

April 4, 1995

LB 337

LR 6

SENATOR HALL: Senator Withem, to open on your amendment.

SPEAKER WITHEM: Yes, Mr. President, members of the body. I'm ready for this amendment now and I had quite of questioned whether I was going to run it or not, but I heard a couple of favorable remarks from people who were speaking on the previous amendment that this might be a good change to make. What I am...the amendment you can find on page 1396 in the Journal. It amends the section that indicates that these provisions will be self-executing, but the Legislature may make rulings to...or may make...pass legislation to facilitate these rights. The word facilitate has always caused me problems. I asked my counsel to go back and find out what the Supreme Court has said about the word facilitate. The one case that seems to be on point is that that was decided in September of 1940. At that time the Supreme Court, in the Winter case, ruled that any legislative act which tends to ensure a fair, intelligent and impartial result on the part of the electorate tends to facilitate the initiative power. My concern is that in recent years, when the courts have been asked to act upon constitutionality of legislative actions that have been taken in the area of initiative and referendum, they have tended to have, in my opinion, a more restrictive view on what the Legislature can do. The most obvious example of that would probably be the case, a couple of years ago, filed in May of 1992, be three years ago, dealing with the...LB 424 which the Legislature passed. In that case, in looking back on that the Legislature probably did go too far and the court probably did rule properly that the requirement in regard to people could only gather signatures totally within their own county, might have been too restrictive. But we've been talking about here on the floor a number of legislative changes to the initiative and referendum process. LB 337 has the Secretary of State developing and printing a manual. Secretary of State develop and print information pamphlets on the measures. We're talking about statements and letters not smaller than 16-type and in red print regarding the...and I don't remember if that was changed or not changed. But originally we were going to legislatively do things to differentiate between paid circulators and volunteer circulators. A number of other things. As a matter of fact there are current requirements in the constitution. I passed the...excuse me, current requirements in the statutes impacting upon the...the abili...impacting upon the petition and referendum process. And I think it would be arguable whether all of those, quote, facilitate. So what I'm doing is I'm not