

January 13, 1989

LB 30-34, 361, 410-460

CLERK: Mr. President, I do, thank you. I have a reference report referring LBs 374-409, signed by Senator Labedz as Chair of the Reference Committee.

In addition to that, Mr. President, I have received a communication from the Chair of the Reference Committee referring the communication received from the University Board of Regents regarding the University Health Care project. That has been referred to Appropriations Committee for public hearing.

Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 30 and recommend that same be placed on Select File; LB 31, LB 32, LB 33 and LB 34, all on Select File, Mr. President, all with E & R amendments attached. (See pages 223-26 of the Legislative Journal.)

Mr. President, new bills. (Read LBs 410-449 by title for the first time as found on pages 226-49 of the Legislative Journal.)

Mr. President, in addition to those items I have notice of hearings from the Agriculture Committee offered by Senator Rod Johnson as Chair; from the Business and Labor Committee offered by Senator Coordsen as Chair; from the General Affairs Committee. That is offered by Senator Smith as Chair. And, Mr. President, a notice of hearing from Senator Warner as Chair of the Appropriations Committee.

SENATOR HANNIBAL: Mr. Clerk.

CLERK: Mr. President, new bills. (Read LBs 450-459 by title for the first time. See pages 236-38 of the Legislative Journal.)

Mr. President, finally, I have an announcement the Urban Affairs Committee has selected Senator Korshoj as Vice-Chair of the committee.

Senator Rod Johnson would like to add his name to LB 361 as co-introducer. (See page 238 of the Legislative Journal.)

(Read LB 460 by title for the first time. See page 238 of the Legislative Journal.)

March 17, 1989

LB 54A, 422, 429, 665

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Microphone not activated) ...everyone. Good morning. For the opening prayer this morning we have a real live Irishman from Philip Neri parish in Florence, Omaha, Dan Lynch, Senator Dan Lynch's parish. We're glad to welcome today from Ireland, ancestors in Tipperary, Father Fitzgerald from St. Philip Neri in Omaha. Please rise for the invocation. (Gavel.)

FATHER FITZGERALD: (Prayer offered.)

SPEAKER BARRETT: (Gavel.) Thank you, Father Fitzgerald. We're happy to have you with us. Roll call.

CLERK: I have a quorum present, Mr. President.

SPEAKER BARRETT: Thank you, sir. Any corrections to the Journal, Mr. Clerk?

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Any reports, announcements or messages?

CLERK: Mr. President, Health and Human Services reports LB 422 to General File; LB 429, General File with amendments; LB 665, indefinitely postponed. Those are signed by Senator Wesely. (See page 1196 of the Legislative Journal.)

Mr. President, I have a new A bill, LB 54A by Senator Weihing. (Read LB 54A by title for the first time. See page 1197 of the Legislative Journal.)

Notice of confirmation hearing from the Transportation Committee offered by Senator Lamb. (See page 1198 of the Legislative Journal.)

Mr. President, received a report from the Department of Personnel pursuant to statute. That will be on file in my office. That's all that I have Mr. President.

SPEAKER BARRETT: Thank you. Before proceeding into the first item on the agenda, the confirmation report to be offered by Senator Withem, just a reminder that we will momentarily be proceeding into the Mother of the Year presentation which has

April 7, 1989

LB 247, 429

area is that transfer of credits, which is a totally different issue than duplication, transfer of credits at some institutions are approved at a department or college level where other institutions they may be accepted institutionwide no matter what college you transfer or what you...department you transfer into. But my understanding is that there probably is still room to make improvement, but the essential thing is that a student knows before he takes the course whether or not it will be transferable and that's the direction they are trying to identify.

SENATOR SMITH: Okay, thank you very much. I would give the remainder of my time to Senator Dierks, then if you have some time left over, please give it to Senator Schimek.

SPEAKER BARRETT: One minute and fifteen seconds.

SENATOR DIERKS: Mr. Speaker and members of the body, I can't even say my name that quick. I've been perceived as one who was the fifth vote in Education Committee as far as getting this bill out. I'm not sure that is a true perception because I think there were several fifth votes in there. Just happened in the way that the vote was taken that I became the fifth vote. Number one thing I want to bring out is that I supported from day one the study that Senator Withem brought and the point that I wanted to make is that sometimes I think we've looked on the study as somewhat in a derisive attitude and I don't think that should happen. Senator Withem's studies, those that I have been involved with, the Education Committee studies that he has sponsored have all been very valid and very to the point and very successful, and I have complete confidence that a study such as he suggests in LB 247 will do the very same thing. It will be to the point, it will be valid and it will be successful. I just want to put that on the record that I do believe that a study would provide some of us who are having difficulty making this decision with the information we need to make a good knowledgeable experienced decision.

SPEAKER BARRETT: Time.

SENATOR DIERKS: Thank you.

SPEAKER BARRETT: Thank you. Matters for the record, Mr. Clerk.

CLERK: Mr. President, I have amendments to be printed to LB 429

April 11, 1989

LB 44, 44A, 47, 66, 285, 285A, 361
361A, 372, 401, 429, 506, 546, 548
582, 582A, 608, 637, 739, 777, 790

your light is on.

SENATOR MORRISSEY: Yes, Mr. Speaker, I would move that we adjourn until 9:00 a.m., Wednesday, April 12.

SPEAKER BARRETT: Thank you. Before we take a vote, Mr. Clerk, have you anything for the record?

CLERK: Mr. President, I have amendments to be printed to LB 739 by Senator Wesely and to LB 429. Enrollment and Review reports LB 44, LB 44A, LB 47, LB 66, LB 285, LB 285A, LB 361, LB 361A, LB 372, LB 401, LB 506, LB 546, LB 548, LB 582, LB 582A, LB 608, LB 637, LB 777, and LB 790 as correctly engrossed. (See pages 1648-52 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. The question is adjournment until tomorrow morning at nine o'clock. Those in favor say aye, opposed no. Carried. We are adjourned. (Gavel.)

Proofed by:

Sandy Ryan
Sandy Ryan

April 13, 1989

LB 429, 506, 767

the bill, I think we have had quite a lot of it this morning, and I do thank everyone for their participation and their help in getting this thing put together and getting it across the floor, and I would just ask for the advancement of the bill and a vote for the bill. Thank you.

SPEAKER BARRETT: Thank you. Any questions? Any discussion? Seeing none, those in favor of the advancement of LB 767 to E & R Initial please vote aye, opposed nay. Have you all voted on the advancement of the bill? Record, please.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB 767.

SPEAKER BARRETT: LB 767 is advanced. For the record, Mr. Clerk.

CLERK: Mr. President, very briefly, Senator Haberman has amendments to LB 506 to be printed. (See pages 1679-80 of the Legislative Journal.)

I have the lobby report for this week, for this past week, and that is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. We have some friends of Senator Rod Johnson under the north balcony from Osceola, Nebraska. We have Levar and Francis Sandell and their son Joel Carlson. Would you folks please stand and be welcomed. Thank you. We're glad to have you with us. Mr. Clerk, to LB 429.

CLERK: Mr. President, LB 429 was introduced by Senators Baack, Elmer, Schellpeper and Labeledz and Hall. (Title read.) The bill was introduced on January 13, referred to Health and Human Services, advanced to General File. I have committee amendments pending by the Health and Human Services Committee, Mr. President.

SPEAKER BARRETT: Chairman Wesely, on the committee amendments.

SENATOR WESELY: Thank you, Mr. Speaker, members, this bill, LB 429, is a bill brought to us by Senator Baack and some other cosponsors to make changes in the state certificate of need law which was a bill passed in 1979, my first year in the Legislature. I had a great deal to do with that piece of legislation, have taken a great deal of interest in it since

that time. We haven't had major change in that bill for a number of years. Probably the last time we had any major changes was in the early eighties when the original 1979 bill was radically changed to a process and system that, frankly, I didn't support and did interject two different reviews under the process and otherwise weakened the original bill from 1979. But outside of those changes we really have gone almost five or six years without major change to this bill. The committee amendments deal with a couple of the items in this piece of legislation and make some improvements, I think, to the bill and I would ask support for the committee amendments. The first is that the original bill did sunset under the bill a review of hospitals under certificate of need for several years into the future, I believe 1992. You would no longer have under the original bill any review of hospitals under certificate of need. This committee amendment would remove that sunset. In addition, the definition of ambulatory surgical centers under the bill was of controversy between the hospitals and the physicians and they worked together to reach a definition that they have agreed to and those are incorporated into the committee amendments. In addition the press association did contact the committee concerned about the Certificate of Need Review Committee and its proceedings and the need to have an open meetings law provision apply to their activity and so the committee amendments would provide for that change. Obviously we'll get into more of the subject matter as time goes on but those were the committee amendments and I think they do improve the bill. I would move for their adoption.

SPEAKER BARRETT: Thank you. Senator Elmer. Senator Elmer, pardon me, we do have an amendment on the desk. Thank you.

CLERK: Mr. President, Senators Elmer, Schellpeper, Baack and Hall would move to amend the committee amendments. (Amendment appears on page 1585 of the Legislative Journal.)

SPEAKER BARRETT: Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker and members, I agree with the committee amendments as Senator Wesely has explained those so far. I am going to ask for a couple of more changes to be made in the committee amendments and the thing that we're going to be dealing with in the bill is we're going to be talking about a number of the thresholds that trigger the certificate of need process. And what I would like to change in this amendment is

that the first change that we have in there would lower the capital expenditure that triggers certificate of need. This would lower the certificate of need review process from 1.5 million to 1.2 million. I think you will see that Senator Wesely has a number of amendments filed to the bill and a number of them do that exact same thing, lower that from 1.5 to 1.2 million. The second amendment was as the bill was originally written, the capital expenditure that triggers review for a substantially changed or new service in the bill was that 1.5 million. I am asking that we lower that down to \$900,000. The third change is that we would add the inflation index to the cost of major medical equipment that triggers CON. This would put into a place a process whereby as the cost of...as the inflation goes up, there would be an automatic raising of these thresholds to meet this inflation factor. The fourth is a change of the procedures. This is purely a technical kind of amendment dealing with the first filer in a CON project, so this is purely a technical kind of change. The next amendment, again, is technical. It allows the Department of Health on its own action to hold a public meeting concerning a CON application. Currently, only the interested parties can ask for such public meeting. This would allow the department to ask for this public meeting. The next change is again technical in nature and deals with some time frames in the holding of the public meetings by the Department of Health in the certificate of need process. I think that is all of the changes that are made. I think I have properly explained them. I don't know whether Senator Wesely is going to address them. If I have not properly explained them, I will attempt to answer any questions that anyone might have on these amendments to the committee amendments. With that, I would just urge the body to adopt this amendment to the committee amendments. Thank you.

SPEAKER BARRETT: Thank you. Senator Elmer, please.

SENATOR ELMER: Thank you, Mr. Speaker. The amendments to the committee amendments have been negotiated and the vast majority of the health care providers of all types in the state have negotiated and worked on these and have come to an agreement that this will best serve the public of the state, and with the adoption of the amendments to the committee amendments, the committee amendments to the bill, we will have a very workable method whereby we can contain health costs as far as capital expenditures are concerned and at the same time we will be able to let some competitive...competitive work be done around the

state to lower the health care costs of the citizens of this state. The certificate of need as it's working now as will be shown later in the debate on the floor is doing nothing but increase health care costs to the people of the state. And I would urge the adoption of the amendment to the committee amendments and the committee amendments.

SPEAKER BARRETT: Thank you. Senator Wesely, followed by Senators Schellpeper and Schmit.

SENATOR WESELY: Thank you, Mr. Speaker, members, I would rise in support of the amendments. They do make technical changes that are needed and identified by the Health Department. I have reviewed those. There is one additional technical change that I will be offering in a later amendment that isn't included, but otherwise it is fine in terms of the technical amendments. The reduction from 1.5 to 1.2 is an agreed to compromise, a reasonable one, and I would support that. The \$900,000 figure on the new services is an attempt at compromise on the part of the providers. Of course, it is not quite what some people would like to see, including myself. I have an amendment to go clear down to \$50,000. That may be perhaps too low, but at least it is a good faith attempt on the part of the providers to compromise and so I would support the reduction down to 900,000. I would argue a bit, I know we'll get into this more later, but Senator Elmer talked about these amendments and how the providers have all sat down and reached a compromise on this for the good of the public. Well, I think in this case perhaps that's the case, but just because the providers have sat down and agreed to something doesn't necessarily mean that the public is well served by those agreements and compromises and I think we'll get into that later. But I did want to challenge that premise and position, but in this case I do agree that these are good amendments and I would support them.

SPEAKER BARRETT: Senator Schellpeper.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker and members, I would also rise to support 429. I think at the present time the CON in the State of Nebraska is probably obsolete. We need...I don't want to do away with it, but we need to update it and I think there has been some compromises worked out here with the hospitals and nursing homes and the medical people and I think that we need to support that. I think Senator Wesely is probably right, it hasn't taken everybody, but I think it has

taken the vast majority and I think it is something that the people can work with and it's something that we should do, and so I would support the amendments. Thank you.

SPEAKER BARRETT: Senator Schmit, on the amendment to the amendment.

SENATOR SCHMIT: Mr. President, I have no objection to the amendments to the amendment, but I just want to say at this time I did not know that CON was responsible for increasing the cost of health care in the State of Nebraska, but I do want to say this. There was a time back when myself and Senator Wesely and Landis and Hoagland and Vard Johnson and a few others established a pretty substantial certificate of need law in Nebraska. At the present time we have a mere shadow of that bill and by the time that we get through with 429 we will have only the shadow of a skeleton and so, therefore, I have drafted an amendment which will repeal the entire certificate of need because I think that it doesn't really make much sense to go through the charade. If, in fact, it is true that certificate of need has increased the cost of health care in Nebraska, that wasn't what we intended. Now I'm not admitting that at this time because it was my intention to try to hold down the cost of health care. I have to say this, and I agree with much of what Senator Owen Elmer has said. It really hasn't worked lately. You just go in there and you get your rubber stamp and you proceed with a couple of little exceptions of course. It's kind of like anything else. If you want to spend 50 million, you can get that approved. If you want to spend a few thousand, then you run into obstacles. So I'll discuss that a little bit more later on but I just want to caution you, ladies and gentlemen, that as the cost of health care escalates in this state and in this country to the point where the average person, and I don't mean a state employee, I don't mean a federal employee, I mean the person who pull on their pants and their shirts and their socks in the morning and go out and get a job in the private sector can no longer afford health care. At that point in time we don't want to sit around and wonder what happened to us. I hope that doesn't happen in the immediate future, but it has almost reached that point now. It has almost reached that point now. It may well be that the present language is inoperable, but if you will just take a look at what we are doing under 429, I think we ought to admit that we have left nothing really, nothing in the bill that can possibly help hold down the cost of health care and so we ought to really consider adjust outright

repeat and not go through the charade, but that is all I'm going to have to say at this time.

SPEAKER BARRETT: Senator Lynch.

SENATOR LYNCH: Mr. President and members, I am concerned. I can understand Senator Schmit's frustration with the system and how it works, but to shoot the system because it failed, I think in this case, could be the wrong approach. I'll say it now and I'll remind you again probably later in the debate that long before we had certificate of need and we're dealing with a profession that was doing business on a cost plus basis. I think most of you people who are in the farming business never bought a tractor until you found out how much it cost first. Nobody bought a bathroom from me unless they knew what it cost. But in health care for some reason or another, when you get sick you go to the hospital and then the insurance company gets the bill and that's okay. Before certificate of need, and we were doing business on a cost plus basis, we built about 1,500 too many beds in Omaha, Nebraska. That had an awful lot to do with the cost of health care and even though that was a long time ago that cost is still being assumed by too many people who get sick because those institutions in some cases were just simply greedy, like building too many gas stations just because you had all that money in the bank and sooner or later you had to close those down for obvious economic reasons. You need some kind of system and checks and balances. To throw out a system of certificate of need now would be the wrong thing to do. I hate to use the word signal of send out, some deregulation I guess is justified in almost any industry so that competition can prevail. National level, President Reagan established the DRG system for about 460 some procedures. That probably did more than anything else to regulate the industry because they knew they wouldn't get paid, just so much money for a certain procedure and they just couldn't, unfortunately, and I think unrealistically and in a very selfish way, just continue to expand and spend money. I have some concerns about the liberalization of the certificate of need. I'm not sure what kind of trigger there will be to justify expanding or not, but on the other hand I would hope that we just wouldn't agree to do away with certificate of need at all. 429 did, in fact, have in it a provision for sunseting certificate of need and with the permission of the chief sponsor, Senator Baack and others, in committee that section was deleted, and rightfully so. Just like to say move cautiously. When you talk about health care

sooner or later you're going to be talking about rationing health care around here. You know you've got rich sick people and you've got poor sick people, you've got those in between who pay the bills, then you're going to have a serious problem. In another year or two from now you might have to seriously consider giving the limited dollars we have, who you're going to be able to treat or not. So keep that mind as you deregulate anything and in particular the health care industry.

SENATOR HANNIBAL PRESIDING

SENATOR HANNIBAL: Thank you, Senator Lynch. Senator Labeledz, please.

SENATOR LABEDZ: Thank you, Mr. President. Some time in January of 1989 I wrote a letter to the Federal Trade Commission in Washington, D.C., in regard to the certificate of need and they sent me back a 13-page reply. I'm not going to stand here and read you 13 pages, but there are some things that I would like to read to you in their reply and this is from the United States Federal Trade Commission. For the reasons discussed below, we believe that Nebraska's current CON regulatory process may unbalance, harm health care consumers. While we believe the outright repeal of CON regulation, health care consumers, we believe that passage of either of the other CON reform bills would likely also have significant positive effects on health care markets in Nebraska. I will go to the last page and read their conclusion. We believe that the continued existence of CON regulations would be contrary to the interests of health care consumers in Nebraska. Ongoing changes in the health care financing system, including prospective payment mechanism and increased consumer price, sensitivity fostered by private insurers are eliminating the principal concerns that prompted the certificate of need regulation. Moreover, the CON regulatory process does not appear to serve its intended purpose of controlling health care costs. Indeed, CON regulation may be counterproductive because it interferes with competitive market forces that would otherwise help contain costs. CON regulation tends to foster higher prices, lower quality and reduced innovation in health care markets. The elimination of such regulation as proposed in LB 745, and that was the repeal of CON and it was in committee and it was indefinitely postponed, or its substantial liberalization as proposed in LB 429, and to a lesser extent in 439, would be likely to benefit the Nebraska health care consumers. Thank you very much.

SENATOR HANNIBAL: Thank you. There are no other lights on. Senator Baack, would you care to close on the amendment?

SENATOR BAACK: Yes, just briefly, I would...I know that Senator Lynch had talked about it, and in the committee amendments we do strike the sunset and I am supportive of that. I don't think that we should do that either, and that was part of the compromise and that's not something that we need to do. I think that 429 takes a reasoned approach though, and I don't think it wipes out certificate of need altogether. There is still some triggers in there that will trigger some things to happen and will trigger some review of certain services that are offered because some of the technical things that are...some of the highly technical machinery and stuff that is available these days will be triggered by certificate of need. So some of those things will still be...still trigger certificate of need, so it doesn't repeal it altogether. I don't think we should do that now either. With that, I would just urge you to adopt this amendment to the committee amendments. Thank you.

SENATOR HANNIBAL: You've heard the close on the amendment to the committee amendments. The question before you now is the adoption of the amendment. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments.

SENATOR HANNIBAL: The amendment is adopted.

CLERK: That is all the amendments I have to the committee amendments, Mr. President.

SENATOR HANNIBAL: Before we go on to the committee amendments themselves, I'd like to take a moment to introduce to the Legislature some very special guests that we have in the rear of the Chamber today. With us today we have participants of the American Legion National Oratorical Contest finals. They are being held here in Lincoln tomorrow morning at the Nebraska Continuing Education Center. We have four of the finalists with us. I'd like to have them be recognized and raise their hand as I call out their name. First, from Huntsville, Alabama, we have Angela Ruth Weaver. From Milwaukee, Wisconsin, we have Joy M. Whitten. From Hydes, Maryland, we have Martin Kelly, Jr. And

April 13, 1989

LB 429

our own from Fairbury, Nebraska, we have Pamela Kay Epp. These students will be vying tomorrow for a total purse of \$60,000 in college scholarships and we wish you all the very best. Thank you for being here today. Mr. Clerk.

CLERK: Mr. President, we're back to the Health and Human Services Committee amendments as amended.

SENATOR HANNIBAL: Senator Wesely, on the committee amendments.

SENATOR WESELY: Am I closing, or...?

SENATOR HANNIBAL: No, you are opening.

SENATOR WESELY: I'm opening. I had already opened. I would rather wait until closing. I don't think we need to...

SENATOR HANNIBAL: Thank you. Senator Schmit, please, on the committee amendments. Senator Schmit waives. There are no other lights on. Senator Wesely, would you care to close?

SENATOR WESELY: Okay, thank you. Mr. President, members, again, the committee amendments originally called for the sunset removal, called for a clarification on the definition of ambulatory surgical centers and also opened up Certificate of Need Review Committee meetings under the open meetings law. In addition, the amendment by Senator Baack lowered the thresholds under the bill from 1.5 to 1.2 in terms of capital expenditure generally and for capital costs and new services went from 1.5 to 900,000. Of course, there is now no threshold so it's going from zero up to 900,000 under these amendments and then made some other technical changes that were necessary, so I would move for the adoption and ask for your support for the committee amendments as amended.

SENATOR HANNIBAL: You heard the closing on the committee amendments. The question before you is the adoption of the amendments. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR HANNIBAL: The committee amendments are adopted. To the bill. Senator Baack, on the introduction of LB 429.

SENATOR BAACK: Yes, Mr. President and members, I will try and give you a short synopsis of what LB 429 does. First of all, I'd like to, you know, just give a few brief comments on the certificate of need process. I think it was stated earlier that the certificate of need law in Nebraska has not been significantly changed, I believe since 1981, when such programs were in effect and they were required by federal law. Since 1983 the federal funding and the requirements were terminated for certificate of need and since that time 14 states have totally repealed their CON laws and many of the other states have changed their CON laws, raising the thresholds and raising the trigger amounts for the certificate of need process. And I think one thing to remember is, is that in the 14 states that have totally repealed their CON laws, the information that I have and the statistics that I have seen do not show that the costs have increased significantly to the consumers in those states. Now to 429 and what it exactly does. I think I have about 10 different points that I'm going to make on the major changes that are made. First of all, the capital expenditure amount that would trigger the certificate of need review as we amended it in the committee amendments would raise from the current level of \$577,240 to 1.2 million. Most of these changes that we're making in the thresholds were based on a report issued by the Federal Trade Commission that said that one of the ways that states should look at raising their thresholds is to approximately double those thresholds, and these figures are fairly close to that. Even by changing this to 1.2 million we still have nine states that have the higher thresholds yet than this, and we also still also, of course, have the 14 states who have totally repealed their CON laws. The second change is the annual operating cost involved with the new service which would trigger review, would go from \$288,620, those figures seem rather odd because they are very...they are not nice round figures and that's because they are index for the inflation factor and that is why those figures are in there. The new triggers that we're putting in also have this inflation factor in them. This new one for the annual operating cost would go from 288,000 to 550,000. And there is also a change in this so that the clarification for the operating cost for this new service and you must show that this is directly related to the offering of a new...a specific new institutional health service. You've got to show specifically that it's connected to that. The third change is the capital expenditure that would trigger review for a new service or substantially change a service. In

the committee amendments that we adopted, the bill originally called for that trigger to be 1.5 million. We are lowering that to 900,000 right now. Currently, my understanding is the department has been interpreting this section to cover changes in service that possibly even involve a mere \$500 in capital expenditure. I have...the hospital in Sidney recently went through a CON review for the installation of a \$500 plug-in for a mobile CAT scanner, so they had to go through the process for that. The fourth thing that is changed is the trigger review for major medical equipment. This would go from the current level of \$400,000. This would now be \$1 million, and I think that this would allow the hospitals to be a little more competitive in an open basis for providing these services to the public. The fifth change is that the current process would be streamlined at the Department of Health's in the certificate of need review. Currently the initial decision now under this bill, that would only be that the Department of Health could make the initial decision. There wouldn't have to be as many appeals involved. The department themselves could make the initial decision and then there would only be one appeal before going to the courts instead of the two sets of appeal that we have in place now, so it does make that change. The sixth change that it makes is a compromise that was reached between the health care association and the hospital association, the nursing homes and the hospital association, and what it does is it says that any conversion of acute care beds to skilled nursing care beds or intermediate care beds or a combination thereof which is greater than ten beds or 10 percent of bed capacity over a two-year period, that will be subject to CON review. Currently if there is no capital expenditure involved, the hospitals can convert those beds without going through the CON process. This actually puts another...this process under CON review which it presently is not under CON review. The seventh change is that the home care services, health care services, would be removed from the CON review. This is done because right now the service is actually rather inexpensive. The capital cost is minimal and reimbursement from state and federal government sources is very strictly controlled as to home health care. And we also have a licensure law for licensing home health care and this is in place that will help regulate the quality of such services that are provided. The eighth change is on...it deals with residential care facilities. If they would convert any of their beds to skilled nursing beds, this is simply to close a loophole that...well, this one is rather complicated for me. It's a loophole where such

facilities could qualify for government or private reimbursement without receiving a certificate of need. This closes up that loophole. It also makes it very clear that closing a hospital, a change in bed classification from intermediate care to skilled nursing care and that acquisition of a computer or other than diagnostic or therapeutic reasons is not subject to certificate of need. If they are going to use it simply for their bookkeeping and this kind of stuff, that is not subject to certificate of need, only if it is being used for diagnostic or therapeutic reasons with the...that is dealing with the computer system. And also the closing of a hospital would not be subject to certificate of need. There is also, the next change is in dealing with the expedited review, it's the short form of allowing for termination of single services, expenditures made necessary by disasters or emergency. This would provide for a short form of certificate of need review so they wouldn't have to go through the entire process. And the last change, the tenth one, is that it would be...it deals with the review of long-term care or skilled nursing beds, intermediate care beds, residential or domiciliary beds and hospital conversions to long-term care beds would continue after August 1, 1992. But since we did away with the sunset clause in there that is not necessary anyway because that is dealt with in another section, so we did address that in the committee amendments when we dealt with the sunset clause. With that, I would be glad to try and answer any questions. Some of these health care issues are, I will freely admit, are not my forte, but I have learned a lot in this process and I will try to answer any questions that I can. Thank you.

SENATOR HANNIBAL: Thank you, Senator Baack. Before we go on to our next speaker I'd like to announce that we have some special guests in the north balcony that are guests of Senator Ashford. We have 61 fourth graders from Hillside Elementary School in Omaha with their teacher. Would you all please stand and be welcomed by your Legislature. Thank you for joining us today. Amendment on the desk.

CLERK: Mr. President, Senator Wesely would move to amend the bill. Senator, I have your AM1246 in front of me found on page 1648 of the Journal.

SENATOR HANNIBAL: Senator Wesely.

SENATOR WESELY: Thank you, Mr. President and members. This is

the first in a number of amendments that I've had drafted but it is the amendment that I think most clarifies and takes care of the concerns I have with this piece of legislation. I want to commend the providers, particularly the Hospital Association and Roger Keetle, for having attempted over the course of the last few weeks to sit down with me and try and work out some compromises on this bill. The Baack amendment is adopted, the committee amendments, did help to some degree to deal with those concerns I have. But the fundamental problem we still have remaining with this piece of legislation is the question about what oversight this state will have to review new services, new equipment, expensive new services and expensive new equipment? That is really the fundamental issue remaining as far as I can see because the other types of issues that we have in the bill I think are fairly reasonable. They come out of a study that was done by a task force that was pulled together by the committee and appointed by me two years ago. This task force was chaired by Dale TeKolste and did come up with a report two years ago. A bill was introduced last year to implement the report. Unfortunately we had a conflict between the hospitals and the nursing homes and as a result we weren't able to proceed on that piece of legislation. Well the hospitals and nursing homes sat down and worked together and came back with LB 429. Unfortunately, they took the original recommendations and the original bill from last year and they substantially enhanced their benefit from that piece of legislation. They took the thresholds that we recommended and made them much higher so that there would be more exemptions to the review. They made some other changes, particularly with the question about new services being reviewed and added those into the bill to further weaken and water down certificate of need beyond what was recommended by that task force that had been formed, a weakening far beyond what I think is justified. And so, of course, I did not feel comfortable with those additional changes. I did feel comfortable with the original base of the changes in changing the process, the procedures. Instead of having two different reviews, one review would occur. Instead of a very elongated review you would have a very streamlined review. Instead of having some things reviewed in a big way in a traditional fashion, you'd have to call nonsubstantive review for these types of operations that really are not controversial and can be reviewed rather easily, or don't even need to be reviewed, at all in the case of home health services. So I think the base and guts of this bill has gone a long way to help the hospitals and the health providers of this state. And what I think is

happening here, frankly, is that they pushed for too much. They are asking to go too far at this time and weakening certificate of need, and I understand the viewpoint of a few senators in here that don't like certificate of need at all, but I hope the majority of people recognize the role certificate of need has played and can play in containing health care costs and maintaining quality of health care in the State of Nebraska. Let me run through quickly some of the charts I have passed out and I hope you'll have a chance to read some of these and I know we're going to break for lunch and you'll all have lots of time then to take a look at all these wonderful materials, but if you look, you'll see that in the one chart I've got that in 1960 this country spent about \$27 billion on health care. It is estimated that that will approach \$750 billion next year sometime, quite an increase, a tremendous increase, an increase approaching 680 percent in about 30 years. You'll also see another chart that shows how the percent of the gross national product for health care has increased from a figure in let's see, in 1960 of about 5.2 to a doubling of that in the current time to about 10.4 and will be over 11 percent and approaching 12 percent of our GNP this year or next. You'll also see another chart showing the line going up dramatically in terms of the percent of our gross national product going to health care cost. You'll also see another chart showing the annual increases in cost and, again, the hospitals particularly have increases, but all health care providers are having substantial increases in cost. You'll see that hospital care is 39 percent of the overall cost of health care and you'll also see another breakdown of how that is paid for. You'll, I think, be able to identify a number of other pieces of information. One of the things that is kind of interesting on the materials I passed out is looking at other countries you'll see that our GNP percentage of now about 11 percent is much higher than other countries. Britain is down to 6.2 percent and Sweden is at 9 percent and others are in between. We spend, as a percent of gross national product, quite a bit more than those countries. We also spend less from the government than those other countries. They have much more nationalized health care programs. Going on you'll see that employers are experiencing tremendous increases in health insurance costs and we're suffering tremendous increases privately and publicly on health insurance to cover our employees. And finally, you'll also see that other changes in the past to contain costs and reduce hospitalization have been effective. You'll see a tremendous decrease in patient days. In the case in Omaha, for instance, from '82 to '88 you'll see

Bergan Mercy had a 47 percent decline. Others have less, St. Joe's, 33 percent decline and the med center about a 12 percent decline in patient days. We're seeing change, radical change in how we handle health care, trying to contain health care cost, trying to maintain quality. But the impacts on this state and this nation are tremendous. Senator Schmit made a point about, privately, about people paying more for medical care than they do property taxes. We're all worried about property taxes in this Legislature, but you'll find most every family paying more, far more, for their medical care for that family than they are talking about property taxes and we're seeing those costs go up dramatically. Now for this old Legislature talking about the impacts of health care costs, you'll find an indigent care bill on Final Reading that is a \$12 million figure. You'll find in the budget an increase of \$4 million this year and then an additional 3 million more next year for state employee health insurance and those figures are both \$2.5 million short of the increase that is really needed, so we are talking in fact of about a \$6.5 million increase in what is necessary to cover our health insurance for our state employees this year and about a \$10 million increase for next year, no small change in cost. That is just additional cost let alone the base cost of what we're paying for health insurance. The Medicaid budget is going to go up \$21 million this year and another \$12 million on top of that next year for a \$33 million increase the next fiscal year, \$50 million of increased cost over the course of the next two years on Medicaid alone. The CHIP program is a program that we've talked about recently. They are proposing a 60 percent increase in premiums for the CHIP program to cover those individuals unable to be insured privately. We have seen the University Hospital proposal for a 40 to \$50 million increase in expenditures for capital improvements there and we've discussed that matter and the list goes on and on and on. We are facing tremendous impact to the taxpayers of this state on health care cost, so we're finding the state, through taxpayers paying these additional costs, you're seeing employers through additional costs on employee benefits paying these additional costs. You were seeing a tremendous resurgence of increase in health care costs rising across the state and the nation. Now we did in the middle eighties try and deal with this because in the early eighties we did have an increase similar to what we're experiencing at this time and we came back with a litany of alphabet soup solutions. We had DRGs, HMOs, PPOs, PROs and CON was part of that. The solution to the health care cost problem is a multifaceted one,

but is one we cannot ignore and must address, and the one initiative that we have before us at this time, the certificate of need initiative, one that we have to recognize plays at least a role in trying to contain health care cost and needs to be changed and improved but can't be weakened or gutted to a point where it is not effective any longer in dealing with those problems of duplication of services and excessive expenditures beyond what is reasonable. Now I know as we go through this and talk about the amendments, that there will be an easy and a hard way for you to go...

SENATOR HANNIBAL: One minute.

SENATOR WESELY: ...and the easy way will be for you to vote against this amendment and perhaps some other amendments because I can tell you, and I know the lobby has got a number of representatives there from the hospital, nursing homes, perhaps the physicians. They are very much in agreement and want to see the bill go through as it is, although we're continuing to negotiate. The Department of Health and the health and insurance industry cares about this question, but are neutralized and unable to participate in helping us to contain the costs of health care and get involved in this issue, and who is left on the other side? Well, that's us really, representing the consumers, the public, the taxpayers of this state. That is who we are here to represent, that is who we are here to try to serve and in my estimation this bill is inadequate in meeting the concerns of the consumers, the public and the taxpayers because it too far weakens the certificate of need process and with reasonable amendments which I am offering at this time we can get back to a change in the bill that improves the legislation and still maintains the oversight we need on this very important matter.

SENATOR HANNIBAL: Thank you, Senator Wesely. Before we proceed, I understand we will have an amendment to the amendment, but, Mr. Clerk, do you have anything for the record?

CLERK: Mr. President, Senator, just one item, Senator Lindsay would like to add his name to LB 325 as co-introducer. (See page 1681 of the Legislative Journal.) That's all that I have, Mr. President.

SENATOR HANNIBAL: Senator Wesely, would you care to recess us for the noon hour?

April 13, 1989

LB 429

SENATOR WESELY: Yes, I'd move to recess till one-thirty.

SENATOR HANNIBAL: You've heard the motion, all those in favor say aye. Opposed nay. We are recessed until one-thirty.

RECESS

SPEAKER BARRETT PRESIDING

CLERK: I have a quorum present, Mr. President.

SPEAKER BARRETT: Thank you. Anything for the record?

CLERK: Not at this time, Mr. President.

SPEAKER BARRETT: The Chair is pleased to advise that Scott Moore, Senator Moore, has some students with sponsors in the north balcony from Bradshaw. We have 19 fifth and sixth graders. Would you folks please stand and be recognized. Thank you. We're glad you're here. Also, Senator Robak has some guests who just arrived in the north balcony, 56 fourth and fifth graders from Field School in Columbus with their teacher. Would you folks please stand. Thank you. We're glad you students can be with us as well. And also the Chair has some special guests under the south balcony, Mr. Terry Healey and his son Chris from Gothenburg. Would you gentlemen please stand. We're glad you could be with us too. Mr. Clerk, to LB 429. Can you bring us up to date?

CLERK: Mr. President, 429 was discussed this morning and it relates to the Certificate of Need Act. Committee amendments have been adopted. Senator Wesely opened on his amendment to LB 429, AM1246. Senator, with your permission, I now have pending your amendment to the amendment which would on page 1, line 10 strike "fifty" and insert "five hundred". Mr. President, Senator Wesely would offer that amendment to his amendment.

SPEAKER BARRETT: Thank you. Senator Wesely, on the amendment to the amendment.

SENATOR WESELY: Thank you, Mr. Speaker. As you recall I

started in on the discussion on this measure. It does a number of things, some of them already adopted by Senator Baack. First off, there are technical amendments to the bill that were necessary and those that I have are similar, well essentially the same as Senator Baack's. There is one additional item not of controversy that would be added, but otherwise that is not of controversy. Another change in this amendment deals with the CT scanners and takes them and puts them on a nonsubstantive review off of the list that had originally been proposed to allow for some review but not have them go through a full formal review. In addition, the capital expenditure provision in this amendment is 1.2 million. Senator Baack has already offered that and so that is incorporated. Where we have the conflict then is two points. The capital expenditure minimum for a new service and the list on what will be reviewed as a new service. Now Senator Baack has already moved from 1.5 million down to 900,000, but from the other perspective we're at zero right now. That is to say any new service would be reviewed under the current provisions of the law, and so we're going from zero to \$900,000. The other way to look at it is we're going down from 1.5 to 900,000. You can argue it both ways. I think \$900,000 is simply too high a figure for the new service. One of the charts I have passed out indicates that we have the new service reviewed in other states and that many have any new service reviewed in Nebraska. It is listed as being \$280,000 and the other services are basically in that range. I'm suggesting that we raise that to \$500,000 versus going clear up to \$900,000, but what this does essentially though is amend the current amendment which is at \$50,000, so we go from 50 to \$500,000 and then I think we'll have this amendment in the shape it needs to be to be further considered. So I'd be glad to discuss that further but I think at this point it is an attempt on my part to be somewhat compromising on this. The Department of Health would like to see a \$50,000 figure. I don't know that that is reasonable, but I think 500,000 certainly is, so I'd ask for that amendment to be adopted.

SPEAKER BARRETT: Thank you. Discussion on the Wesely amendment, please, Senator Elmer, followed by Senator Baack.

SENATOR ELMER: Thank you, Mr. President, members, I rise in objection to this amendment. You know the changes in licensures, the changes in professional reviews, ongoing operational reviews by the Department of Health for all of the nursing care, hospital care units in the state keep these

qualities in good perspective. From a rural perspective they have been nothing but additional costs. These lists should be reviewed even if there is no cost involved, seems completely unreasonable. CON hasn't held down the cost care as Senator Wesely would allege. In his own handout he claims that health care costs are going up, but it says the fastest growing component of health care expenditures in 1988 was professional services. According to the annual report, reading directly from Senator Wesely's handout, the cost of physician services rose 12.8 percent while the cost of services provided by home health, optometrists, nurses, therapists and these other type of people went up almost 16 percent. So you can see this health care component is not something that is covered by certificate of need or these lists, it is covered by the increase in the professional charges. I handed you out an example of what certificate of need is costing our rural hospitals. My hospital in McCook, Nebraska wished to spend less than seven or \$800 to put in some electrical outlets for a portable CT scanner. Because they were offering a new service that they had not offered before, the Health Department was requiring them to go through a certificate of need review. The certificate of need review costs five to \$15,000 for an accountant's time and various professionals to help them put their...to put their materials together, and the new service cost the hospital nothing but electrical outlets. Currently, if you'll look at our handout, if a doctor orders a diagnostic CAT scan of a patient, he has to provide ambulance...the hospital has to provide ambulance service to Kearney, pay for the CAT scan in Kearney, pay for the ambulance trip home, \$308 for the ambulance, 370 to \$80 for the CAT scan. If that unit were available in McCook, the cost of the CAT scan would be 270 to 85 to \$295 with no ambulance cost. It's a clear demonstration of why certificate of need costs us more, and I'd ask you to oppose this amendment to Wesely's amendment, amendment to the amendment.

SPEAKER BARRETT: Thank you. Senator Baack, please, followed by Senator Schellpeper and Wesely.

SENATOR BAACK: Yes, Mr. Speaker and members, I think we need to, you know, we need to focus on exactly what this amendment is and I'm going to talk a little bit more about the totality of the amendment we're going to be talking about, but this amendment is specifically that in the amendment that Senator Wesely first introduced, said that the capital expenditures for

a new service or substantial change of service would be set at \$50,000. He is willing, in this amendment to the amendment, to raise that level to \$500,000.

SPEAKER BARRETT: Senator Baack, excuse me. (Gavel.)

SENATOR BAACK: Thank you, Mr. Speaker. This would raise the level from \$50,000 to \$500,000. Another way of looking at it though is to say that what it does is it raises the thresholds that we have established in 429 from \$900,000 down to \$500,000. That is the two different ways of looking at this amendment. But I think we need to, and I'll be the first to admit that going from 50,000 to \$500,000 is certainly a move in the right direction, but the...I don't think, you know, I don't want to get into an auction on these numbers in here. That's not what we're out here for. I think that we have looked at the thresholds and we have put some very, very reasonable thresholds into 429 and this is done with some reasoning and we didn't do this just by picking a number out of the sky, and I think that...and that's why originally the bill was at 1.2 million, or 1.5 million, we were willing to lower that to 900,000 seeing that we could go to that level and still make the process work properly. So I rise in opposition to this amendment to the amendment. And I think that we need to look a little bit more at the amendment also because...and we'll probably get into this as we discuss the totality of Senator Wesely's amendment, but one of the main features of the disagreement between Senator Wesely and myself, of course, is the list. And if we're going to include this list as services that no matter what costs, they are going to be reviewed, at that point it makes the numbers that we're talking about here, the 50,000, the 500,000, 900,000, whatever number you want to put in there, it makes those absolutely meaningless because we're going to have all of these other services that are going to be absolutely reviewed regardless of the cost. And he's got a very long list of things that have to be included regardless of cost and I don't think that that's a good move. I don't think we ought to put that kind of a list into statute saying that these services regardless of cost are going to be reviewed. What we have here is, we're getting now into the discussion of the haves versus the "have nots" and you're dealing in the competition between hospitals. The haves, the ones that have all these services now like having the list in there so that any new competition would certainly have to go through the certificate of need process before they could offer this service also so we're getting now

into the area of competition between hospitals and how are we going to deal with that? My opposition to the amendment is one that if we put it at 50,000 or 500,000 or a million, whatever we put it at, any of those numbers are going to be totally irrelevant if we add the list. So I am just going to oppose the amendment because that amendment is going to be part of a total amendment that I am in opposition to and that if we adopt his total amendment with those numbers in, those numbers don't mean anything at that point. So I see no reason to change the 50,000 to \$500,000 because if we add the list, we've made that meaningless. With that, I would just urge the body to reject Senator Wesely's amendment to the amendment. Thank you.

SPEAKER BARRETT: Thank you. The gentleman from Stanton, Senator Schellpeper.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker and members, I also rise in opposition to the Wesely amendment. 429 was a compromise that was worked out with the medical people, the hospitals, the nursing homes. The only one that is not happy with the compromise is Senator Wesely and I think that this is a very fair compromise and I would urge that the body not accept this amendment. Thank you.

SPEAKER BARRETT: Thank you. The Chair is pleased to take a moment before recognizing Senator Wesely to announce two guests under the south balcony, Mr. Orville Jurgena and Mr. Devore Silvey, observers of the National Weather Service. Would you gentlemen please stand. Also in the north balcony we have a number of other federal executives visiting with us today. Would you ladies and gentlemen please stand and take a bow. Thank you. Thank you for visiting. Senator Wesely, followed by Senator Crosby.

SENATOR WESELY: Thank you, Mr. Speaker, members, I think people have misinterpreted again what the amendment does. We're trying to take the current status of this amendment which is at \$50,000 and I'm trying to be compromising and raise it to \$500,000. Those of you who support the bill, I can understand, you don't want to make any amendment that I offer any more reasonable so people will be more inclined to vote for it, so I guess I can see why you'd oppose it. But I am in good faith trying to recognize and attempt to be reasonable on the thresholds, but we're already going right now at zero as a current threshold. That is any new service, any capital expenditure for any new

service is now covered and the department, as I said, would only like to go to \$50,000. I think \$500,000 is more reasonable and I'm trying to be reasonable on this and certainly \$900,000 is a huge increase. From zero to \$900,000 to me is not a reasonable adjustment. That's basically in throwing it out the window. It goes too far, but I think \$500,000 is something more reasonable and I'd like to ask your help in amending this amendment to be in the form I think we can proceed with. Now, Senator Schellpeper, you talked about everybody has agreed to this and the only person unhappy is Senator Wesely. Well I have a lot of respect for you, Senator Schellpeper, you've worked with me on the Health Committee and I appreciate very much your good work. Senator Schellpeper, this body is not beholden to the lobby or what the providers come back to us and hand to us. I'm glad that they were able to agree on something and I'm glad that they're real happy that they're all together on this issue, but that doesn't mean we have to stand here and take whatever is handed to us. We've got to think for ourselves. We have to think through what is the best course of action for the State of Nebraska and we have to represent more than just the lobby and the providers on this issue. We have to represent the people, the million and a half folks out there that use hospitals and nursing homes and doctors and have to pay for those services, and when you look at that side of it you have a whole different perspective. Certainly out there, those people able to hire representation of reaching an agreement. But within this body, hopefully this body represents more than that, represents more than the lobby, represents more than the interest groups involved with the issue. And so I would hope we'd be state senators and think about what we're trying to do here and what the issues are versus just taking whatever is handed to us and running with it. And I understand the easy road again is to do that. I'm telling you that the hard road is to find a reasonable compromise that balances out the interest involved here and \$50,000 is what is originally in this amendment. To be reasonable I think \$500,000 is a better figure, but certainly \$900,000 as is in the bill currently is far too great a change at this point and so trying to reach that middle ground I think \$500,000 is reasonable and I'd ask your support for the amendment to the amendment.

SPEAKER BARRETT: Thank you. Senator Crosby, followed by Senator Labeledz.

SENATOR CROSBY: Thank you, Mr. Speaker and members. I rise

to...I am going to...not to vote for the amendment simply because as a member of the Health and Human Services I did feel that when we came out with 429 we had spent a lot of time on this one and another bill that addressed the same problems and that we had done what I thought was a fair and good job to bring out a good bill to the floor that could be put in place and that all parties would be happy. I am not feeling like the lobby is pushing me because I do think I can think for myself, Senator Wesely, and I have one good constituent who is concerned about this bill, Sister Phyllis Hunhoff, at Madonna Care Center and all of you know the reputation of Madonna. She is concerned about the...she likes the certificate of need review, so do I, but I think you can go too far with it and adding to health care costs when you have every little thing reviewed, that does add to the health care costs. So I am going to resist this amendment, hopefully, eventually I'll get to vote for the bill. Sister's concern, Sister Phyllis' concern is that hospitals might be tempted to expand their rehabilitation services and Madonna has such a tremendous reputation all over the state for that, along with Immanuel in Omaha, and I have visited with people who are for this bill and some health care people and I have satisfied myself that the hospitals will not be able to do that without a certificate of need review. You don't set up rehab for \$25,000 or 50,000. That is going to take a lot of money, a lot of staff, a lot of buildings, a lot of equipment. So at this time I will oppose the amendment and I will, as I say, eventually I hope I get to vote for the bill. Thank you.

SPEAKER BARRETT: Thank you. Senator Labeledz.

SENATOR LABEDZ: Thank you, Mr. President. Many of you that were here last year recall the fact that I required 30 votes to gut LB 716A. It passed with a considerable amount of support and went to the Governor and the Governor received an Attorney General's Opinion and the opinion was that because I did that in the last five days of the session, she was compelled to veto the bill. This morning I read parts of a 13-page letter that I received from Washington, D.C., from the Federal Trade Commission and in regard to what Senator Wesely is trying to do here, let me read you the paragraph, what they have to say about it. If the Legislature does not eliminate CON regulations entirely, reductions in the coverage of CON restrictions such as those set forth in the principal provisions of LB 429, would likely reduce the adverse effects of CON regulation. Raising CON coverage thresholds as LB 429 does should substantially

reduce the burden of CON regulation by eliminating review of relatively small capital expenditures, equipment purchases and other investments in new services. A 19...this is very important, a 1988 report by the staff of the FTC Bureau of Economics suggests that hospitals in states with higher CON thresholds have lower overall cost, and I think that is very important. This took a long time, the 13 pages of support for LB 429, so I urge you to reject Senator Wesely's amendment.

SPEAKER BARRETT: Thank you. Senator Lynch, please.

SENATOR LYNCH: Question.

SPEAKER BARRETT: Senator Lynch poses the previous question. Do I see five hands? I do. Those in favor of ceasing debate please vote aye, opposed nay. Record, please.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate does cease. Senator Wesely, would you care to close on your amendment?

SENATOR WESELY: Thank you, Mr. Speaker, members, again, this amendment amends the original amendment. The original amendment wanted to have a \$50,000 threshold. The current statute calls for no threshold, zero dollar threshold. The \$50,000 threshold is what is recommended by the Health Department as a reasonable threshold. I am in an attempt to compromise which has been done throughout this bill as we get a chance to get back to the main bill, want to try and provide for that to go from 50 to \$500,000. Now some people have opposed it and I'm not quite sure why. As we further discussed the amendment it seems to me as I am offering a chance to compromise you would at least take that advantage and try and amend the amendment to deal with that. To go from 50 to \$500,000 is quite a change and still a very substantial increase. It is short of what originally is proposed in the bill or short of even as it is amended, but nevertheless, I think it is a reasonable effort to compromise and I would ask your help to reach that level.

SPEAKER BARRETT: Thank you. And the question is the adoption of the Wesely amendment to the amendment. All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 4 ayes, 14 nays, Mr. President, on adoption of the

amendment to the amendment.

SPEAKER BARRETT: The amendment fails. Next item.

CLERK: Mr. President, we're back to the original amendment, AM1246.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker. Well an attempt to compromise didn't succeed very well. I'm certainly seeing the handwriting on the wall which is one of the reasons I've filed a number of amendments to try and deal with this bill. I know how strongly the lobby has been working this measure. I know how strongly the pressure has been applied and I know how difficult it is to want to wade through the issues, but the key issue on this matter is about to be discussed and that is the question of what we review in terms of new services. Before we get to that let me again emphasize to you, short of that element, that question, we have done through this legislation tremendous things to help the industry, the providers of this state, to have an easier time of getting through certificate of need. Home health services are removed. We make it easier to deal with the hospital and nursing home conversion issue. We take a number of things and move them to what is called nonsubstantive review which is a very easy process to work through, computers no longer having to be reviewed and we have capital expenditures going from 500,000 to 1.2. We have annual operating expenditures from 284,000 to 550,000; major medical from 400 some thousand to one million and capital expenditures for new services from zero to 900,000. We change the system, we streamline it. We make it easier all the way around for everybody. I am just asking that as we give that much back, that we hold the line in one area, one area alone that I'm going to press and make as clear as I can and that is the concept of trying to review new services. This is a problem for the whole country and is exemplified by a handout that I sent around which said, health care costs rising 10.7 percent. One of the key factors was the use of sophisticated but costly technology and treatments for heart ailments, kidney disease, cancer and AIDS. This chart also went through coronary artery bypass surgery, kidney dialysis which is renal dialysis, cardiac care, heart/liver transplants, artificial hearts, nuclear magnetic resonators, all these different new concepts either in surgery or equipment that are nothing today in terms of an overall

impact but which will rise dramatically in the future. And I don't need to go through the examples. I will later if time permits, but the point is it is these types of new surgeries and new equipment where we can try and draw the line on both the cost and quality measure that we've got to recognize that one of the reasons we have such high health care costs is that we have these new exotic surgeries and equipment coming into our country and people are quick to try and pick up on them. They rush forward and grab them at the point at which they are employed and that is a very costly thing to do, it is very expensive. Sometimes the cost will go down over a period of time, CAT scanner is one example of that and for Senator Elmer's edification, this amendment, he mentioned a CAT scanner story, this amendment that I'm offering would put CAT scanners on the nonsubstantive reviews so the problem he had would not be a problem under this amendment. But the concept is this, that new services that are costly and difficult to do need to be reviewed by the state before allowing them to go forward. Under the bill in current shape you basically open the door and allow people in any new service and some of these new equipments that fall below the thresholds that are so much higher now, they will just be free to run forward and move into these areas and spend what money they wish and do whatever they wish within...without any regard for its impacts on the state in both cost and quality. To me, I think you're opening the door far too much. Running through what we're trying to do here, the neonatal care units, both number II and number III, would be reviewed as a new service. These are very expensive, not particularly in terms of new cost, but can be very expensive services that are very important as well and having a review there to make sure that people that move into the neonatal care level II and III, which are higher levels, II is higher than I and III higher than II, have a good quality and good access and can do the job that we want to take care of our babies in need of this type of service. So neonatal care would be reviewed under this proposal, trying to recognize the need to provide for quality in that area.

SPEAKER BARRETT: One minute.

SENATOR WESELY: Open-heart surgery is one of the key argument points for us. Senator Labeledz mentioned the fight that we've had over Bergan Mercy. We would add back open-heart surgery, cardiac catheterization, angioplasty into the review process and we can get into that in great detail but this list would include that because it is very important that we understand if you get

into open-heart surgery or cardiac catheterization or angioplasty you're dealing with a very delicate, difficult operation. You need to have skills and ability. There is a cost to set up these operations. The surgery itself is very difficult and you can't have just everybody anywhere doing these things. It is inefficient, but it's also dangerous if you have everybody providing these services and they don't have repetition, the quality diminishes and you have a difficult time in trying to provide the kind of care that we want for our citizens. In addition you have a number of other things that I'll go through. I guess my time is running out, but I certainly want to get into the real main event here and that is the issue of what list is provided for review and what can we do to try and see that new services are reviewed by the state.

SPEAKER BARRETT: Time. Thank you. Discussion, Senator Conway.

SENATOR CONWAY: (Response inaudible.)

SPEAKER BARRETT: Senator Elmer.

SENATOR ELMER: Thank you very much. We're down to the basic issue, should we require a new service even if it has zero, zero costs, if it is a new service offered by a hospital, must it go through a certificate of need? I say no. We are back to what Senator Baack referred to as have and "have nots". In Senator Wesely's own handout it states rural hospitals are struggling. They are have nots. With the innovative new mobile services that extend far beyond just the CAT scan they can offer those services on a once a week basis for their resident doctors to use at no cost to the hospital. Why should that go through a lengthy certificate of need? Why should a hospital in a larger area have the freedom to come in to a hearing and object and put a stop to that service being offered at a more convenient hospital for our rural citizens? Why should they have to pay more? I say we don't need a list. If, in fact, the service is going to cost more than the \$900,000 in capital expenditure or the 500,000 in increased operational costs to administer and run the program, yes, then it would have the certificate of need. But it is unreasonable to require these people that are not going to spend any additional money to go through this certificate of need. Senator Wesely has addressed quality as one of the questions of certificate of need. Quality is not something that you look at before you start the service. Certificate of need is a service entry point. The quality is

something that is maintained by the professional organizations, by the Health Department itself in their ongoing inspections of nursing homes and hospitals. It is a professional review from the doctors' own peers, from the federal government, from the cost regulatory activities carried out by Medicare and Medicaid. Why have the duplication of certificate of need? It is unnecessary, unwarranted, costly and raises the cost of health care to our public. I'd ask you to reject this amendment.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens. Senator Korshoj. Senator Landis. Senator Landis, on the amendment.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I've been in the Legislature 11 years and when I first came to this body I thought that the laws as a general practice were going to get better through legislation, that maybe it wouldn't happen this year but it might happen next. All right, maybe the forces of complacency or the status quo were strong this year, but we'd wear them down and the law would generally get better over time. I no longer hold that opinion. I think every year we have the chance to invent as much mischief as we solve in passing laws and 11 years ago when we passed certificate of need, or 10 years ago rather, it was meant to stop the excessive costs of duplicating medical services. Since that time it has not had a hugely successful track record, certainly, but the concept isn't wrong. The notion that duplicative medical services are inherently more expensive and cost the community more is still true. Maybe we haven't captured those costs well or analyzed them as well as we should, but that underlying notion is still true. And frankly, the providers over time have rankled at that and not liked that and, certainly, where they had to pay for a review which established that what they wanted to do in the first place was cost effective must have rankled them, must have irritated them. But oddly enough, they lay in wait, find the time, wait from that first exertion of effort by this body to create policy until the time when this body has changed its characteristics, its personnel, and they are always out there, always waiting and 429 winds up being a compromise among the providers. But it is not a compromise with the regulators. The Department of Health hasn't signed off on this bill. The Department of Health, as a matter of fact, thinks that, from what I can tell, that the thresholds are too high, the bill is too generous, the bill is too oriented towards providers and, in fact, making corrections as perhaps we should have done in certificate of need has been handed over to the providers in

April 13, 1989

LB 429

their image rather than in the image of this body or in the image of the consumer. I'm going to support the amendment. Frankly, I can see the votes on the board. The amendment is going to be defeated. 429 is going to move. Bergan Mercy is going to get the ability to do open-heart surgery and the providers' turfs will be recognized. But a notion that says we are going to go from zero dollars in new service reviewed to \$900,000 before we review seems to me to be not just experimentation, not taking care of some services out in the rural areas where, in fact, there is little competition and reason to expand exists. That is really rolling back the role of the regulator and if we agree that there is no single service which in being offered should be reviewed, that we're doing the same thing. We're just...we're basically saying we're going to have the kind of certificate of need legislation that the providers think we ought to have. As tough and as strict as they are with themselves to solve their turf wars, that's about...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...all we're going to ask for as the State of Nebraska. I'm going to tell you, 10 years ago when we fought this fight, that standard wasn't high enough. The standard was higher because we thought that the Department of Health, the regulator and the consumers' interests demanded more protection than just simply the internecine war of the providers and, frankly, 429 seems to me to be a retreat from that policy and I'm going to support the Wesely amendment. I can see the handwriting on the wall. Perhaps we ought to get to a call of the question and do the business we're about to do, but it's an unfortunate day and what I think it does is it establishes again for me the notion that the law does not improve over time necessarily, that we're in a process of refinement. In fact, we can do something good as we did 10 years ago and then undo it later...

SPEAKER BARRETT: Time.

SENATOR LANDIS: (Recorder shut off momentarily.) ...and the possibility as the fact that a law will improve over time. Thank you.

SPEAKER BARRETT: Thank you. Senator Baack, followed by Senators Wesely and Lynch.

SENATOR BAACK: Yes, Mr. Speaker and colleagues, I think that, you know, Senator Wesely has said that the lobby is in control here. I think Senator Wesely knows me better than to say that the lobby has controlled me. I think I've got a record of that not happening in here. I would have not had an interest in this bill at all had it not been brought to me by the hospital in Sidney. They are the ones that came to me and said, you know, we're having some real problems here and we think that these are unreasonable, some of these regulations are simply unreasonable. I have talked to a number of other rural hospitals in my district that feel exactly the same way and what we have is what I talked about before. We have the haves versus the "have nots" here and we have...and so we're not going to allow the "have nots" to have new services, making those services more competitive, we're going to let just the haves have them and not have to be competitive any more. That is what we do if we start putting these kinds of lists in there. I think if you will look at the committee statement in your bill books you will find that there was not testimony against the bill and you'll find that officially the Department of Health was neutral on the bill. I don't know, maybe they have taken lobbying lessons and neutrality lessons from the Board of Regents and none of us are going to know what neutral means, but as far as I can tell, when I read neutral that means they don't have a whole lot of objections to the bill. Maybe in the background they are doing some other things which has happened with the Board of Regents, but I assume when I see neutral that they are out of this and they are willing to live with what we do in this bill. So I would speak in opposition to this amendment. I think it is just going to pit the haves against the "have nots" and I don't think that that is the thing that we need to do in legislation. I think we have set some reasonable limits there. We have set reasonable dollar limits that say if those numbers go...if those costs go beyond those limits, then it will be reviewed. Until they go past those, there will be no review and I think those limits are very, very reasonable, so with that, I would urge you to reject the Wesely amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Wesely, followed by Senator Lynch.

SENATOR WESELY: Thank you, Mr. Speaker. I understand the viewpoint that has been expressed and I appreciate it. I continue to feel though it isn't a question of haves versus

"have nots" or urban versus rural. It is a question of how much can we afford and how do we distribute the resources that we have in a very limited fashion, health care. We simply can't afford to keep adding and adding and adding to the cost of health care in providing this equipment everywhere or that service everywhere and realizing that we've got to make some priorities and some choices, access is important, the quality is important, cost containment is important and there is no way you're going to have any handle on it any further with the bill that you have right now because it will have too high of thresholds and too many of these new services that are going to end up costing a lot of money in the long run won't get reviewed, they'll get into place and before we know it they will be costing everybody a great deal of money and because we disperse those services and equipment across the State of Nebraska, they won't have enough people utilizing them and the quality question comes into play. You know one of the things in this open-heart surgery issue, I had a gentleman call me from Omaha who was with the V.A. and he needed, I believe it was a bypass surgery. Instead of having it right there in Omaha he was sent up to Wisconsin. He was sent up there because they had better quality, they did more of the work, they had the higher success rate and he went up there and got excellent treatment and it actually cost less to send this person from Omaha up to Wisconsin than to do the surgery in Omaha. And one of the things we don't have right now is information about the quality question in our hospitals, and Senator Elmer isn't here evidently, but I'd ask him, he talked about, well, quality you let them in and then you check quality. There is no way for us to check quality. The hospitals will not share with us morbidity data so we know what people go into the hospital to do, what happens when they are in the hospital and how it comes out, what the results are and I'd be one...I've got one of the amendments up here to provide for that information. If you're really concerned about quality and you want to open the door up, let's follow what happens to it. Let's see what kind of quality we get out of it. If we've got five open-heart surgery operations going in Omaha and we had a sixth with Bergan Mercy, let's see what happens. Does the quality go up, does the quality go down? What's wrong with trying to provide some data on this question? And one of the things I pointed out earlier, Senator Elmer again talked about how these things won't cost anything, let's just let them go. But if you look at one of my handouts you'll see, for instance, heart/liver transplants, 1983, \$65 million. They did 176 heart, 163 liver transplants.

They estimate in a couple of years from 176 heart there will be 10,000 heart transplants annually. From 163 liver transplants they will have 5,000 liver transplants annually. From \$65 million cost in '83, 1982, there will be \$2 billion annually cost. See, it starts off as a small thing, just a few transplants, and before you know it you've got a high cost, high utilization and somebody pays the bill and there is also the question about what kind of quality do you have. These transplants are difficult things to do and you've just got to have repetition and then the more you do, the better you'll do it and that's exactly what I'm trying to get at and it's not just with transplants, but it's with all the other things that are included on this list. You've got to understand the concept in health care is to try and realize, as I went through earlier, that we can't afford the increases in health care that is coming through here. We've got to do something about it. One of the ways to do something about it is to not have everybody in the world have the same equipment and doing the same surgery. You make some priorities. You make some choices. You help make some decisions for people, making sure everybody has got access. You don't have to send everybody up to Wisconsin to have open-heart surgery and I know similar cases they went down to Dallas from Lincoln because they had better care down there. This may have changed recently, but in any event, you have to as a legislative policymaking body and through the CON process, understand you can't do everything for everybody, you can't spend money everywhere. You've got to set some targeting, some prioritization and the list that we have is an attempt to do that. I went through open-heart surgery. The CT scanners which have been talked about going on nonsubstantive review...

SPEAKER BARRETT: One minute.

SENATOR WESELY: The positron emission tomography and the magnetic resonance imaging are both diagnostic things as well as the linear accelerator equipment, those would all be under review. The chronic renal disease, dialysis, would be under review as well and the lithotripter would be another piece of equipment reviewed. And, finally, the transplants of heart, kidney, pancreas, liver, et cetera, would be under review. This is a very carefully selected list of expensive new equipment and expensive new types of surgery and to get a handle on what is happening and where we're going in this state on health care, you've got to have this list and provide for that review. Without it you end up having, I think, eventually chaos and

increased expenditures and lowered quality and I think that is not the direction we want to take with health care in Nebraska.

SPEAKER BARRETT: Thank you. Senator Lynch. The question has been called. Five hands? Yes, I do. Shall debate cease? Those in favor vote aye, opposed nay. Please record.

CLERK: 25 ayes, 0 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Wesely, for closing.

SENATOR WESELY: Thank you. Mr. Speaker, members, I've tried to go through a little bit of the philosophy here. I know most people have made up their mind before they ever came to the floor to hear the debate on this issue what they're going to do, and I can see that. But, again, for the record, my thought is clearly that we open up the door and will allow without this amendment the chance for not only Bergan Mercy to come in and have the open-heart surgery that they want, but just about any hospital in the state could come in and move into open-heart surgery. Do you want that? Do you want everybody able to do that? Do they have the skills and quality assurances that you'd want to see happen to have that across the state? I think it's a wonderful thing to try and provide these services and opportunities to people, but there has also got to be a realization that the consumer out there, the public out there is unable to determine who is good and who isn't good, who is expensive and who isn't expensive at these things and without the data and information, they've got to count on us to make sure that people out there are doing the job and doing it well. And I know there is cases and there have been cases of people that haven't had the experience and move into these areas and they don't do a good job, lives are lost, lives are harmed and you're just opening up the door to allow more people to get into very technical, difficult areas, transplants, open-heart surgery, neonatal care, all difficult and very expensive and very important operations and services. And we ought to be able to have some control and oversight to make sure that people move into these new areas are going to do a good job and that they don't diminish the quality and the cost involved with other operations now going on, other hospitals and what they are doing and by not having the review you open up the door and don't allow that weighing of the situation. Now if somebody wants to move in these areas and feels it's important for their hospital or their area of the state, they can make application and the

certificate of need process will review that application. They will determine balancing out the different choices that they have, what is in the best interest of the state, of everybody in the state, not just of the hospital applying or that particular community, but balancing it all out, what is the best solution for everybody in Nebraska. In addition you have all the equipment that we're talking about here and if you have everybody with the same equipment, the ability to move in with this new equipment, again, you have a cost factor. They put the capital expenditure in and they turn around and they don't have enough people to utilize that equipment and the costs are going to go up not only for the new equipment, but for the old equipment. The hospitals that have the equipment then have less people utilizing it. They have to raise costs and, again, the quality question comes into play. The fewer people using the equipment or using the service, the less quality you're going to have. Again, it's important and it has been shown through study after study that in health care you've got to have people that are experts and good at things and you'll find that quality goes up and cost goes down. One of the things, for instance, in health care you'll find is people going up to Mayo Clinic in certain fields of expertise. They have the skills, they have the people, they have the equipment and people will travel from Nebraska up there to get the kind of quality care that they want. I envision in Nebraska that in some of these nonemergency health care services you would have that kind of quality concentration in the state where certain hospitals have the equipment and the people skilled in utilizing that equipment and performing that surgery so that people can come in there and know that they are going to get the best care possible at the lowest cost possible and that's the kind of vision that I have for health care in this state, not that everybody has everything, you'll have nothing as a result of that. But the concept of having certain hospitals able to do certain things and doing them well and doing them inexpensively is what we have to try and do in health care. Otherwise we continue down the road we're on right now with hospital and health care costs skyrocketing, insurance premiums going up out of sight and the quality being brought into question as a result of the problems that result from it. It makes no sense for me to proceed down the road in that direction. It makes more sense, in my view, to change the CON process as has been suggested...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...make improvements where necessary and this bill will do that, but to draw the line on these new services, to draw the line in trying to make sure we have some oversight here and provide all the other easing of the restrictions and the meeting of the concerns that other people have, but not go as far as is called for here. This goes too far and we need to draw the line and stop before we get into a situation that we will regret later. So I ask your support for the amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Wesely amendment. Those in favor vote aye, opposed nay. Voting on the Wesely amendment, have you all voted? Record, please.

SENATOR WESELY: I'd ask for a call of the house.

SPEAKER BARRETT: Senator Wesely, certainly. Shall the house go under call? Those in favor vote aye, opposed nay. Record.

CLERK: 13 ayes, 2 nays, Mr. President, to go under call.

SPEAKER BARRETT: The house is under call. Members, please return to your seats. Record your presence, please. Members outside the Chamber, please return and check in. Senator Conway, Senator Coordsen, Senator Chizek, Senator Goodrich, Senator Haberman, the house is under call. Senator Langford, please report to the Chamber. Senator Schmit, the house is under call. Senator Nelson, please record your presence. Senator Beyer, Senator Chizek, Senator Haberman, Senator Langford. Did you ask for a roll call vote, Senator Wesely, or not? Thank you. Members, return to your seats for a roll call vote on the adoption of the Wesely amendment, AM1246. Mr. Clerk, call the roll, please.

CLERK: (Roll call vote taken. See pages 1682-83 of the Legislative Journal.) 9 ayes, 29 nays, Mr. President.

SPEAKER BARRETT: Motion fails. The call is raised.

CLERK: Mr. President, the next amendment I have is by Senator Wesely. Senator, I have AM1244 in front of me. (Wesely amendment appears on pages 1683-84 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you. Mr. Speaker, members, this amendment is very similar to the last amendment and obviously I am disappointed that we weren't able to do better than the nine who voted in favor of the amendment. Of course, I understand the circumstance that you're in, but let me tell you again the problems that you have by opening up the idea of any new service and these new equipment and not having review unless they meet those thresholds that are raised so dramatically in this bill. In addition, I have some news to report to you that the Medical Center has just been through a CON review and has been turned down by the CON Review Committee on a 4-3 vote. It points out once again how important it is to have an outside review, whether you're talking about a 40 or \$50 million project as in the case of the Medical Center or a four or \$500,000 project in the case of some of these new services or a 40 or \$50,000 project in the case of some of these as well. You've got to have somebody independently taking a look at these issues and then understanding the ramifications of them, the cost implications and the quality implications, an independent review, an independent examination of what is best for the state, what is best for the public, what is best for the general citizenry is what we need to have. The system we have in place is inadequate. It has not worked appropriately. The original bill we had in 1979 I think would have worked much better. We've had, since 1981, a fractured system and one that I have been disappointed in as much as you have. But we have a way and a means to improve that system right now, but one of the worst things we can do is make the change that is proposed by not including the list that I think is important and fundamental. In addition to the Medical Center decision that has just been announced, you know, about the Bergan Mercy case, that will be determined next week and Bergan Mercy obviously is very much behind this legislation and wants to see the Legislature make the determination of whether or not they should be allowed to provide for open-heart surgery. Again, are we the body to make that decision? Are we the people competent to understand its implications for the other hospitals, for the citizens, to understand what is best in terms of quality and cost in the area of open-heart surgery? And my answer is, no, I don't think we're the right people to make that decision as we were not the right people to make the decision on the Medical Center as to its appropriateness. And so, again, I emphasize to you that having an outside review process plays a role, serves a function and has to be maintained. But what we've tried to do here under this bill I think is reasonable up to the point of the list and

up to some of the threshold increases and going beyond that I think is being a bit greedy, that the individuals behind this in terms of some of the providers are in here asking for 12 million more dollars for indigent care, asking for 20 million more dollars for Medicaid and \$33 million the following year. They are asking for 7 million more dollars for health insurance cost, they are asking for more, more, more to pay for the increase in health care costs. What have they come back here with to provide for us some idea how to contain these costs? How do we pay for these costs? How do we do something about this skyrocketing problem? And there have been no ideas laid on the table, no concept other than weakening the certificate of need law which is obviously, in my estimation, not helping contain costs, but most likely to lead to further cost increases over a period of time. So where are we right now? We're at an attempt to be reasonable with the providers, improve the system to try and meet some of their concerns, but they want more, far more than I think they need to have and far more than is reasonable and I care a great deal about this. I've worked on this issue for a long time, I understand it very well and am willing to fight a great deal about it. At the same time I know many of you are not as familiar with the issue and probably care very little about it, but I think as we discuss this and as you see some of the information I have, hopefully you'll think about it some more, consider some of the options some more and let us see if we cannot reach a better compromise than is being proposed under this bill. We're really not that far apart. With many of the changes, many of the process changes, some of the threshold changes, I'm not fighting, I'm not arguing, but I think again that we've gone, with that last amendment being rejected, clearly farther than we need to to meet the legitimate needs of the providers of the state and to come back with a concept of trying to contain the costs that we need to contain in the State of Nebraska. It is obviously getting out of hand and I see nothing being laid on the table to counter this proposal with a better idea on how we do something about that problem. Now with that, I'd move to withdraw this amendment, Mr. Speaker.

SPEAKER BARRETT: It is withdrawn. Mr. Clerk.

CLERK: Senator, the next amendment I have is offered by yourself. It is AM1245.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: I'd pass over that amendment and the next one.

SPEAKER BARRETT: Thank you.

CLERK: Senator, I now have AM 1268 in front of me. (Wesely amendment appears on pages 1684-86 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members, the last amendments dealt with the list and I will revisit that issue on Select File and try to, hopefully, appeal to you to help try and reconstruct a list and review of process. The next three amendments deal with the additional concept of how do we get a handle on health care costs. You know, certificate of need does help with the segment of cost involving expenditure for new equipment, expenditure for capital improvements and also, if you had the list for these new services that end up costing a great deal of money over a period of time, obviously in that particular area we've eliminated that review unless we can go back to it with a further amendment. Under the first two questions we have raised the threshold so high it will be very high cost items in both equipment and in capital investment that we will now be able to review and all smaller expenditures will not be reviewed. But the key question in certificate of need has obviously not stopped the high cost of health care, that we still have an increase in health care cost. It is helping I think to some degree and I think will continue to help under a bill that could be improved over what we have now before us. But the broader question about how do we meet the quality and cost problems of health care in this state need to be addressed with better information, more data for people to have a better grasp of what it costs to go to certain hospitals, what kind of quality care is provided in those hospitals, and right now we've got very minimal public disclosure of costs in hospitals. I passed a bill a few years ago that allowed for consumers to come in and ask for an estimate when they are considering going in for an operation and each hospital is required to provide an estimate of cost. They could cost shop in other words. In addition, the 20 most frequently used DRGs in each hospital are required to be posted as to their average cost for that hospital. That was a nice attempt in cooperation with the hospitals to start to get some information to the consumer, but right now it simply is inadequate and underutilized. We need to have in place better information, more availability of data so

people, not only consumers, but we ourselves as legislators can better understand what is happening out there. What are the expensive hospitals? What are the good quality hospitals? Which are the ones that are high cost? Which are the ones that have a problem with the quality of their care? These are the sort of questions we can answer through the amendments that I am offering through the next three amendments. It provides information to this Legislature and to the people of this state so that we begin to better address the health care cost problem and we need to start to address that problem. There is simply too much to be done and too little tools to do it right now because of the circumstance that we're in. We don't have the ability to act. Certificate of need is not the total solution or even a substantial part of the solution. Much, much more needs to be done and I feel very strongly that we need to move in this direction and we need to take that initiative. As we have, as I said earlier about the piece of legislation before us, we have requests for increased funding, increased expenditure for health care, but we have nothing laid on the table to help us contain those costs, no attempts by the supporters of the bill to come back with an idea of how we can address this all important issue. And right now I think some of the ideas I'm laying out in these next amendments will help begin that process, but in addition, I'm forming a task force that is going to be working in the private sector to take a look at this issue for further action over the course of the next few months and come back next session and begin to address this issue. But, clearly, when you have a 60 percent increase in the CHIP premiums, when you have for private employers 38 percent increases and actually the State of Nebraska as well, 35 to 40 percent annual increases in premiums, you have a situation out of control. This Legislature is going to have to grapple with it. We're going to have to come to grips with it. If we had in any other sector 30 some percent increases in cost I think we'd be obviously concerned and doing something about it. If property taxes went up that amount, if income taxes went up that amount, if sales taxes went up that amount, we'd be screaming and yelling and trying to do something about it, but that is what health care costs are doing and health care costs are out of sight right now for the typical family. You're finding frequently, you know, family coverages in the 250, \$300 a month range which is unheard of compared to where we were just a few short years ago. That is a lot of money to spend. And for some people that can't even get the health insurance and for many people that can't afford the health insurance and go

without it, that is the indigent care problem that we have. We've got to come to grips with this situation. CON is but one part of that solution. We give up too much under this bill. We give away too much in terms of our oversight and I think we'll pay the price in the long run and that price is paid by all of us individually as insurance premium payers and as taxpayers because one way or the other we all get stuck with the bill, but I feel very strongly that we aren't doing enough, that we need to do more and these next amendments are an attempt to try and bring more information to the forefront so we can get a handle on this and do something about the problem.

SPEAKER BARRETT: Thank you. Discussion on the Wesely amendment. Senator Labedz. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Question.

SPEAKER BARRETT: There has been no discussion on this particular amendment. I will not recognize. Thank you. Senator Schellpeper, would you care to discuss the amendment?

SENATOR SCHELLEPER: Thank you, Mr. Speaker and members, I would also be in opposition to this although there has been no other opposition, but I would still be in opposition to it. I think that we're getting to a point here now where we're trying to discuss the same thing over and over again. I think we need to get to the main issue that Senator Wesely is really trying to get at and maybe take that amendment, but all these other amendments that we're having I think we're just wasting time of this body. So I would hope that Senator Wesely would get to his main amendment and we could go on with that. Thank you.

SPEAKER BARRETT: Senator Elmer, on the amendment, followed by Senators Schmit, Moore and Baack.

SENATOR ELMER: Thank you, Mr. Speaker. Senator Wesely has continually said that passage of this bill is going to raise health costs. That is absolutely false. CON itself has done nothing but raise health costs. The Federal Trade Commission report that our federal government put out demonstrates that fact. Government bureaucracies that require increasing paperwork, more and more reports do nothing but increase costs. This particular amendment would require hospitals, nursing homes and various care facilities around the state to fill out additional reports, hire more people to do it and increase costs

unnecessarily. Senator Wesely says that quality is going to decline. CON has nothing to do with quality. The quality is borne by these services, by the physicians. Reputation and medicine is built on quality. When you're sick you want the best. When your physician refers you to another physician he thinks he is the best. Physicians practice as a group in hospitals and oversee each other's work and they are all overseen by the federal and state government and the Department of Health. Medical staffs establish standards of practice that are ongoing and become national standards of practice. Physicians are accountable to the community hospitals where they work and to their association and to the insurance companies who pay their bills and to the federal government who monitors the cost of their care. And if this isn't comforting at all in the way of quality, we can't do it with CON. CON just looks at a facility before it even operates. It has no idea what the quality is after it starts. The ongoing licensing reviews that the Department of Health does assures that quality, not the CON. I would ask you to reject this amendment.

SPEAKER BARRETT: The Chair is pleased to take a moment to suggest that Senator Withem has some guests in our north balcony. We have 50 fourth graders from G. Stanley Hall School in LaVista, Nebraska, with their teacher. Would you folks please stand and take a bow. Thank you. We're glad you could take the time to visit. Thank you. Senator Schmit, further discussion. Senator Moore.

SENATOR MOORE: Mr. Speaker and members, oh, it's not too often I agree with Senator Wesely and I probably don't agree with him today, but you notice I voted on the last amendment because I share some of his frustration. The fact of the matter is, is what are we going to do about health care costs? The problem is, as he mentioned very clearly, in LB 187 the \$12 million bill, you've got a variety of requests and appropriations coming from the health care industry. It goes on and on and on and on, couple that with the fact, as you all know, state employees' health insurance cost went up 36 percent. What are we going to do about it? And I think oftentimes I consider ourselves kind of a board of directors and I think what Senator Wesely mentioned about the university, University of Nebraska Medical Center addition, you know us, the board of directors, us 49 people in here, University of Nebraska Med Center came and said we need this and we voted yes on that. The vote was 40-3. Korshoj, Schmit and I voted no. We don't know anything about

hospitals. We need some independent observations to help us out in our decision-making process. But Senator Wesely has said the certificate of need board came and said, you don't need to build that hospital, correct, Senator Wesely? Now I agree with Senator Baack's bill. I think we need to raise the limitations in it and make it more reasonable, but I still think the certificate of need process is serving a purpose that it has to serve and I guess I wish sometimes we'd listen to a little more and in the case of the University of Nebraska Medical Center, I guess I wish we would have waited until some of the experts give us an opinion of what we should do. Instead we locked ourselves in to spending \$48 million, or in bonds, it's not General Fund, but it's a \$48 million expenditure that is going to be paid for by patient fees that this body approved without listening to the experts. I think the certificate of need can serve a purpose. I'm going to vote against Senator Wesely's amendment here, I don't think this is the way to do it, but I think he is raising a very valid point. We've got to turn it off somewhere, we've got to do something and just turning everybody loose is not the answer to the question, so I'll be voting against Senator Wesely's amendment and I'll eventually be voting for Senator Baack's bill but let's think about it. Let's try and do something and let's remember that the University of Nebraska Med Center. You know, it's always easy to say we need to spend money on these fancy programs but we need somebody out there that independently looks and makes sure we're spending our money wisely.

SPEAKER BARRETT: Senator Baack, followed by Senator Crosby.

SENATOR BAACK: Yes, Mr. Speaker and members, I rise in opposition to this amendment also. I just do want to comment that as Senator Wesely noted that the announcement came that the Medical Center had been turned down. The implication was there that if this bill in place we wouldn't have had that review of that project which is simply not true because that was a \$47 million project. That project would have been subject to review even though that 429 had been in place, so that still would have happened. We would have still had the review of that project, so that simply does not affect this. Mr. Speaker, the thing that I would like to do is I would like you to rule on the germaneness of this amendment. It seems like that this bill talks about the licensure of hospitals, not the certificate of need law. I would question the germaneness of this.

SPEAKER BARRETT: Thank you. Senator Wesely, would you care to respond?

SENATOR WESELY: The amendment deals with an attempt to get data which can then be utilized to help contain health care cost. Certificate of need is intended to help contain health care cost. In that regard I consider them germane.

SPEAKER BARRETT: Senator Baack, have you any comment?

SENATOR BAACK: Yes, I think these concepts deal specifically with how hospitals are licensed and the certificate of need deals with how hospitals operate, what kind of services that they offer. I think they are two different subjects.

SPEAKER BARRETT: Thank you. Senator Wesely, a question, please. Line 5 of AM1268, number one, applicants for a license shall. Who are the license...who are the applicants? These are applicants for...

SENATOR WESELY: Hospitals.

SPEAKER BARRETT: A CON, for hospital.

SENATOR WESELY: Hospital.

SPEAKER BARRETT: Applicants for a license to run a hospital?

SENATOR WESELY: Right.

SPEAKER BARRETT: Thank you. The Chair is prepared to rule and on the basis of subject matter, I...the Chair would declare the amendment to be not germane. Senator Wesely, okay.

SENATOR WESELY: Go to the next amendment.

SPEAKER BARRETT: Thank you. Next item, Mr. Clerk.

CLERK: Mr. President, Senator Wesely, I have AM1269, Senator. (Wesely amendment appears on pages 1686-90 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members. I didn't

challenge the last germaneness matter. This is a similar amendment. I don't know, I suppose it may be ruled nongermane again, but I'd like to give some of you a chance. I know some of you have mentioned to me that, Senator Moore got up and talked about it, that you may not like particularly the one I'm offering but you're at least recognizing the problem I'm trying to address and I'm going to repeat it just a little bit more and then perhaps we can move on. But, clearly, I haven't filed all these amendment just because I enjoy doing it. It frankly isn't too much fun standing up here and having nine votes for your amendments. At the same time I chair the Health Committee. I've been on the committee 11 years. I was one of the key sponsors of the bill in 1979 and I worked hard to see that bill passed and I was disappointed when it was basically weakened and watered down in '81. And ever since I have tried to watch the system and keep an eye on it and I've been disappointed, terribly disappointed. This bill does a lot of good things in changing the process and the case of the Medical Center is one example. The Medical Center now, after being turned down by one review, goes to a second review, same individuals, not same individuals, same type of individuals, public citizens and they have to jump through two hoops. They don't need to do that. One review would have been adequate. If they would have been turned down and been able to go to court if they so decided to do that. But nevertheless, despite all those procedural changes that improve the process, the providers have come in and they have asked for great increases in their thresholds, to appoint far beyond what I think is reasonable and beyond what most other states provide as a matter of fact. And so I am saying that they have a responsibility, that the supporters of this bill have a responsibility to come back with some ideas about what we can do about this problem. I have passed out the information, you've got the statistics about how much health care costs are going up, you know the situation with our own budget, how many millions more dollars we're going to be spending on health care. \$30 million plus in this budget alone increase in health care costs. Over a two-year period obviously twice that amount of money and more on the horizon as we have found, for instance, on the health insurance of state employees. It's much greater than we're even providing for in the increase that we've got on our budget. We've got a serious problem. Certificate of need is not solving that problem. It can help to some degree and I think it has helped, but we need to do more and better at trying to deal with this issue. And for those people who are supporting the bill to come in here and ask us to fund all these

additional things, to put more money in and not to come back with any idea whatsoever on how we can save money is, to me, irresponsible. For us to then turn around and give them what they want without asking for something in return, not demanding of them some ideas and suggestions or proposals that would help us contain health care costs, I think is just not serving the public interest. And so I think trying to discuss and raise this issue is not inappropriate. This amendment, like the last one, attempts to get more data, more information and an ability to then act on it in a way that we can't right now. And so I'm suggesting this is one way to start down the road and certainly I know that the providers have never supported this concept and would not like to see it, but perhaps if we could get the backbone within the body to understand that we have to ask for some things in return that serve the public interest and perhaps some of you will join me in attempting to do this, that we can perhaps get through on this bill some information that will provide for the citizens of this state some compensation for the problems that we're having right now in health care and for the easing of the restrictions that this bill would provide. I think it's the least we can ask and certainly much more needs to be done.

SPEAKER BARRETT: Discussion on the amendment, Senator Crosby, followed by Senators Senator Korshoj and Schellpeper.

SENATOR CROSBY: Thank you, Mr. Speaker, for some reason I don't have a copy of the amendment, but as I understand it, it is simply something to set up a mechanism to obtain data from the hospitals or whatever institutions are involved. Two or three things I'd just like to say about all these amendments again. In the first place, I'm all for collecting information and having that kind of thing available to people who want it, but if someone is suffering from a heart attack, gall bladder or whatever, when you're in terrible pain I doubt very much if that person or the family is going to stop at the door of the hospital and say, let me see your data first because I want to be sure and bring this person to the right place. That is not going to happen. So I think what we're talking about on certificate of need doesn't...this really isn't pertinent to what we're talking about today. Lincoln, Nebraska, has a tremendous hospital system and a wonderful medical staff at each one of those hospitals. I guess perhaps I take a different view of the medical profession than some people do. I have always had wonderful care from my doctors and nurses and all the people

in the health care profession in Nebraska and in Hastings and in here. I've had three good friends come to Bryan Hospital in Lincoln for open-heart surgery, another one for angioplasty. They come to Lincoln because we do have the division. Lincoln General, along with other things has the Trauma Center and I have seen that in action on November 10, 1984, when six girls were brought in off of U.S. Highway 77. That trauma team, let me tell you was tremendous. Dr. John Cherry and the rest of them were absolutely wonderful. Dr. Herb Reese at Bryan is a leading heart surgeon. Why someone would take somebody from Omaha to Wisconsin instead of bringing him to Lincoln, I wouldn't have any idea. And the third one, St. Elizabeth's was neonatal and Burn Unit. How can you say that these people are not working hard to divide up the work and not overdo it and try to keep health costs down? I think all of them work very hard to try to keep the health costs in line. There is a great need and demand for health services these days and perhaps the consumers sometimes are at fault because they want everything, they want miracles worked every day and they want the doctors, nurses and other people to perform those miracles if possible. I have one question for Senator Wehely, and I ask this in good faith, Don, I'm not trying to needle you. But you made one statement a little bit back about you were going to form a task force to study this. My first question is, why do you think we need one and who will decide who is on it, and who will pay for it?

SENATOR WESELY: As most cases that we've had other task forces, as the one that prepared most of the changes in this bill, it is formed by me and it is formed already. The membership has already been determined.

SENATOR CROSBY: And who decided who would be on it?

SENATOR WESELY: I did.

SENATOR CROSBY: And you don't think that the Legislature should have some input on that perhaps? Who is going to pay for it?

SENATOR WESELY: There is no cost involved with it.

SENATOR CROSBY: There has to be cost. You can't have meetings and so on without some cost being involved.

SENATOR WESELY: Surprisingly enough, it can be done.

SENATOR CROSBY: Well I'd like to see a financial statement on that, I really would, I'm serious. Thank you.

SPEAKER BARRETT: Before recognizing Senator Korshoj, I'm pleased to announce that Senator Elmer has 15 fifth grade students from Oxford in the north balcony with their teachers plus nine adults from the Oxford area. Please stand and be recognized. Thank you. We're glad to have you with us today. Also in our east balcony we have guests of Senator Morrissey. We have six boy scouts from Auburn with their leader Darryl Obermeyer (phonetic). Would you folks stand. Thank you. We're pleased that you could visit us. Further discussion, Senator Korshoj.

SENATOR KORSHOJ: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? Do I see five hands? Thank you. Shall debate now cease? Those in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Wesely, would you care to close, please?

SENATOR WESELY: Thank you, Mr. Speaker, members, again, in summary, this amendment is an attempt to try and provide data, financial, economic and morbidity data to the people of the state. The point I'm trying to make, and the information that we're trying to provide here is that we don't have a well-educated, knowledgeable consumer out there. Watchfulness of the state, I mean the salvation of the state is watchfulness in the citizen and you can't see information that isn't there. You can't watch what you aren't able to identify and right now we don't have information available to people so they can know how the hospitals are doing and what the costs are involved and that sort of thing. This amendment would also provide a state health care cost index. That is to say it would provide for us, some other states have had this idea of how the different hospitals rank and their cost and have an index for people to identify and compare and I think that would be something valuable in addressing the cost factors involved and trying to help consumers make a better choice. Senator Crosby talked a bit about how we proceed on this matter and had some concerns

expressed about whether I was trying to say that we didn't have good quality care in Nebraska. I think we have good quality care over all in Nebraska. I think, obviously, we have excellent physicians and excellent hospitals. We are pleased with our health care providers in Nebraska and ought to be, but the problem is that if we open up and allow the new services and the new equipment and not have the sort of oversight that we need to have, we will lead down the road eventually to a time where individuals are involved that perhaps don't have the experience and background and don't have the repetition of cases, that the equipment is dispersed and having to...only so many people utilizing it, the costs go up across the State of Nebraska. We've got to understand that part of the reason we have the kind of quality care that we do have right now is in part because of certificate of need and part also in Lincoln because they have cooperated and they define different roles for different hospitals to play and they have been able to spread those around and allow people to identify what they can do best and not have everybody doing everything. And, Senator Crosby, that's exactly what I'm trying to suggest. We don't need to have every hospital in the state doing open-heart surgery, don't have to have every hospital in the state doing transplants. We don't have to have a neonatal unit in every hospital. We can share and divide and allow for access and still maintain quality and Lincoln is one example of that. And so what I'm trying to do and I have yet to hear anybody, again, who is supporting the bill come back with some suggestions, but what do we do when we weaken CON, what do we do when the health care costs keep coming up, how do we address the fundamental underlying problem of health care costs and what are we going to do about it? And I'd like to hear from some individuals about that and at this point I'll withdraw this amendment, Mr. Speaker.

SPEAKER BARRETT: Thank you, it is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Wesely. Senator, I have AM1309. (Wesely amendment appears on pages 1691-92 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members, I appreciate your forbearance and your patience and I know you're not very happy spending your Thursday afternoon working through all this. At the same time I don't know any other way, because right now I

don't think many of you perhaps, and certainly on the lobby are really very concerned or listening to what I am trying to accomplish in raising these issues. You know, filibuster is not too much fun and I don't enjoy this particularly. I remember when Senator Hall went through this recently and the bill I didn't particularly care very much about, but it meant a great deal to him. Maybe you feel that this particular issue isn't of that great importance and I can understand that, but this is the one bill trying to address the question of quality health care and the question of how do we pay for health care and how do we contain health care costs? And though I understand the desires of proceeding, we have, I guess, another 20 amendments to go. It would make a difference to me, Senator Elmer and Senator Baack and others, if I heard the desire on the part of the supporters of this bill to talk and work and try to come to some compromise. If, instead of the current response that I get on the measure which is we like the bill the way it is and there is no reason to consider further amendments, and certainly the numbers are in your favor, maybe time isn't on your side but numbers are on your side, I still think in terms of serving the public interest we should consider how we might further address health care cost problems, how we address the quality issues I have raised and if the supporters of the bill had some desire to be reasonable about some further amendments, perhaps we could proceed with the legislation. But, instead, I don't have that feeling and, of course, under the circumstances as an individual senator, there is not much choice I have but to try and, one by one, work my way through the issues that need to be addressed. Again, this particular amendment gets back to the issue of morbidity reporting. One of the things in exchange for no list, if we're not able to have the oversight before a service is opened up and review it, if we could at least have the morbidity reporting so that we can identify what is happening, what is happening to the quality of care for our citizens, what is happening to loss of life for our citizens perhaps or injury to our citizens from the care that is provided and now no longer regulated. If we don't have a list, at least we should have this sort of reporting so that the public and this legislative body can know how it is transpiring, how we are proceeding, how things are working out. We don't have that information. You know, I was going to come to you today and talk about... Senator Crosby and some of the others talked about the good quality care that we have, we don't have any information to document that. We don't have the ability to say particular areas or with particular hospitals, what is happening, what is the situation.

And without that information I'm not sure that we can really proceed to any degree in identifying where our problems are and where our successes are. We all have this sense of success in certain areas and feel good about that, but there is also a concern of failure, of not having the kind of quality that we want and, as I said, one individual called me, talking about Omaha. Didn't have the best program up there, had to go somewhere else. Well there is no way to confirm or deny that sort of a feeling in that sense of frustration. And so this amendment would provide the morbidity reporting which, if we're not going to have the list, is the least we can do so we can at least track what is happening. Now with both other amendments and this one, I'm trying to get more disclosure, more public information, more understanding to the people so that they can make informed choices. Similarly, I'm trying to get to the Legislature information so we, too, can make better choices as to what the best policy is. So I would ask for your indulgence and consideration of this amendment.

SPEAKER BARRETT: Thank you. We have some additional guests under the south balcony from Senator Robak's district, Columbus, Kelly Lant and Buster Johanson. Would you folks stand. Thank you. We're glad to have you. And also under the south balcony, Senator Elmer is announcing a guest, the mayor of McCook, Flora Lundberg and friend, Helen Allen. Would you folks stand. Thank you for visiting with us today, all of you. Senator Korshoj, discussion.

SENATOR KORSHOJ: Question.

SPEAKER BARRETT: There has been no discussion on the amendment. Thank you, sir. Senator Schellpeper.

SENATOR SCHELLEPER: Thank you, Mr. Speaker and members. As a member of the Health Committee we have discussed CON for some time. I do resent the fact that Senator Wesely says that the lobbyists are controlling 429. I don't think there is anybody on the Health Committee or even in this body that probably cares more about health care than what I do, but I just think that we have gone too far with some of these amendments and we need to get back to the bill that is worked out with all of the people concerned, and I think it is a fair work out, and I think we need to just get back to that and then pass that, so I would urge that we reject this amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Wesely, your light is next. Senator Lynch, please.

SENATOR LYNCH: Mr. President and members, I appreciate Senator Wesely yielding to me for a number of reasons, mostly, hopefully, that he and "Denny" Baack, by the time I get through talking will agree that maybe we can save any more discussion on certificate of need until another day, but while they're discussing it I'll mention just an editorial comment or two. Certificate of need can work. It was an effort long before the DRG system came along, Diagnosis Related Grouping system which was an effort on the part of the federal government to provide just limited amount of dollars based on what they thought was real cost for certain procedures for Medicare patients. As President Reagan at the time decided they could not afford to continue on a cost plus basis, the feds would soon run out of money. It worked better than certificate of need, but I want to relate, while they are still talking, an example of how certificate of need was not even permitted the chance to work. A long time ago there were an awful lot of construction projects in the Omaha area. I mentioned already we have over, well over 1,000 too many beds. At one time we had as many as 1,500 too many beds. Methodist Hospital moved from its old location to a new location out west. Children's Hospital wanted to expand. They made an arrangement with each other that Methodist Hospital would expand and, in fact, built a wing that could be used for the Children's Hospital efforts. At the time that suggestion was made, we already had almost those 1,000 too many beds in the Omaha area. We had in place a certificate of need program, I happened to be on it, and I was also chairman at the time of a group called the Project Review Committee and this was just a group of people who looked at all the facts and recommended to the certificate of need. We, after reviewing it, agreed that we did not need this new hospital. The certificate of need people agreed that we did not need this new hospital and the state Certificate of Need Committee also agreed that we did not need this new hospital, but a judge, one person, a single man, decided because he didn't like the process of certificate of need, he would allow the hospital to be built. Well I tried calling Methodist just before noon to find out today what their count was, how many patients were in the beds. They haven't called me back so I can't tell you for sure, but I did try. But I think they're probably half full or half empty, depending upon how you view it. That's where your costs are. If certificate of need were allowed to work back in those days, that kind of

extraordinary and unnecessary cost wouldn't exist today, so don't fault, don't fault certificate of need. Nobody gave it a chance to work. Institutions who were selfish and greedy in their own way didn't even want to give it a chance to work. Given the absence, and in the absence of any other way to help contain health care costs, there was an effort at least tried to be made. Maybe the free enterprise system in the absence of certificate of need can have some effect, but I really doubt it. I am concerned with 429 in a lot of ways, trying to talk to Senator Wesely to indicate to him that I'm not sure where we're going to go at this point in time during this session any different from 429, and based on the votes that were up there, it doesn't look like we'll go that far. I'm willing to try to live with 429 as we have it now and we'll see. But one of the amendments that Senator Wesely offered had to do with information. Now the body ought to be consistent. If you don't want to get involved and you don't want to control and you don't think you need certificate of need, don't argue that you are saving money or losing money. With all due respect to Bernice, I don't want to hear people reading documents from Washington, D.C., which back up a policy which, in fact, I think was wrong to begin with. I'd like to see Nebraska specific information, and if you want information...

SPEAKER BARRETT: One minute.

SENATOR LYNCH: ...then get it, and then when you get that information we can look back and see, in fact, whether certificate of need worked or whether or not in the liberalization of the certificate of need and raising those thresholds we, in fact, save money. But if you don't have the information, folks, you'll never know the difference. So I think one serious amendment that Senator Wesely could offer and we should seriously consider, if you really want to be consistent to know the difference whether certificate of need or some kind of overview like this works, then you ought to be able to have the information. And as long as these institutions are accepting so much public dollars and there is an awful lot of public dollars going into private and public institutions for Medicare, Medicaid patients and the rest, by golly, we deserve to know the difference. We deserve to know the morbidity rates as well. I don't think the institutions should withhold that information from us. They should provide it willingly.

SPEAKER BARRETT: Time.

SENATOR LYNCH: We shouldn't have to pass a law to do that.

SPEAKER BARRETT: Thank you. Senator Schmit, would you care to discuss the amendment? Senator Labedz next. Senator Schmit.

SENATOR SCHMIT: Thank you, Senator Labedz, I haven't spoken on this all day and I'm not going to belabor the point. I just want to say this. It's easy to stand up here today and say that certificate of need hasn't worked. Senator Dan Lynch just gave an example of how it was not allowed to work. We do not know today how many dollars the people of the State of Nebraska have in their pockets because a dozen or so years ago a rather unlikely conglomerate of individuals, Chambers and Landis and Hoagland and Johnson and Wesely and Schmit and DeCamp and a few others, got together and decided we'd try something called certificate of need. Didn't work as well as we wanted it to work. We'll be the first to agree to that. Didn't do all we thought it would do. We will agree to that also. Probably today it may well have been and may be an idea whose time has come and gone, I'll concede that. I just want to say also that sometimes in this floor we all get desperate. I've been that way, in fact, I was a little bit that way yesterday. But we accuse the lobby and the lobbyists are doing things. There is nothing illegal or immoral about that. That's what they're paid for out there. We understand that. We're all grown up and we know that. Sometimes they have more influence, sometimes less. I want to make a couple of points, however, and that is this, that without someone raising the questions that have been raised here today we would just march blissfully on down the line and rubber-stamp what has happened. What are you going to do about the fact that the medical school now has been rejected by the certificate of need? Will some of the questions that were raised by the Department of Health be answered? I don't know. Will some of the questions that were raised by Clarkson and then later, I guess repudiated, will they be addressed? I don't know. Will we take a second look at any of the costs that seem to continue to press upward and onward day after day after day? I hope so. Will we add the emergency clause to this bill, strike a couple of dates, try to save the med school? Maybe so. The point I want to make is this, that unless sometimes, someone gets a handle on the cost of health care, and I'm not saying that we're doing it right or wrong today here, but we are marching step by step down the road to some kind of national health insurance and if you like that, ladies and gentlemen, try

being a farmer in today's agricultural economy where tomorrow is the most important day in most of our lives. If you're not signed up for the farm program, you've got about 40 to 60 percent of your year's income on the line. It just seems to me that without some willingness to answer a few questions, that we say to those providers, you go ahead and do as you will. All of us know that if we had to pay our health care cost in cash or with a check, we couldn't do it. But as it is with third party providers today, we have that insulation, that prepayment provision which allows us to sort of insulate ourselves from reality. I would hope that you would not be critical of Senator Wesely. We do not always agree, oftentimes we disagree and maybe I don't agree with what he is doing here this afternoon because I have been in that position, but I think someone has to call your attention to the fact as it was mentioned here earlier when I raised the question with him, how many people, notwithstanding the fact that there have been thousands of words spoken on behalf of property tax relief, how many people pay as much property tax as you pay for your health insurance? Not very many of us, not very many of us. One more question. Give us 10 years and see what it is going to be.

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: I don't know what the answer will be, but I can tell you right now that unless you get a handle on the cost of health care, there are not going to be very many people of ordinary means who will be able to afford the health care, number one, nor the insurance, number two. As was pointed out earlier, Blue Cross underestimated the cost of the insurance for the state this year by \$2.5 million. It's going to be a tough thing in that situation and it is going to be tough for the people of this state when you find out that regardless of your income level, you can't afford to buy certain kinds of health care. Are we at that point in time going to have to develop the best health care system in the world that can be afforded by only a very few? I hope not. Ladies and gentlemen, don't belittle and belabor Senator Wesely. Think back a few years and think where you might have been without CON and try to look ahead a few years and see where you might be in a few years from now.

SPEAKER BARRETT: Time.

SENATOR SCHMIT: And for gosh sakes, give a little bit of

April 13, 1989

LB 429, 761
LR 75

thought to those two or three of us who spoke about the medical facility at the University of Nebraska and the fact that maybe, just maybe there are some economies that ought to be looked at there.

SPEAKER BARRETT: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. Speaker. I yield my time to Senator Wesely.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker and Senator Labedz. I've talked to Senator Baack, the main sponsor of the bill, and we're on amendment number seven. There are about 20 more amendments to go through and it's late. In talking to Senator Baack I obviously care very much about trying to address the broader issues as Senator Schmit and Senator Lynch have raised, the specific issues about this bill and the breadth of the easement that it provides on the CON process. I hope my message has gotten through that we've got to deal with the cost and quality issues involved, that there is much to be decided and much to look at yet on this bill. With that understanding, I've talked to Senator Baack and he and I are going to follow up with a meeting and before we get back to this issue on Select File, rather than continue on and run out the rest of the afternoon which would be, of course, quite easy to do under the circumstance, I'm going to try and again, try and negotiate and cooperate on this issue as I have been doing. We did succeed a little bit in reaching some compromises but obviously some major differences agree, but in an attempt to be cooperative and, again, trying to reach a compromise, I'd ask that this amendment be withdrawn and the additional amendments that have been filed.

SPEAKER BARRETT: Thank you. All amendments are withdrawn, right? Is that...? Thank you. For the record, Mr. Clerk.

CLERK: Mr. President, items for the record, new resolution, LR 75, asking the Legislature to encourage all Nebraskans to participate in blood pressure and cholesterol screening. That will be laid over. (See pages 1692-93 of the Legislative Journal.)

I have amendments to be printed to LB 761 by Senators Kristensen, Morrissey and Dierks. (See pages 1693-96 of the

Legislative Journal.)

Mr. President, the next motion I have on LB 429 is by Senator Goodrich. Yes, sir, yes, sir. Yes, sir.

SENATOR GOODRICH: How many?

CLERK: I have one amendment pending, Senator.

SENATOR GOODRICH: Pull it.

SPEAKER BARRETT: It is withdrawn.

CLERK: Mr. President, Senator Conway would move to amend.

SPEAKER BARRETT: Senator Conway.

SENATOR CONWAY: Pull it.

SPEAKER BARRETT: Withdraw, thank you.

CLERK: Mr. President, I have nothing further on the bill.

SPEAKER BARRETT: Back to the bill itself. I have a number of lights on. I'm not sure that you all want to speak to it. Senator Labeledz. Senator Bernard-Stevens. Thank you. Senator Elmer, on the bill itself.

SENATOR ELMER: Thank you, Mr. President and members. We've talked at length about the bill today. This can go a long ways toward helping our rural Nebraska hospitals provide the services that we require in our towns, without having to drive 100, 150, 200 miles, provide this cost, or these services at less costs to our patients than we have in the past. The one example I passed out to you today would save almost \$400 per procedure just by having that service at the McCook Hospital, and I'd urge the advancement of LB 429 to Select File.

SPEAKER BARRETT: Thank you. Senator Korshoj, on the advancement of the bill.

SENATOR KORSHOJ: Question.

SPEAKER BARRETT: Do I see five hands? I certainly do. Shall debate cease? All in favor vote aye, opposed nay. Shall debate

cease? Record.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Wesely, please, to close. Oh, I'm sorry, Senator Baack.

SENATOR BAACK: Got a little confused there, aye, Mr. Speaker? It's my bill, okay. (laughter)

SPEAKER BARRETT: One would never have known.

SENATOR BAACK: I know, it's kind of hard to tell and sometimes it gets confusing, doesn't it? I will yield a couple minutes to Senator Wesely.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Senator Baack. I want to just apologize to the body for the time it has taken to go through some of these amendments. I don't like taking the time like that. At the same time, I don't apologize for the points I'm trying to make and the issues I'm trying to raise. I think the only way I could have done it was the way I did do it, and I hope now the message has gotten through that we need to do something with the bill, do something with the issue and there is much more to be done than we've accomplished yet with the bill, but Senator Baack has assured me that we can sit down and talk, we can work on this. I want to thank Senator Landis and Senator Lynch, Senator Moore, Senator Schmit and others who have gotten up and expressed their concerns as well. It has made me feel a little better this afternoon and hopefully we won't have to go through this again on Select File or Final Reading and we can reach some agreements and move forward in a unified fashion. Senator Baack, I appreciate very much your cooperation on this issue.

SPEAKER BARRETT: Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker and colleagues, I will work with Senator Wesely. We will sit down in between now and Select File and try and see if there is some middle ground in between where we're at right now and where Senator Wesely would like to be. I'm not making any guarantees up front. Senator Wesely and I talked about that, but we will sit down and I will sit down in

good faith to try and work these things out if we can. I think we have a good bill here. I think we have a bill that is very reasonable. I think it is one that we have thought about for a long time and we've made some reasonable adjustments in the CON process and I think it's one that we can all very easily live with because there still will be a CON process. Once a new service or a capital expenditure reaches the thresholds, there will still be CON review. There will still be CON review for something like the Medical Center. We will have that yet in place. We are not totally eliminating CON. Totally eliminating CON is not something that I would even desire to do. I don't think that we need to do that. I'm not sure whether it would apply to the Pharmacy Building or not, but it might, I'm not sure. With that, Mr. Speaker, I would simply urge the advancement of the bill.

SPEAKER BARRETT: The question is the advancement of the bill authored by Senator Baack and others, LB 429. Shall it be advanced? Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 29 ayes, 6 nays, Mr. President, on the advancement of 429.

SPEAKER BARRETT: LB 429 is advanced. Senator Morrissey is announcing the fact that he has some guests in the north balcony. We have 15 K through fourth graders from Locust Grove School in Brownville, Nebraska, with their teacher. Would you folks please stand and wave and be recognized. Thank you. We're glad to have you with us. Anything for the record, Mr. Clerk?

CLERK: Mr. President, Senator Abboud has amendments to LB 429 to be printed. That's all that I have. (See page 1699 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Moving then to LB 683.

CLERK: Mr. President, 683 was a bill introduced by Senator Landis and a number of members. (Read title.) The bill was introduced on January 9, referred to Appropriations. On March 14, Senator Landis offered a motion to place the bill on General File, Mr. President. That motion was considered on March 21 and prevailed. The bill is now before the Legislature. I do have amendments pending.

April 13, 1989

LB 84, 84A, 247, 429, 611, 683A, 683
739, 739A, 761, 809
LR 76

683A.

SPEAKER BARRETT: The A bill is advanced. And Senator Carson Rogers is announcing some guests in the north balcony from Scotia. Representing District 28 in Greeley County, 11 K through sixth graders from Scotia with their teacher. Would you folks please stand. Thank you. We're pleased that you could visit with us today. For the record, Mr. Clerk.

CLERK: Mr. President, I have some...new resolution, LR 76, offered by Senators Wesely, Landis, Schimek, Crosby and Warner. (Read brief description of LR 76 as found on pages 1701-02 of the Legislative Journal.) That will be laid over.

Enrollment and Review reports LB 247 to Select File; LB 611 to Select File; LB 84, LB 84A, LB 739, LB 739A to Select File. Those are signed by Senator Lindsay as Chair. (See pages 1702-04 of the Legislative Journal.)

Mr. President, a series of amendments; Senator Wesely to LB 429; Senator Conway to LB 683; and Senator Kristensen, Mr. President, to LB 761. (See pages 1705-08 of the Legislative Journal.)

And the last item, Mr. President, your Committee on Revenue whose Chair is Senator Hall reports LB 809 to General File with amendments attached. And that's all that I have.

SPEAKER BARRETT: Thank you, sir. Senator Dennis Byars.

SENATOR BYARS: Mr. President and colleagues, as LB 809 was reported out of committee, I would ask that we adjourn until the 17th day of April, 1989, at 9:00 a.m.

SPEAKER BARRETT: Thank you, Senator Byars. You have heard the motion to adjourn until Monday morning at nine o'clock. Those in favor say aye. Opposed no. Ayes have it, carried, we are adjourned. (Gavel.)

Proofed by:

Marilyn Jank
Marilyn Jank

April 20, 1989

LB 84, 429, 603, 683, 683A, 739, 767
LR 83

of total revision. Don't try to make up for mistakes you made in LB 775 and LB 773 by trying to compensate for it by passing this type of bill. Two wrongs do not make a right. If you make a mistake one place, correct that mistake. Don't make another mistake trying to rectify a mistake that you made previously.

PRESIDENT: Thank you. The question is the adoption of the McFarland amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 8 ayes, 23 nays, Mr. President, on the adoption of the amendment.

PRESIDENT: The amendment fails. Anything else on it, Mr. Clerk?

CLERK: Yes, Mr. President. May I read some items first, however.

PRESIDENT: Yes, please do.

CLERK: I have amendments to be printed to LB 739 by Senators McFarland and Wesely. (See pages 1814-17 of the Legislative Journal.) Mr. President, amendments to LB 603 to be printed. (See pages 1817-18 of the Legislative Journal.)

New resolution, LR 83 offered by Senator Lynch and a number of the members. (Read brief description of LR 83. See pages 1818-19 of the Legislative Journal.)

Enrollment and Review reports LB 429, LB 683, LB 683A and LB 767 to Select File. (See pages 1819-21 of the Legislative Journal.)

Mr. President, the next amendment I have is by Senator Landis.

SENATOR LANDIS: I'm going to withdraw that amendment.

PRESIDENT: Do you wish to withdraw that? It is withdrawn.

CLERK: I have nothing further on the bill, Mr. President.

PRESIDENT: Okay, on the advancement of the bill. Senator Warner, did you wish to speak?

SENATOR WARNER: Yeah, Mr. President, I rise at this point to

April 24, 1989

LB 429, 569, 569A, 606, 681, 683, 769
812

but if 18 and 6 makes 24, it probably won't work with a call of the house. So I will just sit down and unfortunately accept defeat.

SPEAKER BARRETT: Record, Mr. Clerk. A record vote has been requested.

CLERK: (Read record vote. See pages 1885-86 of the Legislative Journal.) 18 ayes, 21 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. Messages on the President's desk.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 569 and find the same correctly engrossed, LB 569A, LB 606, and LB 681, all correctly engrossed and all signed by Senator Lindsay as Enrollment and Review Chair. (See pages 1886-88 of the Legislative Journal.)

Mr. President, I have received a communication from the University of Nebraska regarding a proposed bond issue. That will be referred to Reference Committee for referral to the appropriate Standing Committee.

Amendments to be printed by Senator Lindsay to LB 429; Senator Withem to LB 812; Senators Withem and Hall to LB 812, and Senator Warner to LB 683. (See pages 1890-92 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you, sir. Senator Labedz, for what purpose do you rise?

SENATOR LABEDZ: Thank you, Mr. President. I move that we adjourn until April 25th, nine o'clock in the morning.

SPEAKER BARRETT: Thank you. You have heard the motion to adjourn until tomorrow morning at nine o'clock. Those in favor say aye. Opposed no. Carried. We are adjourned. (Gavel.) Thank you.

Proofed by:

LaVera Benischek
LaVera Benischek

face the reality that we're going to have to increase the tax somewhere for substantial long term property tax relief. I withdraw the amendment, basically, on one consideration and that is, hopefully, that the body will reconsider putting...making it a two-year function because, at least, if the people taste what it's going to be for two years, then we will be forced to...if the funds are not available, we will be forced to find a funding mechanism. We will be forced to look at the tax and the people will have even a bigger impression on us because they have had it for two years. Doing it for one year will not give the proper hammer for us to address that issue. Two years would do so. And, as Senator Lamb said, doesn't make too much difference. So let's go ahead and make it the two-year on the reconsideration motion pending. If the revenues aren't there, we'll have to find the funds for that and we'll do so and then we'll move the bill. I withdraw my amendment at this time.

PRESIDENT: It is withdrawn. Mr. Clerk, do you have something new?

CLERK: Mr. President, items for the record.

PRESIDENT: Okay.

CLERK: I have amendments to be printed to LB 813 by Senator Hall and others. (See page 1914 of the Legislative Journal.) Senator Schmit has amendments to LB 813. (See page 1914 of the Legislative Journal.) Senator Ashford to LB 588; Senator Wesely to LB 429. (See pages 1914-26 of the Legislative Journal.)

Mr. President, Senator Haberman would move to reconsider the adoption of the Lamb, Chizek, Moore and Hall amendment to LB 84.

PRESIDENT: Thank you. Senator Haberman, please.

SENATOR HABERMAN: Mr. President and members of the body, in no way am I criticizing the work of the Appropriations Committee. I am not doing that. However, I would like to bring to your attention that the Appropriations Committee has approved a \$1,093,000,000 budget for '89 and '90. For '90 and '91, they have approved a \$1,170,000,000 budget. That's a two-year budget for all of the state agencies and evidently all of the members of the Appropriations Committee feel that that money is going to be there. So I guess it kind of bothers me a little bit to have a member of the Appropriations Committee get up and say, hey,

April 26, 1989

LB 429, 603A

SPEAKER BARRETT: Thank you, any discussion? If not, those in favor of the advancement of 603A say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. LB 429, Mr. Clerk. (Gavel.)

CLERK: Mr. President, the first item on LB 429 are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 429.

SPEAKER BARRETT: The question is the adoption of the E & R amendments to LB 429. Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, the first amendment I have to the bill is by Senator Abboud.

SPEAKER BARRETT: Senator Abboud.

CLERK: Senator, I believe...

SENATOR ABBOD: Withdraw.

SPEAKER BARRETT: It is withdrawn.

CLERK: The next amendment, Mr. President, is by Senator Wesely. Senator, this is your amendment, page 1705 of the Journal, it's AM1360, 1360, Senator.

SPEAKER BARRETT: Senator Wesely.

CLERK: Senator, I'm sorry. It's AM1360, the Journal page is 1705. My mistake, 1705, Senator. Excuse me.

SENATOR WESELY: Oh, okay. Mr. Speaker, members, this is an amendment to deal with a particular problem of review that was added in LB 429, that would be HMO's and their sale. I think it was kind of an inadvertent mistake. HMO's are covered under CON for equipment purchases and capital expenditures and different items. Under this bill they would have been included and they are thought to be included under their sale. We just had a sale

of an HMO recently that we went through here, in Lincoln, our HMO. Those sales are under review by the Department of Insurance. So the Department of Insurance is already overseeing HMO's as sort of a quasi insurance company, so there is no reason for them to be under CON review. So this would take out the sale of an HMO from review, but still maintain the HMO's under review for other CON activity. I think, hopefully, Senator Baack can agree to the amendment. It's really nothing more than clarification of where we're at, I think, in today's policy. So I'd move the adoption of that amendment.

SPEAKER BARRETT: Thank you. Discussion. Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker and colleagues. I do agree with the amendment. I don't see any problem with that, it probably was just an omission in the bill, so I do agree to it. Thank you.

SPEAKER BARRETT: Any other discussion? If not, those in favor of the Wesely amendment please vote aye, opposed nay. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of Senator Wesely's amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Mr. President, the next amendment I have is by Senator Lindsay. Senator, this is your amendment on page 1890 of the Journal.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President and colleagues. This amendment would simply...it's a very short amendment, very simple amendment. What it would do is place back into the CON process open heart surgery. Under the amendment or with the passage of the amendment the open heart surgery would still require a certificate of need. The reason I offered this amendment was that one of the issues that has come up, we've read it in the papers, we've heard about it on the floor, we've heard about it in the lobby, is the question of a hospital in Omaha attempting to get into the open heart surgery field. And that...that that hospital getting into that field would result in detriment to another hospital in Omaha. The hospital that is

looking for it is Bergan Mercy. Bergan has gone through the CON process and has been denied. The reason for that is there is simply, in Omaha, there is simply not a need for further open heart surgery services. The current Omaha metropolitan area capacity for open heart surgeries is 2,250 surgeries per year. In 1988 there were only 1,174 open heart surgeries performed in the Omaha area, and that is a figure that is down from the previous year. A review of I think some of these fact sheets that have been passed out by, I believe, Senator Wesely will show that a review of comparable metropolitan service areas would show that Omaha has the highest number of open heart surgery units per 100,000 population. Omaha is extremely high in the number of hospitals that offer the service. The CON process has judged that there is not an unmet need for more open heart surgeries, or the capacity for more open heart surgery. The Department of Health, the Certificate of Need Review Board, the appeal board of the CON, all have agreed that it's just not necessary. It's also been shown, and I think something that is important and I think that we have to consider when we're looking at this procedure is one of the fact sheets that may have gotten by you in the flood of paper that we received, and that is the fact sheet that shows a graph, that shows that as the number of open heart surgeries performed by an institution decreases the mortality increases. In a nutshell, what we're talking about is the more open heart surgeries a single institution performs, obviously within reasonable limits, the safer it is for the patient, the better off the patient is. And I think that's why we're here. We're not here for anything other than the people and the people who are receiving the care. Cost containment is important. That is...may or may not be an effect of CON. But one of the effects that is coming out of this is the question of...that we would be adding an additional hospital doing open heart surgery. And I believe the process has already started. I believe construction or whatever the capital infusion necessary to begin the heart surgery program there has already started. I think what is important is that...an additional thing that is important is that Bergan Mercy, if it is allowed to go into the open heart surgery field, the ability for St. Joe's to continue to operate as a teaching hospital is severely impaired. Bergan Mercy, in its CON appeal, or its CON process, stated that they would take, they estimated that they would take approximately 142 cases from St. Joe's per year. That, obviously, is going to result in a reduction in the...obviously in income to St. Joe's, but more importantly it's going to result in a reduction in the exposure of students

at St. Joe's, which is a teaching hospital, it's going to result in a reduction of their exposure to this type of surgery and their ability to teach their students. I brought the amendment because we've got several amendments that have come up on General File and Select File, none of which I think really went to the heart of the issue, or I shouldn't say the heart of the issue, because there is a good question on CON, I don't mean to get around that. But one of the big issues has been the open heart surgery. The trust of the amendment, the intent of the amendment, the effect of the amendment is simply to put that issue out before the body so that that issue can be debated. With that, I would urge the adoption of the amendment.

PRESIDENT NICHOL PRESIDING

PRESIDENT: Senator Labeledz, please.

SENATOR LABEDZ: Thank you, Mr. President. I wish to speak in support of LB 429, but at this moment I'm speaking against Senator Lindsay's amendment. It certainly does bother me that we have two Catholic hospitals on opposite sides of this issue. And I can understand Senator Lindsay, the St. Joseph Hospital is in his district, and Bergan Mercy is not in my district, but I feel that what I will speak to you about now is the right thing to do. As I've told you before, I've been interested in the certificate of need for some time and have previously introduced bills dealing with this subject. Senator Lindsay's amendment is directly at strictly Bergan Mercy and any other hospital that can meet the thresholds for open heart surgery that is now in LB 429. LB 429 is a bill which comprehensively addresses the present day need of most segments of the health care industry and still maintains a more reasonable and less time consuming CON process. I still see LB 429 is carrying out the original intent of the certificate of need law, but we certainly do have to update and streamline our procedures to permit the Nebraska health care providers to keep up with the change available in technology and procedures. In keeping with this thought, I wish to point out that the testimony of one member of the appeal panel, and I believe Senator Lindsay mentioned the fact that Bergan Mercy was denied their appeal on a vote of three to two against the proposal. And in this case to permit it, and in this case it was to permit open heart surgery. Let me quote one of the members, what they said, that voted against the open heart surgery. The original intent of certificate of need, when it was set in motion, the intent was to contain costs by

reducing duplication and to maintain a standard of quality of care. And I didn't feel, personally, there was any threat to either concept in granting the certificate of need there. We are strictly held to regulations as set down, and we cannot go beyond that. It is not our place to change law. But I do feel there is some evidence here, in the way the regulations are implemented, to make a strong case in restraint of trade in this particular situation at least. The fine print in the regulation obstructs the original intent. I think for an individual patient it is not the best situation when you have to be transferred. And I will repeat that. This is from one of the panel members. "I think for an individual patient it is not the best situation when you have to be transferred, but that is not our responsibility." The statement illustrates why we need to change our CON law to modernize our thresholds and to set out specifically the standards in our statutes so they can be and may be more uniformly followed. There are many of you that think passing LB 429 may have an adverse effect on open heart surgery in Omaha. And let me read you again a quote from Dr. O'Halloran, the only physician that was on the appeal panel. The motion had been made to deny Bergan's case and Dr. O'Halloran said, "Bergan Mercy has shown that there is an unmet need. It appeared to me, by the numbers they showed in all the volumes of material, that they will be able to provide a quality of care that I feel is going to be better than several of the hospitals that they will take the patients away from, and that's my interpretation of the material."

PRESIDENT: One minute.

SENATOR LABEDZ: End of quote. Those statements, to me, are very reassuring that we are doing the right thing with LB 429 and the wrong thing if we adopt Senator Lindsay's amendment. Thank you.

PRESIDENT: Thank you. Senator Hall, followed by Senator Wesely.

SENATOR HALL: Thank you, Mr. President and members. I rise in opposition to Senator Lindsay's amendment to LB 429. The basis that Senator Lindsay offers the amendment to the bill is on the fact that if there are fewer operations there will be fewer deaths. I mean the argument could be made then, I guess, if Lucille Ball had not had open heart surgery she might be alive this afternoon, that's not the case. If you carry the argument

to the fullest extent, would Senator Lindsay respond to a question?

PRESIDENT: Senator Lindsay, please.

SENATOR HALL: Senator Lindsay, would you agree to an amendment that would remove the hospitals that in Omaha currently have the ability, through the grandfather clause, to provide for open heart surgery procedures, even though they do not meet the minimum threshold that is currently out there under CON, but yet they, in many cases I think it's three, do not even come anywhere near. Would you support an amendment that would take operational procedure away from them in order to cut costs and save lives?

SENATOR LINDSAY: Senator, I believe that you're referring to the two that would not...

SENATOR HALL: Yes or no.

SENATOR LINDSAY: Yes, I wouldn't have a problem with it.

SENATOR HALL: You would support that amendment...

SENATOR LINDSAY: Sure, sure.

SENATOR HALL: ...to str...

SENATOR LINDSAY: Are you offering it?

SENATOR HALL: I will, especially if this is adopted, clearly. Thank you very much, because that will do, in essence, exactly the reverse of what this amendment would do to LB 429. It will say, look, even though this hospital has been doing everything up to the point of the open heart surgery, and they have in the case of Bergan Mercy, and you might as well cut to the quick and, Senator Lindsay, I appreciate the amendment, because that's what much of the debate has been on, it's what much of the debate, clearly all of the debate was last year when we gutted my A bill to 716 and put this procedure into statute, allowed for it to take place, got it passed, advanced it along and it was vetoed. There was not any time to override the veto because it was done within the last five days of the session. The issue here is one of do you let a hospital have the ability to function within their capabilities, or don't you? There clearly

is the ability there by Bergan, because of their staff, because of the experience, because of the number of procedures that they currently provide, many more than those who have been grandfathered in, just because they happen to be there at the time, who don't combined, I think three of them don't, combined, do the number of procedures that Bergan does currently. But yet, because of the CON, Bergan is not allowed to do the open heart surgery. It's clearly a turf battle. Senator Lindsay is very honest and up front in his approach, and I appreciate that, because he says they're going to take business away from St. Joe's. It's rare that two Catholics disagree, isn't it, Senator Lindsay. But here we...but here we have a situation where we don't want to, I guess, pass the bread across the communion rail. In any case, it's a situation where the people that are hurt are the patients. You're not hurting the hospital, you're not hurting the doctors, you're not hurting the administrators. Many of those people, especially the doctors, function in more than one setting. They function in a hospital, if they're on a cardiac care team, in more than one hospital. The only people that end up being hurt are the patients. You talk about increased costs, those patients go into Bergan, they find out that they have to move to a different hospital setting in order to provide the service that they critically need, they have to be picked up and they have to be moved.

PRESIDENT: One minute.

SENATOR HALL: Inconvenience, I think yes, I mean it is ridiculous to say that because they don't meet a certain threshold, although they come very close, they do not deserve the opportunity to have this procedure. It's unfortunate that the CON is at the level that it currently is. They ought to have this ability to do that, especially when you have a number of hospitals who currently have the procedure available to them because of a grandfather provision, but yet come nowhere close to the number of procedures that Bergan currently operates, or anywhere near what CON requires at present. I would urge the rejection of Senator Lindsay's amendment, although I do appreciate the open and "honestness" of the amendment as he offers it.

PRESIDENT: Thank you. Senator Wesely, please, followed by Senator Schellpeper.

SENATOR WESELY: Mr. President, members, I do rise in support of

the Lindsay amendment and do commend him for bringing it to the attention of the body. It is taking an isolation what one issue we ought to consider today. At the same time it is probably the issue that drives the whole debate. I've tried to negotiate with Senator Baack and the Hospital Association to try to ease up the problems that I have with the bill. But the fact that Bergan Mercy wants to proceed and provide for open heart surgery has blocked any attempt to try and include some sort of a list that would provide some review of these very important types of surgeries and services. And so really it is the key fight and the key issue and we might as well get right to the issue, although I hope in time we can get to some other issues as well, that we'll come up with some other amendments. But the Bergan case is a very difficult one. I know it's one that has split friends, obviously, from Omaha as to what is best. But I would argue that there are already five different open heart surgery services found in Omaha and that is, at that pace, too many when you have a population that you have in Omaha. One of the handouts that I sent around earlier indicates that other cities, other towns have much fewer individuals. Omaha is listed at the very high end. There's no town of comparable size with five open heart facilities. At .81 per 100,000 it is the highest, the average is about half that. So, in essence, Omaha should probably have two, maybe three open heart facilities. Now, under the Bergan plan, you want to go from five to six. That clearly, I think, is in the wrong direction. The reason you don't want five or six, you want a fewer number so that you have more repetition, you do a better job, the experience is up, the teamwork is there, the facilities are high grade, and you do better work on a very important surgery. I've also mentioned earlier in debate on this that there was a gentleman from the VA hospital who was sent up to Wisconsin to have open heart surgery because they found it cheaper and better quality there versus just down the street in Omaha, Nebraska. So, although we don't have statistics about the kind of quality we now have in Omaha, certainly from every statistical analysis the more a surgery is done per unit the better quality and the lower the cost. In addition, again another handout I have, number three, indicates exactly that, that the mortality rate goes down dramatically as procedure volume goes up. So there's no doubt in my mind that for quality of care you're going to find the better course of action is to allow the certificate of need process to work and they have twice now reviewed this matter and determined against Bergan Mercy, that it was not in the best interests of the public, that their need had not been met to proceed with a

granting of that operation at Bergan. There were quotes by Senator Labedz about the issue. I quote Kim Murphy, whose on the panel, and she says, "Frankly, it appeared more that this was a desire to offer a service than to fill an unmet need." That is really a key question here, are we trying to meet the need, or are we just trying to fill up services so that hospitals are able to provide whatever they wish to provide. In addition, I've passed out, on a yellow sheet, the history of the Bergan Mercy issue. If you take a look at that you'll see how time after time Bergan has tried to move forward on this without perhaps working through the channels as they should, trying to get this done without getting the proper authorization. Now they are working through that system as they should and I guess they had good reason to try and circumvent it because they had been turned down twice now in that process. I'm sure they'll...

PRESIDENT: One minute.

SENATOR WESELY: ...appeal that, but nevertheless it appears to me that the people that should know and the experts over in the department have reviewed this and found that Bergan ought not have that right. So open heart surgery is important. It should be reviewed. And I commend Senator Lindsay for offering this amendment. It really comes down to the problem in Omaha, where you have the hospitals in such competition that they forgot how to work together. In Lincoln we've not got that problem. We have one open heart surgery operation in place, and that's Bryan Hospital. We've divided between the hospitals key high cost, high quality areas so that each hospital has a different function to play. In Omaha they could do something similar. But because of their intense competition they're unable to do that. So, instead of sharing and cooperating they compete and they try to cover every service possible, have every piece of equipment they'd like. And that ups the cost and I think lowers the quality and it really is a problem, particularly acute in Omaha. But nevertheless that's where the fight is, and that's where the issue is, and I would recommend supporting Senator Lindsay's amendment.

PRESIDENT: Thank you. Senator Schellpeper, please, followed by Senator Pirsch.

SENATOR SCHELLPEPER: Thank you, Mr. President and members. I would like to ask Senator Lindsay a question, please.

PRESIDENT: Senator Lindsay, please.

SENATOR SCHELLPEPER: Senator Lindsay, how many teams of doctors now operate in open heart surgery at St. Joe?

SENATOR LINDSAY: I don't know, I believe it's one. I shouldn't say, I think there's two doctors that I've heard of. If what you're saying is...I would agree that the same doctors would be performing the surgeries at Bergan as would be performing...(interruption)

SENATOR SCHELLPEPER: Yes, that's what I was...

SENATOR LINDSAY: No question about that.

SENATOR SCHELLPEPER: But you know I guess it makes no difference to me as long as they're a competent, well educated doctor, where they operate, whether it's at St. Joe or Bergan Mercy. I think if you go into Bergan Mercy with a heart problem you should be able to be operated on rather than have to be moved to St. Joe. So I guess as long as the doctors are educated and very competent, I see no problem why they can't operate at that hospital. So I would be opposed to this amendment.

PRESIDENT: Thank you. Senator Pirsch, followed by Senator Chambers, please.

SENATOR PIRSCH: Thank you, Mr. President. I can't tell you any statistics. And while I voted for the certificate of need, because I was concerned about health care costs, I can tell you from personal experience that you don't go looking at costs when you look for open heart surgery. I didn't plan to speak, but I do support Senator Lindsay's amendment. As many of you know, my husband, Al, had heart surgery a year ago in February. Al had an angioplasty at one hospital, and they tried to rush him into surgery the next morning, for the open heart surgery, but we were not about to be rushed, quite frankly. And we did shopping around and we did consultation with everyone that we had known that had ever had heart surgery, and quite frankly we moved. We moved from the hospital that did the preparation to a hospital and a surgeon that had done over 200 of these operations, and what was impressed on us time and time again, by the people that we spoke to when we were looking for the best darn surgeon, was that you should have the best darn team along with that surgeon.

And that goes with the pre-operative care, but also very important the post-operative care, that team of doctors and nurses that have worked together and that have the experience. During that time it was a very rough time, but I strongly feel that it is not only the surgeon, and we were told this also time and time again, but it is that entire team and that after care that is so important. Four other friends and relatives died with the same complication that my husband had. He had a five artery bypass, very serious. Four of our friends and relatives of friends died during that period. And I'm happy to tell you, of course, that Al is doing very well, thank you. But I do think very strongly that that experience, that that surgeon that we looked for, and that team of doctors and nurses who provide that care along with that surgeon were the most important part of my husband's recovery. With that, I strongly support Senator Lindsay's amendment.

PRESIDENT: Thank you. Senator Chambers, followed by Senator Labeledz.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, the best line that I was going to deliver, Senator Labeledz beat me out of it. If the Catholics can't agree..., Senator Labeledz, that was going to be the crowning comment of my statement. And I think with this Bergan Mercy versus St. Joe that is right up there now, after all these years, Oklahoma versus Nebraska, Cain versus Abel, Godzilla versus Rhodan. (Laughter.) And Senator Labeledz versus Senator Lindsay. But, at any rate, I'm going to support Senator Lindsay's amendment. And I think the discussion between Senator Lindsay and Senator Hall, on these grandfathered hospitals, is very pertinent and very appropriate. But it may not be realistic for us to think that there will be a consideration given to what they discussed. If the purpose of the standards is to set a threshold which must be reached before hospitals are allowed to engage in this activity. And there are hospitals which have not met that threshold but are allowed, for political reasons, and I guess that was to get the bill passed originally, to perform this service. It is difficult, it is difficult to support Senator Lindsay's amendment without "ungrandfathering" those other hospitals. As a step in that direction, because Senator Hall said he would offer that amendment if Senator Lindsay's is adopted, I support Senator Lindsay's amendment, not just because of what Senator Hall had suggested. But what I wish could be determined is how many open heart surgeries legitimately need to be carried out. I'm

wondering if the competition among hospitals is similar to that among auto mechanics. Every mechanic says he's going to do a better job at less cost, and in a lot of instances none of the mechanics really give you what you need, and in some cases any mechanic can give you what you need, depending on the seriousness of the damage to be corrected. I'm not an expert on medical matters. I've never had to go to a hospital for any treatment in my life. I don't want to go to a hospital, because frankly I don't trust them. I don't trust their sanitation procedures, I don't trust the doctors in terms of their competency, I'm not confident that the kind of medication that is prescribed is what I would need in the first place and, if I really did need it, I'm not confident that that is what I would be given because of who I am. (Laugh.) But above and beyond all of that, and I wish Senator Hall were here because I'd ask him a question, maybe I can ask Senator Labeledz, well, anyway, maybe I'll ask Senator Lindsay.

PRESIDENT: Senator Lindsay, would you respond, please.

SENATOR CHAMBERS: Senator Lindsay, so the record is clear I'm going to ask two or three questions in sequence. Would the same doctors who perform the open heart surgery at St. Joe's perform it at Bergan Mercy, if your amendment fails? Is that what I understood to be the case?

SENATOR LINDSAY: Yes, from what I understand there are two doctors, and I know at least one and maybe the other, are going to perform the surgeries at both hospitals.

SENATOR CHAMBERS: Have these doctors expressed an opinion on this amendment?

SENATOR LINDSAY: They haven't called me.

SENATOR CHAMBERS: Okay.

SENATOR LINDSAY: I don't really know.

SENATOR CHAMBERS: So we are not discussing the competency of those who would be performing the surgery, we're talking about the locations where it would be performed.

SENATOR LINDSAY: No, not...I am not in, any way, challenging the competency of the doctors performing them, of those two

doctors that I'm mentioning.

SENATOR CHAMBERS: And your contention is that, with the set of circumstances being what they are now, there is adequate service of this kind available to meet the projected needs of the people who would seek this service.

PRESIDENT: One minute.

SENATOR LINDSAY: Yes.

SENATOR CHAMBERS: Senator Labedz, may I ask you a question, if you can pull away from the reincarnation of Albert Einstein,...

PRESIDENT: Senator Labedz. Yes, she can.

SENATOR CHAMBERS: (Laughter.) ...who is the brother of Frank Einstein. That's an inhouse. Senator Labedz,...

SENATOR LABEDZ: You're comparing me to what?

SENATOR CHAMBERS: No, not you, that was the gentleman you were talking to.

SENATOR LABEDZ: Thank you.

SENATOR CHAMBERS: Senator Labedz,...

SENATOR LABEDZ: Yes.

SENATOR CHAMBERS: My time is so close to being out, I'll wait until I get another shot, and then I'll ask you the question that I wanted to ask you.

SENATOR LABEDZ: You got a guilty conscience, that's all.

PRESIDENT: Senator Labedz, please, followed by Senator Wesely.

SENATOR LABEDZ: Thank you, Mr. President. Senator Pirsch did give heart-wrenching details of her husband's surgery. I asked her the doctors name and it was Dr. Randy Ferlic, and he is also a cardiac surgeon at Bergan Mercy Hospital along with Dwaine Peetz, Dick Schultz, and Jeff Sugimoto, who are very highly qualified cardiac surgeons and do all...and are there on the staff. And Dr. Ferlic is on the staff already at Bergan Mercy

Hospital, so the same quality of care that Al Pirsch received would also be received if any patient was taken to Bergan Mercy Hospital. Senator Wesely mentioned the fact that Kim Murphy made a statement, she is also part of the panel that voted against Bergan Mercy on their certificate of need for heart surgery. And there is another quote that he should have given you which said the Federal Trade Commission's letter was very interesting. But we are not here to make policy, we have to...we are just here and have to make a decision based on laws and regulations, and I'm sure she meant of the State of Nebraska. And what we're doing here with LB 429 is to modify the rules and regulations of certificate of need. Also, Carolyn Gigstad said, and I quote, "I don't believe that capacity is an issue here. I don't feel that the financial impact on other institutions has any merit here, although I'm sure it's going to definitely hurt, but that's not part of the CON's criteria before us." I believe that Bergan Mercy can give us the safety, the quality of care and the after care that Senator Pirsch mentioned while she was speaking about her husband. And we certainly are happy that Al Pirsch did come through with a very successful operation, but I'm sure that we will also receive, since we have the same doctor at Bergan Mercy, the same quality of care. Thank you.

PRESIDENT: Thank you. Senator Wesely, please followed by Senator Byars.

SENATOR WESELY: Mr. President, members, just real briefly. Senator Labedz keeps bringing up these quotes from the panel members, doesn't reemphasize, however, that twice members have reviewed this, twice they've looked at the issue and twice they've decided Bergan Mercy should not be allowed to have the open heart, that it wasn't in the best interests of the public, wasn't cost-effective, wasn't high quality. For whatever reasons are given on the other side, that is wonderful, Senator Labedz. But the issue has been decided and looked at and decided against Bergan Mercy. And the quotes, I think, only reemphasize the fact that that decision has been made. Now if you look at one of the other handouts I've put out on the red sheet, you'll see the occupancy data on Omaha area hospitals. I talked about the intense competition between Omaha hospitals. If you have a chance to look at that what you'll see is that on the average they're really hurting right now. They've dropped in census down to a point where Lutheran is down to 25 percent occupancy, Bergan Mercy is 40 percent occupancy, and the best

occupancy level is 65 percent for Children's Memorial Hospital. The whole situation here is that Bergan Mercy is in trouble in some ways, they've dropped in occupancy. They want to maintain occupancy levels. They don't want to lose this service and they're in to expand and attract business to that hospital. The question we have to ask in response to that is that's great for Bergan Mercy, we know what they're trying to do and why they're trying to do it, they think it would be in their best interest. But is it in the best interest of Omaha? Is it in the best interest of the public? Is it in the best interest of the state? Those questions have been addressed and the answer has been no, that it wasn't, that it wasn't the best thing to do. So for those reasons I think again that we ought to support the Lindsay amendment and recognize cooperation would be better here. Now I understand there were negotiations between Bergan Mercy and St. Joe's Hospital and those broke down. The better thing to do would be to get those people back together, working together and trying to work this thing out. Unfortunately, that hasn't happened. I'm not sure quite why or what the circumstance is, but greater cooperation, at this point, is what we need more of in Omaha, not more competition, not more duplication, and that is exactly what we have if this bill passes and we don't have the review of this certain circumstance.

PRESIDENT: Thank you. Senator Byars, followed by Senator Chambers.

SENATOR BYARS: I rise reluctantly, Mr. President and colleagues, to let you know that I was a member of the Certificate of Need Review Panel that heard this application. I sat for hour, after hour, after hour listening to the testimony and trying to absorb all of the facts, statistics that had a bearing on whether the certificate of need was granted or not. I have some problems with the certificate of need process. But I, in particular, am going to support Senator Lindsay's amendment for the very reason that this has been addressed. Senator Wesely is exactly right, this has been heard time and time again with the same result on every occasion. I don't think this body wants to spend another day, or two days, or three days, or a week such as the Certificate of Need Review Appeal Panel used to hear this case, that's how voluminous it is, that's how many arguments can be made. And I assure you, as you hear the arguments on both sides you'll hear some very, very valid points. But I feel a decision has been made, I don't

think it's up to this body at this time to change that decision, and I therefore will support the Lindsay amendment.

PRESIDENT: Thank you. Senator Chambers, followed by Senator Labedz, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'd like to ask Senator Hall a question or two.

PRESIDENT: Senator Hall, please.

SENATOR HALL: Yes.

SENATOR CHAMBERS: Senator Hall, I had touched on this when we were off the mike. Are you aware of any instances where two people or more needed open heart surgery at the same time?

SENATOR HALL: No, Senator Chambers, I'm not, but I'm sure that has happened in the past.

SENATOR CHAMBERS: How many hospitals currently did you say in Omaha can perform the surgery?

SENATOR HALL: I think it is five, and I would...Senator Wesely is nodding yes, so I think five is correct.

SENATOR CHAMBERS: So if, without Senator Lindsay's amendment, there could be a possibility of several people needing this surgery and the same doctors, the two would perform all of them? Is that what would happen?

SENATOR HALL: I'm not sure I understand your question, Senator Chambers.

SENATOR CHAMBERS: Are there more than two doctors, or are there only two doctors that perform this kind of surgery?

SENATOR HALL: There are, I think, more than two teams of physicians that function as a cardiac care team that perform these surgeries. They do move from hospital to hospital, based on where the patient is located and where they happen to have the ability to function.

SENATOR CHAMBERS: So if Bergan Mercy were added that wouldn't make these teams unable to accommodate Bergan Mercy, along with

these others.

SENATOR HALL: Not at all. Many of them happen to currently function and even have residence in Bergen Mercy.

SENATOR CHAMBERS: Senator Hall, do you think one hospital could accommodate all of the people who would need open heart surgery?

SENATOR HALL: Senator Chambers, I don't think I'm qualified to answer that question. But without anymore information than I currently have, my answer would be I don't think so.

SENATOR CHAMBERS: How many do you think it would take?

SENATOR HALL: I don't really know.

SENATOR CHAMBERS: Would it take two?

SENATOR HALL: Don't know.

SENATOR CHAMBERS: Then how do you know it wouldn't take...it would take more than one?

SENATOR HALL: I think currently it takes about six.

SENATOR CHAMBERS: You heard Senator Korshoj say that, (laughter) he's kibitzing. Thank you, Senator Hall.

SENATOR HALL: Senator Chambers, don't give Senator Korshoj the benefit of my answer, please.

SENATOR CHAMBERS: Oh, you didn't hear him?

SENATOR HALL: No, I didn't.

SENATOR CHAMBERS: Oh, okay, all right. He might have picked it up. I'd like to ask somebody a qu...oh, Senator Lindsay.

PRESIDENT: Senator Lindsay, would you respond, please.

SENATOR LINDSAY: I'll try.

SENATOR CHAMBERS: Senator Lindsay, do you have any way of determining how many hospitals it would take to accommodate those who need this type of surgery?

SENATOR LINDSAY: Senator, the best I could do, again going back to one of these fact sheets that was passed out, is showing that for example in Albany, Schenectady, Troy, New York has a population of 846,000, they have one facility. West Palm Beach, Boca Raton, Delray, Florida has 790,000 people, has three facilities. It looks like it goes anywhere from actually anywhere from one to four in...for this population size.

SENATOR CHAMBERS: How many do you think, in Omaha, it would take? And I'm just asking for your opinion.

SENATOR LINDSAY: I would...anywhere from three to five.

SENATOR CHAMBERS: From three to five?

SENATOR LINDSAY: I think that's the chicken way out, isn't it.

SENATOR CHAMBERS: Thank you. Senator Wesely, do you have an opinion? And I'm not just trying to get comparisons, and if you have a reason for stating it.

SENATOR WESELY: Sure. In the review, if you remember the issue last year, the question was, will you be able to do at least 200 of these in the course of a year, that's what they felt a team needed to do to be good at this type of surgery, open heart surgery. And that's the threshold Bergan has been trying to meet and unable to meet because there is already so many other activities going on with other hospitals, they can't get enough volume to meet that need and that's the quality threshold, and the concern that's been there, that you bring them in and they won't have enough to meet that quality issue of 200, and the other hospitals that may be at that or close to it will drop down because some of their people will go there. So everybody loses, everybody doesn't have enough to be good at what they're doing, and that's a real concern.

SENATOR CHAMBERS: Okay, he's the question that I'm asking, how many...

SENATOR WESELY: ...would be better?

SENATOR CHAMBERS: How many facilities would it take to handle the number of people who need this surgery?

PRESIDENT: One minute.

SENATOR WESELY: It would appear to me that three would probably be a better figure.

SENATOR CHAMBERS: How many have been grandfathered?

SENATOR WESELY: Five.

SENATOR CHAMBERS: Five, so, if we took all of those that have been grandfathered away, how many would we have operational?

SENATOR WESELY: (Laughter.) Five minus five is zero, if I remember.

SENATOR CHAMBERS: So how did St. Joe get there, through the grandfather?

SENATOR WESELY: No, they want to be in there. This bill, if it passes, would allow them to bypass what remains in the process, that they failed at, to go in and be the sixth one in open heart surgery.

SENATOR CHAMBERS: I thought you said Bergan Mercy wants to be the sixth.

SENATOR WESELY: I meant Bergan Mercy.

SENATOR CHAMBERS: Let's keep our Catholics straight now.

SENATOR WESELY: Bergan Mercy, I meant...

SENATOR CHAMBERS: They might be in the same family, but...

SENATOR WESELY: You know what I meant, I meant Bergan Mercy.

SENATOR CHAMBERS: Okay.

SENATOR WESELY: St. Joe was in there because they got grandfathered, right.

SENATOR CHAMBERS: Okay, so nobody had to meet the standard we're talking about now in order to be in originally.

SENATOR WESELY: That's right.

PRESIDENT: Time. Senator Labedz, please, followed by Senator Hall, then Senator Elmer.

SENATOR LABEDZ: I thank Senator Chambers for asking that last question, because that really brought to light what we're thinking and talking about here, and perhaps I couldn't have done it better than when he asked the question of Senator Wesely. In 1979, Senator Chambers, when the certificate of need was passed it had a grandfather clause which gave all the hospitals, that had projects or were in place at the time, as of September 1, 1979, the right to continue. But many hospitals, at that time, began projects or procedures simply to beat that September 1, 1979 deadline, and that is the reason that they are now not...necessarily have to go to the certificate of need. They are in there, they're grandfathered in, but no other hospital has ever gone through the certificate of need process for open heart surgery in Nebraska, other than Bergan Mercy. And it...Senator Chambers, also mentioned the feud between St. Joseph and St. Catherine's Hospital. As I said in the beginning, it bothers me considerably that two Catholic hospitals can't get together and come to some compromise or agreement, but evidently they can't. But I want to stress, Senator Chambers, that the reason, and, Senator Wesely, you know it and I know it, the reason they were denied the open heart surgery by the panel was because of our rules and our regulations. And I've said that once before today. What we're trying to do here with LB 429 is modify that. When it was on General File I read you several paragraphs from the Federal Trade Commission letter that says Nebraska needs modification in their CON laws. And, if we don't do it now with LB 429, we are guilty of not giving the quality of care that our patients deserve. I can recall Senator Pirsch gave us the story of her husband. I took my husband from a cabin, on the Platte River, all the way into a hospital with chest pains, stomach pains also, did not know at the time that he was having a heart attack. Now I took him to the University Hospital. Had I known he was having a heart attack I would have taken him to St. Joe's Hospital. I'm not a nurse, I'm not a doctor. I knew that he was in terrible pain and fortunately he was only have a blood problem and did not require heart surgery. But I would have been furious had that hospital or any hospital that I'd taken him to say that we have to transfer him to another hospital at the critical time that he is needing heart surgery. Senator Chambers mentioned the feud between the two teams, Nebraska and

April 26, 1989

LB 429

Oklahoma, when he mentioned the two Catholic hospitals. Senator Chambers, there are two hospitals and there are two football teams, but in this case Bergan Mercy is being penalized. Thank you very much. Oh, I'm sorry. If I have any balance of time left...

PRESIDENT: Yes, you do.

SENATOR LABEDZ: ...I almost forgot, Owen Elmer would like the balance of my time.

PRESIDENT: Okay. You have a couple of minutes, Senator Elmer.

SENATOR ELMER: Thank you, Mr. President. Two minutes will be plenty. The primary thing that's been espoused for the good of the State of Nebraska through CON is saving health care dollars. At the testimony of the CON for Bergan Hospital several things were brought out. And derived from that testimony that was given by the financial officers, from both St. Joe and Bergan Mercy Hospital, it's estimated that approximately \$10,000 per open heart surgery would be saved if Bergan Mercy were performing them, they'd be \$10,000 less. They estimate that they would do 150 to 200 per year. If these figures are correct, then that would save the Omaha health community \$1.5 million to \$2 million per year,...

PRESIDENT: One minute.

SENATOR ELMER: ...based on those figures. I would urge the defeat of the Lindsay amendment.

PRESIDENT: Thank you. May I introduce some guests, please, of Senator Coordsen in the south balcony. We have 48 fourth grade students from Geneva Elementary School at Geneva, Nebraska and their teacher. Would you students and teacher, please stand and be recognized by the Legislature. Thank you for visiting us today. Senator Hall, followed by Senator Conway.

SENATOR HALL: Mr. President, I would call the question.

PRESIDENT: Question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate.

PRESIDENT: Debate has ceased. Senator Lindsay, would you like to close, please.

SENATOR LINDSAY: Thank you, Mr. President, colleagues. I guess the first thing I want to do is to point out some of the questions, and there have been good questions brought up in the debate. That was the whole purpose of the amendment, is to put this issue out, let it get thoroughly debated and let the body decide this issue and this issue separate from other issues. The first....I'm sure most of you are aware of the question on the grandfathering, that is, I guess, a legitimate argument for Bergan that five out of these six hospitals, or I should say the five hospitals that are doing open heart surgeries were grandfathered in, were doing the procedures, I believe prior to the enactment of the CON bill in 1979. The...so Bergan was not doing them at that time. That may be an argument of whether it's fair or not, but there is, I think, a lot of procedures that different hospitals may or may not have been in prior to that enactment of that law. A second question has been brought up, as Senator Chambers was driving at, and that is how many hospitals are needed. And that's a tough question, but the information I've since provided to Senator Chambers is that Clarkson Hospital, St. Joseph's Hospital, Methodist Hospital currently perform approximately 88 percent of the open heart surgeries. I think...it appears that those three hospitals could handle what is necessary in the Omaha area. Again, another question regarded the teams of doctors. I'm not going to tell you that there are different teams of doctors that are going to be used, if Bergan gets into it. And I'm in no way attacking the abilities of the doctors Bergan would use. But I think it's also important to know that we're not talking just about the doctors. The doctors are probably the most important part of a surgical team, but they're not the only part. They would be using...Bergan would be using different pre-op teams, different post-op, different operating room staff. There would be different personnel involved, it wouldn't just be the doctors. It's also important to note, I think, right now, as I mentioned in my opening, that we've got the capacity, in the metropolitan area, for 2,250 open heart surgeries in a year, and in 1988 there were only 1,174. There is just clearly not an unmet need. But if we go into that a little bit further and realize as medical technology increases the need for open heart surgeries decreases. For example, a couple of examples that I've been given are the PET scanners which can eliminate the

need, in some instances, the need for open heart surgery by identifying dead heart tissue, to determine in advance whether or not the surgery is necessary. Apparently in early 1988 the FDA approved a thrombolytic agent which would dissolve blood clots, and again eliminate the need for some I believe it's bypasses. And there is also the increased use of angioplasty. As I also mentioned in my opening, in 1987, there were more open heart surgeries in Omaha than there were in 1988, that figure is down. Whether there is a connection, I'm not sure, but I think it's safe to say that the need for open heart surgery is not going to increase as the medical technology increases. I think it's going to decrease. It also comes back to the...what I think is important, very important thrust of the issue, and that is that as the number of open heart surgeries performed at a particular institution decreases the mortality rate increases.

PRESIDENT: One minute.

SENATOR LINDSAY: While we are talking about cost containment in hospitals, while we are talking about money that one hospital might make and another might not make, while we are talking about unmet needs, the issue comes down to this could very easily result in a higher mortality rate. And I ask you, what could be more important than that. We're talking about the patients. We're talking about patient's lives. Finally, I think it was mentioned during the debate that CON committee and the appeal board met for hour, after hour, after hour discussing this issue or hearing evidence on this issue. I feel it is unwise for this body, to come in after...while it's been a good debate, I don't think it matches the evidence that was brought before that board and before that appeal board. I think it's wiser, in this case, when we're talking about such a serious issue, to defer to the judgment of those who listen to the evidence, who heard those involved and heard the arguments, I think in this case...

PRESIDENT: Time has expired.

SENATOR LINDSAY: ...it's best to defer to their judgment. I would urge the adoption of the amendment.

PRESIDENT: Thank you. Senator Hall, for what purpose do you rise?

SENATOR HALL: I would like a roll call vote in regular order.

April 26, 1989

LB 429

PRESIDENT: Okay. The question is the adoption of the Lindsay...

SENATOR HALL: Call of the house (inaudible).

PRESIDENT: The question is the adoption of the Lindsay amendment. Roll call in regular order.

SENATOR LINDSAY: Call of the house.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Call of the house, before the roll call vote.

PRESIDENT: Okay. Question is, shall the house go under call first? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 26 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Please return to your desks and record your presence. Those not in the Legislative Chamber, please return and record your presence. Thank you.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Members, please return to your seats and record your presence. Senator Ashford, record your presence. Senator Nelson, Senator Haberman, record your presence. Senator Lamb, Senator Peterson, the house is under call. Senators Lamb and Peterson, please report to the Chamber. Members, return to your seats for roll call vote in regular order. Senator Lamb is on his way. Senator Hall, may we proceed? The question is the adoption of the Lindsay amendment to LB 429. Mr. Clerk, read the roll.

CLERK: (Roll call vote taken. See page 1950 of the Legislative Journal.) 15 ayes, 22 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. The call is raised. Next item, Mr. Clerk.

CLERK: Mr. President, Senator Wesely would move to amend.

April 26, 1989

LB 429, 525, 683, 813, 816A

Senator, I have AM1547, but if I may, Senator, before you proceed.

SPEAKER BARRETT: For the record, Mr. Clerk.

CLERK: Mr. President, items for the record. New A bill, LB 816A. (Read by title for the first time.) It's offered by Senator Warner. Appropriations Committee reports LB 525 to General File with committee amendments attached. Amendments to be printed to LB 813 by Senators Baack and Rod Johnson. Attorney General's Opinion addressed to Senator Withem (re. LB 429), and one to Senator Beyer (re. LB 683.) (See pages 1951-57 of the Legislative Journal.)

Senator, I now have your amendment number 1547 pending. (Wesely amendment appears on page 1916 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely. (Gavel.)

SENATOR WESELY: Thank you, Mr. Speaker, members. This amendment is the real key amendment, I think, to address my basic concerns about this bill. And I have many concerns about the bill and I feel very uncomfortable about it. But at least an attempt to compromise, this is what I consider the least best offer. And what it does is, one, it reduces the threshold for new services from 900,000 to 750,000. It reduces the new equipment threshold from 1 million to 900,000, and those two things I've worked with Senator Baack on and, hopefully, he will be in agreement with those. And I would ask for a division of the question that pulls out those two items, the two threshold amendments. Then the other part of the amendment that would be taken up after that deals with the question of a list. And the list that I have on this amendment is...deals with neonatal care, open heart surgery, but it delays that open heart surgery so that Bergan Mercy can proceed with their desire to provide that service, chronic renal dialysis and then transplants. And I'll get into that after we're through with the thresholds. But anyway, Mr. Speaker, to save time and focus the debate, I ask that we divide the question and...let me see...

CLERK: Senator, may I inquire as to where that division would occur, just so...

SENATOR WESELY: You would, you would do numbers two and four, that are listed on 1547, you'd do those two, and then you'd take

out, let me see, you'd take out the rest of the....Three would be split out. Okay. You'd do one, two and four, and then number three would be considered separately. So, one, two and four deal with the thresholds, number three of the amendment deals with the list. And that's how I'd like to separate and divide the question.

SPEAKER BARRETT: Senator Wesely, it occurs to the Chair that is divisible. One, two and four separated from three.

SENATOR WESELY: Okay.

SPEAKER BARRETT: That being the case, which would you prefer to address first?

SENATOR WESELY: One, two and four.

SPEAKER BARRETT: One, two and four, that speaks to the thresholds.

SENATOR WESELY: Right, um-huh. Should I go ahead then, Mr. Speaker?

SPEAKER BARRETT: Thank you, proceed.

SENATOR WESELY: Mr. Speaker, the amendments deal with the threshold issue, and if you have the blue sheet I've passed around, it shows the current law, what was recommended by a task force last year on this issue as to the thresholds, the recommendations under the original LB 429 and the current level under LB 429. What we've done, essentially, on the threshold is gone from 577,000 right now on capital expenditures, to, under the original bill would have gone to 1.5 million. And the bill now, as amended, would have it at 1.2 million, and I don't touch that with this amendment. That is something we've agreed to between Senator Baack and the hospitals and myself, and that would essentially double the current threshold, obviously more than I'd like, but a reasonable increase nevertheless. The annual operating increase would go from \$284,000 right now to \$550,000, as was proposed in the original bill, and that hasn't been changed and won't be changed by this amendment. The major medical equipment is currently \$400,000. The task force that had been formed said it should only go to 500,000. The bill currently, and as introduced, would have raised it to \$1 million. This amendment would change that back down to

900,000, so it's a very small adjustment. I, personally, think it should go down to 800,000. But this is all that Senator Baack felt reasonable, and I guess that's what we'll have to take. The other item is the substantial or new service issue, and that is really the key issue before the Legislature. Right now any new service, or substantial change of service, any dollar figure kicks in the review by CON. The concern again is new services, new equipment that isn't currently being utilized, new surgeries. These things are what concern us and cost great deals of money to start up in and have a quality impact, and these are the things that are really the key problem with the bill. The task force that had been formed said that zero figure should go to \$100,000. The original bill, LB 429, went to \$1,500,000. The amendments that were adopted on General File lowered that to 900,000, and this amendment would go down to 750,000, essentially splitting the difference between the zero figure and the 1.5 million figure of the original bill. This is really a critical point and very important that we do reduce down to 750,000. Essentially, by doing that we will catch most of the equipment that would have been included on the list that I had proposed to the...to be back into the bill. What we do is, in the amendment that I have, is drop off the equipment from the list of review and assume that most of that equipment will be reviewed under this \$750,000 threshold. And then after, hopefully, we can adopt these thresholds, we can get into the issue of the list and what should be on it and what shouldn't be on it. So, hopefully, this will help focus the debate and clarify some concerns and take care of some of those issues. So I'd move the adoption of that part of the amendment, Mr. Speaker.

SPEAKER BARRETT: Thank you, sir. Discussion on the divided AM1547. Senator Hall. Thank you. Senator Conway. Thank you. Senator Baack.

SENATOR BAACK: Mr. Speaker and colleagues, I do have a question for Senator Wesely. In your amendment, when you go down to 750,000, is that indexed?

SPEAKER BARRETT: Senator Wesely.

SENATOR BAACK: Are you taking out the indexing, or are you leaving indexing in?

SENATOR WESELY: Oh, no, no, no, no, I don't think we take out

the indexing, if it's in there, the amendment.

SENATOR BAACK: It's in the amendment, so you...but you, and you're not striking any of those provisions...

SENATOR WESELY: We don't take it out, no, uh-huh.

SENATOR BAACK: ...as far as the indexing goes.

SENATOR WESELY: No.

SENATOR BAACK: Okay.

SENATOR WESELY: It's not my....I've got the amendment in front of me and it doesn't take it out, Senator Baack.

SENATOR BAACK: Okay. Well, Mr. Speaker and colleagues, I can't decide whether to accept this or not. We did have some negotiation sessions and we did talk about some of these numbers. It seems to me, though, that throughout these negotiating sessions that I was the one that was being asked to continue to go down, and I wasn't getting any agreement from the other side as to what they were going to do with this bill. My feeling is that right now I think I'm going to be in opposition to this amendment. I think that throughout the process we have tried to work and tried to work with Senator Wesely on this and come up with some compromise here. As far as I'm concerned, I could agree to this, if we would have had any kind of an agreement whereas the...Senator Wesely would not offer further amendments to the bill. He has not agreed to do that. I know that he cut it down from 30 to 7, or whatever it is. But my feeling is right now that I am going to rise in opposition to this amendment. I will be glad to hear from some of the other co-sponsors of the bill as we go along. But right now I'm going to rise in opposition to this amendment and stick with the numbers that are in the bill right now. Thank you.

SPEAKER BARRETT: Thank you. Senator Wesely.

SENATOR WESELY: Senator Baack, as we talked about before, I am trying to be reasonable. If you want to talk about compromise, the level of what I am willing to accept versus what I had in the bill I introduced, LB 439, this is clearly a reasonable effort on my part to accept threshold increases much beyond what I want. As for further amendments, after this amendment and

dealing with this particular issue of the thresholds and the list, I have, I think, two or three other amendments that deal with the same topic. We don't need to get into those. That what would follow would be the amendment that would deal with the question of morbidity and financial data, and once we deal with that issue, then I would be done and I do not plan at all to go through all those amendments. I think that is a reasonable effort on my part to cooperate and I would ask again for your consideration and support of these amendments. The levels of 750,000 and 900,000 I don't think are at all asking too much. As we talked before, I certainly wanted them lower than that, but in my estimation, it is a good faith effort on your part to be reasonable, and I accept those, and I adjusted amendments that I had drafted to reflect those exact figures. If you look at some of the other amendments I have pending, they are much lower than that, but I don't plan to pursue those, if I can get some agreement at this point on these figures, and then the last remaining issues would be the list, and what is on it, or if there is a list, and then the question of what statistical data would be, and that is really what remains to be fought over on this bill. So, again, I would ask your reconsideration and your support for that amendment, and I'd give my time to Senator Baack.

SPEAKER BARRETT: Senator Baack.

SENATOR BAACK: Yes, Senator Wesely, so what you are telling me is if I agree to these numbers and agree to these thresholds, then are we still going to have to consider the idea of a list? Are we still going to go through with the second part of this amendment?

SENATOR WESELY: Well, yeah, it is a part of the amendment, so, yeah, I think that when we talked before, I wanted to try and address still the list, although if you would look at the list, it doesn't include the equipment. It only includes the service issue, and it doesn't include Bergen Mercy at this point.

SENATOR BAACK: Well, I think that I am going to stick with my original position. I think I am going to oppose this amendment and stick with the numbers that are in the bill right now. I think that we have a very reasonable bill in 429, as we amended it on General File, and I think that we have tried to come up with a compromise here. I just feel like we just haven't quite reached the point where we can accept a compromise at this

point, and so I am going to stand in opposition to this amendment and would urge the body to do so also. Thank you.

SPEAKER BARRETT: Senator Labedz. Thank you. Any other discussion? Seeing none, Senator Wesely, would you care to make a closing statement.

SENATOR WESELY: Mr. Speaker, members, I, again, would ask your support for this amendment. I don't understand the conversation with Senator Baack. We have tried to work together. We met and discussed the situation and talked about lowering the thresholds and the list. Clearly, I feel an obligation to proceed to consider the list issue. I can't just drop that. I feel the thresholds are still higher than they should be. I consider the bill still weakening far beyond what CON should be. But in terms of the threshold issue, what we are trying to do here is reduce the new services from 900,000 to \$750,000, trying to split the difference between the current level and the \$1.5 million that Senator Baack had in his original bill. In addition, the new equipment would merely go down from 1 million to \$900,000, where it is now \$400,000, and these are huge increases in the thresholds, unbelievable increases in the thresholds, certainly more than adequate for anybody I think reasonably to provide for, and in my efforts to try and reduce the amendments and deal with the problems, I just feel like I have not exactly been dealt with completely the way I thought I would be at this point. But whatever you feel about what Senator Baack or the hospital association may tell you, think for yourself on this. What is a reasonable level of thresholds, and if you will do that independently, I hope your judgment will tell you that these thresholds that I am proposing are way above what they are now, are the reasonable compromise that we should strike, and ought to be adopted. And so I would ask your support for them at this time. Mr. Speaker, I would move the adoption of these amendments.

SPEAKER BARRETT: The question is the adoption of Sections 1, 2, and 4 of AM1547 introduced by Senator Wesely. All in favor vote aye, opposed nay. Voting on the first part of the Wesely amendment, have you all voted? Senator Wesely.

SENATOR WESELY: I would ask for a call of the house, Mr. Speaker.

SPEAKER BARRETT: Thank you. A call of the house has been

requested. Clear the board, Mr. Clerk. Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 13 ayes, 1 nay, Mr. President, to go under call.

SPEAKER BARRETT: The house is under call. Members outside the Chamber, please return, the house is under call. Members, return to your desks and record your presence, please. Members, return to your desks. Senator Abboud, please record your presence. Senator Lynch, please. Senators Baack and Wesely. Senator Haberman, the house is under call. Senator Haberman, please report to the Chamber. Senator Wesely, you asked for a roll call? Senator Haberman is on his way.

SENATOR WESELY: Go ahead.

SPEAKER BARRETT: We will proceed then. (Gavel.) Roll call has been requested on the adoption of the divided Wesely amendment. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See pages 1957-58 of the Legislative Journal.) 15 ayes, 26 nays, Mr. President.

SPEAKER BARRETT: The motion fails. The call is raised. Back to the second part of the divided question, Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members. Obviously, I am disappointed in that vote but hopefully that will give us a chance to reconsider that issue in a short period, but let me go to the second part of this amendment and it deals with, besides the issue of Bergan Mercy, the issue of the list, and what should or shouldn't be included. If we would have adopted that slight decrease in thresholds, we would have essentially been able to cover most of the capital and equipment expenditures that have concerned us about their cost. The list that we had originally considered on Select File included a number of items such as magnetic resonance imaging, the PET scanners, the therapeutic radiology, the shock wave, and a number of things that are very expensive, and so with the threshold reduction we hopefully would have adopted in the last amendment, we could have covered a lot of those expensive pieces of equipment, and not had to include them on the list. What remains on the list, and what I still think ought to be adopted, are those types of services that may not meet a high threshold of cost but are expensive in some ways and do add the question of quality to the

issue of CON. Right now, what would be included in this amendment would be neonatal care II and III. Those are higher levels of neonatal care, very difficult, important function. Secondly, it would include open heart surgery, cardiac catheterization and angioplasty but it would not include Bergan Mercy. There is a provision, a grandfather clause, so to speak, that would pre-empt Bergan from having to go through CON, so that would be taken care of in that fashion, but otherwise you would still have open heart surgery and cardiac catheterization and angioplasty still reviewed. Chronic renal dialysis would be reviewed, and, finally, transplants would be reviewed, and that would be of heart, kidney, pancreas, liver, bone, bone marrow. What we are trying to do is get down to those few items right now that certainly need some sort of review. They are very difficult operations and surgeries and procedures, and they deserve to have the kind of quality that people would want to have that use these, that we want to have only so many people utilizing these that they have the experience to do a good job, and that that should maintain quality and, hopefully, reduce cost. And it is that second part of the equation, the cost factor, that has me terribly concerned in this state. I passed out a number of different items, and I will just run through them rather quickly to point out just how serious the health care cost issue is in Nebraska. In one of the sheets I have passed out, we are looking at over the next two years, \$54 million in state taxes to be spent on Medicaid, 11 to 16 million more dollars to be spent on state employee health insurance, another \$2.5 million for the University of Nebraska health insurance, another million for state college health insurance, and another 2 to 4 million dollars for the health insurance provided from the CHIP pool. In addition, we are looking at the state taking over indigent care and that would be \$24 million. This is about 100 million more dollars that we are looking to spend over the next two years on health care in the State of Nebraska through state taxes, 100 million more dollars that in my estimation is money well spent when you are talking about health care if it isn't wasted, if it isn't spent on duplicated services or unnecessary and inefficient services and systems. And right now, you have to raise the question about whether or not that is the case. The \$100 million we are talking about spending, that could be \$100 million to fund the second year of the property tax relief package. It is the \$100 million that could be used to fund a lot of different activities that we are all concerned about, but, instead, it is going into the greater utilization and

greater expense of health care costs in the State of Nebraska. We have got to recognize how serious a problem this is. We are talking about big money, big increases, and we have got to get a handle on it. In addition, another handout I have talks about on a nationwide basis how revenue rich states are flushed now but the future is in question, and this is an article by Neil Pierce (phonetic), and it talks about the two big concerns of states across the country for future budget impacts are prisons and medical costs, and isn't that kind of ironic because right here in Nebraska we are looking at some major additional expenditures for prisons and, obviously, as I just went through, we are looking at major expenditures on medical costs. These increases are dramatic and they are eating up, not just Nebraska, but around the country, and everybody I think everywhere needs to try and get a handle on this problem before it takes away our ability to fund other items, other priorities, other needs as we continue to have the escalation in health care costs. Another handout I sent out earlier, a day or two ago, talks about rationing the poor's health care. Obviously, there is talk in Oregon and elsewhere about rationing health care and we may get to that point because of the fact that we have this runaway cost of health care. Really, the better course, again, listed in this editorial out of Health Week is that we should, and I quote, "If the issue at hand is cost containment, then there are well known policies that could be adopted to eliminate much of the waste, duplication, and inefficiency in the health system. Let us adopt them, no matter what special interests are curbed." Unfortunately, it is very difficult to curb those special interests. We are finding it very difficult today to try and craft a certificate of need law that meets the needs of the public, and unless we do that, we have far worse things that we are going to be facing as we talk about the idea of rationing health care for our poor in this state and elsewhere around the country. The Medicaid increases that I went through earlier are listed in another chart I have and, again, \$54 million over the next two years for Medicaid. Right now we are spending close to \$100 million in General Funds for Medicaid, so we are talking about a significant, significant increase in Medicaid expenditures, and I also think that on the health insurance side, the sort of increase the state employees are experiencing that I mentioned is duplicated by employers across the State of Nebraska. It is not the fault of the health insurance industry. They are not to blame. They are passing on the costs that are having to be paid for by them, the increases and expenses and the greater utilization are forcing employers across the state

to try and grapple with this very important issue, and money spent on employee health insurance is money unavailable for employee salaries and unavailable for that company to spend on other needs that they have. It is money well spent when you take care of the health of your employees, but at the same time, when you have spent more than you need to, when you waste that money, it is felt by all of us. Another part of the handout I have indicates how much we are really talking about for an average family. An average family coverage this year for both employer and employee cost is about \$2,800. So for families, state employee families, we are talking about \$2,800 now going to health insurance premiums, part of that coming from the state, part of it from the employee, but that is a lot of money, money that could be spent on other items, and that is expected to go to \$3,800 next year and \$4,500 the following year, dramatic increases. So just in a couple of years from now we are going to find about \$4,500 being spent every year on state employee health insurance cost per family. Another handout I have got talks about workmen's comp and how much that has gone up, from 1980 at 20 million to double now at 39.9 million, almost \$40 million in 1986. So in six years it doubled in cost. We have got a serious problem here, folks. I have tried to emphasize to you how serious it is on General File and I am emphasizing it again here on Select File. Health care costs are out of control. We have got to get a grip on the situation. The problem occurred in the late seventies and our response was to pass the certificate of need law in 1979. One of the handouts that I have given to you recollects how that happened, and it happened when senators joined together, and together tried to defend the public interest and work to pass the best CON law we could, and we did that, and we were recognized nationally for that. But just a couple of years later, the interest groups came back in and weakened that law to the form that it is now. Now they are coming back in once again to ask that it be further weakened, and my answer is, it is wrong and ought not to be done and we ought to try and provide for at least reasonable restraint on the question of increased utilization expense for health care. The idea of having a list for reviewing neonatal care, open heart surgery, chronic renal dialysis, and transplants is a very reasonable effort, one that I think will serve the state well as we look at cost and quality. So I would ask your support for this amendment to add that list and continue the review of these activities.

SPEAKER BARRETT: Thank you. Discussion, Senator Elmer. Thank

you. Senator Schellpeper.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker and members. As a member of the Health Committee, I want to remind the body that when this bill was heard in the committee, we did not have any opposition to this bill. This has been worked out by all of the people involved and there was no opposition. The Health Department was neutral, so I think that we are just wasting time here this afternoon. The former President of the Nebraska Medical Association said that one of the main reasons that we are having some problem in the rural health area is because of this CON. There is just...they cannot...it costs so much to comply with everything that we just do not need it and it is just outdated. I think we need to put more trust into our local hospital boards. They know what is good for that area, what is good for that hospital. I don't think we need the CON. In talking to the Bergan Mercy, some of their people back here, they also do not want to be treated differently. They want to be treated straight up on the issue so they also do not like this amendment. So I would urge you to not adopt the Wesely amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator McFarland. Senator McFarland. Senator Wesely. Yours is the last light, would you care to make a closing statement?

SENATOR WESELY: Mr. Speaker, members, once again I am just trying to add the list, the neonatal care, the open surgery, minus the Bergan Mercy, the chronic renal dialysis, and the transplants. These are very important functions needing to continue to be reviewed, and I think at least this ought to be included in this piece of legislation, so I would ask your support for this amendment, Mr. Speaker.

SPEAKER BARRETT: Thank you. The question is the adoption of the second part of Senator Wesely's divided motion. Those in favor vote aye, opposed nay. Have you all voted? Record.

CLERK: 5 ayes, 20 nays, Mr. President, on the adoption of the amendment.

SPEAKER BARRETT: Motion fails. Mr. Clerk.

CLERK: Mr. President, the next amendment I have is by Senator Wesely. Senator, I have AM1548 in front of me.

SENATOR WESELY: Yeah, I will withdraw that.

SPEAKER BARRETT: It is withdrawn.

CLERK: Senator, I now have your amendment AM1539.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you. This amendment would have had thresholds at \$500,000 for new services, \$800,000 for new equipment, would have included a list not only for the surgeries, but also for the equipment, but, obviously, that is not the will of the body so I would have that motion withdrawn as well.

SPEAKER BARRETT: It is withdrawn.

CLERK: Senator, I now have AM1517 pending.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you. That would be similar as the last amendment and, again, I would have that withdrawn.

SPEAKER BARRETT: It is withdrawn.

CLERK: Senator, I now have AM1513 pending. (See page 1919 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you. Mr. Speaker, this is one I am going to ask for a vote on and this one deals with the question of reporting. This bill would attempt to bring financial and economic and morbidity data to the public and to try to allow the people to know better what is happening to their health resources and the services and what is exactly the situation. I think one of the big problems, and I have said before, that we have had a serious problem with health care cost increases that we have got to get a handle on the situation. Certificate of need is in place and trying to do what it can to help the problem but it is inadequate. It is not enough. It deals with equipment, the capital expenditures, and some of the surgeries, and I think it has been helpful. I truly believe that and,

obviously, enough people believe that that we are going to continue the process in some form, but the problem is that we have yet to get a grip on the overall question of health care costs, and one of the reasons is we don't know enough. We don't have the information. We don't know exactly what is happening out there. Now a bill a couple of years ago that I sponsored came out and it did a couple of things. It allows the 20 most frequently utilized DRGs to be publicly made known what the cost of those are by each hospital over, I think, a hundred beds, and this is an attempt every six months to let people know what costs there are to provide for some comparisons, and this did for awhile provide for some public disclosure, but it really hasn't functioned as well as we hoped it would. In addition, that bill also provided an individual could come in and request an estimate on what it would cost to get a certain surgery they needed from a hospital so that they could go from one to another hospital and get an idea of what it would cost, again an attempt to provide for some consumer input, but that hasn't really been utilized very much either. So we have not been able to make much progress on the question of knowing what is happening with our health care costs, knowing about the quality care that our health care consumers are receiving, and for quite some time, I have attempted to do something about this issue and have not succeeded outside of that one piece of legislation I mentioned. This amendment would provide for the sort of information that I think would help us get a better handle on health care costs and quality. There would be a health care cost index that would be developed by the Department of Health, give us an idea of what cost were occurring and giving us an idea of where those costs were, and perhaps giving us some idea who was more expensive and who was the least expensive in providing for different types of surgeries and services. By doing this, we get more competition. If we want competition in the health care marketplace to reduce cost, the consumer has to know what is happening. Right now it is so nebulous and it is paid for primarily outside...by outside sources, third party payers, that we end by government or private insurance companies, that the consumer out there just doesn't have the information, and in some cases, just does care, makes decisions based on whatever the doctor tells them. And I think in the long run we have got to bring the consumer more into this decision-making process, have them think more about it. What are the costs? What are the quality issues that they should be addressing? And in my view you can't expect the consumers and the public of this state to make those decisions on any rational basis when they don't know what is happening.

This amendment, I think, would attempt to address that, would begin to get that information out to the public, and, again, I think we would be well served by it. The amendment is number 1513 and it is in your Journal, and it also has been distributed to you. I hope you will have a chance to look at it and consider what we can do here, because until we get the information, until we know what is happening, we will not find that we are going to make much progress on the cost issue. The morbidity part of the data is an attempt to get a handle on that problem that came up with the Bergan and St. Joe issue. We don't know the quality of care being provided out there. For instance, as we tried to look at the issue of what open heart surgery operations, how they are doing now in Omaha versus what might happen with Bergan coming in, we don't have the kind of data we need, so we know who is successful and who isn't. When we go into a hospital, what is the result? What kind of a success rate do they have? This sort of information would be invaluable to people to be able to know where they want to go when they need surgery, when they need assistance from the health care industry. And so for both the financial aspect and the quality aspect, this amendment would help us get a better handle on the issue and I would ask your support for the amendment.

SPEAKER BARRETT: Thank you. Discussion. Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker and colleagues, I rise in opposition to the Wesley amendment. I think that, you know, I can understand some of his frustration with not having the right facts and figures available to do all of the things that we need to do. I know that the Education Committee, in my five years there, has experienced some of the same kinds of frustration, not having the right kinds of statistics and data available to make some of the decisions that we need to, but I think this goes too far. I think it calls for way too much data and gives an awful lot of leeway to the department in making the hospitals meet all kinds of deadlines and filing all kinds of things that I don't know that are all that necessary. I think that one of the things that you need to realize is this is the form right now that hospitals fill out. This is the Medicare cost form, cost report. This cost report is filled out by all of the hospitals. This cost report goes to the Department of Social Services, and then is available to the Department of Health, and they can use this information out of this report that they file right now. I don't think that it is necessary that we add any

more to the bookwork for hospitals, and I think all that will do is increase the cost. It is bound to increase the cost because they are going to have to deal with the volumes of bookwork with adding a new form like this. So I would just ask you to reject Senator Wesely's amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Elmer. Thank you. Senator Abboud.

SENATOR ABOUD: Mr. President and colleagues, as of today, I haven't supported one of Senator Wesely's amendment and I felt that the amendments that were offered up until this time really weren't good amendments, and as a result, I did not support them. But I think that this particular amendment does have a great deal of merit. The forms...the form that Senator Baack held up and showed to the body is an example of how interwoven health care costs and hospitals have become with the government. The fact is hospitals run and doctors make most of their money as a result of government subsidization, and the programs that have been established are good programs and they should continue to exist, but the fact is that the health care community is no longer out there by themselves. They aren't supported by a few, if you have the money, you pay; you get a broken arm, you go to a doctor and you pay out of your hard-earned money. Most of health care costs, unfortunately, are being paid by the government. Now the information that is being requested by Senator Wesely I feel really isn't all that much more than what is currently being requested by the federal government. That particular form is an example of the federal government being involved in the process saying, we know that you are the ones that have to provide that health care to our citizens of the country, but at the same time, we want to make sure that this money is being well spent. Now I am not sure whether Senator Baack's bill, LB 429, is going to work. I am not sure that changing the thresholds will help to reduce health care costs or will increase health care costs, but I don't see how our body can make a decision on something like that without getting all the relevant information. Maybe next year with this information, or two years from now, three years from now, after we look at the information, we will be able to say, well, maybe the threshold should be at this level, maybe we shouldn't have any thresholds. Maybe certificate of need is an outdated mode. But I will be honest, I don't really know that we have enough information to make that type of decision and the information that Senator Wesely is requesting the body to force those

hospitals to bring into this body I think will only help the process. There is a lot of bookwork and there is a lot of accountants that get paid by the hospital to send this information out, and I don't think one other form or other information that has to be provided as a way for them to exist as a, for the most part, nonprofit corporate body, supply that information to the state and eventually to the Legislature I think will help us make a more informed decision. So that is why I am going to be supporting the amendment.

SPEAKER BARRETT: Thank you. Senator Elmer, followed by Senator Warner.

SENATOR ELMER: Thank you, Mr. President. We are talking about more red tape. I'm going to just repeat something that Paul Harvey has said on one of his radio broadcasts about running a hospital. It is kind of an analogy. There is no way to make a grocery store prices...there is a way to make grocery store prices higher than they are. As is, food is one of the consumers best bargains. The cost of living would be much higher than it is except for comparatively reasonable food prices, but there is a way to skyrocket those grocery store prices if you want to. If you want to multiply the prices of everything you buy at the grocery store, here is how. Subject your grocer to the same regulations and government red tape which your hospitals are required to operate under. That means, the grocer would have to keep a record of the total number of customers served broken down by employer. He would have to record the precise number of minutes each customer was in the store. The record must show which customers purchased only meat and nothing else, which customers purchased only bread and nothing else, which customers bought both bread and meat. Separately, the grocer's report must state which customers bought meat and milk; also, the number of customers who came in for one item and purchased more than one. Further, the grocery store is required to give away \$50,000 worth of groceries each year and signs must be posted in the store in three languages telling customers that the store is required to do this. Records must be maintained on all customers and all groceries given away. Further, for one half of the customers, the store is not allowed to set prices. Government will determine those prices. And if those prices are arbitrarily held down to no more than last year's prices, then the store owner must pay his other higher expenses by charging higher prices to the other half of his customers. But for that half, the store cannot

collect cash from the customer but must send a bill to his customer's employer. Further, the store manager is responsible for planning each customer's meals. If he errs in judging what is best, his customer can sue him. Also, the store must keep careful records of each can of peas sold by brand name, by size, by number of peas in each can, the customer's age, and the employer of the customer. Similar reports are required on every product he sells. The store must certify in writing that each customer needs groceries before permitting them to enter the store. The store must have a committee to establish a shopping time limit for each customer. Any customer permitted to shop longer than the pre-established time may not be required to pay for his or her groceries. The store must have written approval of government authorities before adding or deleting any product or brand. The store must have a master's degree in marketing. There are many more regulations which the hospitals are subjected to but this is enough to help you understand why costs of medical care in the United States have gone up much faster and much higher than the price of groceries. I would urge the defeat of this counterproductive amendment.

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I would rise to support the amendment. I, periodically, every session, at least I tend to feel guilty about something I should have done and I didn't do, and, frankly, I feel a little guilty not having gotten in with this a little sooner and provide some support to Senator Wesely and others of you who have been trying to stress with this...are being stressed with this issue. As I understand, what we are talking about is some information. We have got LB 611 going across up here. It is to provide information so you know where income tax and be able to finance schools. We have got LB 744 that I get calls about every day. It is to provide information about how our educational system is working. We spent \$350,000 for the Syracuse study. One of the things it said is we didn't have adequate information. It is a bill that won't be acted on this day, it is up on General File, to help provide that. All that we are doing here is trying to provide some information for informed decisions. You know, for the life of me, what is wrong with that? Your choice is simple. Either you do some statistical, informed decision or you rely on some hired hand that is paid to tell you what somebody wants you to think. This is simple. Support Senator Wesely's amendment, provide some data that informed decisions can be made. I see

nothing wrong with it.

SPEAKER BARRETT: Thank you. Senator Wesely, followed by Senators Schimek and Elmer.

SENATOR WESELY: I am so glad to have somebody speak nicely about one of my amendments, I am just shocked. I really appreciate that. Senator Warner, thank you, and thank you, Senator Abboud. I thank all of you who have given me a little bit of help in a vote or otherwise on this. It has not been much fun raising this issue. I understand the circumstance we are in. You have got a lot of pressure being applied to you by, not just lobbyists out there behind the glass, but you have got hospitals and nursing homes and other folks that would like very much to see this bill go through. But, by golly, you know we are down here to represent more than just those people. We are here to represent the general public, and at the very least, we can at least see that this bill that goes through that weakens certificate of need so much provides a little bit of data, a little bit of information, so that people would be better knowing what the costs are and the quality of different services around the state. And Senator Elmer went through the story that recently was in the hospital association newsletter and read that for us, and we appreciate that, but, Senator Elmer, you are using an analogy of groceries and hospital care. Groceries don't have 60 percent of the care paid for by the government or by somebody else. That is money that the consumer is directly involved in, and we have got a different situation here. We have got big dollars, big bucks in health care, and I just went through almost 100 million more tax dollars, state tax dollars, that are going possibly be going into health care in the next two years. That is additional money, let alone the money we already have in. Sure, we know what we are doing, where we are going, and what the results are, and this data information that you said would be red tape and duplication, I think Senator Baack talked about that as well, that the amendment clearly states that existing systems of reporting would be used by the facilities. We are not going to try and overburden them with additional reporting, but try and use those existing systems, take the data that we have and put it to use, and work with the health care providers. A lot of information is out there. A lot of information comes into the Department of Health and Social Services. We simply don't put it to use, don't make it public. We don't let people know, not only just on the financial aspect, but on the morbidity, the quality question.

We were just making decisions on Bergan Mercy and St. Joe's without having any idea what the current quality of the programs are or what effect the new program that Bergan wants will have on that quality issue. We are shooting in the dark. We are making decisions in the closet here, and I think we ought to open up the light and let a little information shine down on us, and let us make our decisions in a better fashion, so I would ask your support for this amendment. It is something that would at least help, as we pass CON weakening legislation, that would help us get a better handle on the cost issue that is so important to us, I would hope.

SPEAKER BARRETT: Senator Schimek.

SENATOR SCHIMEK: Mr. Speaker and members of the Legislature, I am torn between trying to call the question or whether to speak on this, and I guess I am going to put you through a couple more minutes because I am really feeling much the same as Senator Warner does, that Don has not gotten any support on this floor today for his amendments, and I am kind of afraid that this is one of those issues that is a sleeper issue and we are all going to wake up one of these days and realize that maybe we weren't paying enough attention to this issue. I was asleep during the first day that we discussed it. I couldn't really figure out what was going on and, finally, I think towards the end of that discussion, I sort of woke up. We talked on this floor for a good long time about the need to contain costs of higher education and how we needed to get a higher coordinating system for that, and I don't know if this is a good analogy. I don't know if it is any better than the grocery analogy but it seems to me that we are going the wrong direction on this whole thing, that we need to be talking about ways to contain costs and we need to be listening to some of the things that Don has told us, but to this specific amendment, I would just like to say that it is my understanding, according to the summary that Senator Wesely has given us, that the data that is going to be collected is already reported under existing systems and that it is not going to be that much more trouble or that much more cost to get that information. What this amendment will allow is that this information can be put together and disseminated, and I think it is very important that we take a good look at this amendment, and I am not going to take my entire five minutes. Thank you.

SPEAKER BARRETT: Senator Elmer, please.

SENATOR ELMER: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. The question is, shall debate cease? Those in favor vote aye, opposed nay. Record.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Wesely, to close.

SENATOR WESELY: Thank you, Mr. Speaker. I do appreciate the kind words that some of you have shared with me and, you know, it has been kind of lonely up here, but I also know that there are many that share my concerns, and I do appreciate that a great deal. I did pass out a handout from the Wall Street Journal talking about the latest survey shows hospital charges increasing far more quickly than the CPI. Then it goes through the 20 highest cities and the 20 lowest cities, and it varies from \$350 average charge per day to \$1,500 average charge per day, and it is just an indication of how wide the variance is on cost, not just between cities, but it is also that way between hospitals, and it is between different facilities, and if we could start to get an understanding of what the costs are, and what hospitals are charging, and what other facilities are charging, and also look at what the quality is of those facilities, and what is happening out there in the health care industry, we would be much better able to make good policy decisions as a Legislature, and much better to make good decisions as consumers. And Senator Schimek said, perhaps people were seeing this as a sleeper issue and aren't paying the attention they should to it. If you recall, after we had the General File discussion, there were three different editorials by the World-Herald, and the Star, and the Journal, and in each of those, they talked about the need for having a better bill than 429 was, that LB 429 too far went toward weakening the certificate of need process, and I really, again, recognize that they are individuals who have followed this. Those newspapers have been involved in this, and they were not asleep. They saw the issue and tried to raise concern. Since that time, after those editorials came out, several of you came to me and said, gee, you know, I really want to work on this more and want to see if we can help and, unfortunately, that hasn't always followed up and I have been concerned about that. But when you have the outside pressures that you have, I can understand. I am not really that down on you. I understand that. But it is

really a shame that we aren't back to the days, I guess, I keep thinking back to 1979, and one of the handouts I had goes through back in '79 how we passed the CON bill in the first place, and it was tough. It was a tough thing. We had all the health care providers against us. They were all lined up and all agreed to a certain draft of a bill, and there were some of us in the Legislature that got together and decided, no, we are not going to do that. We are going to do something about health care costs, and we got together and we passed one of the best bills in the country, and the report that I got was published shortly thereafter and distributed across the country as an example of where a state and a Legislature can rise up against a special interest and can rise up on behalf of the public and pass good certificate of need legislation, good health planning, and good cost containment legislation. Of course, after that, we lost a little bit and the bill was amended, and since that time, I have been very disappointed but, at least, in 1979, we showed that ability as a Legislature to act and think for ourselves. And I would ask for you to consider that on this amendment. You know that we need the information. You know it can be valuable and helpful. You know that this does not try to add further burdens of reporting but use the data and information that is now being generated and put it out there and allow the department and the public to have access to it. It seems like that is a very reasonable thing to ask, and I'd hope you'd be willing to do that and vote for this amendment, and I'd ask for your support.

SPEAKER BARRETT: Thank you. The question is the adoption of the Wesely amendment to LB 429. All in favor vote aye, opposed nay. Senator Wesely.

SENATOR WESELY: Yeah, I would just ask for a call of the house, Mr. Speaker.

SPEAKER BARRETT: Shall the house go under call? Those in favor vote aye, opposed nay. Record.

CLERK: 17 nays, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those members outside the Chamber, please return and record your presence. The house is under call. Senator Moore, please. Senator Landis, please. Senators Ashford, McFarland, Pirsch, Scofield, please report. Senators

April 26, 1989

LB 429

Scofield and Pirsch, the house is under call. Senator Wesely, only one absent.

SENATOR WESELY: That is okay. A roll call will be fine.

SPEAKER BARRETT: A roll call did you request or not?

SENATOR WESELY: In reverse order.

SPEAKER BARRETT: Roll call in reverse order has been requested. Members, return to your seats please for a roll call vote. (Gavel.) Mr. Clerk, roll call in reverse order.

CLERK: (Roll call vote taken. See pages 1959-60 of the Legislative Journal.) 17 ayes, 20 nays, Mr. President.

SPEAKER BARRETT: Motion fails.

CLERK: Mr. President, Senator Wesely would move to amend. Senator, I have AM1309.

SENATOR WESELY: That is okay. You can withdraw that, and the next one.

CLERK: Withdraw that.

SENATOR WESELY: Withdraw it.

CLERK: The next motion, Mr. President, Senator, do you want to withdraw AM1538 as well, is that right?

SENATOR WESELY: Yeah.

CLERK: AM1538?

SENATOR WESELY: Yeah.

SPEAKER BARRETT: It is withdrawn.

CLERK: Senator, I now have AM1597 in front of me. AM1597, that was the last one you just handed me, Senator.

SENATOR WESELY: Oh, actually, that will be a substitute amendment. Do you have your motion up there? Yeah, I misspoke when I brought that up there. I think we need to go to the

reconsideration at this point.

SPEAKER BARRETT: The call is raised.

CLERK: Mr. President, Senator Baack would move to reconsider the vote on floor amendment 196 to LB 429.

SPEAKER BARRETT: Senator Baack.

SENATOR BAACK: Yes. Mr. Speaker and colleagues, this is the reconsideration of the first vote that we took this afternoon, and that deals with the thresholds we are going to have...I think Senator Wesely is going to substitute AM1597 for this one because that makes sure that the index is in there, and he can speak next, but I would urge the body to reconsider this motion. This will change the thresholds down to the 750,000 and at the 900,000 level, and we can agree to those, as long as they are indexed and they would be indexed under this process. Thank you.

SPEAKER BARRETT: Senator Wesely, any comment?

SENATOR WESELY: Just appreciate Senator Baack, as we have tried to negotiate a bit and, hopefully, we can get this much done at least.

SPEAKER BARRETT: Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker. We are not going to need a reconsideration motion because we just are going to use Senator Wesely's amendment 1597 which will do exactly that same thing, so we don't need the reconsideration. We will just consider Senator Wesely's motion to lower the thresholds to 750,000, and 900,000, with them indexed. Thank you.

SPEAKER BARRETT: Thank you.

CLERK: Senator, just so...we are discussing then AM1597.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker. I apologize. Evidently, there was a slight technical error in the amendment that I had earlier, and Senator Baack caught it, and so this is the corrected version. Again, what we are trying to do here is

on the thresholds, instead of going from 400,000 to \$1 million on major medical, we drop it down to 900,000. We go from zero on new services, a substantial change in services, to \$750,000, instead of the 900,000 which is now in the bill. So it is a slight adjustment to lower the thresholds a little bit, and at this point, I will take any little bit I can, so I'd ask your support for the amendment.

SPEAKER BARRETT: Discussion on the amendment, Senator Schellpeper? Thank you. Senator Warner, any discussion on the amendment?

SENATOR WARNER: I am sorry I got diverted a second. If someone could tell me how the index works?

SPEAKER BARRETT: Senator Warner, pardon me, Senator Wesely.

SENATOR WARNER: What is it indexed against?

SENATOR WESELY: Okay, I can try and answer that. Senator Warner, right now, when we last, I was going to say a word I shouldn't have said, changed the law on CON, we did put a CPI, Department of Commerce Composite Construction Cost Index is what is utilized, that is the reference. And so you have a base, and then every year it is adjusted based on that index I just mentioned. So that if, for instance, this amendment is adopted and we go to 750,000 for new services. You would look at that index and then you would make an adjustment every year from now on. For instance, the capital expenditure was at 500,000, if I recall, back about six or seven years ago when it was first adopted. Now it is 577,000. So it slowly adjusts upwards based on the CPI or whatever this index is, Composite Construction Cost Index. We now do that for capital, the capital one that we have, and this would now have the same thing for the new services and the major medical.

SENATOR WARNER: And the items again what the index...

SENATOR WESELY: What is in the index, you mean?

SENATOR WARNER: No, the kinds of costs that are being measured again use...

SENATOR WESELY: Oh.

April 26, 1989

LB 429

SENATOR WARNER: Were they medical cost, or are they something else?

SENATOR WESELY: I think they are everything. I think it is everything.

SPEAKER BARRETT: Senator Baack.

SENATOR BAACK: On the inflation, on the inflation factor in the consumer price index is what it is based on, on CPI.

SENATOR WARNER: The consumer price index?

SENATOR BAACK: I am relatively certain that is true.

SENATOR WARNER: Well, I guess if that is what we have in there why...fine.

SENATOR WESELY: That is now in the law, Senator Warner.

SENATOR WARNER: Yeah. I don't think it has any relationship much to medical costs but I guess it is something everybody understands, but there is about as much relationship with the consumer price index and increase in medical expenses as it must be something else. I can deal with it later I guess.

SENATOR BAACK: I do have it...it is a new construction index that is in place and that is what it is based on, a new construction index, and that is how the inflation factor (interruption).

SENATOR WARNER: New construction of buildings nationwide, it is buildings we are talking about essentially?

SENATOR BAACK: I would assume for health care kinds of facilities that is built right in. It is a national index, health care facilities, yes.

SENATOR WARNER: Okay.

SPEAKER BARRETT: Any other discussion? Senator Abboud.

SENATOR ABBOUD: Waive.

SPEAKER BARRETT: Thank you. There are no other lights on.

Senator Wesely, any closing statement. Thank you. The question is the adoption of the Wesely amendment to LB 429. All in favor vote aye, opposed nay. Record, please.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted. Senator Wesely, back to you for the advancement of the bill. Excuse me, Senator Baack. I am sorry.

SENATOR WESELY: I would like to talk on advancement but I...

SPEAKER BARRETT: Closing is waived. Any discussion?

SENATOR WESELY: Yeah.

SPEAKER BARRETT: Senator Wesely, please.

SENATOR WESELY: Mr. Speaker and members, I know you all want to go up to the zoo, and we will go from one to another, evidently, but it is all in good humor, all in good humor, but let me...I know there will be a rush to vote for the bill in advancement, and I have said it time and again, but here today, Senator Moore, I appreciate this. Senator Moore just caught tonight's World-Herald, medical center trims proposal in review effort. You remember we had a resolution through here for \$47.8 million for a six-story out-patient building and a parking garage. It was rejected by certificate of need. The medical center, evidently, and I just got this, I haven't had time to read it. Evidently, now they are cutting \$8 million from that proposal. You just saved \$8 million. I don't understand. I handed out for you a sheet, they are green sheets, and they go through over the years how CON has gone through and reduced or eliminated project after project saving expenditures that simply weren't needed, and you can argue on occasion that they made a mistake. Maybe they cut back too far. Maybe it cost more in the long run, I don't know, but you are terribly weakening a process that again just today and in the past has had a significant positive impact on the question of health care costs. We have, and I appreciate Senator Baack's cooperation to reduce the thresholds. The thresholds are back to a level at least that are somewhat reasonable. I am not saying they are what I would like to see at all, but at least we are trying to move in that direction. What I argue is that the lack of the list, the lack of the

review of the new services and the new surgeries is going to be very damaging to this state. It is going to be damaging on cost and it is going to be damaging on quality. You are going to have more people getting into areas that are very technical, very difficult, and not having any review except in some cases there will be some review. That is not an absolute, but I think in many cases, you are going to open up the door in a way you don't want to open it up. We have a serious problem with health care costs, almost a 100 million more dollars will be spent in state taxes over the next two years for health care expenditures if everything that is now pending goes through. That is money that could be spent on other things, and what you are doing is taking a step backward, not a couple of steps backward as the original bill, but still a step backward from where we were, and I simply think it is a mistake and I would ask you to vote against the advancement of the bill, recognizing Senator Baack has been very reasonable in attempting to work on this but, nevertheless, the bill goes too far, weakens too much, and hurts a process that I think should be better and stronger than it is right now. So that is my comments, and I know many of you feel differently, but I hope at least you will consider that this is an important issue.

SPEAKER BARRETT: Senator Lynch.

SENATOR LYNCH: Mr. Chairman and members, I know it's late. Just take a second if I can. In Senator Wesely's sincere effort to develop his point of view, he did pass out a document that said, I am number two. I only feel obliged to stand up and mention since people I work for were identified in the letter. And it was a letter that was sent about 15 to 18 months ago which had nothing to do with 429. I don't fault Don for that. It was sent out by someone other...it was put together then by someone other than him. Also, it identified a proposed state health plan problem of \$2.5 million again which has nothing to do with the issue. And, just for the record, I thought I am obliged, in fact, to mention that I would hope that you would all understand, especially those involved with 429, those for and against it, those involved with the concern of health care costs at the state level and others, that the two really have very little to do with each other. I was hoping that it wouldn't have happened. Now that being said, I want to mention that 429 is something that is difficult for me to support because I do strongly, I favor a strong certificate of need. However, for those of you that might be living in a dreamland

that think that we can run health care like we do at the grocery store and the free enterprise system should take over, remember a couple of things. Next time you go to see a doctor or you go to a hospital ask first how much it is going to cost. Can I see the hands of anybody here that did that the last time they went to a doctor or went to a hospital. Well, Conway embarrasses us everywhere he goes anyhow, but, seriously, think about that. Seriously, you cannot treat the cost of health care problems and say, well, if we just deregulate, it is no problem because costs will take care of themselves. You have got to be living in a dreamland to think that. That is why you need some kind of identification of numbers. You need something like Senator Warner discussed about, and Senator Wesely suggested, some kind of a reporting law. If you don't ask what things are going to cost, do you buy a tractor, do you buy gasoline, when you go to the grocery store, you see what costs are. You know, when you do anything, go buy a dress, you always ask. You know if you don't ask what it is going to cost, they have got prices up there. So, please, please, don't ever think that you are going to contain health care costs by simply deregulating. You are going to escalate health care costs. It is a cost plus business, and until President Reagan put in the DRGs, the diagnosis related grouping system where he is setting price on what the feds would pay with federal dollars for about 460 some procedures, nobody ever did anything to try to contain costs. Please remember that. Support this if you will. It seems to be the will of the body, but I think in the long run with all due respect of those who support it and the institutions that encourage its passage, you are only being kidded. The public is being kidded. Costs are going to continue to rise. You are not really going to serve any good purpose with this at all and, unfortunately, I have to say that. From a consumer point of view, this could be one of the worst things that could happen to the cost of health care, and we should have some how or another in place some kind of a system that forces us to justify the costs after we at least identify what those costs are.

SPEAKER BARRETT: Senator Schellpeper.

SENATOR SCHELLPEPER: Call the question.

SPEAKER BARRETT: Thank you, that won't be necessary. Senator Baack, would you care to close?

SENATOR BAACK: Yes, Mr. Speaker and colleagues, I know everyone

is getting tired. I am just going to have a very short closing. I think we have a very reasonable bill here, and what Senator Wesely talks about, that the medical center lowered their cost by 8 million, or whatever, what he is saying, basically, is that a \$40 million threshold would be too high. That would still be reviewed under the process that we are putting in place here, and many of the things that we have talked about, and many of the projects that have been rejected in the past would still be reviewed under CON with what we are going to put in place with 429. We are not wiping out certificate of need. We are simply changing the thresholds to be more realistic I think with the health care costs and the equipment costs that go into health care today. With that, I would simply urge you to advance the bill. Thank you.

SPEAKER BARRETT: Thank you. And the question is the advancement of LB 429. All in favor say aye. Oh, you have had a request for a machine vote. I am sorry. Those in favor vote aye, opposed nay. Voting on the advancement of the bill. Have you all voted? Record.

CLERK: 27 ayes, 4 nays, Mr. President, on the advancement of LB 429.

SPEAKER BARRETT: LB 429 is advanced. A reminder of those who are going on the field trip, transportation is available at the west side. Mr. Clerk, anything for the record?

CLERK: Mr. President, Senator Haberman has amendments to LB 813; and Senator Warner to LB 807, and that is all that I have, Mr. President. (See pages 1961-63.)

SPEAKER BARRETT: Senator Weihing, would you care to adjourn us.

SENATOR WEIHING: Mr. Chairman, I move that we adjourn until 9:00 a.m., April 27.

SPEAKER BARRETT: Thank you, sir. You have heard the motion to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Carried. We are adjourned. (Gavel.)

Proofed by:

Sandy Ryan
Sandy Ryan

May 2, 1989

LB 78, 262, 429, 588, 591, 591A, 606
646, 681

further on it? The call is raised.

CLERK: Mr. President, Senator Labedz would move to amend the bill.

PRESIDENT: Senator Labedz, please.

SENATOR LABEDZ: Withdraw.

PRESIDENT: Withdrawn.

CLERK: Mr. President, Senator Ashford would move to amend.

PRESIDENT: Senator Ashford. It is withdrawn.

CLERK: Mr. President, Senator Hall...kill motion, Senator?

SENATOR HALL: Withdraw.

CLERK: I have nothing further on the bill, Mr. President.

PRESIDENT: Okay, we're on the advancement of the bill. Senator Chambers.

SENATOR CHAMBERS: In view of the...Mr. Chairman and members of the Legislature, I will just make the motion, then see if it's necessary to discuss it further, but I move that 588 be advanced to E & R Initial.

PRESIDENT: You've heard the motion. Any discussion? If not, the question is the advancement of the bill. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: 26 ayes, 8 nays, Mr. President, on the advancement of LB 588.

PRESIDENT: LB 588 is advanced. Do you have something for the record, Mr. Clerk?

CLERK: Mr. President, I do. Enrollment and Review reports LB 429 correctly engrossed.

Enrolling Clerk has presented to the Governor bills read on Final Reading today, Mr. President. (Re: LB 606, LB 681, LB 78, LB 646, LB 262, LB 591, LB 591A. See page 2028 of the

May 17, 1989

LB 44, 44A, 49, 49A, 134, 158, 158A
162, 162A, 175, 175A, 182, 182A, 198
211, 228, 228A, 308, 309, 309A, 362
377, 429
LR 88

Mr. President, bills read on Final Reading today have been presented to the Governor. (Re: LB 44, LB 44A, LB 49, LB 49A, LB 134, LB 158, LB 158A, LB 162, LB 162A, LB 175, LB 175A, LB 182, LB 182A, LB 198, LB 228 and LB 228A. See page 2482 of the Legislative Journal.)

Mr. President, amendments to be printed, Senator Hall to LB 211, Senator Ashford to LB 362, Senator Weihing to LB 377, Senator Lynch to LB 377. (See pages 2482-88 of the Legislative Journal.)

Enrollment and Review reports LB 308 as correctly engrossed, LB 309 and LB 309A as correctly engrossed.

And, Mr. President, I have a communication from the Chair of the Reference Committee rereferring study resolution LR 88 from the Banking Committee to the General Affairs Committee. That is signed by Senator Labedz as Chair. And that is all that I have, Mr. President.

PRESIDENT: We'll go to Final Reading on number 9. We'll start with LB 429, but we need to get into our seats and get ready for Final Reading, please. Mr. Clerk, LB 429.

CLERK: The first motion...I have motions on 429, the first is by Senator Wesely. Senator Wesely would move to return the bill, the purpose being to strike the enacting clause.

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: I will withdraw that amendment at this time.

PRESIDENT: All right, it is withdrawn.

CLERK: Mr. President, Senator Moore and Lindsay would move to return the bill for a specific amendment. (Moore-Lindsay amendment appears on page 2489 of the Journal.)

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Well, it's another one of those cows to the ring and see who bought her this time. This time it's one of my old rangy old cow. This one I believe in. This is the Bergan Mercy amendment. Now 429 is a bill dealing with certificate of need, 429 introduced by Senator Baack and the intention of this bill I

agree with and I hope he is supporting the bill regardless. But the thing that I always had a problem with, I've always had a problem with is the situation that Bergan Mercy Hospital, and it comes down, you don't like the rules, you go back and try and change them. And I think if the Legislature permits this to happen, we basically slap the whole certificate of need process in the face and told all the hospitals in the state, you know, if you don't get your way with them, come to us in the political arena and we'll take care of you. Now, yes, we've voted on this before and I don't intend to take up a whole lot of time, but I just want to run it through one more time because I think it's the right thing to do. And that's all I really care to say and I give the remainder of my...and I want to mention that I'm sure as shootin' not doing this thing for St. Joe Hospital. I mean, I don't...if it happens to be the one it seems like they help, so be it, but I'm doing it simply because I wanted the Legislature to stand firm, we are going to raise the thresholds in CON, try and make it work better, but at the same time we, the Legislature, are going to stand behind that process and in their attempts to save us health care dollars in the State of Nebraska. And with that, I would relinquish the balance of my opening to Senator Lindsay.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Senator Lynch. Lindsay, I'm sorry. Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President and colleagues, I guess I concur a little bit with what Senator Moore said. It's not our intent to take a great deal of time on this on the floor tonight. It's kind of interesting to say tonight instead of today. I think what we want to do is just kind of go back, summarize or reiterate the reasons before, if the votes have changed, they've changed; if they haven't, they haven't and we'll go with whatever the consequences may be. But we would like to put it back before the body one more time for the body's decision on it. I think the first thing that we should review is the reasons for taking, to review what the amendment would do. It would strip open-heart surgery from the certificate of need revision, from LB 429, and would still require for open-heart surgery to have the certificate of need process. I think it's best to review the reasons on both sides and see which way they should stack up. The...first of all, I think the certificate of need process is designed for cost containment to

allow those developments, those improvements that are needed in the community. I think it has been shown that...it's been shown to the CON committee, to the appeal board, to the district court once that there is no need. There is no need for an additional open-heart surgery unit in Omaha. There were, in I believe in 1980...either '87 or '88, there were 1,174 open-heart surgeries. Omaha has a capacity to do 2,250. We're barely over half our capacity and we think it's important that we add another open-heart surgery unit. I don't think it makes any sense. That is not going to help anyone as far as health care costs or as far as, as I'll talk about a little bit later, health care quality. I think if that's not the goal of what we're trying to do, I'm not sure what the goal is. The, again, to repeat, Omaha has the highest number of open-heart surgery units per capita of the top, I think it was 20 cities that were studied, of cities of comparable size, we're not even close. We've got five of them in Omaha, we don't need that many even. We certainly don't need one more. As far as costs, I don't think we're going to save costs, I think it's going to actually harm, at least St. Joe's. I think that's pretty clear and I think it's going to harm it in a couple of ways. First of all, I think by Bergan Mercy's estimates it is going to take away 142 cases per year from St. Joe's, 142 cases is what St. Joe's will lose. It is going to result in a loss of revenue, obviously, to St. Joe's in the millions of dollars, but more importantly we've got to look at what that loss is going to do. First of all, sure, it's going to cost them on the cost side, or on the revenue side, and I don't think I need to go into that, but what I should go into is that it is going to impair the teaching ability of the St. Joe's Hospital, one of the two teaching hospitals in the City of Omaha. I think it's important to note that the University of Nebraska...let me back up, one of the two teaching hospitals in the State of Nebraska, I believe, as far as those that have the university right there. The University of Nebraska Medical Center only does 6 percent of the open-heart surgeries in Omaha. They don't have a big program. When...the university sends a lot of their students to St. Joe's to learn these procedures, to get their training, using St. Joe's Hospital. Additionally and obviously, St. Joe's uses it for its teaching facilities. What is a possibility in the event that that drastic number of loss of open-heart surgery opportunities, what is certainly a possibility is a...it could trigger an accreditation review, and if accreditation falls short because of the numbers, we're not going to have a teaching hospital in the state that can teach our medical students how to do these.

We're going to be sending them out of state. Finally, and I think most importantly, and I think this is the argument that should carry more weight than any and that is we're talking about lives. We're talking about mortality rates. We're talking about as the number of open-heart surgeries decreases, and all sides agree, the number of open-heart surgeries at St. Joe's will decrease and that is not the issue. The issue is, what is the effect of that and the effect of that and I think it's very clear the effect is an increase in mortalities. I think passed here out on the floor, oh, within the last week was a letter from a Dr. Bellotti, I believe, who indicated that while we agree the same surgeons will most likely be doing the open-heart surgeries, he indicates that a surgeon alone does not make an open-heart surgery successful or unsuccessful. It's a team of surgeons that does it, and as he states, a team does not transfer with the surgeon from hospital to hospital. The team consists of heart-lung machine pump technicians, circulating nurses, operating room scrub nurses, intensive care technicians and nurses, nurse anesthetists and anesthesiologists. We're talking about a good number of people who all contribute to the success of those open-heart surgeries. I suggest to you that this is not something that we want to tinker around with to make one hospital or another a full-service hospital or whatever the arguments may be. We are dealing with a very serious issue, more serious than the \$36 million we just talked about for two or three hours, more serious than the sales tax exemption we spent a couple hours on this afternoon. We're talking about people's lives and I think it's something that we have to take very seriously here in making our decisions. I think to turn it around and look at the issue...the arguments in favor of it, I think there's a couple of them. One is Bergan Mercy would be a full-service hospital and people wouldn't have to transfer. I don't think there has been any showing that it is going to cause a decrease in mortality by, because people don't have to transfer, and I think the opposite of that actually has been shown. More importantly, I think, or the second argument I should say, is that it's just not fair because Archbishop Bergan Mercy Hospital was not grandfathered into the open-heart surgery the way the other hospitals were, and that's true. When Bergan Mercy...Bergan Mercy was not in at the time and they couldn't start in...

SPEAKER BARRETT: One minute.

SENATOR LINDSAY: ...without a CON. So I think that's clearly

true, but looking at other, there are obviously other areas where other people aren't grandfathered in. I believe Bergan Mercy has a neonatal intensive care that it was grandfathered into and there is some, I think, Immanuel, Clarkson and Midlands in Omaha don't have that and would have to go through the...or had to go through CON. Same thing I think with the CAT scan, I think Bergan Mercy was grandfathered into that, others had to do the CON. Finally I think to close, I'd like to point out that I'm not sure this is just an Omaha issue. It's...something that I guess we've been forgetting as we go through is that, for example, in Lincoln, and I think Lincoln's hospitals actually work together fairly well so far, but we're talking about one hospital that does open-heart surgeries in Lincoln and if it's such a profitable thing and that's apparently what it has turned out to be, those other hospitals are certainly going to take a look at it to see whether they want to get involved or not.

SPEAKER BARRETT: Time.

SENATOR LINDSAY: With that, I would...like I say, it's not the intent to take up a lot of time. I would just ask that the bill be returned and that the amendment be adopted.

SPEAKER BARRETT: Senator Labedz, on the motion to return, followed by Senator Baack.

SENATOR LABEDZ: Thank you, Mr. President. I stand here with a little reluctance to oppose Senator Lindsay's amendments more so than ever because the session is almost to an end, but once in a while he does drive me back to Omaha and I could just see myself walking the interstate from the Platte River bridge. But I will have to, in good conscience, stand up and oppose what he is trying to do. We've heard all the arguments before, both pro and con, on this subject matter. This issue was raised on General File and it was thoroughly debated there. It was raised again on Select File and more thoroughly debated and nothing has changed between now and the previous debates. If anything has occurred, the debate has been good. It has served to strengthen the present provisions of LB 429 concerning open-heart surgery and has added reassurance that we were doing the right thing by passing LB 429 this year. And I refer to the letter that I distributed earlier this evening from Dr. Ferlic, in the letter authorized by Dr. Ferlic from Bergan Mercy explaining Dr. Ferlic's credentials and the details of his practice. He

has...he is and has been a noted cardiac surgeon in Omaha for about 15 years and he and his associates presently perform more than 300 open-heart surgeries per year. He is on the staff at Clarkson Hospital, Immanuel, University, Children's, Midlands, St. Joseph and Bergan Mercy. His endorsement of permitting Bergan Mercy to have an open-heart surgery program does not grow out of any self-interest on his part, but is an opinion of one who has the experience and the knowledge of open-heart surgery and the patient care to be able to make such a judgment. I...Senator Lindsay mentioned that there would be taken 142 patients away from St. Joseph. I think it's important to note at this time that Bergan Mercy can perform the heart surgery about \$10,000 cheaper per patient than St. Joseph and that is something to take into consideration. The fact, too, is that...I think Senator Moore mentioned but he's not on the floor and I was late for his opening too, that we should not amend...we should amend LB 429 because Bergan Mercy has been denied a certificate of need for open-heart surgery through the administrative procedure and is now trying to circumvent that procedure. I must tell you that the panel who heard Bergan Mercy's appeal for the CON approval to perform open-heart surgery was comprised of five different people, three of them, the majority felt Bergan's program should be approved. One of the three, however, felt forced to vote in opposition to Bergan's program because of the requirement of the present law and the department's interpretation and enforcement of such laws. So I ask you to reject Senator Moore and Senator Lindsay's amendment and then we'll be able to read LB 429 on Final Reading. We've gone through this before. It has taken a lot of time and hopefully no one has changed their mind. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Baack, Senator Schmit on deck.

SENATOR BAACK: Yes, Mr. Speaker and colleagues, very briefly I state an opposition to the amendment also. I think that one of the things that we have failed to mention here so far is that this is what the CON thing is all about. We're talking about the haves versus the have nots and this is one of those cases again. We had the other hospitals in Omaha all grandfathered in, they had the process. Bergan was not grandfathered in. They are trying to have the open-heart surgery there. They are one of the have nots and the CON process has been preventing that so this is one of the things that we deal with. The thing

that I want to emphasize is that this amendment makes this whole bill sound like that is what this bill is totally about, is a battle between Bergan and St. Joe's and it simply is not. This bill came to me from a number of health care associations and we've worked out a number of compromises as you realize we've compromised here on the floor a number of times in dealing with the thresholds in the CON process and I think we've got a bill that is in very, very good shape here. I think that what we have to realize here is that the thing where we do not provide that open-heart surgery has to be reviewed no matter what not only applies to the Bergan and the St. Joe case, it applies to all hospitals in the State of Nebraska. It is going to apply to all of them now. But we're not going to see any of them being able to qualify without going through the CON process because the thresholds are low enough that if they have to invest in all of the equipment and all of the operating room and things necessary to do it, they are going to have to go through the CON process, the thresholds will catch those people. So we're...and all of the hospitals in the State of Nebraska, as far as I know, are in support of this bill except for St. Joe's on this one issue in 429. I think with that I'll just stop. As Senator Labeledz has said, and so has Senator Lindsay, that we have debated this one time on Select File. We've looked at the issue. I think we should get to a vote as quickly as possible and see whether the votes are there. If they're not there, then I would hope that we would go ahead and read the bill tonight. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you. Senator Schmit. Senator Schmit waives. Senator Langford.

SENATOR LANGFORD: Call the question.

SPEAKER BARRETT: The question has been called. Five hands I do see. Shall debate cease? Those in favor vote aye, opposed nay. Record, please.

ASSISTANT CLERK: 25 ayes, 5 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate does cease. Senator Moore.

SENATOR MOORE: Mr. Speaker and members, like...you all heard all the arguments before. Now I'm not like Senator Lindsay where obviously I have a vested interest in my district nor am I

like Senator Wesely who is one of the fathers of this piece of legislation. I bring this to you only as a innocent bystander that watched this whole debate on 429 that something is wrong here. Something is wrong here because you're allowing one hospital, they didn't like the way they were treated, come to the Legislature, carry on the coattails of some legitimate changes in the certificate of need and get around what the verdict was. I don't like that. I disagree with it. Now Senator Labeledz talked about a letter we received from some professional and, you know, I don't know what is best...I don't know the best decisions for health care, I really don't know that. I don't think we should be making that decision here in the political arena. I think we should stand by CON on this decision because if you don't, you just make an invitation to everybody else, if they don't like what they get, come over here, hire a lobbyist and it will be taken care of. For that reason I bring this amendment in good faith and hope it gets adopted.

SPEAKER BARRETT: Thank you. You've heard the closing. The question is the return of the bill to Select File. All in favor of that motion vote aye, opposed nay. Voting on the motion to return the bill. A record vote has been requested. Record.

ASSISTANT CLERK: (Read record vote. See pages 2489-90 of the Legislative Journal.) The vote is 18 ayes, 22 nays, Mr. President.

SPEAKER BARRETT: Motion fails. Anything else on the bill?

ASSISTANT CLERK: Yes, Mr. President. Senator Wesely would move to return the bill for a specific amendment, that being strike the enacting clause.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you. Mr. Speaker, members, we shut off debate fairly quickly on a very important bill and I do think we need to discuss this just a few minutes longer. I do plan to leave the amendment up if you desire to make some comments not having had the chance in the previous amendment. I want to thank Senator Moore and Senator Lindsay for offering that amendment. It does point out problems with the bill and there are many other problems with the bill. I plan to vote against it and I hope many of you will as well. I know the chances are

very good that this bill will pass and pass overwhelmingly, but nevertheless, let me run through once again why there is great concern on my part for this legislation in its current shape, and, first, let me thank Senator Baack in particular for having been very cooperative in bringing the bill into a form that is much more acceptable than it was to begin with, that he has been willing to cooperate and negotiate and I have appreciated that a great deal. I'm not offering any other amendments and I just simply think a chance to one more make the case against the sort of changes in this bill needs to be made. Number one, in preparing for this I went back over the years to, as Senator Moore said, I've been involved in this from the beginning and was a co-sponsor of the original bill and it was a very tough bill nationally recognized and we weakened it terribly back of '80-81 and ever since I frankly don't want to claim much credit for it because it hasn't done nearly what I hoped it would. Nevertheless, I do feel it has done some good and I've looked back over the years and found that it has saved millions of dollars in expenditures and I'll go over that in a second. But it has been weakened quite a bit over the years and hasn't done all that we'd hoped to do. But nevertheless, the problem of health care costs are still out of control despite whatever successes we've had with CON, limited as they have been. And I look back over the years and back in 1984 I fought for changes in our state employee health insurance coverage plan and I was arguing because at that time we had a \$15 million plan and it was going to go up to \$16 million and I thought we couldn't afford it, it was unbelievable and how we had to do something about health care costs. And now just for your information that \$15 million cost to our budget is going to be \$46 million this next fiscal year, tripled, tripled in five years. Now this is something we've got to try and get a handle on and I do appreciate, yesterday, your support for a minor cost, \$36,000 amendment to do a health care cost index, but we are in a serious crisis with health care in the State of Nebraska and in the nation. The one effort we've really undertaken was certificate of need. It was weakened and this will weaken it further. Other things need to obviously be done because despite CON we're still having health care cost increases, but when you've had a \$15 million expenditure triple in five years, it ought to be a cause for alarm. What are we going to do about it? One thing to do about it is not to weaken one of the few efforts we've made to contain costs. I think that is a mistake. This bill is much better than it was and I appreciate that, but nevertheless, it still does dramatically weaken the impact of

this legislation. To show the sort of things that can be done under this legislation, I did pass out for you the medical center stories, an editorial from just the last few days. We saw there that after we approved the medical center project, that the medical center did cut its costs by finding money in this cash reserves and putting it into the financing of its program, of its project which will save the financing costs of the project \$7.9 million. That's not bad, saving \$7.9 million. And it's funny because if you look at it, you'll also, again, looking back over the years, found in 1986 the medical center wanted a geriatric facility. They wanted to spend \$11 million. They found that they weren't going to succeed in the CON review and they came back and cut that to a \$1 million project, \$10 million savings. We've got to get a handle on this problem, and frankly, it's no different than trying to get a handle on the budget which we've just gone through today and yesterday. Saying no is tough. It's one of the hardest things anybody can do. The Appropriations Committee tries to do it for us in this Legislature and we've seen that that has not been easy to do. Saying no to projects is just as difficult for health care, but just like out budget is limited in its resources, so is our resource base for health care. We cannot continue to spend everything we would like to spend on health care costs, just like we can't spend everything we'd like to spend of the budget. So somebody has got to say no and, unfortunately, we're going to open up too much, I think, under this bill, the ability to move forward without somebody having a review and a chance to say no. And any time you do say no, which the CON process does, somebody is not going to like it. There are many Bergan Mercy's out there that have been told no that come back and try and find another way to get their goals and it's just as we've gone through in the budget, you say no once and they try another approach and another day and another time until they finally get their goals and unfortunately, eventually, they seem to succeed. So saying no is something that is hard for this Legislature and this state but we've got to learn to say no or we'll never get a handle on the health care cost issue. We'll never be able to bring to grips the sort of tripling of costs that we've seen just in one area. We're also seeing in Medicaid and in other programs a total cost increase of over \$100 million over the next two years. As we've fought and struggled for \$98 million in property tax relief, if somehow, some way we could match it, we'd wipe out the health care cost increases we're facing, we'd be able to do two years of property tax relief, not just one. We'd be able to do a lot of the other things we're talking

May 17, 1989

LB 429

about, but, no, no, we're seeing that money eaten up and just basically for the same type of services sent away in tax dollars that we once had hoped for other purposes. So I'm concerned, I'm very concerned. We need to do something about it. We are going to, I think, take the wrong step with LB 429 and I would ask you to think about it a little more, perhaps discuss it a little more and then maybe we'll see if we can't come to some conclusions different than passing this bill.

SPEAKER BARRETT: Senator Elmer, please.

SENATOR ELMER: Thank you, Mr. Speaker. As you know, this is my priority bill and I feel like I should say just a couple of words before we take this final vote. First of all, the information that Senator Wesely is talking about are bricks and mortar and large ticket items. We're not removing those from certificate of need. Any of those capital construction budgets of any consequence at all other than to put in a new door or perhaps add one room would have to go through certificate of need. Secondly, Senator Lindsay, would you answer me a question.

SENATOR LINDSAY: Yes.

SPEAKER BARRETT: Senator Lindsay.

SENATOR ELMER: Senator Lindsay, one of the things you mentioned was you fear that St. Joe would possibly lose accreditation. Is that true.

SENATOR LINDSAY: Mmm, hmm.

SENATOR ELMER: I don't think that's possible. First of all, does St. Joe send some of its doctors to intern at other hospitals?

SENATOR LINDSAY: Yes, it does.

SENATOR ELMER: Does it do it outside the City of Omaha?

SENATOR LINDSAY: I...well, I think you're talking about the Creighton Medical School does it send, yeah. Sure, it's different programs get accredited at different places.

SENATOR ELMER: Sure. University of Nebraska Medical Center is

an accredited medical center, isn't it not?

SENATOR LINDSAY: Of course it is, yes.

SENATOR ELMER: Of course, and it's doing far fewer heart...open-heart surgeries than St. Joe. I think that that's possibly a misstatement. Last of all, Senator Wesely, would you answer me one question, please.

SPEAKER BARRETT: Senator Wesely, would you respond.

SENATOR ELMER: Have you read and understood the Federal Trade Commission report on certificate of need?

SENATOR WESELY: Yes.

SENATOR ELMER: It shows certificate of need is actually increasing health care costs. Do you agree with that conclusion?

SENATOR WESELY: Absolutely not.

SENATOR ELMER: I understand, obviously. And because of certificate of need in my local hospital one operation, a CAT scan was costing \$300 to \$400 more per procedure than it would with the system, just one small example. We need to pass this bill. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I rise to oppose returning this bill. I feel that we've discussed it many hours. If I remember correctly we discussed it and debated it on General File, then on Select File and now we want to return it on Final Reading. I think we ought to defeat this motion and go ahead and read the bill. I'll yield the rest of my time to Senator Baack.

SPEAKER BARRETT: Senator Baack, please.

SENATOR BAACK: Yes, Mr. Speaker and colleagues, I just want to talk about a couple of the things that Senator Wesely mentioned in his opening. He talked about the Medical Center and how there were some costs saved in that project and that is absolutely true. There were some costs saved in that project.

Under the bill that we are passing, that particular project would still be reviewed. We are not wiping out that review process. I think that is the mistaken notion that we're putting across here, that we're wiping out certificate of need. We are simply adjusting the thresholds of certificate of need to what I consider to be a much more reasonable level. I think we have compromised in this bill. We've come down quite a bit from where we first started with this bill and I think the votes were there to pass it at that level, but I didn't think some of those figures were reasonable. I thought we needed to come down on some of those and so we did come down on some of those. Most of the projects that will take place in the State of Nebraska, a good number of them will still come under the certificate of need process. We're not totally wiping that out. He also made a statement that we have skyrocketing health costs which I absolutely agree with. Well one of the things that you have to consider in that is I think the figures that I have seen, only 39 percent of those costs deal with hospitals. There is 61 percent of the other costs that is skyrocketing also. I would expect if we're going to do something in that way to try and stop these skyrocketing costs, we're going to have to bring in some things that stop the cost of the doctors going up. We're going to have to do some of those kind of things also if we're going to totally put the brakes on health care costs as they rise up. So I think the certificate of need process under LB 429 is a good bill. I think we've worked out some good things. I think it is very reasonable legislation. I think it is much more realistic in the nineties, going into the nineties, we're going to have a much more realistic certificate of need process that more adequately reflects what the costs are in health care in the State of Nebraska. So with that, I would urge the defeat of this amendment and then we can go ahead and read the bill and pass the bill tonight. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Schellpeper.

SENATOR SCHELLPEPER: I'll call the question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Shall debate close? All in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate does cease. Senator Wesely, would you

like to close on your motion?

SENATOR WESELY: Thank you, Mr. Speaker. I appreciate the body's indulgence in giving me just a few more minutes. I must say that I know the consequences of the situation and that very shortly we're about to vote on a bill and likely to pass it overwhelmingly, but you know one of the few satisfactions in losing on the floor is sometimes the ability to put in the record your thoughts and your expectations and years later being able to look back and at least have that sense of I told you so, as Senator Chambers likes to do. I just did it tonight when I looked back on the health insurance issue and I found exactly what I said five years ago is exactly what has happened since that time and I'm again saying in 1989 that I think we're going to see some serious problems with health care costs, continuing to skyrocket. This bill, better, because of the compromises we've worked out than it was but still it goes too far in easing up on the oversight on the cost, costly matters of construction and equipment purchases and the particular concerns I have with the new services. Now this is an area that is deregulated under this bill and in this deregulation of these different types of services of open-heart surgery and transplants of whatever, this is the new high tech cost area that we are going to really have to struggle with over the years, that if we open up and allow more people to be doing things, you'll have more of these operations provided. They will increase the cost I think because of that. They will decrease the quality and I think we're going to be very unhappy with the results. But I understand the will of the body and the sentiment that there is here. I simply want to state that I am opposed to this bill. I hope some of you will vote against it and I will withdraw my motion to return.

SPEAKER BARRETT: Thank you. It is withdrawn. Anything else, Mr. Clerk?

CLERK: I have nothing further on the bill, Mr. President.

SPEAKER BARRETT: I believe we could proceed to read the bill then. Members, take your seats, please. Senator Lamb.

SENATOR LAMB: (Mike not activated immediately.) ...to suspend the rules or not? Is that not necessary?

SPEAKER BARRETT: No. I don't believe so, Senator Lamb.

May 17, 1989

LB 84, 429

SENATOR LAMB: Ahead of the other A bill, or the other appropriation bill? No A bill? Oh.

SPEAKER BARRETT: There is none. Mr. Clerk, would you please proceed with the reading of the bill.

CLERK: (Read LB 429 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 429 become law? Those in favor vote aye, opposed nay. Have you all voted? Record.

ASSISTANT CLERK: (Record vote read. See page 2491 of the Legislative Journal.) The vote is 37 ayes, 10 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 429 passes. Just in passing, remind the body, it's been a long day, but during Final Reading members are to remain in their seats and stay there until the final vote has been announced, for future reference. Thank you. Obviously, we relaxed it tonight. Mr. Clerk, is there anything for the record?

CLERK: Mr. President, next.... No, not at this time, Mr. President, thank you.

SPEAKER BARRETT: Proceeding then to the next bill, LB 84.

CLERK: Mr. President, LB 84, the first motion I have on the bill is by Senator Warner. Senator Warner would move to return the bill for specific amendment. The amendment may be found, Mr. President, on page 2262 of the Journal.

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, you've had handed out to you the dollar impact of this amendment, the effect of it, is to take out that 40-41 million dollars of the cost of the bill. This bill is somewhat different than some others because whatever is in the substantive language controls an appropriation if you want to maintain at least the balance between different classes of property, has to be changed or else the full cost ought to be

May 17, 1989

LB 84, 429, 525, 611, 813, 814

Warner's amendment. Obviously everyone here is familiar with the issue. I think Senator Lamb and Senator Abboud touched on the problem. We all wish that it could be more. We all know this is the temporary addressing of an issue that has been in an issue that we, in this body, and those who are here before us were faced with year after year. If we can't do this this year, colleagues, if not now, when? If not now, when? The revenue is there. We know it's there. I agree with Senator Abboud, this is the people's money and we should return it. I urge you to reject the amendment.

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign engrossed Legislative Bill 429. Senator Schmit, further discussion on the motion to return? Thank you. Senator Moore.

SENATOR MOORE: Mr. Speaker and members, I only rise, you know, obviously Senator Warner makes a good point, and in his opinion the way we start balancing the budget is on the back of LB 84. That's his opinion and I simply disagree with it. I said before last week when we talked about some of this stuff, I think if we really need to start cutting back, you know, I'm not saying 98 million dollars is a magic number, I don't think you have to balance the budget on the back of LB 84. That's just simply my opinion. All 49 of us have our own opinion. Though I do think it is rather obvious that some of it you can't vote for everything, and I won't be voting for everything. I will be voting for LB 84 though, because I think it's important and we've said it all night here, LB 84, in many people's opinion and obviously in mine, dovetails into LB 611, my priority bill. I think it's important that we use some of the money we now have to do some stopgap property tax measures hopefully next year we move into a more permanent solution. Now obviously if we were dealing with a bare-bones state budget, 98 million dollars would, indeed, be too much. But with what we've done in LB 813, LB 814, and now LB 525, we pass all that, you're talking about a 15 percent increase in the state budget. We're not going to do all that. Maybe if you were talking a 5 or 6 percent increase in the state budget, and LB 84 at this level, then you'd be truly stealing from the needs of state government and the continuation of that government, but we're not. We're simply not. I will...I have and will continue to concur with Senator Warner's numbers and desires of where we should be in the finality of how much we spend. Obviously Senator Warner and I

May 17, 1989

LB 84, 187A, 429, 525, 651, 651A

SPEAKER BARRETT: Thank you. The question before us is the bracketing until LB 739 is read. Those in favor vote aye, opposed nay. Have you all voted? Record. Record vote has been requested.

CLERK: (Read record vote as found on page 2494 in the Legislative Journal.) 15 ayes, 27 nays, Mr. President, on the bracket motion.

SPEAKER BARRETT: Motion fails. Items for the record, please.

CLERK: Very quickly, Mr. President, LB 429, read earlier on Final Reading this evening has been presented to the Governor. I have amendments to be printed on LB 187A, to LB 525, and to LB 651 and LB 651A. (See pages 2494-97 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Next item, Mr. Clerk?

CLERK: I have nothing further at this time, Mr. President.

SPEAKER BARRETT: Back to the bill. Members take your seats. Senator Hannibal.

SENATOR HANNIBAL: I move we adjourn until eight o'clock tomorrow morning.

SPEAKER BARRETT: You've heard the motion offered by Senator Hannibal to adjourn until eight o'clock. Request for machine vote. All in favor of the motion to adjourn, please vote aye, opposed nay. Record, please.

CLERK: 11 ayes, 25 nays, Mr. President, on the motion to adjourn.

SPEAKER BARRETT: Motion fails. Mr. Clerk.

CLERK: Mr. President, I have a bracket motion by Senator Hannibal until Friday, May 19, until 1:30 p.m.

SENATOR LAMB: Mr. President, was that motion up there before?

CLERK: Senator, it was.

SENATOR HANNIBAL: I heard there was nothing else on the bill,

May 19, 1989

LB 272A, 377, 429, 706

CLERK: (Began taking roll call vote.)

PRESIDENT: (Gavel.) The Clerk can't hear your response, let's hold it down, please.

CLERK: (Roll call vote taken. See pages 2572-73 of the Legislative Journal.) 8 ayes, 30 nays, Mr. President.

PRESIDENT: The amendment to the amendment fails. Do you have anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Your Enrolling Clerk has presented to the Governor bill read on Final Reading this morning, Mr. President. LB 377 is reported as correctly Engrossed. (See pages 2574-75 of the Legislative Journal.)

PRESIDENT: The call is raised.

CLERK: Communication from the Governor to the Clerk. (Read communication regarding LB 429. See page 2574 of the Journal.) And Senator Wesely would like to add his name to LB 706 as co-introducer. That's all that I have, Mr. President.

PRESIDENT: Senator Conway, do you have any words of wisdom about eating lunch?

SENATOR CONWAY: No. (Laughter.)

PRESIDENT: You don't? (Laughter.) I know it will stress and be a strain, but...

SENATOR CONWAY: I move we recess until one-thirty.

PRESIDENT: Okay, you've heard the motion. All in favor say aye. Opposed nay. We are recessed until one-thirty. Thank you.

RECESS

SPEAKER BARRETT PRESIDING

CLERK: I have a quorum present, Mr. President.