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Rules Committee
January 14, 2009

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The Committee on Rules met at 3:00 p.m. on Wednesday, January 14, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of discussing the rules of the Legislature. Senators present: Scott Lautenbaugh, Chairperson; Mike Flood; Steve Lathrop; Kent Rogert; and Dennis Utter. Senators absent: Annette Dubas.

SENATOR LAUTENBAUGH: We're on the record. I'd like to call this meeting of the Rules Committee to order. I'd like to introduce those present. I have Speaker Mike Flood; myself, Scott Lautenbaugh; Senator Steve Lathrop; Senator Kent Rogert. We have committee legal counsel Brent Smoyer; and our administrative assistant Kurt Hammond. I believe the first rule to be presented or proposed change to be presented comes from Senator Friend. []

SENATOR FRIEND: Thank you, Chairman Lautenbaugh. Members of the Rules Committee, my name is Mike Friend, F-r-i-e-n-d. I represent District 10 in the Legislature. And my proposal is pretty straightforward. I really don't have much to say about it. It is serious. I mean, it's been a little bit of a question for me since I got here. []

SENATOR LATHROP: What number is it? Seventeen? []

SENATOR FRIEND: Sorry, yeah, it's number 17, Rule 3, Section 7. It actually adds subsection (d) "The Chairperson may, at his or her discretion, assume the title of Chairman, Chairwoman, or Chair." For legislative purposes, I just think that it adds clarification and it gives a Chair the ability to just provide a little more clarity. That's all. I think chairperson is...doesn't describe, I think, appropriately in our rules what the particular Chair should be...I think it's...to be honest, I think it's political correctness when this occurred run amuck, when this law...when this rule was put in place. I just think this is more...I think it could be more efficient. But that's all I had. []

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SENATOR LAUTENBAUGH: So your proposal leaves it to the discretion of the Chair in question? []

SENATOR FRIEND: Absolutely, yeah, that's our intent. []

SENATOR LATHROP: Can I ask a question? []

SENATOR LATHROP: Is the point of this, is it a title thing while they're in committee? Is that the concern? I read that and I'm like I don't even know what it means, unless it's just so that we can refer to, in this case, Senator Lautenbaugh as the Chair. Is that it, when they're functioning in their duties as the Chairman? []

SENATOR FRIEND: Yeah. It's been a pet peeve of mine because, I mean, why are we...look, we have it all over in our statutes. And, I guess, I understand that. I think that that was created and it was done in a way that...it was done because, in a way, because political of political correctness. Now the thing is I think that this adds clarity. I mean, you can't be a ten-year-old...you can't be a ten-year-old child and chair a committee. They're men and women. I mean, it just...I just thing it adds simple clarification. []

SENATOR LATHROP: What did it say before? I don't see anything deleted. All I see is this provision being added. []

SENATOR FRIEND: Right. It didn't say anything before. []

SENATOR ROBERT: The Chairperson was added years ago. []

SENATOR FRIEND: Years ago. []

SENATOR ROBERT: Instead of Chairman. []

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SENATOR LATHROP: Oh, okay. I got you. []

SENATOR LAUTENBAUGH: So the existing rule refers to Chairpersons. You want it to be the option of the Chair to be referred to as a Chairman or Chairwoman at their discretion. []

SENATOR FRIEND: That's correct. And it seems trite. I don't mean to be. I think it's just sort of been a little...I've been here for six years and I've looked at it and I go, why. (Laugh) I'm afraid if you actually put something on your letterhead that said "Chairman" that the rules police are going to come after me. I didn't really want that to happen. []

SENATOR LAUTENBAUGH: But you would have a personal preference, since you are the Chair of a committee, to refer to yourself as Chairman Friend? []

SENATOR FRIEND: Or whatever. []

SENATOR LAUTENBAUGH: I mean, but would that be your personal preference? []

SENATOR FRIEND: Yes, it would. []

SENATOR LAUTENBAUGH: Like to reflect Senator Utter has joined us. Any other questions from the members? Thank you, Senator Friend. []

SENATOR FRIEND: Thank you. []

SENATOR LAUTENBAUGH: Any proponents for this bill or proposed rule change? Any opponents? Anyone neutral? Okay, that closes the hearing on proposed rule change 17. Next we have proposed rule change 18 from Senator Nantkes. []

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SENATOR NANTKES: Good afternoon, Chairman Lautenbaugh, members of the committee. My name is Danielle Nantkes, that's N-a-n-t-k-e-s. Proud representative of north Lincoln "Fightin' 46th Legislative District," here today on behalf of proposed rule change 18 as indicated in your packets. It's really a very straightforward proposal that was brought to me by various parties including members of the public and many members of the esteemed staff of this institution. I don't mean to belabor the point by any means because I know you have many important changes before you this afternoon. But quite simply the proposal seeks ensure that at the time of bill introduction the introducer also includes the statement of intent on the proposed legislation at that time rather than prior to the committee hearing, as is the current process. I think that as the flurry of bills happens at the initial stages of introduction it's important to help the staff, interested parties, and primarily the public have a clear, easy understanding about what we're trying to accomplish with those bills. And an accompanying statement of intent at that point in time, I think, would help to accomplish that. So that's my intent, my spiel. I'm happy to answer any questions. []

SENATOR LAUTENBAUGH: Thank you, Senator Nantkes. Any questions for Senator Nantkes? []

SENATOR NANTKES: Okay, thank you. []

SENATOR LAUTENBAUGH: Thank you. That closes the hearing on proposed rule change 18. Next we have proposed rule change 19 from Senator Nelson. Good afternoon, Senator Nelson. []

SENATOR NELSON: Good afternoon, Senator. Mr. Chairman, and we have some maps to distribute to you at this time. But, members of the committee, my name is John E. Nelson. And I represent District 6 here in Nebraska. We've got...I think I will just...are you ready to go ahead? []

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SENATOR LAUTENBAUGH: Yes, please. []

SENATOR NELSON: (Exhibits 1 and 2) All right, fine. I'm here today to present two different changes to the selection of members of the Executive Board and the Committee on Committees. And before we begin to explain the proposals I'd like to just take a moment to give you the background of this issue. The present caucus system that the Legislature uses is intended to group together senators with constituents...whose constituents have common interests and to ensure fair representation for every area of the state on every committee and the Executive Board. Our current system fails to accomplish those goals and creates problems that do not exist with other solutions. At the present time, the three caucuses are drawn nearly at random and they do not correspond with congressional districts. It's important to emphasize this point because the caucus system was initially created to follow congressional district lines. Presently, predominantly rural constituencies, such as those represented by Senator Heidemann, Karpisek, Dubas, and Adams, caucus with Lincoln while predominantly city constituencies, such as those represented by Senators Gloor and Janssen, caucus with rural senators. I feel that there is a better way to organize the Legislature than using meaningless lines which group together senators whose districts are dissimilar. Our current system unnecessarily restricts access to seats on committees. By mandating that each arbitrarily drawn caucus be given a certain amount of seats on each committee we have created a system whereby a senator with expertise in a given field may not be assigned to a committee which pertains to his or her particular talents. And we are thus doing a great disservice to the people of Nebraska by assigning committee seats using our current methodology. Creating a new system which opens up more committee seats to more senators is preferable to the status quo. The first alternative before you decreases or reduces the number of caucuses from three to two. Instead of drawing arbitrary lines, this system groups together districts with largely city constituency and districts with largely rural constituencies. Before you is a copy of the proposed breakdown in districts between the two caucuses. In the two caucus system the number of members on the Executive

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Board and the Committee on Committees would remain the same. However, the number of members per caucus on the Executive Board would be increased from two to three and the numbers of members on the Committee on Committees would be increased from four to six. This alternative is a dramatic improvement to the current system in a number of ways. First, instead of being...of each caucus being allotted one-third of the seats on each committee, each caucus will be allotted one-half of the seats on each committee. That change increases the likelihood that every senator is assigned to their committees of preference and expertise. Second, the caucuses are divided in a meaningful and coherent way. Third, the interests of all constituencies across the state are protected with both city and rural parts of the state given equal representation on every committee. The second alternative dissolves the caucuses all together. The Committee on Committees would be made up of the Chairperson, Chairman, Chairwoman and all 14 standing committee Chairs. The Executive Board would be made up of an elected Chairman and Vice Chairman as it is now. The remaining six members would be elected at large from the floor of the Legislature. The balloting would consist of one round of voting with senators voting for up to six members. The top six vote-getters would comprise the Executive Board. This alternative breaks down all the walls that currently exist and allows the Legislature to operate as one body instead of breaking it down into three baseless parts. Every seat on every committee would be open to every member of the Legislature. These changes are not intended to impact the One Hundred and First Legislature or to change the makeup of any committee as they currently exist. Instead these changes are intended to create the best system of governing possible moving forward to 2011. As always, I'm willing to work with the members of this committee and of the Legislature to compromise on either of these proposals or to create alternatives different from what I am presenting to you today. I apologize for reading the script but it gets a little technical about the way it works. And I just wanted to be careful the way it was worded so that I could present it to you in the most understandable manner. I thank you for your time and will answer any questions that you might have. Thank you. []

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SENATOR LAUTENBAUGH: Senator Nelson, did your comments just pertain to both proposal 19 and 20? Both proposals? []

SENATOR NELSON: Yes, yes. []

SENATOR LAUTENBAUGH: Any questions for Senator Nelson? Senator Lathrop. []

SENATOR LATHROP: Perhaps you can help me by clarifying and maybe we'll talk about your proposal for changing the composition of the Exec Board. []

SENATOR NELSON: Um-hum. []

SENATOR LATHROP: Obviously, we just went through that process just a few days ago. What is the evil that your rule change is intended to correct with respect to the Exec Board? How is it that we do it now that you think results in some inequity? []

SENATOR NELSON: I don't know that there's any evil necessarily. It's just that... []

SENATOR LATHROP: Evil is a poor term, maybe inequity or... []

SENATOR NELSON: Well, inequity, it simply adjusts from two, two, and two. By reducing it to two caucuses you've got three and three. And the goal is to get fair representation from rural constituencies and also from the more urban interests. []

SENATOR LATHROP: Do you think that the current system hasn't done that? []

SENATOR NELSON: No, I think that probably the current system works in a smaller number like that, where you're only dealing with six people it probably is working all right as far as the Executive Board. I only point out that with two caucuses then you've got a little different shift. []

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SENATOR LATHROP: So the changes to the Exec Board are just sort of the natural consequences of the changes to the way we caucus. []

SENATOR NELSON: That's right, that's right. []

SENATOR LATHROP: And you would change it from three caucuses to two. []

SENATOR NELSON: Reduce it to two caucuses. []

SENATOR LATHROP: And your idea there is to carve out from the state or split it to the rural folks and then to the urban folks. []

SENATOR NELSON: Yeah, right. If...and it's...we don't have a color copier, I guess, here in the Capitol anymore so I'm reaping the benefit of color. But you know where the present three congressional districts are. And if you look at the maps then you can see where we are today and the way things are divided as far as the Districts 1, 2, and 3. This third map which shows the proposed two caucus system, you...and even though you can't see the color, the vast majority of the state has more rural interest than it does in urban. So if we were to reduce it to two caucuses then we would have all of Omaha, all of Lincoln for the most part with the exception of possibly one, because one of those districts there, 25 probably has more rural than it does urban and also up in Dodge County, which is Fremont. And then it's very hard to see on the map but if you go out to Grand Island, Grand Island would also constitute part of the urban, part of the city. []

SENATOR LATHROP: So I'm going to go back to the question I asked you before on the other rule change. If we just look at the caucus system, who do you think is being treated inequitably in the current system that your new rule would treat more fairly? []

SENATOR NELSON: I don't think...you know, I'm not so sure that we have inequities.

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It's just that we're going to have more availability of the various committee assignments. As I said, you're going to have more opportunity if you divide it with the two caucuses instead of going from the First District, to Second, to Third, you know, on the Committee on Committees as far as committee assignments. You're just simply going to alternate. And there should result, you know, in more availability for senators that want to serve on certain committees. []

SENATOR LATHROP: Yeah. And I'm wondering, I read this, this morning so I haven't had days to think about it, Senator Nelson. But I'm wondering if I'm looking at just take Natural Resources. Okay? We go one here, one there, one here, one there. Then we go to the next committee and one here or however it's done. It seems to me like when you get to the...when you get to later on in the process, and I did serve on Committee on Committees and kind of watched how this happens. People get their first choice early on and then they may be some place where they absolutely don't want to be. But that's just sort of a function of what their interests are and how many spots we have, isn't it? Does it necessarily change if we divide them by three versus two? []

SENATOR NELSON: Well, it seems to me that you might move from Third District to First and somebody go into that slot. And then you go into Second, by the time you come back to Third there may have been a lost opportunity for someone to go on a committee that they want. Do you follow me on that? Or to put people, let's not...that's not the way of stating it, that you may have two or three senators that are particularly interested in being on a certain committee and there would be less opportunity for someone to lose out. They'd have more opportunity to get on the committee if it's simply an alternate system. []

SENATOR LATHROP: Let's use Appropriations... []

SENATOR NELSON: Okay. []

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SENATOR LATHROP: ...because traditionally Appropriations has been kind of the committee an awful lot of people want to serve on. Right? []

SENATOR NELSON: Right, right. []

SENATOR LATHROP: I think that's generally... []

SENATOR NELSON: Yeah, I think that's fair, yeah. []

SENATOR LATHROP: ...generally a true statement. So how does your system change things? We have right now...what do they have on Appropriations, nine? []

_____: Nine. []

SENATOR LATHROP: Nine, so three from each district. []

SENATOR NELSON: Does that include the Chairman, the nine? []

_____: Yes. []

SENATOR NELSON: Okay, so actually we're... []

SENATOR LATHROP: The Chair would take up... []

SENATOR NELSON: ...that's elected from the floor. So... []

SENATOR LATHROP: The Chair would take up one of the seats... []

SENATOR NELSON: One of those. []

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SENATOR LATHROP: ...from his caucus. And each caucus would get a total of three. []

SENATOR NELSON: Um-hum. []

SENATOR LATHROP: And we spread them around. Now if you have 14 people that want on Appropriations and there's 9 slots, seems to me it doesn't matter whether we do that from two caucuses or three. You're still going to have five people that don't get on Appropriations. []

SENATOR NELSON: That's true, that's true. Yeah, it's not going to increase the number of slots. []

SENATOR LATHROP: No. And that really is if the intent is to try to help people get on the committees that they want... []

SENATOR NELSON: Um-hum. []

SENATOR LATHROP: ...then the answer is to increase the number of seats on the committee... []

SENATOR NELSON: You could do that. []

SENATOR LATHROP: ...until we accommodate the people that have an interest in it. In which case we'd probably have 25 seats on Appropriations and over in Business and Labor there would be 3. But changing the number of caucuses, I don't know if that accomplishes what I hear you tell me is the intent or the goal. That's my own... []

SENATOR NELSON: And that's your observation, yeah, right. []

SENATOR LATHROP: ...that's my own thought and anyway... []

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SENATOR LAUTENBAUGH: Any other questions for Senator Nelson? []

SENATOR UTTER: As a freshman senator, I have to admit a lack of knowledge of the background, the traditions a little bit with regard to the inner workings of the Legislature. But one of the things that, I guess, I felt like the three caucus thing worked pretty well. And maybe I'm just speaking from private experience. At least from my standpoint it worked very well. And the idea of getting together with the folks in the Third caucus and expressing preferences with regard to committees and the outcome of that expression was satisfactory as far as I'm concerned. I'm a little concerned, one of the things I heard before I came to the Legislature in more than one instance about the rural/urban split in Nebraska. And folks talked to me about that as though it were a...I wouldn't say it was an evil thing but at least it was a situation in the Legislature that existed. Now, whether it does or not, I don't know. I haven't actually experienced that. But it seems to me like going to the two caucus system intensifies that, if there is a split, a rift, a difference among legislators. That when we divide this up and say, okay, all of the rural folks are going to be over here and all of the city folks are going to be over here, that as a Rules Committee we're kind of intensifying that mythical, if it be mythical, rural/urban split. I guess my concept of the Legislature is that in the best interests of Nebraska we should not add splits if we can help it. And in the best interests of Nebraska that we should have us govern as one state. And I would hate to see us as a Rules Committee, I think, do something that may intensify a split whether it exists or not. How do you... []

SENATOR NELSON: Well, I don't...it's not my intention in any way to intensify any split. If anything, I am more for keeping the western and central senators and the urban together on all the issues that we can. Although they do have different interests. Senator Gloor, for instance, from Grand Island, who doesn't really represent any rural, he's representing an urban constituency. Now, he's still out in central Nebraska and he's going to have those interests. But we pretty much as it is right now have a rural/urban split just the...you can look at the map right there. So we aren't really changing anything

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much. It's just that we are in the two caucuses attempting to place those senators with common interests, such as Senator Heidemann, you know, down in southeast Nebraska, others that...where their interests are common being in that caucus than the more urban interests in the other caucus. And I would hope that that wouldn't aggravate any difference or split. []

SENATOR LAUTENBAUGH: Any other questions for Senator Nelson? Thank you, Senator. []

SENATOR NELSON: Thank you, Mr. Chairman. []

SENATOR LAUTENBAUGH: Any proponents that wish to speak? Any opponents that wish to speak? Any neutral testimony? Okay. We have rule (sic) 21 proposed by Senator Pahls. Yeah, Mr. Smoyer, I think you were going to present that. []

BRENT SMOYER: I'm Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, legal counsel for the Rules Committee. Senator Pahls was offered an opportunity to come speak to this rule but he declined it. So, essentially, I'll just be introducing it. As far as questions and answers I really cannot provide as much as I would like to. The basis of this rule is just a simple change from a two-thirds vote of the body to a three-fifth vote of the body to achieve a motion for cloture. It would change it from approximately 33 votes, two-thirds, to 30 votes, dropping it by 3. It really kind of lines it up with what would be needed to override a gubernatorial veto. And that's essentially the only major function I can see of it, speaking from a neutral point. []

SENATOR LAUTENBAUGH: Thank you. []

BRENT SMOYER: Thank you. []

SENATOR LAUTENBAUGH: Any proponents for this rule change? Any opponents?

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Any neutral testimony? Thank you. I guess we should get a sense of the body, I mean a sense of the committee. []

SENATOR LATHROP: Since they're all on the same subject matter or at least the ones that deal with the lay people on committees and so forth, that would make sense. []

SENATOR LAUTENBAUGH: Are there any that any members want to specifically handle separately? []

SENATOR ROBERT: Which ones are his? []

SENATOR LAUTENBAUGH: The remaining ones, 1 through 16. []

SENATOR ROBERT: Oh. []

SENATOR FLOOD: Good afternoon, members of the committee. My name is Mike Flood, F-I-o-o-d. I represent District 19 and am an ex officio member of this committee. I have a number of proposed rule changes that I'd like to discuss beginning with the proposed rule change number 1, which is in your packet. A number of these are innocuous. This essentially deals with the motion to indefinitely postpone, allowing the introducer of the bill to speak for five minutes to the motion. Currently the language is located under the heading "Shall debate cease." We're moving that language to Rule 6, "Bill stages of consideration," under General File and Select File headings. This is just a more logical place for the language and would make it easier to find. I worked with the Clerk on this. This is intended to make our rules easy to interpret. And there's nothing substantive changing with Rule number 1. []

SENATOR LAUTENBAUGH: Thank you. []

SENATOR FLOOD: Number 2 in your packet addresses Rule 6, Section 15,

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"Constitutional Amendments, Votes Required." It deals with the votes required for the passage of a constitutional amendment at a special or general election. This proposed language change would clarify the voting requirements. The Clerk felt this was...would be helpful and reading the rules so that everything was clearly spelled out. The new language is intended to make the procedure easier to understand. Proposed rule change number 3, this is regarding the time limit speaking. Our current practice for an introducer of the matter pending may speak ten minutes on the introduction, twice during the course of debate, and then they're entitled to a close. This has been our practice in the Legislature. And it clarifies that and puts it into the rule, in Rule 2, Section 10. It deals with the number of times a member may speak to a matter. It clarifies that the introducers close is included in the introducers opportunity...three opportunities to speak. Rule change number 4, this is something that I've dealt with on a motion to overrule the Chair. My ruling and consistent with other rulings, most recently on April 15, was that during a motion to overrule the Chair members do not have the ability to yield time nor ask other members questions. And this puts this in the rules. This has been the practice of the Legislature. And this just essentially says that you can ask...not ask questions of another member. This is consistent with the practice that we already adhere to on motions to overrule the Chair. Rule number 5, regarding "Appropriations Bills, Procedure After Veto." The Chair has ruled both ways on this in terms of whether the Appropriations Committee recommendation could be divided. The proposed language would clarify that the recommendation would not be subject to division. Rule change number 6, regarding "Governor's Messages, Amendments." We get a lot of communications from a lot of different agencies. This narrows the scope that the Clerk must read to communications received from other states. Obviously, if the Governor delivers a veto messages, and we're going to be relating any statements to the Legislature from the Governor. But you'd be amazed at the amount of information that's presented to the Clerk for communication over his lectern to the full Legislature. And this will clarify what, in fact, he has a duty to relate to the membership. Rule number 7, this deals with the rule that we have in place, the reading of a bill on General File section by section. The proposed change would delete that language from the rules. In

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recent history it has been used for filibustering purposes. I think there are enough opportunities to filibuster a bill without having the Clerk read bills section by section. This does nothing to stop someone from dividing the question when it's appropriate which is on almost every bill in front of the Legislature with the exception, if we adopt this rule, on the budget. But...rule change number 8 is something I'd like to spend a little bit of time on. It proposes to change the rule that deals with motions to reconsider. This proposed change would prohibit a member for repeatedly offering reconsideration motions in order to extend debate. The proposal places into Rule 7, Section 7 language which states: "The motion to reconsider shall be made by a member other than the introducer of the original question that is being reconsidered." Our rules state that a reconsideration motion must be made by someone voting on the prevailing side or not voting. Now a principal introducer of an amendment may change his or her vote to no or not voting for the sole purpose of offering a reconsideration motion. This maneuver has been used to extend debate when it is clear that a vote to reconsider will fail based upon the vote of the original motion. I think the purpose for a reconsideration motion is a situation where another member does actually reconsider their vote on the matter and would like to have another bite at the apple. And I think that it's appropriate to allow that to happen. And if someone did want to use this for filibustering purposes nothing would stop them from finding somebody else to do that. But when it's the introducer of the matter before the Legislature reconsidering their vote on their own motion I think that clearly dilutes the purpose of the reconsideration motion for purposes of procedure. Moving on now to proposed rule change number 10, this deals with select committees and proposes several changes. The first change deals with the Reference Committee. And if you're on the Business and Labor Committee you'll remember this. []

SENATOR LATHROP: Yeah, you skipped nine. []

SENATOR LAUTENBAUGH: Yeah, I think we skipped number 9. []

SENATOR FLOOD: Oh, I'm sorry. I'm sorry, I'll go back. Number 9 with regard to

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"Enrollment and Review." As the former Chairman of that committee, this deals...this rule deals with the motion to return to General File from E&R. The proposed change would eliminate this language from the rules. You know, you're got Select File, and General, and Final Reading to make changes on bills. I don't see any need to return a bill from Enrollment and Review to General File. If there are Enrollment and Review changes that need to be made they can obviously be made both in the E&R amendment and on the floor on Select File. Sorry. Rule number 10, if you were on the Business and Labor Committee you'll recall we had kind of a quagmire in terms of last year, Senator Utter, for your purposes we had a situation where the committee was not inclined to approve the appointment of an individual appointed by the Governor to serve on a commission. And we didn't really have in place a system to handle a non...a vote of no recommendation from the committee to the full Legislature. This deals with that subject. The first change deals with the Reference Committee, addresses the situation which I just referenced in which the Business and Labor Committee recommended the Legislature reject an appointment to the Commission of Industrial Relations. The proposed change would provide the Legislature with the ability to deal with an appointment that has been rejected by a committee and ultimately by the body. The change addressing confirmation reports requires the committee to make a report and then allows the committee to make one of three recommendations: (1) approve the appointment; (2) reject the appointment or file a report of no recommendation in the event of a tie. This rule change clearly spells out the status of the appointment based upon different floor actions for various types of committee reports. If the committee report is to approve the appointment and the body does not adopt the report then the appointment is rejected. Also, the appointment would be rejected if the body takes no action. If the committee report is to reject the appointment and the floor does not adopt the committee's report then the appointment would be approved. The rule as drafted provides the committee make a report of no recommendation in the event of a tie. But the actual floor procedure is unclear. And this is...and I don't have this addressed in here. So if you were interested in forwarding this to the floor for debate it has to be discussed by the membership here. Before advancing this rule for consideration by the

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full body I would request the committee address the floor procedure for this aspect of the rule change. It is not...this is not a completed rule. We need to decide what happens if there is a tie. And I don't really have a preference but I think we should have some procedure to deal with that on the floor, whatever that is. The second change deals with the Reference Committee as well. It addresses appointment letters received by the Clerk of the Legislature at the end of session. Currently, letters received during the last eight calendar days are not acted on. The proposed change would increase the number of calendar days to ten. This would provide the standing committees with more time to conduct confirmation hearings on the appointments and to prepare a report on the appointments and to prepare a report on the appointment for consideration by the Legislature. The third and final change deals with the Redistricting Committee. The proposed change would create a new subsection for the Redistricting Committee and would renumber the remaining sections accordingly. That's simply cosmetic. It has nothing to do with changing the way we do redistricting. This Legislature will obviously have to decide how that's going to be handled. Rule change number 11 deals with the committee statement. We've had situations where committee statements are filed with the Clerk that are incomplete, they lack necessary information. I think it is our role as legislators to make sure the Legislature is as transparent as possible so that members relying on those committee statements and citizens relying on those committee statements know what the bill is that we are going to be considering. This gives the Clerk the opportunity to not file or accept a committee statement and have the committee go back and do it until it's in fine form. Obviously, that's a tough position to put the Clerk in. But I think there has to be some standard that's adhered to so that we don't just simply accept a committee statement that's incomplete or even inaccurate. And in all reality the Clerk does not have the time to review a committee statement every line. But I think you know when you see one that is not ready for prime time you should be able to say to the committee staff and the Chairperson, we're not going to accept this; please give us a complete committee statement. We've had committee statements before that simply say: this bill amends this section of the law and with a few other sentences. And it simply didn't describe what was occurring. Proposed rule

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changes 12 through 16 address different aspects of the same issue, nonmembers of the Legislature serving on legislative committees, task forces, commissions, and advisory councils. Last year there were eight bills that would have created these task forces or made changes to existing task forces. Well, that may not sound like a lot of groups. Keep in mind the Legislature has only 14 standing committees. I and other members of the Legislature have spoken about this issue. I have several concerns with this practice. My first concern is that this practice is an unconstitutional delegation of legislative authority. We were elected to make the public policy decisions for the state of Nebraska. I think it is important for this body to keep in mind while nonelected citizens certainly do contribute to our understanding of the issues and these proposed rule changes do not prohibit our committees from soliciting input and advice from citizens, I feel it is important to reserve the official public policy functions with the elected members of our branch of government. A second concern is the separation of powers issue in terms of duties, membership, staffing, and funding of these task forces. One of the bills introduced last year that would have created a task force provided for the Governor to make appointments to the proposed task force and to select the Chair of the task force. At the same time staff to one of our standing committees was designated as the staff to the task force. Although the bill provided for two members of the Legislature to serve on the task force, the task force could have and probably would have been chaired by a nonmember of the Legislature. In this case we would have had a nonelected citizen directing the workload of our legislative committee staff probably selected by the Governor. And this is a serious concern to me. Bottom line, you and I were elected to do the people's business in this branch of government. And it's important we take that responsibility for that role while at the same time seeking input from those with more expertise in the subject matters we are addressing. Now let me go through some of the specific rule changes that comprise this package. Proposed rule change number 12 would amend Rule 3, Section 1, the rule that deals with committees of the Legislature in general. The new language to be placed in the rules reads as follows: "(d) Members"...and I don't think on the proposed rule change this is underlined. So I want to make sure I read it. "Membership on legislative committees shall be limited

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to members of the Legislature exclusively. This shall not prohibit standing committees from inviting citizens with expertise in an area within the subject matter jurisdiction of such standing committee to meet with members of the standing committee to provide input and advice." This proposed change would address bills and resolutions which create committees, task forces, commissions, and advisory councils, and membership on these committees by members of the Legislature and persons other than members of the Legislature. Proposed rule change number 13 amends the rule that deals with the resolutions. Other than interim study resolutions, the proposal would state the Legislature would not "authorize by legislative resolution a legislative committee, legislative task force, legislative commission, or advisory council with membership by persons other than members of the Legislature." The next proposed rule change, number 14, basically makes the same change as the previous rule change but it places this restriction on interim study resolutions. I'm not going to go ahead and read that. I think it's in your...in the rule. Proposed rule change number 15 outlines what process will be if a bill or resolution is introduced outside the parameters of our rules in the previous proposals. Therefore if a bill or resolution is introduced to create a task force, by whatever name it is called, and the membership includes both members of the Legislature and non-legislators this rule provides that the Reference Committee will hold the bill or resolution and not refer the matter to a committee for public hearing. The final proposed rule change in this package, number 16, authorizes the Speaker to not schedule any bill or resolution which is amended in the committee to create one of these task forces. Also in the case of an amendment being offered on the floor this proposal would state the amendment would be ruled out of order by the presiding officer. I feel very strongly about this issue. And I can go ahead and close and take your questions. Several of these changes today deal with cleaning up and clarifying our existing roles. This last group of rule changes would tread new ground in preserving our constitutional responsibilities to make the public policy for the state of Nebraska. Thank you. []

SENATOR LAUTENBAUGH: Thank you, Speaker Flood. Do we have any questions for

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the Speaker? Senator Rogert. []

SENATOR ROBERT: I have a few. Shall we do these by person or you want to go by rule? []

SENATOR LAUTENBAUGH: Why don't we just go by committee member, just to... []

SENATOR ROBERT: Okay, all right. Okay. I'll go back to rule change number 10. You've addressed, Speaker Flood, you've addressed most instances except one that I can see. What if the...this would be in the second paragraph of the changes. It says if the report coming from the committee is to reject the appointment and there is no provision here if the Legislature fails to act such as there is in others. This says if it's failed to be...if the report is not adopted what if we don't act on it? []

SENATOR FLOOD: When you said...is that what you mean by we don't schedule it? []

SENATOR ROBERT: We don't schedule it or we don't get a vote because in the previous paragraph it does mention if the Legislature fails to act on the appointment it is therefore rejected. We don't say that in the next situation where we actually put out a report that is to reject. []

SENATOR FLOOD: I'm okay with clarifying that language. []

SENATOR ROBERT: Okay. What would your...what would you...what would it be then? []

SENATOR FLOOD: If they...if...okay, let's say the committee...the full Legislature has to vote one way or the other under my proposal. []

SENATOR ROBERT: Right. []

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SENATOR FLOOD: And if the full Legislature doesn't vote one way or another on an appointment, depending on the type of appointment, they can be...and we adjourn sine die, in some cases that appointee would be treated as confirmed because we failed to take action on that appointment. []

SENATOR ROBERT: Okay. []

SENATOR FLOOD: So I will tell you I have...the Speaker, I think, has a duty to the body to always schedule those. []

SENATOR ROBERT: I just...yeah... []

SENATOR FLOOD: Yeah. []

SENATOR ROBERT: ...for example. Okay. Then jumping around a little bit, I apologize. On one of the last ones here, rule change 12, for example, can you give me some examples of committees, or task forces, or commissions that are now in existence that would be contrary to this rule if we changed it. []

SENATOR FLOOD: Community Corrections Council. []

SENATOR ROBERT: Is that the only one? []

SENATOR FLOOD: No. There are others out there that...Rural Development Commission, member of the Legislature sits on that. They would not be compromised by that. They're already in statute. []

SENATOR ROBERT: Okay. []

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SENATOR FLOOD: But you give me an opportunity to talk about the Community Corrections Council. We have three branches of government on there. There are two judges, there are two legislators, there are members of the executive branch, Department of Health and Human Services, Probation from the courts, and then citizens advancing policies out into, you know, advancing...making decisions on spending money, and reviewing program, and hiring people. At the end of the day it's a fourth branch of government. At the end of the day somebody has to be ultimately responsible because when you mix it up with so many different branches of government not only is it a constitutional separation of powers issue but who's ultimately responsible? The Governor is said to be, you know, he has the direction over who the committee hires for an executive director. But we have members of the Legislature on there that apparently have no ability to, you know, that have a say on that or don't have a say on it. It's just too confusing. []

SENATOR ROBERT: So you wouldn't...you don't necessarily have a problem with task forces that do not have legislative members. []

SENATOR FLOOD: No. []

SENATOR ROBERT: You just don't want to mix them up. []

SENATOR FLOOD: If...you can have all the task forces you want. They'd have to be appointed by the Governor or you can specify, you know, we're going to have this task force that's going to be an executive branch task force. It will have on it the mayor of the city of Tecumseh and Tekamah or however you want to do it, but it would be under the executive branch. And you still have the authority to do that. I have no problem with that. But when you mix both branches of government I do have a concern. []

SENATOR LAUTENBAUGH: May I have...are you done, Senator Robert? []

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SENATOR ROBERT: For now, yeah. []

SENATOR LAUTENBAUGH: Briefly, doesn't the Legislature remain ultimately responsible because we could remove the authority for these things to continue to meet, exist, these mixed task forces that you're worried about? []

SENATOR FLOOD: We do have the ultimately authority, yes. And, I guess, is your question...does your question go through do we need this rule change if we have the authority as a full body to make this decision? []

SENATOR LAUTENBAUGH: Well, my question was you said someone has to be ultimately responsible. Isn't it still us? []

SENATOR FLOOD: Well, an executive branch task force it's not us anymore, it's whoever the Governor is and the agency and the director of the agency, depending on how it's set up. Or it can be set up a lot more creatively as a noncode agency would a private board or something like that. We've had situations with the Behavioral Health Oversight Commission where we had nonmembers of the Legislature directing legislative staff, spending legislative resources out of the Legislative Council's budget without...with very little oversight from the Legislature with the exception of a signature from the Executive Board. My thought is we have 49 members. And if you look at the Beatrice commission we had, what, seven members that attended almost every meeting and did the work. And they're the ones that are going to walk back in the Capitol and make the decision on Beatrice. They're the ones that have a vote in the Legislature and they're the ones that have a microphone in the Legislature. So if ultimately the citizens have elected those seven members, you know, they should be the ones serving on the commission. And they can bring whoever they want in, either by subpoena or by asking people to come, taking trips to different areas of the state, we have that responsibility as members to do that. []

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SENATOR LAUTENBAUGH: Thank you. Any other questions? Senator Lathrop. []

SENATOR LATHROP: As long as we're on that rule I'd like to ask you this question or go through some hypotheticals. Obviously an investigative committee, like the BSDC committee, that works well and ought to be senators and if you're going to issue subpoenas the lay people should not be involved in that. But I'm wondering out loud about...tomorrow I'm going to probably put a bill in to require that Health and Human Services put a group of people together for the purpose of developing regulations relative to community-based programs, over, you know, things like provide for the safety and habilitation of the folks in there. There are some things that are beyond the scope of the expertise of the Legislature. And if you're having somebody develop rules or regulations or provide input or ideas or thoughts of a collection of experts, what's wrong with having a group of people that meet. Now maybe there shouldn't be a senator involved. And I certainly think they shouldn't be spending our money or bossing our staff or other senators around. But I'm just wondering if it's an area that requires expertise, and I'm just going to use the regulations for the safety and habilitation of...in community-based programs. I mean, we don't know anything about it. And we could conceivably develop enough of these committees where the state senators spend, you know, becomes a full-time proposition through the interim. []

SENATOR FLOOD: Well, when you're talking about making regulations that have the same force and effect of law under the Administrative Procedures Act I think that is, you know, the executive branch, it's one of the powers they have reserved to them under state law to be able to craft those regulations and to introduce them. We can't, we can't introduce regulations. We can craft the state law and give the agency the parameters of which it shall work in. And I think that's the purpose of a public hearing--to introduce a bill like that and to bring those people to the table and to accept public input and to solicit public input. And when the bill is on the floor make sure that it's in such a form that it sets strict parameters on what you want the state agency to do. And if you're unhappy with the regulation either as proposed or as passed, Senator Bourne in 2005

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introduced and passed a bill with Senator Fischer's help that allows the Legislature to call an agency on the carpet, bring them in front of the Executive Board, and make them justify their regulations. I'm all for the Legislature having as much say-so in what the policy of this state should be. I just, you know, if you wanted me to set up a committee to accomplish a goal to build a highway between Scribner and West Point, I could create a commission where I could guarantee you nine out of the ten people on there would recommend that they build that highway, maybe ten out of ten. I could do it...I could get whatever outcome I wanted by creating a task force. And that's inside one person's legislative district. []

SENATOR LATHROP: Maybe the thing that's got me a little uncomfortable is the idea that I've only been around two years and so I can't imagine all the different scenarios and the different occasions where we have set up sort of a mixed task force that's worked. But maybe the most recent example is the one that followed the safe haven where Senator McGill and Ashford, I think, met and served on kind of a...I think they called it a task force, where they met at Boys Town and talked to experts and kind of collaborated and tried to come up with some ideas. They didn't have any ability to legislate or perform any legislative function or ultimately spend money or pass bills. But that setup allows the two of them to return to the body with ideas, propose legislation and I'm... []

SENATOR FLOOD: I helped them set it up. []

SENATOR LATHROP: Yeah. And I'm wondering if there isn't...if there isn't a way that there's a...that the concept may be not bad in certain circumstances. But it's the circumstances where they authority to spend money or share or... []

SENATOR FLOOD: Under my rule you could still do that. []

SENATOR LATHROP: Why don't you tell me what the distinction is then. []

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SENATOR FLOOD: The distinction is under this you'd have to introduce a resolution, either an interim study resolution or a BSDC-like resolution or introduce a bill. I'm not stopping what Senator McGill set up. She came to me and I said, go for it. You can do this without a resolution. You can do it without a bill. You're not asking for money. You're not asking...you can use whatever room in the Capitol you want to use. You can use your resources as a state senator to get input on any public issue. She did it exactly right and she hit the nail on the head. And the way they put that thing together I'm completely comfortable with. []

SENATOR LATHROP: And that's just informally. []

SENATOR FLOOD: It's informally. []

SENATOR ROBERT: Just because they had no resources or availability to dictate policy. []

SENATOR FLOOD: They had all the resources they needed in terms of rooms and support staff, you know, to...you know, I can tell my staff to help me on an issue that I find important. You can do that without introducing a rule or resolution. What I do object to is a formal appointment of an individual that's a nonmember of the Legislature. And then he or she carrying that appointment into areas of the state where other members of the Legislature have no idea what's going on, and using that appointment in the color of their work, acting as the public extension of the Nebraska Legislature. That is only for senators. But I think we can do everything that you want to do with Senator McGill's task force without ever having to introduce a resolution. Quite frankly, that is the poster child, she is the main reason, I think, people should be comfortable with this because she pulled it off. You know, it's semantics, I guess, the word task force. I'm not opposed to all task forces. I am opposed to giving legislative authority. []

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SENATOR LATHROP: That's all I had on that particular rule. But I do have questions on some of the others. []

SENATOR LAUTENBAUGH: Why don't you go ahead. []

SENATOR LATHROP: On number 5, I'd like to visit with you about that and demonstrate my lack of understanding about the process along the way. Again with only two years experience, I'm drawing on our experiences with a gubernatorial veto of an A bill and our attempts to override the veto or the attempts that were made. What's this rule do to that process? And does it leave us free to, leave me free to, and I'm just going to use an example, the Meals on Wheels was one piece of a package of bills that were over...or which were vetoed two years ago, something I felt strongly about. And we had an opportunity to debate that. Would that... []

SENATOR FLOOD: No. []

SENATOR LATHROP: Why don't you explain the process or what this does to the process and whether or not I'm going to be free on the floor to pick out an appropriation from the group of appropriations that have vetoed or what does this do. []

SENATOR FLOOD: The only issue that the presiding officer has when someone files a motion to divide a question is whether or not the question is divisible. And in some situations if you have a three-line bill with one section and a repealer my ruling would probably be it's not divisible because it's only one issue. When you get a bill from Senator Johnson that's 1,500 pages and it's about, oh, Health and Human Services procedures regulating practitioners, it's clearly divisible. The question is, is it divisible in 900 different ways because it has 900 sections or is it divisible in two, you know, depending on the first part deals with the due process and the second part deals with the sanctions. With the budget, obviously one of the bigger matters the Legislature considers, you know, it's clearly divisible by agency. It's divisible by, you know, you

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could divide it up by General Fund expenditures and Cash Fund expenditures. I'm just saying I think the Chair has ruled both ways on this. I think we should make it not divisible. But it does not stop any senator from filing an amendment that says I want to amend the appropriation to Agency Number 62 on page 107 of the bill to change \$625,000 to \$1.3 million for Meals on Wheels. You can still do that. You can go in and amend it as many times as you want. You know, we have anywhere from 20, you know 15 to 20 amendments. []

SENATOR LATHROP: So all we're doing is saying once they put the Appropriations bill up somebody can't stand up and say I've divided the question. []

SENATOR FLOOD: Yeah. []

SENATOR LATHROP: But we can still pick at it, one appropriation at a time... []

SENATOR FLOOD: Correct. []

SENATOR LATHROP: ...by amendment. []

SENATOR FLOOD: Right. []

SENATOR LATHROP: If we were inclined to. []

SENATOR FLOOD: Okay. And this is...in this one we're dealing with vetoes. []

SENATOR LATHROP: Right. []

SENATOR FLOOD: So... []

SENATOR LATHROP: We don't get to amend it at that point do we? So is... []

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SENATOR FLOOD: So you want to divide the vetoes? I want to divide the vetoes. []

SENATOR LATHROP: Well, there may be...let's say that there's 25 appropriations that have been vetoed out of the Appropriations bill. And now it comes to us in a group and, you know, there's 25. And now is that a package and we have to...if I...if there's three things in there I feel strongly about that ought to be overridden do I have to vote...make the decision to vote for an override of all of them or just one of them? Can I break it down so I can consider them one at a time? []

SENATOR FLOOD: Well, if the Appropriations Committee's recommendation is to...they have the option of doing it separately and they have the option to do it collectively. And if they...Appropriations Committee decides to do it collectively you would, you know, you would be in a position where you could either up or down on that. So couple of years ago when we had the Meals on Wheels issue I recall it was a separate recommendation. We had seven separate recommendations, didn't we? []

SENATOR LATHROP: I don't think it was. []

SENATOR ROBERT: No, they were as whole. []

SENATOR LATHROP: They were hanging together as I recall. []

SENATOR FLOOD: But didn't they have seven different votes? []

SENATOR LATHROP: I mean, that was one of the frustrations. []

PATRICK O'DONNELL: I don't mean to interject. But let me see if I can provide some clarity here. When you get a veto and when you say A bill it's an Appropriations bill, it's not an A bill, separate. []

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SENATOR LATHROP: Got it. []

PATRICK O'DONNELL: Okay? All right. Appropriations bill, mainline bill, Governor gives you 15 vetoes, sends it back. The first option under the operating rules is the Appropriations Committee meets and recommends which of those 15 they choose to override. Okay? This proposed change basically says so when they come back to the Legislature with that report and say we're going to override 5 of the 15, that motion, that 5, you can't divide out those 5. You vote on those 5 as a package. Okay? You still then have the option to override any of the other ten. Okay? []

SENATOR LATHROP: That they've elected not to come out as a committee and say... []

PATRICK O'DONNELL: Exactly, exactly. []

SENATOR LATHROP: Okay. []

PATRICK O'DONNELL: And you could bundle them just as the Appropriations Committee did. But, you know, if I could give you underlying rationale here at least... []

SENATOR LATHROP: That would be good. []

SENATOR LAUTENBAUGH: Yeah, that's what I was going to ask next, so please do. []

PATRICK O'DONNELL: Okay. I think, at least when I put this together my theory is that the Appropriations Committee is the entity that put that budget package together and presented it to the Legislature, should have the first opportunity to decide amongst the nine members on that committee which of those overrides the Legislature should collectively do. They've got kind of the big picture perspective, if you will. And as Speaker Flood noted, the Chair has ruled different ways over the years as to whether

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that motion was divisible or not. And as you might surmise, some years there are members who didn't get things in the package that they wanted and other years they did. And so this draft would suggest that the Appropriations Committee gets the first bite of the apple in terms of what they want to do. If you allow for a division you really create a situation where you could have an endless series, especially if you had a large number of line-item vetoes, where you could have an endless series of packaging that would go on. And I think this is an attempt to allow the Appropriations Committee their day, if you will, in terms of the overall budget picture. Okay? I don't...it...I don't know if that works unfairly or fairly. []

SENATOR LATHROP: I'm just wondering though and thinking back on... []

PATRICK O'DONNELL: Yeah. []

SENATOR LATHROP: ...on the...my last experience with it. And they said...I thought the decision, and Senator Nelson is here, he may remember this differently. But I thought the decision was we're not going to recommend that we override any of the line-item vetoes. And if this were in place the body would then have to... []

PATRICK O'DONNELL: No, I don't think that's true, Senator. []

SENATOR LATHROP: And that may be the basis... []

PATRICK O'DONNELL: Okay. []

SENATOR LATHROP: ...of my misunderstanding. []

PATRICK O'DONNELL: If the Appropriations Committee came back and said we recommend you don't override anything, that's their report, you know, we're...they're done. You still have the option, as would any other member, to file a motion to override

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any specific piece or pieces of those line-items. Okay? You would still have the ability to do that. The committee has just come back and said we're going to recommend not to do any of them. Okay? You have not lost anything at that point. You still have all the options in front of you that you would have had before. []

SENATOR LATHROP: If the vote were the committee came out and said there's 15 appropriations that have been line-item vetoed, we recommend 1 through 5... []

PATRICK O'DONNELL: Right. []

SENATOR LATHROP: ...for...that the Legislature take it up on an override. Now that they've been packaged together and we have a...and they can't be divided, we now decide as a body whether or not we're going to override those...that veto, 1 through 5,... []

PATRICK O'DONNELL: Right. []

SENATOR LATHROP: ...or not. []

PATRICK O'DONNELL: Right. []

SENATOR LATHROP: If that fails, do we still get to go back to pieces through 1 through 5, appropriations 1 through 5 and have individual motions to override? []

PATRICK O'DONNELL: On...yes. You could not do... []

SENATOR LATHROP: So the fact that we've taken them up in a package... []

PATRICK O'DONNELL: ...a 1, 2, 3, 4, and 5 again because you... []

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SENATOR FLOOD: You could pull 3 out, you could... []

PATRICK O'DONNELL: ...you could vote on 2 and 3 together, or 1 and 4 together, or any combination thereof. The only thing you'd be precluded from doing would be considering 1, 2, 3, 4, 5 as a... []

SENATOR LATHROP: As a package. []

PATRICK O'DONNELL: ...particular override. []

SENATOR LATHROP: If that's the case, and as a nonAppropriations member I still have all the freedom to file whatever I want to file... []

PATRICK O'DONNELL: Right. []

SENATOR LATHROP: ...on the overrides. Then tell me what's the purpose of this rule. What are we accomplishing? []

SENATOR FLOOD: The purpose of this rule is you already have the ability to pull three out or pull two out or pull four out. The Appropriations Committee puts a package together. They've decided they want this to be considered in its entirety. You're not stopped from coming back later and pulling number 4 out and doing it separately and if you don't agree with their package and vote against it and vote to sustain the veto on that package. But if we start dividing up every one of these questions, the process could go on forever. We could have...you could put in, you know, the committee could put in seven veto overrides. And we could end up taking those one by one by one. And then if you didn't win on one you could come back and you could do two again. I guess it's meant to streamline the budget override process. []

SENATOR LATHROP: Would it not also result in this, and I appreciate the chance to

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have an exchange with you about it. Would it not also have this effect, if they say this is our block, 1 through 5, we'd like to take that up. And it goes first, right? []

SENATOR FLOOD: Right. []

SENATOR LATHROP: So what could effectively happen is the Appropriations Committee...maybe they ought to have this prerogative. But I just want to understand the mechanics. They take up 1 through 5, we override the veto. Because there's a little bit of something for everybody in there that they just can't pass up they vote to override. And now all the money is gone and it diminishes the change that number 20 or number 15 is going to have a decent shot. []

SENATOR FLOOD: I think it's conceivable that could happen. []

SENATOR LATHROP: Okay. Then I think I understand the rule. []

PATRICK O'DONNELL: Just one other observation. []

SENATOR LATHROP: I still have to contemplate whether I like it or not. But I think I understand it. []

PATRICK O'DONNELL: Yeah, exactly, sure. And think...I think another aspect of this, and I hope I'm not going to confuse the issue. On Final Reading you file a motion to return a bill for specific amendment. Okay? We can't divide that amendment because it's a motion to return for that amendment, so we can't divide. So oftentimes, as you well know, amendments that are returned from Final Reading to Select File are multifaceted, lots of pieces in there. And you do not have the ability to divide at that point in time. You do when we're on General File and when we're on Select File, but not at Final Reading. I think you could look at this as an extension of that kind of principle where, you know, you've got the principal introducer, in this case the Appropriations Committee, saying to

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you we've looked at all of the 15 overrides and we think 1 through 5 are what we should do. And I don't know if that's helpful. But again, that was part of my mindset. []

SENATOR LATHROP: I understand the philosophical similarities. []

PATRICK O'DONNELL: Yeah, yeah, exactly. []

SENATOR LAUTENBAUGH: Okay. That do it for you? []

SENATOR LATHROP: Yeah on that one. Let me look and see. Kent might have something. []

SENATOR ROBERT: I have one. []

SENATOR LAUTENBAUGH: Go ahead, Senator Robert. []

SENATOR ROBERT: Mr. Speaker, on Rule Change Number 3, this may simply be a fact of eight months of lost memory. It is my understanding that the procedure is you have 10 minutes to open, three times of 5 minutes, plus a 5 minute close. That's not correct? []

SENATOR FLOOD: Initially, when I looked at this I thought that was the case, off the top of my head. And sitting in the presiding officers chair, you know, off the top of my head when I first looked at that I thought you had three times to do it. []

SENATOR ROBERT: Ten minutes is your first time to open. []

SENATOR FLOOD: Ten minutes is your first time. But the closing is your opportunity, you know, you get, what is it, it's 5 minutes to close, it is your third time. And that has been the practice of the Legislature. []

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SENATOR ROBERT: Okay. []

SENATOR FLOOD: So I know where you're coming from because I, too, when I first looked at this was confused. Upon further clarification, though, it is intro, speak twice and close. []

SENATOR ROBERT: So you never really got five chance to speak on it. []

SENATOR FLOOD: Right. []

SENATOR ROBERT: You really only have four no matter what. Okay. []

SENATOR LAUTENBAUGH: Senator Lathrop. []

SENATOR LATHROP: So you think that's the rule right now. And all we're doing is... []

SENATOR FLOOD: Yes. []

SENATOR LATHROP: ...placing it specifically into our rules. []

SENATOR FLOOD: Yes. []

SENATOR LATHROP: But we've, as a practice, permitted people to open, close and talk three times in between. []

SENATOR FLOOD: We have followed the practice of intro, speak twice and close. But the reason I was confused when I first saw it is I just assumed they had, you know, I knew they had three times to speak after their opening. I didn't consider the...I mean we called it closing. I just said it was your third time, Senator. So...now... []

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SENATOR ROBERT: Actually (inaudible). []

SENATOR LATHROP: So does the Chair tell somebody, look, you... []

SENATOR FLOOD: If you...I think you might be... []

SENATOR LATHROP: ...introduced this proposition... []

SENATOR FLOOD: You might be confused because as a senator that is not introducing the amendment you have three times to speak. And that's where you get the three times. []

SENATOR LATHROP: Right. []

SENATOR FLOOD: But the closing is part, is their third opportunity. And that's why we say, Senator, this is your third opportunity, will you be closing. []

SENATOR LATHROP: Oh. []

SENATOR ROBERT: So the introducer of an amendment, you've always warned him it's his third time on his second consequential... []

SENATOR FLOOD: We do, we try to. []

SENATOR ROBERT: Okay. []

SENATOR LATHROP: All right. []

SENATOR FLOOD: But every other senator does have three opportunities to speak. []

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SENATOR LAUTENBAUGH: Anything else, Senator Rogert? []

SENATOR ROBERT: No, thank you. []

SENATOR LAUTENBAUGH: Anything else, Senator Lathrop? []

SENATOR LATHROP: Not on that rule. Let me just glance through these to make sure. Is it my understanding, you think, and maybe I'm addressing both the Speaker and the Clerk, that 10 needs some work before it's ready for prime time. []

SENATOR FLOOD: Yes. All that we have to do is decide how you're going to handle a tie vote in committee, a no recommendation. []

SENATOR ROBERT: And I would like a little...yeah, I would like a little clarification on the no action. []

SENATOR FLOOD: Yeah, because my rule is not complete in its form right now. I felt like the Rules Committee could wrestle with that a little bit. []

SENATOR LAUTENBAUGH: In the time allotted. []

SENATOR FLOOD: In the time allotted. []

SENATOR LAUTENBAUGH: Okay. []

SENATOR LATHROP: I think that's all the questions I have. []

SENATOR LAUTENBAUGH: Thank you, Mr. Speaker. []

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SENATOR FLOOD: Thank you, Mr. Chairman. []

SENATOR LAUTENBAUGH: Any proponents for these changes that we haven't already heard from? []

PATRICK O'DONNELL: I don't know if I'd characterize myself as a proponent, although I guess I am. I'd just...let me respond to some of your questions, if you're okay with that, Mr. Chair. []

SENATOR LAUTENBAUGH: Please, go ahead. []

PATRICK O'DONNELL: Senator Lathrop, just so...you asked about proposed change 3. Current practice is movers, introducers get four times. Okay? You're offering an amendment, you get four times; anybody else gets three times. That's what it has been. That's what...this rule would not change that. Okay? We're just making it clear. Dick and I, oftentimes, have to explain that to members. This is to try and help members. []

SENATOR LATHROP: I've been here two years and I didn't realize it. []

PATRICK O'DONNELL: That's...that's...okay. []

SENATOR LATHROP: I was thinking I had opening, close and three chances. []

PATRICK O'DONNELL: Right. []

SENATOR LATHROP: Okay. []

PATRICK O'DONNELL: I think we've talked about Proposed Change 5 enough, unless you have additional questions about that. Senator Rogert, oh, now with regards to 10, you had some questions about 10. I...I do think this one needs some additional work. I

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would suggest to you, though, that the...I'm looking at what's the third page, you know, where the new language is at the top of the page and the very last new language paragraph, where it says, in the event a motion fails...in the event a motion on a report fails to receive either an affirmative or negative from the majority of the elected membership then such appointment shall be deemed rejected. Okay? My frame of reference for this whole thing, and you were involved in this last year, Senator Lathrop, is that it takes 25 votes to do something. Okay? And Laurie and I wrestled with this in the office this morning in terms of let's say you have a motion to reject. But for whatever reason it gets 23 votes to approve the motion to reject and 21 votes against it. I'm not sure where that leaves us. I think that's when this last paragraph would then kick in which says, in the event a motion on a report fails to receive either in the affirmative or negative a majority vote, the appointment shall be deemed rejected. That's how I would construe that just so you know. It's unclear to me how if a report came out of committee, we've got a split committee, it's an even vote, I have a report that says they're making no recommendation, I don't know how you deal with that. I don't know how we deal with that on the floor. Okay? And that's part of why I think you need to think about this a little longer. I think that's cumbersome. And Laurie and I sat scratching our heads this morning, talked about options. But I don't think we've got them outlined in that proposal in front of you. []

SENATOR ROBERT: Can I comment just briefly? []

PATRICK O'DONNELL: Absolutely, Senator. []

SENATOR ROBERT: My concern is sort of I think you could pull this out of this last paragraph that says, in the event a motion fails to receive the majority vote, my concern is what if we don't get a vote? Nothing against the Speaker not scheduling, but what if some day somebody...the recommendation is to reject an appointment. It comes to the floor, somebody gets up sine die or the Speaker decides not to schedule it? []

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PATRICK O'DONNELL: Yeah. []

SENATOR ROBERT: What happens to the appointee at that point? []

PATRICK O'DONNELL: Well, then you know it gets back to the background on this is we have conflicting Attorney General's Opinions. []

SENATOR ROBERT: Right. []

PATRICK O'DONNELL: And the old Douglas, Clarence Meyer Opinion would suggest that if the Legislature hasn't taken express action to reject, that conferee stands confirmed. The Spire Opinion, which is a later opinion, tries to distinguish between vacancies versus, what the other term (inaudible) here? []

SENATOR ROBERT: The fill. []

PATRICK O'DONNELL: ...term... []

SENATOR ROBERT: Succession. []

PATRICK O'DONNELL: Yeah. And the Spire Opinion is a hard read for me. I mean, it's...I'm not sure. I look at it and I conclude different things every time I look at it. And it's "muckied" up the waters a little bit from my reading of it. And you're right. I mean I'm not sure where that leaves us with this draft. []

SENATOR ROBERT: Is it within our scope to say, in the event we take no action on a committee report, the committee report stands official? []

PATRICK O'DONNELL: I think you could say that and I think we could put that in the rules. I don't know what happens when the Attorney General, because the Governor

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has asked for an opinion, gets a different opinion... []

SENATOR ROBERT: Sure. []

PATRICK O'DONNELL: ...which is entirely likely or possible, you know. []

SENATOR ROBERT: Okay. []

PATRICK O'DONNELL: I mean, the rules are important. But they're constitutionally based. So I think certainly if there is something in the rules that suggests that, that gives us, the Legislature, an argument notwithstanding whatever Attorney General Opinion might be forthcoming to...as requested by a Governor who didn't like what you did or didn't do. Okay? []

SENATOR ROBERT: Okay. []

SENATOR LAUTENBAUGH: Wouldn't we probably run into the problem right away that action of a committee is not an action of the Legislature. []

PATRICK O'DONNELL: Yes. []

SENATOR LAUTENBAUGH: That everything is tied to what the body does or fails to do. []

PATRICK O'DONNELL: Yeah. And, I mean, the Speaker and I were talking about this. The other thing I think we were concerned about is we didn't think it was proper or appropriate for a committee to ultimately tie...the Legislature should express itself as opposed to just a committee of the Legislature doing that. So that's again what some of this tried to deal with. And I'm not sure we've been very successful, but that's where we were going. Okay? []

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SENATOR ROBERT: Yeah. And it may...my question may fall into that last paragraph. If it didn't receive a majority vote that is the same thing as not taking a vote... []

PATRICK O'DONNELL: Yeah. []

SENATOR ROBERT: ...in some theory. So okay. []

PATRICK O'DONNELL: Yeah, yeah. []

SENATOR ROBERT: That's it. []

SENATOR LAUTENBAUGH: Any other questions for Pat? Any other proponents? Any opponents? Any neutral testimony? I believe that concludes the hearing. Thank you all. Members, we'll go into Exec Session now. Do we have a motion for that? []