

will meet for a brief Executive Session, in Room 1003, upon recess to select a Vice-Chair. Appropriations Committee upon recess in Room 1003 by the Appropriations Committee.

Mr. President, I also have the Committee on Committees report as offered by Senator Lowell Johnson and the Committee on Committees. Also an acknowledgment, Mr. President, that Senator Beyer has been selected...Senator Emil Beyer has been selected as Vice-Chair of the Committee on Committees.

PRESIDENT: The Chair recognizes Senator Lowell Johnson. Could we have your attention for just a moment, please. (Gavel.) Could we have your attention just a moment, ladies and gentlemen. If we could have your attention just a moment, we won't request your attention too long today, but Senator Lowell Johnson has an announcement.

SENATOR L. JOHNSON: Mr. President and members of the Legislature, your Committee on Committees met yesterday, and after careful deliberations completed the committee roster, which you find on your desks, which has been placed there by the Clerk. The report was unanimously adopted by the Committee on Committees, and I, therefore, move at this time that it be accepted and approved by the Legislature.

PRESIDENT: Is there any discussion? If not, the question is the adoption of the report. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of the Committee on Committees report.

PRESIDENT: The report is adopted. Back to you, Mr. Clerk. We're ready for the introduction of new bills. Mr. Clerk.

CLERK: Mr. President, new bills. (Read LB 1-80 by title for the first time. See pages 44-61 of the Legislative Journal.)

PRESIDENT: If I could have your attention just a moment, please, we'll introduce a couple of guests. Over under the north balcony, our first doctor of the day for this year is Dr. Dale Michaels of Lincoln, Nebraska. He's from Senator Warner's district. He's here to take care of us on behalf of the Nebraska Academy of Family Physicians. So would you welcome Dr. Michaels. Would you please stand, Doctor. Thank you for

February 10, 1989 LB 35, 36, 38, 42, 44, 45, 51
53, 60, 79, 110, 123, 140, 168
169, 189, 190, 207, 408, 607, 610
708, 775
LR 2, 29

for the record, Mr. Clerk, at this time?

CLERK: I do, Mr. President. Mr. President, your Committee on Judiciary whose Chair is Senator Chizek reports LB 42 to General File; LB 44, General File; LB 708, General File; and LB 110 as indefinitely postponed. Those are signed by Senator Chizek.

Mr. President, Revenue committee whose Chair is Senator Hall reports LR 2CA to General File; LB 607, General File with amendments; LB 775, General File with amendments. Those are signed by Senator Hall. (See pages 690-91 of the Legislative Journal.)

Health and Human Services Committee whose Chair is Senator Wesely reports LB 610 to General File with amendments. (See page 691 of the Legislative Journal.)

Mr. President, Report of Registered Lobbyists for this past week as required by statute. (See page 692 of the Legislative Journal.)

I have amendments to be printed to LB 408 by Senator Barrett.

Mr. President, communication from the Governor to the Clerk. (Read communication regarding signing of LB 35, LB 36, LB 38, LB 53, LB 79, LB 123, LB 190, LB 51, LB 60, LB 189, LB 207, LB 45, LB 168 and LB 169. See page 693 of the Legislative Journal.)

Mr. President, your Committee on Enrollment and Review reports LB 140 to Select File with E & R amendments attached. (See page 693 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: We'll move on to LR 29, please.

CLERK: Mr. President, LR 29 was offered by Senator Langford. It's found on page 656. (Read resolution.)

PRESIDENT: Senator Langford, please.

SENATOR LANGFORD: Mr. President and colleagues, I offer this resolution with a great deal of joy because this gentleman plays cards and plays golf with Jack, my husband, every day, practically, in the summer. He has been instrumental in the

on the other side of the line. And this bill then just simply grants the authorization to set up the same paper trail as we have for those that are already within the state and they would be allowed then to bring back into the state the liquor which they had originally shipped out of the state which was damaged and then only from the retailer that they shipped it to. I would ask for your advancement of the bill.

SPEAKER BARRETT: Any discussion? Seeing none, those in favor of the advancement of LB 777 vote aye, opposed nay. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 777.

SPEAKER BARRETT: LB 777 is advanced. LB 44.

CLERK: Mr. President, LB 44 was introduced by Senator Bernard-Stevens. (Read title.) The bill was introduced on January 5, referred to Judiciary, advanced to General File. I have no amendments to the bill.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. Much of the bill, LB 44, really belongs to Senator Lowell Johnson who last year had a bill, I believe number 1221. Much of the idea of that bill, in fact, I would say most of the ideas of the bill came from Senator Johnson and the bill the Legislature passed last year. To give you a brief history of the bill, last year there was very little debate. There was very little, in fact, there was no opposition and the bill passed easily. The Governor was given advice and upon that advice vetoed the bill, and when the bill came up, it came up at, I guess, the wrong time in our veto override session that we had, and after the train had to come to a stop sometime, then this bill came up and we only had 27 votes on the override attempt. There will be, I suspect, a gubernatorial veto on this one as well. But I would like to explain to the body what we have and where I believe, if we have a chance to sit down with the governor, where we might be able to work this problem out. Nebraska's statute, Section 29-1823, specifically provides that the cost of a mental evaluation, precedent to a commitment, is the responsibility of the county wherein the crime is charged. That cost is part of the trial process. It is not disputed here and it should be a

responsibility of the county. However, there are about three points that need to be made. The statute is silent, it is silent on the issue of responsibility for costs incurred for treatment of a defendant after the commitment. The statutes say that the cost of the commitment and evaluation must be paid for by the county. It is silent on the cost of the commitment...cost of the treatment after commitment. Nowhere does the statute say anything. Point two, the legislative history of Section 29-1823 is silent on the issue of whether or not after the commitment is made who should pay for it. The statute is silent and the legislative history of that statute is silent. And the third basic major point is the issue is not discussed in any reported Nebraska opinion to this date. I would like to point out that the Attorney General has a decent argument that Nebraska Revised Statute 29-1004 makes such costs a county responsibility. Therefore, a good position that I think the Legislature can take is this bill simply clarifies what is silent. What this bill does, in essence, members of the body, is it goes into the statute in a section that says, you know, that the treatment of...the evaluation and the cost of commitment will be made...borne by the county, that section that...the section is totally silent on who pays and bears the burden after that commitment, where this bill will clarify that. This bill will say, if commitment occurs, then the cost of the treatment at that particular point will be borne by the State of Nebraska. If, in fact, the person in question is then released from that commitment and it goes back to the trial process, then, obviously, that cost again, by clarification of the statute, would be borne by the counties. Okay, part of the problem that the counties are having, and I will be quite honest, I like to be up front on all issues, part of the problem is that it's totally impossible for many...for most, and I would say almost all of rural counties to budget for such an item as this. How do you budget for someone that's going to commit a crime, that will be deemed mentally incompetent, and will have a 40, 60, \$100,000 bill? How do you budget for that? In most counties, that doesn't occur, but when it does occur it totally annihilates the budget. Statistics that I handed out to the body show the tremendous variations and costs if you take it even statewide. They go from 34 percent increase one year to a 6 percent increase to a minus .4 percent to a 13. The changes are nowhere possible to be planned for. And at the counties and municipalities and the areas where you're at maximum levy or close to because of railroad...the difficulty we have on railroad lawsuits and everything else, this is something that

simply has been a burden, so much, in fact, that what is beginning to happen...I can say it on the floor, I think, and I don't know if anyone else would, at least in other counties, admit to it, but what is happening is counties are saying, we can't afford this, we cannot have this in our budget, there is no way we can get the money so we will drop the charges. So someone then who is convicted or charged with murder or rape and they are deemed by court, they have their evaluation, and is deemed to be mentally incompetent, sometimes more than we would like to admit the charges are dropped because then the state would pick up the whole cost because it's not a court procedure. This clarification is needed. It is something that is...there is no legislative history that shows that this was not intended and so we are clarifying that statute and, in my opinion, it would stand a constitutional test if such a test was challenged, which I would anticipate there would not be. That concludes my opening remarks, Mr. President.

SPEAKER BARRETT: Thank you. Discussion? Senator Warner. Senator Warner, discussion on the advancement of the bill.

SENATOR WARNER: I would like to have a little more explanation from Senator Bernard-Stevens, if he would, as to charges on very severe crimes that you...I would like to know some examples if there are very severe crimes that are not pursued. Is that what I hear you say, at the local level?

SENATOR BERNARD-STEVENS: What we basically have, Senator Warner, is situations in the county and I think it's simply a situation of reality where if we have a charge filed, a severe or serious charge filed...

SENATOR WARNER: And there...

SENATOR BERNARD-STEVENS: ...and the person then is...the defense says we have mental incompetency here and so the judge orders an evaluation and the evaluation comes back saying, yes, we are mentally incompetent. Now the county is at a severe disadvantage at that particular point, if it's the county attorney that would be pushing the case. The county, may at this point, have no funds available, simply no funds available to handle such a cost, but the gentleman will be committed. So now the county is at a point, do we push the charge, and if we find him guilty and he is then committed, we pay for it or we drop the charge, he is already declared mentally incompetent, he

will be committed but the state pays for it. It's a matter of absolute funding and it's a deplorable situation. And I wish I could come out and say specific charges but, obviously, on something like this, it's very difficult to get the specifics as who is going to come out and say, yes, that's what we have done, but my information says, this is, in fact, beginning to happen out there.

SENATOR WARNER: I would be very curious to see a specific example. I can appreciate you couldn't perhaps do that on the floor, but that seems like a fairly serious accusation. I don't know if it adds support to the bill one way or the other. One other question then, did I understand you that the individual ends up in a proper institution in any event? They just drop the charge. Is that the only difference?

SENATOR BERNARD-STEVENS: That's correct.

SENATOR WARNER: So the individual is still institutionalized appropriately?

SENATOR BERNARD-STEVENS: That is correct. The only difference is if the individual would then be released, there would be no way to follow up on the charge.

SENATOR WARNER: Well, it seems doubtful to me that that would happen very often but it's just almost inconceivable.

SPEAKER BARRETT: Senator Landis, additional discussion.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, I understand Senator Bernard-Stevens' concern to be state payment for the expense of treatment for someone not mentally competent to stand trial. My concern is with respect to the language that appears on page 4 and 5 in which the bill requires a judge to commit somebody who has been found to be mentally incompetent to a state hospital for the mentally ill. And the question that I have...and this will come to the form of a question, it's possible for someone to be mentally incompetent to stand trial because they cannot understand what's going on. They are not able to give a plea since they're not able to understand what is happening and that their liberty is at risk. The standard for involuntary commitments, however, has to do with whether or not an individual is dangerous to the community or to themselves, and the difference between those two is significant because

Senator Bernard-Stevens' language here requires a judge to order somebody into a mental hospital upon a finding of being mentally incompetent and I'm not sure that the standard for mental incompetency to stand trial which may be absent any elements of danger to the community is the same as that which, in other parts of our statute, we would require for an involuntary commitment. Senator Bernard-Stevens, can you tell me whether you or your staff has analyzed the test required to establish mental incompetency to stand trial and compare that test to the test required to make an involuntary commitment into a mental hospital? And if those tests have been analyzed, are they the same or are there any differences between those tests, that you know of?

SENATOR BERNARD-STEVENS: Senator Landis, I don't mean to throw the question back, but I guess my answer in the beginning is in the form of a question, can you answer those questions?

SENATOR LANDIS: Yes, I can tell you that in my estimation those two things are different. The test for whether one is mentally competent to stand trial is whether or not an individual can understand that their liberty is at stake and that the proceedings...that they can understand the proceedings. That contains no element of danger to society or to themselves, but that's the standard. The standard for incarceration in a mental institution against one's will is establishing a danger either to oneself or to one's community and that has to be established. To me, those two standards are different. And, yes, I think the standards are different. Let me ask again, do you know whether they are the same or not?

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Yeah, Senator Landis, I guess my response is the information that I've been getting from Judiciary staff and also my own is that in this particular situation when the circumstance that you have, if, in fact, and when it, in fact, arises, that once the alleged victim or in this case the person has been deemed mentally incompetent by the process, that the situation now changes. The situation is a little bit different now than what it was in a straight civil...a straight civil area, to the point that the judge will have to do some type of process where the judge will say, yes, we're mentally incompetent but we're not simply going to go outpatient here. It's a little bit different ball game in this

situation. And I wish I could be more specific on that and I, personally, cannot but my understanding is...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...it is a different situation.

SENATOR LANDIS: I won't take time for your bill. On Select File, I think some analysis would be due the body.

SENATOR BERNARD-STEVENS: I appreciate that, Senator Landis.

SPEAKER BARRETT: Any other discussion on the bill? If not, Senator Bernard-Stevens, would you care to close.

SENATOR BERNARD-STEVENS: Only to the degree, Mr. President, that it is an item that is incredibly difficult for counties and it's been a burden on counties. It can cause us some choices that may be made that we would prefer not being made and I think it's not only an obligation but a clarification and something that is reasonable and feasible for the State of Nebraska to do and I urge the advancement of the bill. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Shall LB 44 be advanced to E & R Initial? Those in favor vote aye, opposed nay. On the advancement of the bill, have you all voted? Have you all voted? Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: I guess the body is on consent calendar, kind of gone to their offices, and if we don't have some help here in a minute or so, I may have to call for a call of the house which I think I will at this point just call for a call of the house.

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

CLERK: 12 ayes, 0 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please record your presence. Return to your desks. Those outside the Chamber, please return. The house is under call. Roll call vote has been requested. Members, please return to your seats and check in. Those outside the Legislative Chambers, please

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LB 44, 44A, 637

return, the house is under call. Senator Beyer, please report your presence.

SENATOR BERNARD-STEVENSON: Mr. President, I would accept call in votes. There are 20 ayes at this point and most people are gone.

SPEAKER BARRETT: I'm sorry, we have had a request for a roll call vote, Senator.

SENATOR BERNARD-STEVENSON: Thank you.

SPEAKER BARRETT: Members, return to your seats for a roll call vote. Senators Chambers and Chizek, please return. Senators Lamb and Moore, the house is under call. Members, please return to your seats. (Gavel.) Senator David, Senator Chambers is the only one missing. Proceed? Thank you. A roll call vote has been requested. The question is the advancement of LB 44 to E & R Initial. Mr. Clerk, call the roll.

CLERK: (Roll call vote read. See page 1402 of the Legislative Journal.) 26 ayes, 4 nays, Mr. President, on the advancement of LB 44.

SPEAKER BARRETT: LB 44 is advanced. The call is raised. The A bill, Mr. Clerk.

CLERK: Mr. President, LB 44A by Senator Bernard-Stevens. (Read title.)

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENSON: Mr. President, I would simply move the advancement of the A bill.

SPEAKER BARRETT: Is there discussion on the advancement of the A bill? If not, those in favor of the advancement of LB 44A, please vote aye, opposed nay. Please record.

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 44A.

SPEAKER BARRETT: The bill is advanced. LB 637.

CLERK: Mr. President, LB 637 was a bill introduced by Senator

April 3, 1989

LB 44, 44A, 47, 66, 75, 78, 87
220, 240, 262, 348, 372, 399, 401
431, 438, 438A, 546, 548, 569, 569A
582, 582A, 592, 606, 608, 628, 637
681, 706, 777, 790

the time Senator Abboud can have to finish his closing.

SPEAKER BARRETT: Thank you. The question is the advancement of the bill to E & R Engrossing. All in favor vote aye...thank you. Roll call vote has been requested in reverse order. So be it. Mr. Clerk.

CLERK: (Roll call vote read. See pages 1431-32 of the Legislative Journal.) 27 ayes, 10 nays, Mr. President, on the advancement 592.

SPEAKER BARRETT: LB 592 advances. Anything for the record, Mr. Clerk?

CLERK: I do, Mr. President, thank you. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 262 and recommend that same be placed on Select File; LB 569, LB 569A, LB 606, LB 628, LB 681, LB 78, LB 438, LB 438A, LB 706, LB 47, LB 75, LB 548, LB 582, LB 582A, LB 240, LB 790, LB 777, LB 44, LB 44A, LB 637, LB 66, LB 546, LB 87, LB 220, LB 372, LB 399, LB 401 and LB 608, some of which have E & R amendments attached, Mr. President. (See pages 1432-44 of the Legislative Journal.)

Mr. President, your Committee on Health whose Chair is Senator Wesely reports LB 348 to General file with committee amendments attached. That's signed by Senator Wesely as Chair. (See page 1444 of the Legislative Journal.)

That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. As announced before recess, we will move back to LB 431 and LB 431A. LB 431, Mr. Clerk.

CLERK: Mr. President, the first item I have on 431 are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 431 be adopted.

SPEAKER BARRETT: The question is the adoption of the E & R amendments to LB 431. Those in favor say aye. Opposed no. Carried. They are adopted.

April 7, 1989

LB 44A, 44, 777, 790

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 790 be adopted.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Nothing further on the bill, Senator.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 790, as amended, be advanced to E & R Final.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 777.

CLERK: LB 777, Senator, has no amendments.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that LB 777 be advanced to E & R Final.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 44.

CLERK: LB 44, Senator, I have E & R, first of all.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 44 be adopted.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Nothing further on the bill, Senator.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 44, as amended, be advanced to E & R Final.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 44A.

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

May 17, 1989

LB 44, 813

RECESS

PRESIDENT NICHOL PRESIDING

CLERK: 34 ayes, 0...excuse me, Mr. President, I have a quorum present.

PRESIDENT: Very good. The Chair recognizes the exhausted speaker.

SPEAKER BARRETT: Thank you, Mr. President, and members, I assume we are to the point where we're considering a motion that I might have made to suspend the rules, yes, on Journal page 2423. This is the suggestion that I made yesterday for you to think about and, hopefully, adopt today. We are to the point where we are in the deep water now specifically with regard to Final Reading. I did mention the 30 hours which we have backed up. We will have more very shortly, hopefully. And it's becoming humanly impossible for our two Clerks to handle that amount of Final Reading in three days, I believe. My suggestion is that we suspend Rule 6, Section 7, subsection (b), and Rule 8, Section 5, to allow us to read the appropriations bills which have a fiscal impact of less than \$1 million for the two-year period. That's all it amounts to. Then we can proceed to read these few bills on the agenda today and then move on to the next item of business, General File A bills. That is the essence of the motion and I would urge the body to adopt it. Thank you.

PRESIDENT: Is there any further discussion? If not, the question is the suspension of the rules. All in favor vote aye, opposed nay. Please vote if you care to. Record, Mr. Clerk, please.

CLERK: 32 ayes, 0 nays, Mr. President, on the rule suspension.

PRESIDENT: The rules are suspended. If you will all take your seats, please, we will begin with Final Reading on LB 44. (Gavel.) What I said was if you would take your seats, please, we would start on LB 44. Mr. Clerk, LB 44, please.

CLERK: Mr. President, very quick item, if I may. LB 813 and

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LB 44, 44A, 814

LB 814 are reported as correctly engrossed. (See pages 2456-58 of the Legislative Journal.)

(Read LB 44 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 44 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2458-59 of the Legislative Journal.) 27 ayes, 14 nays, 3 present and not voting, 5 excused and not voting, Mr. President.

PRESIDENT: LB 44 passes. May I introduce some guests, please. In the north balcony, before we go on to Final Reading of the next bill, Senator Lowell Johnson has 45 fourth graders from Millikan Park School in Fremont and their teacher. Would you folks please stand and be recognized. Thank you for visiting us. I might say to you folks in the balcony, we're on Final Reading which is the time when the bill have been discussed and discussed more and fully understood at this time and the law states that the bill must be read in its entirety before the entire assembly before they vote on it. So while the Clerk reads awfully fast and you may not be able to understand all of the words that he says, that's what is happening at the moment and this will be going on for about an hour. So you can look forward to that. Mr. Clerk, LB 44A, please.

CLERK: (Read LB 44A on Final Reading.)

PRESIDENT: All provisions relative of law relative to procedure having been complied with, the question is, shall LB 44 (sic) pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2459-60 of the Legislative Journal.) 26 ayes, 14 nays, 5 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 44A passes. May I introduce some more guests, please. In the north balcony Senator Scott Moore has 25 second and third graders from St. Paul's in Utica, Nebraska and their teacher, and there are also eight sponsors with them. Would all of you folks please stand and let us welcome you. And thank you

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LB 44, 44A, 49, 49A, 134, 137A, 158
158A, 162, 162A, 175, 175A, 182, 182A
198, 228, 228A, 305, 815, 816, 816A

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 228 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on pages 2473-74 of the Legislative Journal.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 228 passes. LB 228A.

ASSISTANT CLERK: (Read LB 228A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 228A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on page 2474 of the Legislative Journal.) The vote is 45 ayes, 1 nay, 2 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 228A passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 44, LB 44A, LB 49, LB 49A, LB 134 with the emergency clause attached, LB 158, LB 158A, LB 162, LB 162A, LB 175, LB 175A, LB 182, LB 182A, LB 198, LB 228, and LB 228A. Anything for the record, Mr. Clerk?

CLERK: Mr. President, yes, thank you. Your Committee on Enrollment and Review reports LB 305, LB 815, LB 816, and LB 816A as correctly engrossed, all signed by Senator Lindsay as Chair of Enrollment and Review. (See pages 2475-76 of the Journal.)

I have a confirmation hearing report from Health and Human Services Committee signed by Senator Wesely as Chair. That's all that I have, Mr. President.

PRESIDENT: We'll move on to LB 137A.

CLERK: Mr. President, 137A is a bill introduced by Senator Warner. (Read title.)

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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

Senator?

SENATOR LYNCH: Well, Mr. President, Chairman and Mr. Clerk, I'd like to ask unanimous consent, if I could, to have permission to withdraw, yeah, and substitute another amendment. Withdraw 1890 for 1934. (The Lynch amendment appears on pages 2598-99 of the Legislative Journal.)

SPEAKER BARRETT: Insert 1934?

SENATOR LYNCH: Yes, sir.

SPEAKER BARRETT: Any objection? So be it. Senator Lynch.

SENATOR LYNCH: Mr. President, members, I'd ask permission to return this bill for this amendment. I don't intend to take a lot of time. We have an awful lot of other important legislation, everybody said that. I'll try to absolutely do it. The only difference between the original amendment that was substituted and 1934 was the section that states that the operative date for the parts of amendment which don't appropriate funds is July 1, 1990 now. May or may not remember that this is the indigent health care bill. Just so you understand, I did support LB 525 after receiving some numbers from the Department of Social Services indicating how the funds would be developed for physicians and for hospitals for the reimbursement for the Medicaid patients. It was obvious that it made some sense to use almost \$4.5 million to have it matched 60 percent with federal funds and accomplish a \$12 million goal. Also the re-establishment of how those funds were distributed made sense to help encourage doctors and hospitals to get involved with Medicaid patients and especially reimburse more appropriately family docs and other kinds of physicians. What this bill does, what this amendment does is to delete, from 187, the indigent health care bill, in the second year, in the second year those amount of dollars that were appropriated in LB 525 for physicians and doctors, and reduces the total amount of money from \$12 million down to 7.2. Also, as you know or can remember, hopefully, LB 44 was passed, I'm not sure what kind of fate it may be eligible for in the process that we all understand around here, but the first part of this amendment clarifies that if LB 44 is enacted into law, there is no conflict between LB 44 and LB 187. Under 44, as you, hopefully, or maybe don't remember, prisoners' medical costs are still the county's responsibility. Under LB 187, they would be the

state's responsibility. Under LB 44, the nonmedical is still the county's, and under 187 they still remain the county's. And one of the most important things had to do with the medical incompetent to stand trial folks, who were ordered by state courts, held by counties until trial. Under LB 44, that would become the state responsibility. Under 187, it was, in fact, the counties'. If 187 passes after 44, which is the only way it could happen, could be interpreted to negate LB 44 and leave these costs with the county. The second thing it does is lowers the maximum cap of the state's liability for medical payments under this bill from \$12 million to 7.2 and, as I pointed out, how that would happen. Can you hear me all right up there?

SPEAKER BARRETT: Just barely, Senator Lynch. (Gavel.)

SENATOR LYNCH: Well, I don't care if anybody listens so much, I just want to be able to hear myself is all. Sounded like it was pretty good conversation, too, by golly. Probably a lot more interesting than I'm telling you right now. The third thing it does is increases the administration costs in 187 to reflect the increased costs for the amendment that was adopted on Select File which clarifies that the medical costs of county prisoners, which meet the eligibility criteria of this program, are included in LB 187. It assumes 2,520 prisoners will be eligible. In '88-90, start-up for the state and county still would pay the bills, it adds \$49,929; remember, this is an A bill, and for a total cost of \$562,275. Remember, this is administrative and start-up costs. Please don't ask me to explain it because I can't understand how it would cost, in the second year, for example, it adds another 345,165, total administrative costs of \$1,190,880. And that's hard to...and I can't honestly explain why it would cost that much to administer a \$7.2 million program. But that is what the fiscal office says it would be. There is some training, and I've got a list of the people that would be involved. And, lastly, it lowers the appropriations for a hospital and provider payments to the 7.2 million from 12. Please understand the only cost in '88-89 would be administrative. The bill would not be effective until 1990, at which time the 7.2 million would kick in. That's the amendment. I'll try to answer any questions you might have.

SPEAKER BARRETT: Senator Wesely, would you like to discuss the motion to return.

SENATOR WESELY: Thank you, Mr. Speaker, members. I am not

responsibilities. It does address, in fact, along with LB 44, the problem of maintaining medically incompetent people who are standing trial or waiting to stand trial, and, of course, prisoner medical costs. Douglas County is maybe at an advantage, they can afford it more than some. Douglas County, in fact, traditionally has paid for most of their own, where other counties who have access to state institutions have had the advantage of being able to send folks to those institutions for the same kind of care at state expense. I'm not suggesting this is an urban and rural problem and that we're being mistreated at all. All I'm saying is that across the state there are even greater Nebraska counties trying to cope with this problem. For example, if you're a smaller Nebraska county, and a district judge, a state judge says you shall hold a medically incompetent person until trial, and you're talking in some cases in acute care psychiatric facility, three or four hundred dollars a day, and the trial don't take place for two or three or four months, or is postponed five or six times. That's a problem and it has been traditionally, and is, in fact, a problem for many of those counties. Those are the kinds of problems, that's the kind of people that this amendment would try to serve. Though it would not go into effect until the second year, the cap still remains, we can spend no more than what the bill...original bill provided for. I can't address, because I'm not a lawyer, the constitutionality of all of this. But given the time restraints we have it seemed like this was the only vehicle we had left on this particular day before the session to address this issue and the related costs and offer this compromise to all of you. I'd simply like to suggest that for those of you that may understand...

SPEAKER BARRETT: Thirty seconds.

SENATOR LYNCH: ...and think we should at the same time we provide just matching dollars with federal dollars to take care of some Medicaid problems, we still will not resolve and help the people that could be served by this legislation. And I would ask for your support.

SPEAKER BARRETT: Thank you. You've heard the closing, and the question is the return of the bill to Select File. All in favor vote aye, opposed nay. Shall the bill be returned? Senator Lynch.

SENATOR LYNCH: Mr. Chairman, I can continue to talk until I

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LB 44, 187A, 187, 354, 525

different group, a high need group, but will also bring in some federal monies and will be of assistance to help low income individuals with their medical needs. So you can...what I'm saying is you can combine three different elements that all kind of seem to tie in or be the same, but they're not. LB 525 targets one area, LB 187 targets a different area, LB 354, coming up later, will target another area. All attempt to address the need of low-income individuals to get medical care. A couple of them bring in federal monies, LB 187 does not because the federal government does not set up an indigent care match or program. Hopefully, some day they will but, nevertheless, there is a need and the counties, again, are meeting that responsibility at this time. I'm just trying to summarize as best I can the kind of interrelationship...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...of these issues and, again, I'd be happy to answer questions if you have any.

SPEAKER BARRETT: Thank you. Senator Schellpeper.

SENATOR SCHELLPEPER: I call the question.

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

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

SPEAKER BARRETT: Debate ceases. Senator Lynch, for a closing statement.

SENATOR LYNCH: Mr. President and members, I also would apologize that, as I tried to run through this almost as quickly as I could, I probably or maybe confused some people regarding two subject matters in one bill because I mentioned LB 44. I only did that...anything that has to do with LB 44 is like any other bill that has to do with the same issues in other bills, sometimes needs explanation. And since LB 44 was a consideration of this year, I only mentioned that to make sure that you understood the difference and why, in fact, there was no conflict between the two. We've already discussed it. I think it has been explained. I think you all probably

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LB 187, it has nothing to do with LB 84, or LB 44, excuse me. The problem lies in that the substantive legislation for which the funding is contained in the A bill is not a part of your amendment. And so you've got funding for a purpose in this A bill that that purpose isn't there. It's in a different bill, and so there are...in a very fine technical sense, there could be two subject matters in the bill. I raise the issue so if it gets vetoed, if the Attorney General would write a letter, you know, the body has been warned and those who drafted the amendment to this bill will know that they may have...you know, it may have been a really fine idea and I don't object to learning fine ideas, I...one of the advantages I have, I've seen so many fine ideas I didn't have to originate hardly any, I just copied a lot. But there still is that potential. And I've also made a decision, because I filed an amendment what's up there that I'm going to withdraw because I think it makes the problem more complex if I don't add an amendment, so...with that, I would urge that the bill be advanced.

SPEAKER BARRETT: Thank you. Any other discussion? Shall the bill be readvanced? Those in favor say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. Senator Warner, did you say you wanted to withdraw the other amendment? Thank you. It is withdrawn. Nothing further on that bill, Mr. Clerk?

CLERK: Nothing further on that bill, Mr. President.

SPEAKER BARRETT: To LB 683.

CLERK: Mr. President, 683, the first motion I have, Senator Scofield, I had amendments from you, Senator, printed on page 1883. I have a note that you'd like to withdraw those.

SPEAKER BARRETT: Withdrawn.

CLERK: Mr. President, the next, I have a note...Senator Warner, the next amendment was from you, Senator, on page 1891. I have a note that you want to withdraw that one.

SPEAKER BARRETT: Withdrawn.

CLERK: Mr. President, Senator Warner would move to return the bill to Select File for a specific amendment. Senator, I have AM1550 in front of me. It is on page 1931 of the Journal.

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247A, 250, 250A, 277, 277A, 301, 308
813, 814
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221, 223

Mr. President, a series of veto messages. (Read. Re: LB 44, LB 44A, LB 162, LB 162A, LB 49, LB 49A, LB 277, LB 277A, LB 250, LB 250A, LB 247, LB 247A.) The last message, Mr. President. (Read. Re: LB 301, LB 308, LB 813, LB 814. See pages 2723-29 of the Legislative Journal.)

Mr. President, that completes the items that I have.

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 115, LR 213, LR 214, LR 215, LR 217, LR 218, LR 220, LR 221. We will move on to number five, resolutions, Mr. Clerk, LR 223, please.

CLERK: LR 223 was introduced by the Appropriations Committee. It is found on page 2680 of the Journal. It asks the Legislature that pursuant to the provisions of Section 85-404 and LR 69 adopted by the Ninetieth Legislature to call for the issuance of bond anticipation notes and/or revenue bonds in the amount not to exceed \$4,925,000.

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Yes, Mr. President, and members, I know we are all busy, a beehive of activity this morning, but this first thing out of the shoot is of some significance. You may or may not want to listen. What this is is the approval for the bond financing of Phase III of the rec center construction. Those of you that were around in 1987 will remember at that point in time when we approved the indoor practice facility, that was the first of three phases of activity in the total hyperfitness area, whatever it was called, I forget. And Phase I and Phase II have already been...Phase I and Phase II have already been either built or in the process of being built and paid for, and the university is coming down...coming back with LR 223, and if you remember back, LR 69 two years ago, it basically said...we basically said we approve Phase I and Phase II and Phase III; if on the chance that when you go to Phase III, and Phase III is rebuilding of the coliseum, which I would like to explain a little bit, if we get to Phase III, it is the university's choice to use bond financing, and they must come back to the Legislature for our approval. That is, indeed, what has occurred. That is what LR 223 is talking about. It grants the authority for the university to bond up to \$4.9 million for the UN-L recreation/athletic facility. Now as you remember, the indoor practice facility, you all remember, Phase II of that

out-of-state teachers. In addition to that, I would like to mention that new teachers would also be affected by this particular provision so if a school board was trying to hire somebody who had just graduated, they might also run into the same problem. And, thirdly, I'd like to mention that teachers in parochial schools often come from out of state too, so that might impact upon them more heavily than the public schools. With that, I turn the rest of the time over to Senator Hall.

SPEAKER BARRETT: Senator Hall waives off. You've heard the closing and the question is, shall the Governor's veto of LB 250 be overridden? All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: (Record vote read as found on pages 2768-69 of the Legislative Journal.) 36 ayes, 2 nays, Mr. President.

SPEAKER BARRETT: Motion prevails and the veto is overridden on LB 250.

CLERK: Senator Withem, did I understand you do not want to do the A bill? Senator, is that correct?

SENATOR WITHEM: Withdraw the motion on the A bill.

SPEAKER BARRETT: Withdrawn.

CLERK: Mr. President, the next motion I have is by Senator Bernard-Stevens. He would move that LB 44 become law notwithstanding the objections of the Governor.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, members of the body. I believe this might...I believe this is the last bill up and I hope the body can stay with it just for a little bit longer 'cause I would uphold it if I felt as I did on the other things that I uphold. If I had felt that there is simply...it's simply another bill that we could come back again, try again, certainly I would do so. This is one that's been here before and it's one that I would like to very quickly explain. I think the body can be brought up-to-date on the bill and then we can do the body's will and be done with it. LB 44 came actually last year, last session. It passed somewhere around 46 to nothing. It went to the Governor and it was vetoed and, in

essence, here is the situation we have today. I offered the amend...the bill again this year, it went on Consent Calendar, it then passed with little difficulty and, again, it's back with us on a veto. Just for the record, this summer I did check with the Governor, let her know that I was going to introduce a bill. She did mention that she probably would veto again so we both were understanding of what we were both going to attempt to do and we're both going to do what we feel we have to to represent our particular areas, and that's the way it should be. LB 44, in essence, tries to correct a problem that really is a small county problem, and those in Douglas County and Lancaster County, this really won't affect you that much except for finances, but it won't affect you that much. This is a small county bill, no doubt about it. What the law is now, the statutes now say that if you have a trial the counties are responsible for paying the determination tests as to whether or not the accused is mentally competent. If the accused is deemed mentally incompetent and is then put into a state institution, the law is not clear. Again, I repeat, the law is very clear that testing of the...of whether or not they are to be determined mentally incompetent, that's very clear in the statutes. The counties pay for that. This bill would not change that. This bill would simply change the part that says after they have been deemed mentally incompetent and after they are put into a state institution, the legislation, the statute, is unclear as to who picks up the cost. LB 44 would have the state pick up the cost. What I would like to imply, if the body would, again, be so patient enough to give me their attention on this last bill that we have, is that the small counties, this does not happen very often. They are incapable, I should not say incapable, it is impossible for them to budget for these types of budgetary items. Many counties won't have a situation like this for 5 to 10 years. Then all of a sudden out of the blue they may get a case like this and it may be 20, 40, 60 or over 100 thousand dollars and they may not know when it's going to end. What the counties find themselves into, and it's a very deplorable situation and one that I detest personally, but the counties find themselves in a situation of saying, we cannot afford this, we can't control it, we can't afford it. If we drop the charges then guess who pays for the institutional stay of the alleged criminal? The state will pay. Many counties at times have had to face this issue. Most counties that I'm aware of try to do the best they can, but in many situations they feel they have no choice. They simply cannot pay and they are forced to decide whether they bankrupt the county, whether they dip

again into an area of property tax where many are at their max levy anyway, or do they ask the county attorney or does the county attorney on his own decide to drop the charges? And in some cases in the State of Nebraska the charges have, in fact, been dropped on major cases simply because the county cannot and does not and could not obtain the funds. This is a situation that we do not need to have in the State of Nebraska. This is a situation that nobody in the small counties wants. They want to charge the alleged criminal, they want to have a fair trial, and they want the proper punishments due. In the larger counties, you have enough of each year of these type of instances that you can budget within the county. That's why it's not too much an effect on larger counties. You have a case record already. You can budget for that. The smaller counties very seldom will have that. I know on discussion on the floor a few senators said that they found it hard to believe that counties would drop charges in major cases. I can tell you that it happens. I can tell you that it has happened up until three months ago and it will continue to happen. That's, in essence, the bill. If LB 44 passes, it says if an alleged criminal's been deemed mentally incompetent and is sent to a state institution, the state will pay for that until the person is ready, deemed capable of standing trial, of which case then it is trial procedure and the county then picks up the costs at that point. I'd be glad to answer any questions if some are available. I would hope and urge the body's indulgence in this matter. Thank you.

SPEAKER BARRETT: Thank you. For purposes of discussion, Senator Robak. I have two other lights on I believe that might have the same idea in mind. Senator Langford, did you care to discuss the matter? Senator Korshoj, did you care to discuss it. Senator Robak, has moved the previous question. There are no other lights. Senator Bernard-Stevens, would you care to make a closing comment?

SENATOR BERNARD-STEVENS: Just briefly, Mr. Speaker. This is, I think, an important policy question. The bill in the veto message, the veto message stated that it was clear that the counties take up the responsibility and I'd like to say I have no qualms with that. That is absolutely correct. What we're trying to do, though, is clarify the section of the statute that is unclear as to who should pick up the cost, and the section would be clarified to say that the state would pick up the cost of the state institution until time that the person would be

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deemed mentally competent to stand trial and then the costs would shift back to the counties. It is important. It is a small county issue, there's no doubt about it. We need your help. Thank you.

SPEAKER BARRETT: Thank you. The question is the override of the Governor's veto on LB 44. All in favor vote aye, opposed nay. Voting on the motion to override. Have you all voted? Record, please.

CLERK: (Record vote read as found on page 2769 of the Legislative Journal.) 12 ayes, 23 nays, Mr. President.

SPEAKER BARRETT: Motion fails. Any other overrides filed with the Clerk? The Chair advises that certificate is being signed indicating that there has been an override on LB 250 and the same is true for LB 49 and LB 49A. (See Certificates as found on page 2772 of the Legislative Journal.) Matters for the record, Mr. Clerk?

CLERK: Mr. President, a series of communications addressed to the Secretary of State's Office regarding the Legislature's actions today on certain line item veto overrides, as well as certain other veto overrides. (See Communications as found on pages 2769-2772 of the Legislative Journal.)

Mr. President, I have a communication from Senator Labeledz appointing the membership to the LR 247 (sic)...LB 247 Committee that was passed into law this year. (See Executive Board Report as found on page 2773 of the Legislative Journal.)

I believe, Mr. President, that's all that I have.

SPEAKER BARRETT: No other unfinished business on the desk. Motions in preparation, Mr. Clerk, for sine die?

CLERK: Mr. President, Senator Wehrbein I believe has the first motion.

SPEAKER BARRETT: Senator Wehrbein, please.

SENATOR WEHRBEIN: Mr. Speaker and members, I move that a committee of five be appointed to advise the Governor that the 91st Legislature First Session of the Nebraska State Legislature is about to complete its work and to return with any message the

SENATOR LYNCH: Excuse me just a minute, Mr. President. Mr. President, members, I wanted to make sure that I had the right number and page. It's AM2358, found on page 604. It does three things. It changes the dollar amounts and years to reflect the fact that this bill did not pass last year. It deletes the state liability cap language from the A bill, the cap remains the same as the main bill, which is 7.2, and deletes language which was needed last year in case both LB 44 and LB 187 were passed. I could go into some more detail, but it does adjust the amount of funds to administer the program. And I won't, at this time, reflect on my concern about the total cost because I would need more information. But at the appropriate time, unless somebody is interested, I could explain the difference between the administrative costs for the 260 million dollars now in Medicaid and the percentage needed to administer this, but there may be a better time for that. I would simply ask for your support to return LB 187 (sic) for the adoption of this amendment.

SPEAKER BARRETT: Thank you. Is there discussion on the motion to return the A bill for purposes of an amendment? If not, those in favor of that motion please vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: The bill is returned. Senator Lynch, on the amendment.

SENATOR LYNCH: Yes, sir. I think it's been discussed. Unless there are some specific questions, I'd ask for its adoption.

SPEAKER BARRETT: Thank you. Any discussion? Any questions? If not, the question is the adoption of the Lynch amendment. All in favor vote aye, opposed nay. Record, please.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of Senator Lynch's amendment.

SPEAKER BARRETT: The amendment is adopted. Senator Lynch.

SENATOR LYNCH: I would move the advancement back to Final Reading, Mr. Chairman.