

April 16, 1982

LB 404

ourselves in requiring 33 votes a precedent that will be set today and be applied for many years in the future? I think that is a mistake. I would urge my colleagues not to sustain the Chair in this matter. In fact I would urge the Speaker to change his mind.

SENATOR LAMB: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, this is another exceedingly important point that unfortunately we have not had the benefit of some staff research on. Let me just say that I guess the way I look at it, it has got to be a question of substance and not the question of the form and when you are comparing the Commission on Aging with this new Department on Aging, I think what you have to do to make this rule meaningful and to make the constitutional provision meaningful is to compare the powers of the two different entities that are in question, and if the Department on Aging has substantially greater power than the Commission on Aging, then in effect what you are doing is creating a new executive office. If you look at the Commission on Aging, the statutes on the Commission on Aging, there are really only one, two, three, four, a couple pages of statutes on the whole Commission compared to the twenty page bill that is before you on the Department of Aging and the powers that the Commission has are, one, to collect facts and statistics, to make recommendations, to keep informed, to serve as an advisory board, to report and make recommendations, and to cooperate. The interesting thing about all these powers is that they have really no power to mandate anything. They have the power to do research themselves, to do some coordination but they have no power to force anybody to do anything it would appear. When you look at the Department of Aging as proposed in 404, if you look at pages 6 and 7 and 8, you will see that there are some extensive powers in those sections: To develop annual plans; to promulgate rules and regulations and bylaws; to review the performance of area agencies and to approve or disapprove; to designate or withdraw designations of area agencies; and then finally, #16, such other powers and duties necessary to effectuate and implement all of the sections of the act. With much appreciation for what Senator Fowler has said, it seems to me that if you are going to look at the substance of a matter and not just the form that we are in fact creating a new executive agency, and let me tell you why it is important to pay attention to the constitutional provision. I think probably what the framers had in mind is then unless you give substance or give some substance to Senator Lamb's distinction that what is going to happen is every time you want a new executive agency the first thing you will do is create some little