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Rules Committee
January 11, 2017

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The Committee on Rules met at 1:30 p.m. on Wednesday, January 11, 2016, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on proposed rules changes. Senators present: Mike Hilgers, Chairperson; Paul Schumacher, Vice Chair; Burke Harr; Bob Krist; John Kuehn; and Jim Scheer. Senators absent: None.

SENATOR HILGERS: (Recorder malfunction)...this meeting of the Rules Committee. My name is Mike Hilgers. I represent District 21 which is northwest Lincoln and Lancaster County. I'm Chairman of this committee. I believe we're missing one but I would like to start with introductions. Senator Krist, would you mind starting?

SENATOR KRIST: Bob Krist, District 10.

SENATOR SCHEER: Jim Scheer, District 19.

SENATOR SCHUMACHER: Paul Schumacher, District 22.

SENATOR KUEHN: John Kuehn, District 38.

SENATOR HILGERS: And Senator Harr will introduce himself when he comes through. Senator Schumacher is also the Vice Chair of this committee. The Rules Committee, unlike other standing committees...unlike standing committees, does not have its own committee staff. So today Beau Ballard who's from office will be acting as the committee clerk. The purpose of this hearing today is to consider proposed amendments to the Legislature's permanent rules. We have received 27 proposals from members of the body as of Monday. Today we're going to hear testimony. We're going to hear from the introducers of those proposed rules. We may hear from supporters of those rules, opponents and neutral parties as well. And actually it looks like we may have some folks here who are testifying. Would you...by show of hands if you're here to testify if you're not a senator, would you raise your hand to testify. Okay. We do have a few members of the public here. We've also received some letters which we will introduce into evidence at the appropriate time. If you are here from the public and intend to testify, Beau

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Ballard has green sheets which if you, while you wait, if you would not mind filling out when you come up to testify, Mr. Ballard will get those sheets from you. Where are those, Beau?

BEAU BALLARD: (Inaudible.)

SENATOR HILGERS: Oh, I'm sorry. They're in the back.

BEAU BALLARD: (Inaudible.)

SENATOR HILGERS: As previously agreed, we will go...we will start in order in which the proposals were received. There will be some other senators who have proposed rules, have committee hearings themselves now or Executive Session. So we may alter that rule slightly. But we are going to go in the order...we intend to go in the order in which the proposals were received. So with that, we will hear I believe our first, Rule 1 and 2 is from Senator Albrecht. Senator.

SENATOR ALBRECHT: Good afternoon, Chairman Hilgers and members of the Rules Committee. Do I need to spell my name?

SENATOR HILGERS: Would you introduce yourself and spell your name for the record, please.

SENATOR ALBRECHT: Okay. My name is Joni Albrecht, J-o-n-i, Albrecht, A-l-b-r-e-c-h-t, and I am Senator for District 17. What I'd like to first request is the members Rule Committee consider after I consulted with the Clerk's Office, I'd like to withdraw the first rule change. It's my understanding we don't need to do that. So I'll now move on to the second one. Thank you for taking time to hear my suggested rule change. This is a small change which in no way would tip the balance of power for any of the caucuses in one way or another. This simply moves an extra legislative district from the Third caucus to the First caucus. And while I don't....while I do not feel that it would be a mistake to place LD17 in the Third District caucus, after the last redistricting, that's where Senator Bloomfield was sitting: in the Third Caucus. I personally live in the First Caucus. I'm with Congressman Fortenberry's area. So it's my belief that if I'm the new sitting senator, I should be moved to that particular district. I do have a wonderful district

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with both urban and rural areas and Wayne State College being one of them was named our best college in the state in 2016 according to Money magazine. Geographically LD17 reflects what a wonderful...what is so wonderful about our state and some of the different things that they're recognized for. In my district, the split between the First and Third Congressional District...in my district, while I realize that the majority of the population lives in the Third Congressional District, half historically are in legislative district...on my end of it. So for most of my constituents the congressional district that they have identified with now would be mine because that's the district that I represent. So, myself, I live in the First District. During my conversations with many of the legislative districts there, I don't know personally if there are other districts that are split like mine. Do any of you know? That would be a question. I understand that this is a process that normally is done around redistricting time, but if there would need to be a statute change or something to that effect I'd be happy to prepare the necessary changes. So I thank you for your time and if you have any questions I'd like to take them.

SENATOR HILGERS: Thank you, Senator Albrecht. Any questions for Senator Albrecht?
Senator Harr.

SENATOR HARR: Thank you. Do you know...so your district...and sorry I'm late. Your district is split right now, right?

SENATOR ALBRECHT: Yes.

SENATOR HARR: Where is the population basis in your district?

SENATOR ALBRECHT: The population district is heavier on district end of...in the Third Caucus obviously than the First, but I live in the First caucus area.

SENATOR HARR: Okay. But you represent the whole...

SENATOR ALBRECHT: Yes.

SENATOR HARR: What is the numbers? Do you know?

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SENATOR ALBRECHT: How many people live in the district?

SENATOR HARR: No, how many live in each part according to the last census tract?

SENATOR ALBRECHT: No, I couldn't tell you that.

SENATOR HARR: Okay. Can you give a guesstimate?

SENATOR ALBRECHT: There's 34,000, I have no idea how it's split up. Couldn't tell you.

SENATOR HARR: Okay. All right. Thank you.

SENATOR HILGERS: Senator Krist.

SENATOR KRIST: You'll probably have a pleasure to be here during redistricting. If you want to call it a pleasure. I went through the redistricting process. And although Senator Bloomfield and I made several suggestions for movements of lines and appropriately representing people, it was the last redistricting effort that put your district where it is and for good reason. I think if you look at the demographics and the...your population base in terms of the total population and the acreage, if you will, the total size of your district, I believe that was the right decision. Just besides you living in a different congressional district, tell me why it's important that we move the whole district into another caucus.

SENATOR ALBRECHT: Well, because if it's...if I'm sitting on a caucus for the state and I'm representing my...my Congressman is Congressman Fortenberry, but not that I can't deal with either one of them the same way, but if it's for purposes of what we're doing here for the state if in fact it says somewhere that it's based on population then, okay, if I'm...if there's more in one than the other. But I don't think going door to door I ever heard anybody even talk to me about these caucuses and whether I should be sitting in One, Two, or Three. And there's only one that's uneven and whether that's not the reason for the movement, but I would just think because that's where I live, that's where I would probably be. But if you can tell me that it's based on

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population and there's more and in the caucus Three than there is in caucus One then that's what I'd need to know too.

SENATOR KRIST: What I would like to do is go to Legislative Research and look at the information that we looked at in 2010 in terms of the redistricting. And I think you can see that there were sound judgment to be where it is. I would also offer that I'm very interested in Offutt Air Force Base which you know...

SENATOR ALBRECHT: So am I.

SENATOR KRIST: ...which district that's in. You know which district that's in, the caucuses that's in.

SENATOR ALBRECHT: Three.

SENATOR KRIST: Fortenberry's, right?

SENATOR ALBRECHT: Yes.

SENATOR KRIST: Okay, before it was Two and we move it around. It doesn't stop me from talking to Fortenberry every time I go to Washington D.C. So I think you represent 34,000 plus or minus a certain percentage. You also represent 1.9 million people. So it shouldn't stop you, as you said, from going to the other one. I can find no compelling reason to move it unless you can come back to us with information that either your demographics, the geographic area, or whatever is more suited one way or the other.

SENATOR ALBRECHT: So is that...that's what's most important to this body is to find out based on population?

SENATOR KRIST: What's most important I think is to look at history in terms of what the redistricting actually did and to look at why those reasons were there. And I don't think I've heard anything that says that none...that those reasons have...would change anything. And I can

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tell you Senator Bloomfield and I were locked horns with people who put different things in different places. But that's what happened. So I don't see that...I don't see that there's a compelling reason to do that.

SENATOR ALBRECHT: And are there other districts that split, other senators that sit in different districts, do you know?

SENATOR KRIST: I think there are people who sit on the line and that are in different and I think that's probably part of the research that you want to do if you want to submit this again. But right now, I'm sure that there are districts out there that if you look at the shoehorn around Grand Island and some of those places there's districts that are in different counties, that are in different caucuses. So look at the research that was done prior to the and during the redistricting process and see if there is a compelling reason. I don't see it.

SENATOR ALBRECHT: Fair enough. Thank you.

SENATOR HILGERS: Any other questions for Senator Albrecht? Senator Schumacher.

SENATOR SCHUMACHER: Just a couple questions. And maybe you answered this already, maybe you don't know. How many districts are in a similar predicament?

SENATOR ALBRECHT: I don't know that. I know that we are. We're in One and Two.

SENATOR SCHUMACHER: And if something, an accident or something were to happen to you that you no longer were here and the Governor appointed somebody on the other side of the street...

SENATOR ALBRECHT: He might ask for a rule change as well, he or she.

SENATOR SCHUMACHER: (Laugh) And so...and as we're all here for what we all think is too short a period of time. But so the caucuses which are generally fairly stable animals following fairly stable rules and simple rules that have worked for years, to flip-flop them back and forth

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when in substance you go and talk to your Congressman or all Congressmen, the senators, I mean I just...where you live, the senator person lives, I don't see where that compelling public policy is to contort what is a relatively simple system, unless you can kind of tell us.

SENATOR ALBRECHT: I just figured I was living in Fortenberry's district and that's where I should be sitting, in caucus One.

SENATOR SCHUMACHER: Okay. Thank you.

SENATOR HILGERS: Any other questions for Senator Albrecht? Thank you, Senator.

SENATOR ALBRECHT: Thank you.

SENATOR HILGERS: Are there any proponents here for either rules, proposed Rules 1 or 2? Any opponents? Any neutral parties? Seeing none, the testimony on proposed Rules 1 and 2 is closed. We'll now move to proposed Rules 3, 4, and 5. If you're here to testify on one of these rules and are unaware of which...where the rule falls in the order, I believe my staff, Mr. Brey in the back has a list of the rules and the orders in which we'll be considering them. So if you're here to speak on one that's later you will at least have some sense of where you fall in the queue. So can speak to Mr. Brey in the back. Good afternoon, Senator Schumacher. Would you mind introducing yourself and spelling your name for the record.

SENATOR SCHUMACHER: I'm Senator Paul Schumacher from District 22, S-c-h-u-m-a-c-h-e-r, and it's my pleasure to make these requests to this committee today. As a prelude to Rule Number 3, perhaps some of you have not been real familiar, I don't believe you had the opportunity, Mr. Chairman, to get real familiar with the thing called the Planning Committee. And the Planning Committee the Speaker now is automatically a member of the Planning Committee, as is the Appropriations Chair and other members selected by the Executive Board. And the Planning Committee was a brainchild of Senator Harms out in Scottsbluff. And he was big on planning and trying to figure out what's the long-range trends, what might be the appropriate responses to those trends, whether or not what we were doing on sort of a short-term basis within the Legislature was taking advantage or trying to buck those trends. And so this

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committee was created by statute as a special committee of the Legislature. And it has spent a lot of time over the last...it must have been ten years that it's been created in looking at big issues. It has been very fortunate that the University of Nebraska at Omaha, the public policy folks there have put a lot of time into researching demographics, researching cash flows, researching various trends with regard to the aging population, all those kind of things and each year the Planning Committee publishes a rather nice report on its activities and on its research. And as too many things are around here, probably not a whole lot of reading is done of that report. But nevertheless, it is very interesting and it is very good to have it spoon-fed to you if you're privileged enough to be a member of that committee because you tend to get some very good presentations on the issues. The statute says that the Planning Committee may propose legislation. And I joined the Planning Committee in my very first year because I thought it would be kind of an interesting thing and I think planning is probably pretty important. And in my time we have not proposed any legislation. We have made those annual reports, have sat through lots of meetings which generally run between one and a half and three hours, and have learned a great deal. When...but the discussion often within the committee was that, what do we do with this? How do we take this knowledge, and other than maybe having a briefing session which is done at the beginning of a Legislature, how do we make it relevant? How do we give a priority to something? And so in their parting meeting two of the senior members, Senator Campbell and Senator Gloor, made a motion that we bring to the Rules Committee a suggestion that like some of the other special committees we have the ability...the Planning Committee has the ability to prioritize two bills. And that is the gist of the first rule change, that two priority bills be given to the Planning Committee to spotlight and bring to discussion on the floor two bills that are somewhat consistent with the nature of the discussions that have been had and the research that's been done by the university. We now, I should say, have a small research budget that has been...is being used and I...Senator Krist, since you were kind of responsible for that, you may remember how much that is. I think it seems to me either \$25,000 or \$50,000.

SENATOR KRIST: \$50,000.

SENATOR SCHUMACHER: So we have a little bit of a way to reimburse the university for some of its efforts which is...they're just excellent. They're just excellent analysis, some counterintuitive things have come out of that. One of the things that was researched couple of

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years ago, counterintuitive which probably is lost in the pages of what lays on a credenza someplace gathering dust, is that there's often the notion that if we were to consolidate counties there would be huge savings. And oddly enough the conclusion was, you know, whether it's the Keith County sheriff that has a deputy sitting in Arthur County or a guy sitting in Arthur County is called the Arthur County sheriff, it isn't much cost savings. And there are some accessibility issues to the people in the counties that would be eliminated, but not much cost savings: counterintuitive but nevertheless that was the conclusion of that particular report. So any rate, this particular thing just is simply doing what Senator Gloor and Senator Campbell asked to be done and that is allowing the Planning Committee to have two priorities.

SENATOR HILGERS: Thank you, Senator Schumacher. Would you also briefly address Rule 4 because it also deals with the Planning Committee. We could take questions on both of those combined.

SENATOR SCHUMACHER: Right. This is, as I put that motion, the last motion, into writing, it occurred to me that what is also important since these are kind of unique bills that might be brought forward and they are maybe the kind of thing that are result of some detailed knowledge and the ability on the part of a committee to analyze the response of the participants at a hearing, that probably these bills, the default place for them to go is to the Planning Committee for hearing. And because this was not part of them what Senator Gloor and Senator Campbell suggested in their motion at the last Planning Committee meeting I felt it was only fair to them to subdivide these into two issues so that I wouldn't sit here and say, you know, this is all was in that motion when in fact it was not. This is integral to the first one. It would sure make things a lot more efficient and utilize as I think the Planning Committee should be utilized, the knowledge there, in order to propose...fulfill a statutory duty to propose legislation, also prioritize it, and also have the hearing on it so it gets some direct input as to whether or not it's missing the mark or not. So that was this and it's separated only for the reason that it was not in the motion made by Gloor and Campbell at that last Planning Committee meeting this year.

SENATOR HILGERS: Thank you, Senator Schumacher. Any questions on proposed Rule 3 or 4? Senator Krist.

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SENATOR KRIST: Senator Schumacher, thank you for bringing this and just to kind of fill in some gaps and then a question.

SENATOR SCHUMACHER: Okay.

SENATOR KRIST: First of all, there is a large budget, I would consider it largely because it's carved out of the Legislative Council's budget and it was meant to be an investigative process, a research process that we could fall back on. And I agree with you. The things that have been created at UNO are exemplary in the fact that given some of the research that we've asked for, the...one of the things that we're guilty of I think many times is reaching a conclusion without getting all the research that we need or trying to make the research match the conclusion. That's not the case with these folks. They're pure professionals and academics and just for the fact that some of those reports that have come out are so counterintuitive, they've been extremely well used I think throughout the body if they read the product. I'll also say that this is not without precedent. The Performance Audit Committee is also a nonstanding...not-standing committee of the Legislature and it does have priorities. So I think that it's well in line to say that when you do have a subject matter that's discussed there that you would necessarily have a priority go forward. I have to disagree with you on the referencing process because I think using that precedent of Performance Audit Committee, Planning and Performance Audit are separate functions that serve a wonderful research and investigative function for the Legislature. And to actually assign something to Planning would in some ways I think handcuff the independence of that research and that investigation so I can wholeheartedly support I think priorities being assigned to subject matter that's there. I don't see that that encumbers the situation at all. And in fact, I will reference, again, Performance Audit does not often use its priorities because the subject matter has to be discussed in one of the research projects performed in Performance Audit in order for them to attach. I was lucky enough to have Senator Harms give me one of his priorities for a bill that had been researched...similar subject matter had been researched in Performance Audit going forward. So I think there's great precedent in doing that and I would support the first part. The second, I think you and I have been on Planning for a while and we both realize that some of those things are not necessarily assignable, that we're very inquisitive in terms of what those statistics should be, but getting the actual data is not something that I think

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needs to be assigned. And so my question is, how fervent are you on the second part? And does it really...do we really need to assign the Planning Committee issues?

SENATOR SCHUMACHER: Do we really need to assign the Planning Committee issues? You know, there may be alternate routes to do it. But the Planning Committee often has cross-jurisdictional things that this research impacts. And it may be an impact on two or three different standing committees and so to try to pick, well, this one or that one is I suppose something that the Executive Board does every day. But nevertheless, there are some things that just simply transcend a number of committees because they are targeting out policies that may not be right for 15 years. Some about, you know, how do you take care of a transportation program to take elderly people to the doctor? Is that Health and Human Services? Is that Transportation? Is it...whatever other committee that would be applicable to but there was substantial research that was done and in conjunction with the Committee on Aging. So that was the idea, that that would be the default. And maybe that's the way I should have worded this, that the Planning Committee is the default committee and left up to the discretion of the of the Executive Board whether it's to be nondefaulted. So I mean certainly the Planning Committee I think should have some priorities. And it may be the proper committee to hear a transjurisdictional issue.

SENATOR KRIST: Thank you.

SENATOR HILGERS: Any other questions? Senator Kuehn.

SENATOR KUEHN: Thank you, Chairman. Senator Schumacher, a couple of questions I just would like to get you...the value of your experience on as we have a broader conversation about the role of the prioritization as we move forward with each individual senator having a priority bill, 25 Speaker priority bills, 2 priority bills for each standing committee, and now in my short time here we've got a State-Tribal Relations, Performance Audit each now have--four more priority bills. We're talking about increasing that by two while we're also recognizing that last year there were some individual senators whose priority bill did not get heard on the floor. So as I'm reflecting upon the great work that the Planning Committee has done and I hope they continue to do, I want to continue to support the work of that committee, I also am torn with how we then prioritize the priority bills in terms of if the purpose of the prioritization is to build a

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degree of egalitarianism among all individual senators that we each get one priority bill, a degree have egalitarianism between the individual standing committees, and then offer of the Speaker an ability to select 25 bills of importance to the body as a whole, what happens when we just continue to have so many priority bills we can't fit them in anymore and should there be a first-in-time, first-in-right kind of assignment to priority bills? Or how do you see this working as we go forward? Should we add two more to that list?

SENATOR SCHUMACHER: Well, last year was pretty unique in that we had we ran out of time, really ran out of time and I don't think we got to many of Senator Hadley's Speaker bills, unless they were reasonably uncontroversial. It was a bad deal. But nevertheless, that wasn't always the case. If Planning shouldn't have two bills for that, then maybe we should look at Tribal Relations, maybe we should look at the other ones. Or maybe we should play a little bit with the Speaker priority bills. But nevertheless, that Planning Commission not be able to get two priority bills in line with the rest seems to me maybe not wise. It may be a question of numbers that it shouldn't. But those are important issues that are looked at and sometimes it wouldn't get prioritized otherwise because to require a...if the Planning Committee introduces or proposes legislation under statute, to require it then for an individual senator on that committee to burn up their personal priority to prioritize a Planning Committee bill or to somehow amend the Speaker's 23 bills that Planning Committee proposals get the first priority of, this just seems like a simpler way to do it.

SENATOR HILGERS: Any other questions? Senator Harr.

SENATOR HARR: Thank you, Mr. Chairman. So...and I've never been on one of these types of special committees versus a standing. You...how many special committees are there?

SENATOR SCHUMACHER: Oh, gosh.

SENATOR HARR: If you know.

SENATOR SCHUMACHER: You got me there. I'm stumped. I know this is one of them.
(Laughter)

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SENATOR HARR: Okay. Performance Audit is.

SENATOR SCHUMACHER: I think the Rule Book has it if we can find it here. I think there's a list in here if I remember right.

SENATOR HARR: I should have looked that up. Sorry.

SENATOR SCHUMACHER: Rule 3?

SENATOR KUEHN: Rule 3, Section 5.

SENATOR HARR: All right, so standing...and then...

SENATOR SCHUMACHER: Special: Building Maintenance; Education Commission of the States--this is page 17 of this purple book--the Exec Board, huh, okay; Legislative Performance Audit; Planning; the Rail Compact, I thought we did away with that one, but...

SENATOR HARR: Whoa, whoa, whoa. Whoa, whoa, whoa.

_____ : We just stopped paying for it.

SENATOR HARR: No, no. We're paying for it. I'm on it. We go in two years; we leave.

SENATOR SCHUMACHER: Oh, okay.

SENATOR HARR: So don't take that...I guess I am on one. (Laughter) We don't meet as a group. Okay.

SENATOR SCHUMACHER: Higher Education Commission.

SENATOR HARR: That one is 15,000, yeah.

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SENATOR SCHUMACHER: And the Tribal Relations. So that's the last of them.

SENATOR HARR: Okay. So there are one, two, three, four, five, six, seven, eight it appears to me. And does Exec Board get a priority? How many do they get?

SENATOR KRIST: Two.

SENATOR HARR: Two. And well, we know Midwest Interstate Passenger doesn't get one. State-Tribal I think get...

SENATOR SCHEER: Get one.

SENATOR HARR: They get one?

SENATOR SCHEER: I think it's one.

SENATOR HARR: And Performance gets one or two?

SENATOR KRIST: Two.

SENATOR SCHEER: Two I believe.

SENATOR HARR: Two. Okay. So I guess my first question is, what should be the guidepost for future Legislatures, future Rules board determining who gets a priority and who doesn't? How did you rise in a short tenure and surpass me on my Midwest Passenger Rail Compact?

SENATOR SCHUMACHER: Because you lost your engine. (Laughter) Planning didn't show you were going to last very long.

SENATOR HARR: I mean that's been around since 2000, right? And it doesn't have a priority. How do we determine who gets...which one of these special committees gets one and which one doesn't?

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SENATOR SCHUMACHER: I think like everything else, you exercise some common sense. You indicated that you rarely...that committee rarely meets.

SENATOR HARR: Yeah.

SENATOR SCHUMACHER: And we meet pretty religiously every month.

SENATOR HARR: During session or year round?

SENATOR SCHUMACHER: Kind of year round, yeah.

SENATOR HARR: Okay.

SENATOR SCHUMACHER: And we meet every month. There's quite a bit of resources spent on the research that the university does now. It is an area which is not really addressed in an organized fashion by anything else. And it really has meaning...could have meaning that would transform into things that ultimately will save the state some money, or at least maybe deter the state from going down roads which will prove unfruitful. So I think that's part of the common sense. You look through the list really as we were going through there, quite surprised that of the ones that don't, the Planning Committee is clearly one of the ones that should.

SENATOR HARR: And there are nine members. Is that made up three from each congressional district?

SENATOR SCHUMACHER: So I think that there's...you submit your name to the Executive Board.

SENATOR HARR: Okay.

SENATOR SCHUMACHER: And if I'm not mistaken, also the Exec Board also appoints the Chairman. And so I don't think there are any rules other than common sense imposed by the Exec Board for distribution. Maybe Senator Krist knows.

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SENATOR HARR: Okay. Is it three per caucus or is it just whoever (inaudible)?

SENATOR KRIST: No. It's whoever wants to sit. There are positions that are filled by like the Speaker, the Chairman of this or Chairman of that. But then the rest of them are appointed ad hoc.

SENATOR HARR: Is anyone ex officio on there?

SENATOR KRIST: No.

SENATOR HARR: Okay.

SENATOR KRIST: (Inaudible) an ex officio.

SENATOR SCHUMACHER: And also as it was this last go around, many committee Chairmen were on the Planning Committee. And they're basically all senior people. Assuming that the Exec Board reappoints, there would only be myself which would be a seventh year on it and Senator Riepe. So this was a senior level committee that exited.

SENATOR HARR: Okay.

SENATOR KRIST: Speaker, the Chairman of the...may I?

SENATOR HILGERS: You may.

SENATOR KRIST: The Speaker, the Chairman of HHS, the Chairman of Revenue, Chairman of the Executive Board, and then you and Schilz and...

SENATOR HARR: Who was Natural Resources.

SENATOR KRIST: ...Riepe.

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SENATOR SCHUMACHER: And Senator Cook.

SENATOR KRIST: And Senator Cook who was the Chair.

SENATOR SCHUMACHER: Right, right.

SENATOR HARR: Okay. So I'm going to address Rule...I'm going to skip around a little and go to Rule 4. What type of bills would you see being referenced to Planning? So what I'm asking is when Exec Board does their...I guess I want a little more guidance so when Exec Board does their referencing, they can say, oh yeah, this one...this should go there or this should not go there. I mean, do you see abortion bills going to Planning because isn't that natural family planning?

SENATOR SCHUMACHER: (Laugh) Senator.

SENATOR HARR: I mean, what kind of bills do you see there?

SENATOR SCHUMACHER: I see bills that are not ones that would commonly be before a traditional one of the standing committees that would try to address a problem that there's a certain degree of certainty that the...is going to emerge in the next decade or so. I would see the bills coming...that the Planning Committee proposes certainly being referred to them or given priority to refer to them in the Planning Committee level because they probably are based on some rather in-depth research and discussion already for the Planning Committee, which by its nature would take at least five votes to propose a bill. So they have...they're serious bills that have done serious research on them that project something out into the future that is not an immediate crisis type issue that we seem to always drowned in, in the Legislature.

SENATOR HARR: Let me ask you a different way then. Having been on the Planning board, having known what kind of bills are probably being proposed this year, what bill would you see should go to Planning?

SENATOR SCHUMACHER: The Planning Committee has not proposed any bills in its history even though it has statutory authority to do it. I don't think there's ever been a bill proposed. And

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what we...what has brought up this idea of the priority and having something referred to it is to have a mechanism that takes some of that research and has an object to the research rather than just a report that is filed and sometimes referred to by individual senator or committee, but oftentimes that research has a real difficult time getting translated into action.

SENATOR HILGERS: Senator Harr, let me...I don't know if you have any additional questions. I know Mr. Speaker had a quick question.

SENATOR HARR: I'm still trying to comprehend, if it's okay.

SENATOR HILGERS: Please proceed.

SENATOR HARR: Thank you. Can you name a bill that would be referred to bill to the planning department...or Planning Committee then?

SENATOR SCHUMACHER: I would think that if the Planning Committee were to introduce it...and maybe we should be restricted only to bills introduced by the Planning Committee. I mean that may be an idea that's coming out of this discussion to help delineate it from just any random bill. I would think that what we've seen is largely dealing with demographics, largely dealing with the shift of population in a rather dramatic way into three counties and away from at least 67, 68 counties and the implications that that has. Healthcare is a big one, education as to how that shift of resources impacts those counties and impacts on the other end of the spectrum in the...and will impact poverty levels in the Omaha-Lincoln Metro, needs for additional educational resources there, those kind of things that we really don't think about every day but clearly from the reports of the committee are such...the research done by the committee are such we should be thinking about and possibly if we did think about would shape some of our spending habits and some of our priorities down the road. We have a real, real, real issue developing due to that repopulation or decrease in population of those 60-some counties and how we deal with that and begin to fashion policies on a long-term basis I would look to be embedded in some of this legislation.

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SENATOR HARR: Okay. Let me chip back to Rule 3 now on the priority. We do a lot of things here based on tradition and decorum but not always and a lot of things...way things have been done in the past are no longer...or may no longer because of term limits. If...what is there to limit what that priority is used for. So let's say we get five members together and they put a priority on a bill that expands Medicaid because there is no formal jurisdiction around that. What you're saying...I mean I could make the argument that's long-term planning for the state, healthcare is important, a large number of people in greater Nebraska are uninsured. So therefore, the Planning Committee can use its priority there. Would there be a thing to stop the Planning Committee from using a priority to expand Medicare...or is it Medicaid? Medicaid.

SENATOR SCHUMACHER: As the rule is now written, no. If the Planning Committee introduced a comprehensive health thing for rural Nebraska, for example, or transportation to the doctors as a subcategory of Medicaid or perhaps even the distribution of birth control kind of things, that would be another kind of area, and decided to introduce that health issue and prioritize it, remember, five people of that committee is what it would take to introduce that bill and to prioritize it. No. And if it would meet the same fate if it were just a general Medicaid bill, it would probably meet the same fate as one proposed by anybody else, or at least up to this point in time.

SENATOR HARR: Okay. Now...and I'll try to keep this short because I'm just trying...I don't know how special committees work. A standing committee, the Chair pretty much gets to decide how those committee priorities are used. Some committee Chairs say, hey, let's fan it out. You guys decide how you want to do it and we vote on it. In others the Chair just says this is what the committee priorities are going to be. How would it how does it work and how would you foresee it, for the record, working in a Special committee such as this?

SENATOR SCHUMACHER: Well, my experience, Senator Harr, has not necessarily the same as yours because I think on the Banking Committee as Senator Scheer when he was Chairman and Senator Gloor before him, and Revenue Committee there's some consensus. I don't think I've ever seen a Chair say this is what it is, and by gosh, this is the way it's going to be. I think there's always been a consensus of what was going into the committee priority bills. And some cases

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there were several bills, more than one, consolidated into a committee priority bill. I have not had the experience of having an arbitrary Chair saying this is the way it is and lump it.

SENATOR HARR: Well, let's see what the rule says. So 5, 5(b) says: "Each chairperson of those committees which are authorized to hold public hearings on bills may designate as priority bills two of the bills referenced to that committee and on which the committee has held a public..." So the rule pretty much gives full discretion to the Chair. Would you see something...now I don't know of those committees, I'm not sure what it refers to, of those committees if that's standing committees or if that's all committees. Well, I go to (c) and it says Legislative Performance Audit may designate but the principal introducer must concur with the designation as a priority bill and with the withdrawal of the designation once made. And then (d) says The State-Tribal Relations. Oh, so that's why you add (e). I'm learning how this works on the fly.

SENATOR SCHUMACHER: It's tricky, isn't it?

SENATOR HARR: So would you, I guess, would you be open to language that would probably clarify if it's the role the Chairperson or the role of the committee?

SENATOR SCHUMACHER: I think as it's worded it says "the committee," if I'm not mistaken the way this was worded, that the Planning Committee...

SENATOR HARR: Committee as established.

SENATOR SCHUMACHER: But if you feel there's additional language saying committee as opposed to Chairperson...

SENATOR HARR: Well, I would probably say by a majority of the committee.

SENATOR SCHUMACHER: You know, (inaudible) the Rules Committee certainly has the wherewithal and the authority to tweak and to insert language and you know fill in the blanks on these things.

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SENATOR HARR: So, may designate by a majority of the committee.

SENATOR SCHUMACHER: We can work that out.

SENATOR HARR: After...so on line three: Majority has the priority bills, two bills. And do you want any of that language that the introducer has to, must concur with the designation?

SENATOR SCHUMACHER: You know, I would envision for the Planning Committee to give by its majority vote a priority to a bill. It will then...a bill that it proposed under the statute. And so it would naturally have its introducer's priority. And we want to limit these priorities to bills proposed by the Planning Committee, that's fine with me rather than randomly pick out some bill out there.

SENATOR HARR: And this may surprise you, I haven't read these in a long time, the rules. Is there...I know by tradition there's always a priority of individual committee and then Speaker. Do you know if that's in the Rules? Anybody? Is that in the...?

_____: What's your question?

SENATOR HARR: The priority, that it's....

SENATOR SCHEER: Well, as far as when they come up?

SENATOR HARR: Yeah.

SENATOR SCHEER: Usually the priorities are in order as they get prioritized and go on the list. They just go to the top of the list. But they would still go in order as they come to the list.

SENATOR HARR: But generally we try to make sure all individual priority bills get heard. And Senator...and it's generally...individual...

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SENATOR SCHEER: There's no, as...that I have ever found, I see no specific record that these go in front of these or that, if that's what you're asking.

SENATOR HARR: Okay. Oh, that's interesting. Okay. So there's no deference given to necessarily personal priorities. That's just, again, tradition. Okay. And we...that's why we entrust the Speaker. Okay. Well, I think those are the questions I have at this point. Thank you.

SENATOR HILGERS: Thank you, Senator Harr. And, Mr. Speaker, did you have a question?

SENATOR SCHEER: Well, I guess, Senator Schumacher, the thing that...and I'll be honest, I was sort of supportive but then as we talked longer, it's one of those deals where I've talked myself out of it to the extent that when you hadn't...you've been on the committee for seven years. The committee has never brought anything to the Rules Committee that I'm aware of that said, gee, we needed the ability to have a priority bill for this. And as you talked about what those specific things might be, all of them, at least in my perspective were easily referenced to a specific standing committee that we have right now. Most of the information that has...that comes out of the Planning Committee, you're right, it's...UNO does a tremendous job in putting those things together and there's a wealth of information, especially even by each district. Those are phenomenal pieces. But if they spur or justify legislation, normally all information spurs or justifies legislation by an individual senator. And bear in mind, the individual senators, also those are the ones that are prioritized as committee bills. They're not...normally it starts with some senator's bill. And the reason that I sort of talked myself out of it is I was looking back at Senator Bolz, although she was not looking back at me, but I just...I'm looking and thinking we spent an hour even at the Legislative Council in relationship to behavioral health committee that we've been working on since we were done. And that's loaded with some stuff. We've sat and trying to figure out...and I think it really is immaterial, but there were several bills that were being discussed coming out of that but that committee did not have one bill or one priority that it's going to have to be able to be introduced. It's going to be introduced going into a specific committee. And the people on that committee worked very hard to come up with that. So mostly from the lack of, as long as it's been there, not having one example that, gee, this needed to be able to come out of Legislative Planning, I'd feel more comfortable bringing more priority bills

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forward if the need was shown before--just simply saying in case we need them, it'd be nice to have them.

SENATOR SCHUMACHER: Well, I think it's a bit of a chicken-and-egg situation. The Planning Committee, brand new idea. And it was different from these other committees like the Aging Committee because this is a special committee.

SENATOR SCHEER: But it is not different. For example, you've tried to correlate it that it is the same as, for example, Performance Audit. And Performance Audit literally came forward because it had the need for legislation. And that's how those priorities were given to them is because they actually were looking at things that they were investigating and needed to develop bills that were specific to the things coming out of there.

SENATOR SCHUMACHER: The focus of the Planning Committee over the last, as long as certainly I've been on it and I think the two years before I was on it, has been started out general kind of research, academic research. The frustration that was expressed in Senator Gloor and Senator Campbell's motion was that this research should be able to be transformed in a more effective way into legislation. It's a chicken and egg. If you don't have a priority and if the focus wasn't coming up with legislation, then there's not something to say, look at, this was our bill, and you know what, the Insurance Committee had other priorities of its own. They shouldn't have to burn up a...one of their two priorities on this, nor should an individual member of the Planning Committee have to burn up their personal priority on this. But this is something that at least a majority if not all because usually there's pretty much unanimity on the attitudes on the committee, but at least a majority of those people on the committee felt to be important enough to bring to the Legislature. And so I think it has not been a focus of the Planning Committee to exercise a statutory prerogative to propose legislation. And it has not been used. And that is a defect. When you say, okay, what if we start to say here's an issue that we've learned of and we're pretty sure is going to be an issue down the road in the future. Let's draft a bill. Then as a committee go hunting for somebody to prioritize it. It just seems like the Gloor and Campbell idea was a good idea to be able to have them put a priority on a bill to make sure that they don't put a lot of effort into a bill and it then end up sitting there.

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SENATOR SCHEER: Fair enough. Appreciate the comments, it's just that you did have...the committee did have the ability to propose legislation regardless if it got anywhere, but nothing has ever come out of that committee.

SENATOR SCHUMACHER: And as a practical matter, Mr. Speaker, this year is shot already...

SENATOR SCHEER: Right.

SENATOR SCHUMACHER: ...because the Planning Committee is not going to meet until the end of bill introduction. So by having this option available, the current Planning Committee may have one shot at it next year. And so we're really talking of something to take effect basically down the road and for the Planning Committee to work towards saying, look...and to tell the folks at the university, look, we want to be sure that we're right on this. Let's work on a piece of legislation because we know that we're going to be in a position to introduce it. Hopefully there are some younger people on the Planning Committee so that it's just...you know, there's some transitional thing. And we're going to be able to prioritize it.

SENATOR SCHEER: Fair enough. I don't want to burn a lot of time.

SENATOR SCHUMACHER: Right.

SENATOR SCHEER: That was my comments. Thank you.

SENATOR SCHUMACHER: Sure.

SENATOR HILGERS: Senator Harr.

SENATOR HARR: Thanks. And I would talk about this in Exec and this is something I think we will talk about in Exec but there will be other members who aren't on this committee. But first of all, do you has the Tribal ever used their audit...I mean their priority?

SENATOR SCHUMACHER: I think last year...

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_____ : I think they did.

SENATOR SCHUMACHER: ...Senator Larson had a bill that was before Revenue where there would be some...

SENATOR HARR: Gambling, yeah.

SENATOR SCHUMACHER: ...preferences or something...I'm not sure it was gambling or not.

SENATOR SCHEER: Colby did.

SENATOR HARR: Okay. Would you be willing to limit it to one and then let us test it and then if it turns out we need more than one we can advance it to two?

SENATOR SCHUMACHER: I think it's the Rules Committee's prerogative to amend this. It won't affect me very much one way or the other. I don't even know if I'm going to be on the Planning Committee again. And certainly even if I am, one year before it's gone. So this is not anything that I have any personal dog in the fight on.

SENATOR HARR: Okay. I appreciate it. Thank you. That's all I have. Thank you, Mr. Chairman.

SENATOR HILGERS: Thank you, Senator Harr. Any other questions on Rules 3 or 4? Senator Schumacher, you also have Rule 5 if you wouldn't mind addressing that one now as well.

SENATOR SCHUMACHER: Okay. This is a thing that I thought would be a good idea to bring up to the Rules Committee. And it's a result of recent activity and attempts to struggle with the information age and access to facilities. And as I'm sure probably all of you have gotten a memo or a letter of some description from the Executive Board that in order to have access to your legislative computer, you had to sign a form saying that you read some rules of some description before you were granted access. And big deal to read some rules, except that when they're in a thick book like this I'm not sure how many of those ever get read completely. (Laugh) But apparently, in this particular case, it was a simple one-page thing and you signed an affirmation

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or something saying, yeah, I read it, before you got the tools of the trade or the computer. I do not like that. And I do not like it because it sets a precedent that without it being in the constitution, without it being in statute, without it being adopted by the body in the Rules, a senator would have to do something or sign something to get access to the tools and instruments of being a senator. And what is the limit that that power if we say it rests in the Executive Board, it doesn't have to be in a rule, that power has? And how can it slip back and forth as different majorities change over the years? And a certificate of election means something. And when you come with that certificate of election you should not have to sign anything to be given the tools of the trade. And I think that if there's going to be requirements that you take a course, do this or that before you can have a tool of the trade that it should be something agreed to, debated, and passed on by the entire Legislature and put in these rules. We could very easily hear someone say, look at, we all have a microphone and that microphone is on radio and television and it's recorded for posterity and, you know what, we should all so that we don't embarrass the Legislature on the microphone take a course in broadcast etiquette and sign a certificate saying we took a course in broadcast etiquette. Or maybe so that we don't make...get too mad, have to do a little yoga before each session and sign a certificate that we did or read any number of things you can imagine, take a course in Marxist philosophy so we know it when we see it-- whatever. We should not have to do that. It's a pretty clear-cut thing that if you're elected you have a right to the tools of the trade. And that's basically what this says. This doesn't get into the issue whether or not the Exec Board can and make this edict for ordinary staff people because they are employees of the Legislature. I have no problem with that. But I have a great problem with when one possesses a certificate of election and is seated as a member of this body, them having to sign anything, read any catechism, do any exercise, acknowledge anything. We don't even require a certificate by a senator that they've read the rules. There would be a shortage of certificates if that was a requirement. So why this? And I feel strongly enough about it that I brought this before this committee. I don't intend on signing any paper. If I have to go back to getting those big stacks of books, so be it. I only use that computer for one thing and that is to read a bill on the floor as it comes up and the amendments to it and hit it with the printer so I can take my pesky "overliner" to it and try to figure out what I'm voting on. And I mean it's part of a very complicated issue that I think the Exec Board realized and what we do with telecommunications? We can do a lot of things. But I think a certificate of election entitles you to

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the tools of the trade and you should not be required to do one single thing more unless it is voted on by the body and part of these rules or in statute or the constitution.

SENATOR HILGERS: Thank you, Senator Schumacher. Any questions on proposed Rule 5? Seeing none, thank you, Senator Schumacher.

SENATOR SCHUMACHER: Thank you.

SENATOR HILGERS: We will...we were handling all the...for ease and efficiency and so you didn't have to go back and forth, I wanted to...

SENATOR SCHUMACHER: I need the exercise, Mr. Chairman.

SENATOR HILGERS: Are there any proponents on proposed Rules 3 or 4?

JACK GOULD: Senator Hilgers.

SENATOR HILGERS: Yes, sir.

JACK GOULD: My name is Jack Gould. I would like to testify more to the process than a specific rule. Is that possible or not?

SENATOR HILGERS: Are you here to testify in favor of either of the rules, any of the rules?

JACK GOULD: I am not. I'm not supporting or opposing a specific rule. I'm really wanting to know if I can address the process in general.

SENATOR HILGERS: Of rulemaking?

JACK GOULD: Of rulemaking, yes, that's a big part of it. Yes.

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SENATOR HILGERS: I don't think this will be the time for those types of comments. If you have any written submissions you'd like the committee to consider we're happy to consider those.

JACK GOULD: I've heard the word "tradition" used a lot here already today. The ability to speak is traditionally one that this Legislature stands for. My comments are very short but they're directed specifically at just the outcome of the process. And I...you know, if you say that there will be another time, I'm wondering when that would be.

SENATOR HILGERS: If you have written comments and you'd like to submit them, we'd have to review them and put them into the record as to the process.

JACK GOULD: In other words, I can't speak to you directly in front of the public.

SENATOR HILGERS: You can, although to be fair to all the other testifiers who are here to speak on one particular bill, we can't just let anyone just come on and speak on any particular issue.

JACK GOULD: If I wait till the end of the hearing would I be allowed to speak?

SENATOR HILGERS: At the end of the hearing you can speak with the committee members after we adjourn.

JACK GOULD: Not in a formal process of speaking to...this is a body that's not easy to reach. The Rules Committee traditionally has probably not had a lot of questions asked.

SENATOR HILGERS: How much long do you think your comments may be, Mr. Gould?

JACK GOULD: If it exceeds five minutes I'll be surprised.

SENATOR HILGERS: Given that everyone is waiting, if you wait until the end we'd be happy to take those comments, sir.

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JACK GOULD: Okay. I will do that. Thank you.

SENATOR HILGERS: Thank you. Are there any proponents for Rules 3 or 4? Any opponents? Anyone testifying in the neutral capacity? Are there any supporters for Rule 5? Any opponents or those testifying in a neutral capacity? Seeing none, the testimony is closed on proposed Rules 3, 4, and 5. Next we will hear on proposed Rule 6 from Senator Kate Bolz. Welcome, Senator. If you wouldn't mind introducing yourself for the record.

SENATOR BOLZ: (Exhibit 1) Sure. I'm Senator Kate Bolz; that's K-a-t-e B-o-l-z, and I represent District 29 in south-central Lincoln. I'm proposing a rule change that formally puts into the rules what accounts for full and fair debate under Rule 7, Section 10. The proposal would deem full and fair debate as eight hours in General File, four in Select File, and four in Final Reading. The legislation clarifies expectations and assures that each bill is treated in the same in terms of process. Our Unicameral Legislature is built on principles of inclusion and participation and the televised public floor debate is a part of that process. It is in the public interest to ensure that each issue up for consideration receives full attention from the body and from the public and sufficient time for discussion to improve any bill with the members of the Legislature as well as members of the general public. So clarifying expectations about how this will occur when issues are under debate is first and foremost important to the second house. This legislation clarifies practice that has changed over the years. Prior to 1992 there was no way to end debate. In the past, between 1992 and 2002, the rules have listed eight hours for each stage of consideration. Then in 2002 it was removed from the rules and left at the discretion of the Speaker for what constitutes full and fair debate. Speakers have generally considered eight hours of debate on General File, four hours, and then two hours to be full and fair. But last session Speaker Hadley reduced the length of time for what was considered full and fair debate on General File from eight hours to six hours. Other bills have been determined to have full and fair debate even when members of the body have not had an opportunity to speak even once. So there has been some inconsistency in terms of what has been determined to be full and fair debate. And this rule change would clarify and put into the rules specifically what we mean by full and fair debate. I think it would also allow for consistent enforcement. The determinant of full and fair debate should not be dependent on who happens to be presiding in the Chair at the time of debate. And further, the Rules Book specifically references that the determination of full and fair debate is at

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the opinion of the presiding officer. And I don't know that it's best practice to allow our rules to be determined by the opinion of a presiding officer. I think all bills should be treated the same in terms of debate. I have personally both supported and opposed cloture votes. I've been on both winning and losing sides of these kinds of issues, debates, and votes and I'm not trying to bring this legislation to encourage or discourage the use of this tactic but rather to make the rules fair and clear. And I appreciate your consideration of this rule change.

SENATOR HILGERS: Thank you, Senator Bolz. Any questions for Senator Bolz? Mr. Speaker.

SENATOR SCHEER: Well, I would just note if this was adopted, trying to use my memory from last session which was a short session being 60 days, we had 22 filibusters. And utilizing eight, four, and four, that would mean those 22 filibusters would have equated 44 days of the 60-day session. And I truly believe that there needs to be some flexibility left within the system and I think part of that relies heavily on this selection of the Speaker that things will be fairly handled. And I think we have not demonstrated over the last several years that things are going to be less contentious or perhaps cloture vote being used less. And I honestly believe that we might be better served at the discretion of the Speaker than unilaterally setting specific times without the option to move things that are obviously perhaps on some occasions not in the best interests of the body but a very, very...I'm not talking about a minority, but exclusively perhaps one or two members to grind things to a halt I don't think is in the best interest of the state or the body. And I think sometimes that's where we are looked at unfavorably by the public as not being able to totally do our jobs. And I'm very cognizant that this is an important issue, but I would revert back to a comment that Senator Harr made, reported, and I truly believe that: It's not hard to kill a bill. You can get four or five people and it doesn't matter if it's two hours, four hours, six hours, or eight hours, it's easily done. But the hard part is putting together the coalitions of people in order to get legislation passed. That's much harder and I just hate to tie our hands on both ends of the stick.

SENATOR BOLZ: You know, certainly there are multiple perspectives on this issue. I guess to the conversation I would add that it is also a Speaker's discretion whether or not he or she even schedules a bill and when he or she schedules a bill. There are multiple buttons and levers here.

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Part of what I hope to achieve is consistency so that one controversial bill isn't treated differently from the next controversial bill.

SENATOR SCHEER: Absolutely. I don't disagree with that.

SENATOR HILGERS: Senator Harr.

SENATOR HARR: Thank you. You know, and we're going to have a long talk, discussion today about filibusters. And so I'm going to probably get as many people's opinion as possible and since you're in the hot seat, I'm going to get yours first. First of all, I understand where the Speaker is coming from. This would take some discretion away from the Speaker. I personally would rather see that it's at discretion of the state senator from Legislative District 8. I think that would be the fair way, right? But my question...I mean in seriousness, it does take power away from him and I understand why he'd be against it. And anyone in that position should fight to protect their power or at least the prestige of the Speaker because we had a previous Speaker, Senator Hadley, Speaker Hadley, and he took it from eight to six. And while past performance does not indicate future actions, it's a good indicator. And looking at past performance I saw when we went from eight to six the number of filibusters actually went up, right? And I don't know if there's a causation there between those and I'm trying to figure out is it, we had more...in your opinion, did we have more because it took less time and it was easier to do? Is that why you think maybe we had more since now, hey, I can do a filibuster. I need 33, it only takes me six hours. It's not going to now can affect my other bills down the road because we're not going to take as much.

SENATOR BOLZ: I mean I guess I would respond to your question slightly differently and just say that if someone is clear that they have eight, four, and four hours on the floor to defend their perspective, I would hope that they would think seriously about whether or not that is of such importance to their district and to the people of Nebraska that they're going to slow down the legislative process in that way. So I mean I guess changing it to eight, four, four I would hope would make people seriously consider whether or not to pursue this.

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SENATOR HARR: The first question I have is, do you think six encouraged or discouraged more if you have...or do you have an opinion on more filibusters?

SENATOR BOLZ: Well, I can share with you that my staff gave me a very helpful chart that said in 2016 we had 24 filibusters, whereas in 2015 I think we had 14. In 2014 it looks like it was closer to...it's a bar graph here so it was under ten--seven or eight. During that period that I talked about where in 2002 it was eight, eight, and eight, it was...2002 had four filibusters; 2003 looks like it had two or three; the next year was six. So I think when there was a longer debate for filibusters, the data illustrates that there were fewer filibusters.

SENATOR HARR: So it is your contention that amount of the filibuster has a correlation on the number that we have.

SENATOR BOLZ: A correlation. I couldn't probably speak to causation, but certainly correlation.

SENATOR HARR: At least a correlation. Okay.

SENATOR BOLZ: I'd be happy to share this chart if the committee is interested.

SENATOR HARR: Oh that would be wonderful if you have them.

SENATOR BOLZ: Yep.

SENATOR HARR: And so it's your contention that's why we need to increase the time because, right, I mean it's what Speaker Scheer brought up. We only have a certain amount of time. And if we...if I filibuster every bill, guess what, my bill probably isn't going to be heard, and by the way, either are some of my colleagues and they're probably going to be angry at me, disappointed because they spent a long time on their bill and especially with term limits, every session matters more and more to us. And so it's your proposition that we be more judicious on our use of filibusters.

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SENATOR BOLZ: I would hope that that would be a part of the results, that we would be more judicious and thoughtful about whether or not we take it to the mat if we know for sure that our cloture debate will be 16 hours on the floor in total. But I also think clarifying and making sure that every bill is treated the same is an important part of this conversation.

SENATOR HARR: And why do you think that's important?

SENATOR BOLZ: Because I feel just as passionately about the issues that I support or oppose as you do, as Senator Krist does, as Senator Scheer does. And I just don't think that it's fair that the discretion of another member of an equal...another equal member of this body gets to choose whether or not my bill should have more or less debate.

SENATOR HARR: And the Speaker could still set up a situation where your bill starts specially set. And after a certain amount of time debate moves to a different bill, correct? And it may not come back on the agenda or on the calendar.

SENATOR BOLZ: Right, the Speaker still has the authority of scheduling. Absolutely.

SENATOR HARR: So they would still have...he or she would still have the ability to control somewhat if they know there was a controversial bill that's going to be filibustered. So it wouldn't have to go all eight hours, would it?

SENATOR BOLZ: Correct.

SENATOR HILGERS: Senator Krist.

SENATOR KRIST: I'm only going to talk one time on filibusters today. I see that there are several here. And, Kate, you're in the chair so I'm going to direct my comments towards you. Please don't take them personally. The problem with consistency is that the Speaker's authority could be to go from eight to six to four to two to one. It's it's pretty much up to him...or her, sorry. I disagree with that. I disagreed with it and I've told Hadley and I told Adams and I've told everyone who has sat in the Chair. I believe that Speaker Flood was probably one of the best at

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managing floor operations. He left it at eight, four, and two all the way and it was his scheduling authority that was the most notable where he would pull things off the schedule until people reasonably worked out their issues. So what we're talking about here is a new group of people that came in, and you can point to the point in time when it happened, that figured they could kill anything with 17 votes. Let's talk reasonably about what the real catalyst is. It's people trying to shut people up and not allowing another viewpoint, another ideological point, another philosophy to be heard. That's wrong. That is dead wrong. I would suggest to you that eight, four, and two would be good for a long and six, four, and two would be good for a short. And that philosophy is standard to give everyone an equal playing field coming in and then put it back on the Speaker to say this is going nowhere, because I was told by Senator Flood get your s*** together because it's not coming back on...

SENATOR HILGERS: Senator, excuse me. Please...this is a public hearing. Please watch your language.

SENATOR KRIST: Thanks for your correction. I really appreciate that--get your s*** together and make sure before you...

SENATOR HILGERS: Senator, Senator...

SENATOR KRIST: That was an exact quote, Senator--before it's coming back on the floor. So that's where I stand on this issue and I honestly believe that we can get along and we can collaborate and we can go forward and we can reasonably listen to each other in terms of going forward. I do believe that if different personalities enter into leadership that we might see that go down. I trust at this point that I don't think Senator Scheer is going to go below six. And eight, four, and two seems to have worked for a long time. Whether we flip-flop and try to put the burden on proof as we will see here soon on 17 or 33 or 30, I think that's a whole different debate. But I appreciate that you brought it forward and I do appreciate the fact that I think that in, at least in the past year the other factor that is weighed is that Senator Hadley did not like to go past a certain point during the day. There were times in this Legislature where 11:59 day after day after day may have been warranted and it really kept people from abusing the time on the floor as well. So that's all I'm going to say on the subject.

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SENATOR BOLZ: I've got a brief comment to add.

SENATOR KRIST: Please do.

SENATOR BOLZ: To your comments on being prepared and floor management, I think another benefit of consistency relates to those of us...we are all citizen legislators. And many of us have other responsibilities, other jobs because we are citizen legislators. And in terms of being able to organize your votes, being able to count on people being where they're supposed to be when they need to be there, especially when we do go to late night I think consistency in terms of what to expect in Floor Debate could be helpful to either moving or blocking a piece of legislation.

SENATOR KRIST: All right. Thank you.

SENATOR HILGERS: Any other questions for Senator Bolz? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. If I think back through the filibusters that we've had, they seem in my mind to fall in about three categories. One usually early in the session maybe doesn't involve priority but it involves a bill voted out of committee early. What comes to mind most of the time, I think was two years ago when we spent a full filibuster on whether or not a neighborhood guard should have the ability to have amber lights on the truck. There was no substantive discussion after probably the first hour. Then whether or not trucks in north Omaha near the cattle yards should wash their manure out ahead of time or something like that. And that likewise there was no substantive discussion after about an hour. And then I think the one that everybody was afraid to argue against but somehow it got a filibuster was one by the volunteer firemen, that a cigarette lighter should have a safety switch on it of some description. And again, it wasn't very long after we ran out of substantive discussion. On the other hand, probably if we were talking about a major tax shift of some kind, for example, eliminating the Property Tax Credit Fund or increasing the income tax rate or decreasing it or locking in tax cuts in some formula. All those are incredibly complicated issues with profound long-reaching implications and may well deserve more than eight hours of substantive debate, likewise a major cut to the university budget, assuming the Supreme Court reverses Roe v. Wade, a discussion on what the parameters of Nebraska's choice versus abortion things are. My mind, eight hours on

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those kind of issues are way, way not enough because they're going to require a really deep philosophical examination of complex issues with far-ranging implications. So do you see...is some kind of a sliding scale appropriate? How would you see something like that if it's not a personal priority bill, if it's not a committee priority bill, maybe a different schedule?

SENATOR BOLZ: The language that I have proposed, and I'm going to read it verbatim so that I am accurate, says that for purposes of this rule, full and fair debate shall mean no less than eight hours. So if the presiding officer and the Speaker and the introducing legislator, the body as a whole deems that more debate is appropriate, this would not prohibit additional debate but would say that at least a minimum of debate shall be considered for the purposes of determining what is full and fair.

SENATOR SCHUMACHER: For amber lights?

SENATOR BOLZ: You know, I guess what I would say is that if the body is spending time on an issue that is not of deep importance to the state as a whole, it's incumbent upon us as members to address the Speaker and ask him or her to perhaps not reschedule it.

SENATOR SCHUMACHER: When we have this...I think there's a rule that says if...because a lot...in some of these filibusters, the same thing is said by people over and over and maybe what is said isn't even pertinent to the issue or is redundant and clearly it's being done for no other purpose than to chew up the clock. Yet we have a rule already that says if the argument is reduced to chewing up the clock and a member raises that to the Speaker's attention, that there's authority to shut things off because it's not contributing to debate. Yet I don't think in my time here that rule has ever been used or invoked. Do you know why not?

SENATOR BOLZ: I guess my perception is that because it again reverts back to this idea of an individual's opinion. If it is the opinion of the presiding officer that someone is debating for dilatory purposes, it's difficult to prove. And again, that's the language that's used in this section of the rules which is that it should be the opinion of the presiding officer and so to the degree that we are able to not have rules based on opinion I think we should. You know, I think it would be appropriate if a presiding officer did say that they thought that an issue was for dilatory

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purposes if it was clearly so. If you're removing commas and changing minor pieces of the legislation, there may be a point time in which that's appropriate. But I think that's another lever that we can, as a body, use to make sure that we can do our work.

SENATOR SCHUMACHER: I guess I kind of view this as a battle between fairness and something in a hard-and-fast rule and common sense and how do you begin to create fair parameters because all Speakers for all time may not be fair. And if the body takes a philosophical turn that one particular philosophy or state of mind is distinctly better and heads a stampede down a road sometime in the future, these rules may stay on for sometime in the future. How do we breed that into the rule to basically control a Speaker that might run amok at some point in the future and yet let the Speaker with the common sense to not spend eight hours on amber lights?

SENATOR BOLZ: It's a good question and it's a fair question and, my esteemed colleagues on the Rules Committee, I'm pleased that you'll be grappling with it. I would make one minor point here which is the Speaker is not always the presiding officer. So multiple people preside over the body and the way the rule is now, the presiding officer determines full and fair debate and in our practice and our tradition it has been that there's agreements between presiding officers in the body as a whole and the Speaker but that the plain reading of the rule articulates that it is the opinion of the presiding officer, which is not something that I agree with.

SENATOR SCHUMACHER: But doesn't the Speaker at any given point--and I don't know the answer to this, but always my impression--have a right to take the Chair at any particular point?

SENATOR BOLZ: There is a hierarchy of who may preside over the body. And the top of that hierarchy is the Lieutenant Governor. So you have a point that someone could, with consistency, implement that rule. But the person at the top of the hierarchy, as I understand it, is not a member of our body; it's the Lieutenant Governor.

SENATOR SCHUMACHER: You know, that does raise an interesting issue though is if my impression was wrong and the Speaker cannot take command of the starship by taking the bridge, then it...this...maybe there is more need for something specified if any person who

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happens to be in the Chair because you get a lot of variability there and you can almost see a lot of game playing starting to happen if in ranging how the...do you have the answer?

SENATOR KUEHN: There's the hierarchy right there.

SENATOR SCHUMACHER: Okay. But who can oust who in order to...

SENATOR KUEHN: It starts from Rule 1, Section 5 and then moves into Section 6.

SENATOR HARR: Where? Is that in the Rule Book?

SENATOR KUEHN: Yeah, Rule 1 B, Presiding Officer, beginning with Section 5, President of the Legislature, and then moves through those descriptions.

SENATOR SCHUMACHER: But once in the Chair, can an outranking officer oust a lower officer?

SENATOR BOLZ: Rule 1, Section 5 says Presiding Officer, President of the Legislature. The Lieutenant Governor shall preside as President of the Legislature. The Speaker shall serve as acting President and then preside when the Lieutenant Governor shall be absent, incapacitated, or acting as Governor. And then it goes on to list that the order of presiding officers begins with the Chair of the Exec Board and works its way through the committee Chairs.

SENATOR SCHUMACHER: So if one of the lower ranking people in that list is in the chair, can a higher ranking person say get out, I'm taking command?

SENATOR BOLZ: That would be my interpretation, but I...we might clarify that with the Clerk's Office or someone who has experience with that set of circumstances. But the way I read it the Lieutenant Governor is the presiding officer.

SENATOR SCHUMACHER: Thank you, Senator Bolz.

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SENATOR HILGERS: Senator Harr.

SENATOR HARR: Thank you. Interested in this issue because I think it's interesting. I have a couple questions and then I have a follow up from earlier. So please bear with me if you will. We had a situation on the opening day--and Senator Kuehn and I are involved in this--where Senator Kuehn asked for a ruling from the Lieutenant Governor who was presiding at the time. And it was my argument, and it still is, is that the optics of having, while the Constitution allows it, having a member of the executive branch because the Lieutenant Governor kind of goes between both, elected as executive but can serve as a legislative. I think would be good to have a rule so that they, the Lieutenant Governor, whoever he or she may be, would understand what is expected. And I think that would be...I guess it's more of a comment than a question...let me phrase that as question. Do you think it would be a good idea for us to be able to set parameters so that the Lieutenant Governor when he or she is sitting in this seat understands what their expectations are?

SENATOR BOLZ: In this specific rule change that I've brought to you, most certainly. I mean I think that's some of what I'm trying to achieve with this rule change is to set clear rules and expectations.

SENATOR HARR: Okay.

SENATOR BOLZ: More broadly, I'd have to think that through. But generally I think the nature of rules is that everyone understands them and can abide by them and that there's consistency so if there are other circumstances in which the Lieutenant Governor might not abide by the rules because it's a matter of tradition rather than rules, that's worth consideration.

SENATOR HARR: Okay. Thank you. And I guess the next...because it helps prevent them from being put in a bad spot as well, him or her. Okay. My next...and this is really why I raise my hand, although I always find what Senator Schumacher says interesting. So this is a balancing act of filibusters. We want to...we need a fail safe but we want to make them difficult. Speaking for eight hours, six hours, whatever it is. Maybe six wasn't enough. Maybe it wasn't difficult

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enough and your data seems to indicate the more difficult we make it the less we have, is that correct?

SENATOR BOLZ: That's certainly...the chart that I passed around certainly shows a correlation...

SENATOR HARR: Seems to indicate that, right? So then my question becomes looking at your rules, rule...proposed rule, we had a situation last year with Senator Davis on prairie dogs, right? Went through committee, went through General, passed, went through select and passed. And then...now I'm not impugning the integrity of Senator Davis because if you recall he was sick which is why he missed it. General, Select, he didn't have time to put in an amendment. It just shoots right through, right? So he had to wait till Final. And he did a filibuster on Final and filled the whole two hours and all that work that had been done by Senator Chambers came to an end and there was a successful filibuster after a mere two hours of debate. I guess my question is, my fear is that people will start targeting, I'll use nicely, bills on Final Read only. Do you think...would you be open to a rule change that says if we do incorporate into the rules the eight, four, four; eight, four, two; eight, four, one; six, four, one; whatever it is, that the first round that a person filibusters they must do the maximum amount so that way we discourage sniping on Final Read.

SENATOR BOLZ: We are...this is the first time I have considered that proposal. I think...

SENATOR HARR: I just thought of it up here too.

SENATOR BOLZ: (Laugh) I think it's worth consideration. So the proposed rule would be that cloture cannot be invoked unless the maximum amount of debate has occurred on the previous rounds?

SENATOR HARR: Of at least one level, not even...so you can still come at Final, but it would be...under yours it would still be eight hours.

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SENATOR BOLZ: I think the only consideration I would add to that is that if there is a substantive change between General and Select or Select and Final that might inspire someone to push an issue to a cloture vote even if on previous rounds they had not. So if an amendment is adopted, if language is changed that could change the ballgame for an individual senator.

SENATOR HARR: Okay, so let's go down that road. Amendment is introduced that changes the bill completely. You know, there are things called shell bills. So if there's a shell bill and something is thrown in there and now it's on Final, is it your...I just want to make sure I have the record clear. You would say at that point they'd have to have the eight hours? Or if it's a shell bill, something is put into it, you'd still only have to do four?

SENATOR BOLZ: I guess on the fly my response would be if there's an amendment or a substantive change, that maybe would change the way in which we handle the interpretation of previous cloture hours. So if the rule was that you had to take cloture to the hour limit on each round of debate or previous rounds of debate, that would stand as long as the substance of the bill stands. But if the substance of the bill has been significantly amended, perhaps it wouldn't be appropriate to require those previous rounds of debate.

SENATOR HARR: Okay. And I want to be clear. I am not...what I'm trying to do is prevent the situation where all of a sudden Final Reading, someone goes four hours, right? Instead of doing the eight hours, four hours and four hours. And what I'm proposing is on Final Read, if you're going to go, you got to go the whole eight hours. What do you think about that?

SENATOR BOLZ: So you're suggesting maybe turning it around, making it...

SENATOR HARR: No.

SENATOR BOLZ: No?

SENATOR HARR: No, what I'm saying is...and maybe this is on me, I'm not being very clear. Senator Davis last time waited till Final Read and went the two hours, right? And it was a filibuster and only had to work two hours. That's a heck of a lot easier than going six hours or

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eight hours. And so my concern is that everyone will just wait till Final Read to do their filibusters because they only have to do a shorter period of time. So what I'd like to ask you is, I guess the first time...first round a filibuster is done, whether that's General, Select, or Final, do you think it should be required that they go the maximum? So in this case, if you waited till Final to do your first filibuster, you'd have to go eight instead of just four because it's also...you know, it's a heck of a lot easier to talk four hours at the end than it is to talk eight, four, and four again, right? I mean 4 is a heck of a lot easier than 16.

SENATOR BOLZ: Sure. So I guess two responses. First is the rules as they stand allow for the scenario you just described, so maybe that's some consideration for the Rules Committee that a cloture vote can be addressed on the final rule. So that is as it already stands. So clarifying it may be valuable. But your other point is that another way to think about it might be that to deem something to have had full and fair debate, perhaps we need 16 hours of debate total. Maybe that's what's full and fair, whether that comes on General, Select, or Final.

SENATOR HARR: So under that scenario let's say I let it go through Select...or General. Now I'm on Select. Sixteen. Would I have to go 8 hours for the cloture vote or would I have to go 12?

SENATOR BOLZ: You could go 12 and then 4.

SENATOR HARR: Who would make that determination if I have to go 8 and 8, or 12 and 4?

SENATOR BOLZ: That's not the rule that I'm proposing, so someone might have to propose that rule and be able to justify what it...how it would work.

SENATOR HARR: How would you like to see it done?

SENATOR BOLZ: I'd like to see it done as eight, four, and four.

SENATOR HARR: Okay. But so it's your...so then it's your contention that if you are going to filibuster, you have to do it on General. You can't do it later on.

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SENATOR BOLZ: I don't...

SENATOR HARR: Or you don't care if someone just only brings a filibuster on Final? And that's fine. I'm just trying to figure out where you are.

SENATOR BOLZ: The rule, as I am proposing it, is that full and fair debate shall not be deemed less than eight hours on General File. So if I don't believe that I've had full and fair debate on my issue so that I can take it to a cloture vote, I don't want that to be at the determination of the Chair.

SENATOR HARR: Okay. I will tell you if someone wants to not push my bill to cloture, I'm cool with going one hour, right, because then I only need 25 votes. So let's say I have 26 votes, 26 votes, and now, you know, Senator Schumacher smells blood. The guy is pretty sharp. And he says, I never liked that bill, and he waits till Final. And he takes it four hours or he takes it to debate. Is four hours enough in your mind, or should it have to go to eight?

SENATOR BOLZ: I'm not sure I entirely follow your question.

SENATOR HARR: Okay. I have a bill. Let's say it is on groundhogs, prairie dogs. Round General File I get 26 votes, okay? Select, there are no amendments brought so it flies right through, right? Now Senator Schumacher says, you know what, this is to do something to prairie dogs, and he's a friend of the prairie dogs, so he's decided on Final he wants to protect those little...are they towns or cities? I think they're towns. Anyway, he wants to protect the prairie dogs and he's going to bring a filibuster on Final. Do you think it's fair that he only has to go four hours or do you think we should require him to go the whole eight?

SENATOR BOLZ: I think maybe flipping the way that we're thinking about it could help me answer your question, which is if I oppose the prairie dogs, I want my opportunity on the floor to debate as long as I feel I can possibly debate to articulate my point to prevent the prairie dogs. And I don't want to be quieted sooner than the rules, laid out in a fair manner by this body, would allow.

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SENATOR HARR: I'll tell you what I want. I want to get to cloture as quickly as possible because I don't think, you know, Paul doesn't think, Paul wants to get to it as quickly as possible because he doesn't think I can get to 33, but he's going to hold his cards close to his vest and wait until Final, right? And if he only has to go 4, there's an incentive to wait until Final to bring filibusters, because now I only have to fill...Paul only has to fill 4 hours of debate versus having to fill 16. And he knows the votes are there. I only had 26. He knows what's going on. I just think if you're going to...I will just say I think we should, if we're going to do this, we should say that that first round should have to be eight. That's my point. I guess I will quit trying to beat a dead horse or, in this case, prairie dogs.

SENATOR SCHEER: Senator, historically though, that would be true right now. It has been for the last 20 years.

SENATOR HARR: I know. I (inaudible).

SENATOR SCHEER: So I mean you're talking about something that's really not germane to what she's talking about, so.

SENATOR HARR: Well, as we have seen, traditions can change.

SENATOR HILGERS: Here's one tradition. We'll continue with Senator Kuehn. Do you have a question?

SENATOR KUEHN: (Laugh) Thank you, Mr. Chairman. Just as a point of clarity for the record, not really a question but just since Senator Harr did reference and there's been some discussion about referencing the authority of the Lieutenant Governor in the presiding Chair. Article III, Section 10 of the constitution clearly outlines the role of the Lieutenant Governor as President and outlines...

SENATOR HARR: (Inaudible).

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SENATOR KUEHN: ...his restriction on voting. And so I think when we contemplate some of the rule changes, we need to also recognize where constitutional roles fit in. And I just to put that on the record. So thank you.

SENATOR HILGERS: I understand, Senator Bolz, you have an Appropriations Committee meeting...hearing, committee hearing that you have to go back to. I apologize if we've run...

SENATOR BOLZ: I'm more than happy to answer the committee's questions.

SENATOR HILGERS: Okay. Yep.

SENATOR SCHUMACHER: Just a little quick follow-up: You've brought an issue to us of what is turning out to be more complexity than I think probably any of us realized when we first read it. And so are you steadfast to this? And if we tweak this and come up with some other approach or something along the line that Senator Harr has been suggesting or whatever might occur to us tonight as we sleep on it, you adamant, would you not support any different approach than this?

SENATOR BOLZ: I am more than open to discussion and negotiation on the implementation and specifics of the legislation. The three principles that I believe in are that there should be sufficient debate such that the second house can understand, participate, and engage; that there should be consistent rules that shouldn't be based on the opinion of the person who happens to be presiding. Those are probably the two fundamental principles that I believe in and would hope that any legislation that the...any rule change that the Rules committee brings forward would be consistent with.

SENATOR SCHUMACHER: Thank you, Senator Bolz.

SENATOR HILGERS: Any other questions? Thank you, Senator.

SENATOR BOLZ: Thank you.

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SENATOR HILGERS: Are there any proponents here to testify on proposed Rule 6? Any opponents? Neutral parties? Seeing none, that will close the testimony on proposed Rule 6. Next we will consider proposed Rule 7 and 8. Senator Kintner.

SENATOR SCHUMACHER: One thing: Senator Harr and I are supposed to be at a Revenue Committee thing. I don't know if that's been postponed or...

SENATOR HARR: Hasn't been postponed. We have to just decide which one (inaudible).

SENATOR HILGERS: Would you like a second to consider what you want to do?

SENATOR SCHUMACHER: Well, I don't know. It's very important we sit here, but it's kind of important we be there too. And I have yet to figure out how to be two places at once.

SENATOR HARR: I don't know. I mean I guess we can try to get her as a separate meeting with Ruth Sorensen, property taxes, Commissioner. Maybe that's the only thing we can do.

SENATOR SCHUMACHER: I would hope that she'd be amenable to meeting with you and me separately. I suppose we should ask Senator Smith whether or not he wants us at this meeting.

SENATOR HARR: We talked to him this morning. He pretty much told us, obviously nicely, (inaudible).

SENATOR HILGERS: Want to take a quick five-minute recess and you want to contact Senator Smith, resolve this?

SENATOR SCHUMACHER: Yeah, we probably can walk down there and see if she's amenable to meeting with us.

SENATOR HARR: Yeah. What's that?

SENATOR HILGERS: We'll take a five-minute recess.

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SENATOR HARR: Is that cool?

SENATOR HILGERS: Yeah, please. Let's do that.

SENATOR HARR: Thank you.

SENATOR SCHUMACHER: Let's do that. Thank you.

SENATOR HILGERS: Five minutes. Yes, Senator. Sorry.

BREAK

SENATOR HILGERS: Okay. We're back on the record. Senator Kintner, would you introduce yourself and open on proposed Rule 7 and 8 together?

SENATOR KINTNER: I am Bill Kintner, B-i-l-l K-i-n-t-n-e-r. And what this is, is a rule change proposal to eliminate secret ballots for leadership. It's Rule 1, Section 1, "Election of Officers"; Rule 3, Section 8, election of Chairman and Vice Chairman. What the changes are is the ballots for officers and Chairmen would be signed, including the members' legislative district. The ballots without signature or district number or which are not legible would be invalid. The Clerk would tally the votes and announce the winner. After the elections, the Clerk would record each member's vote in the Legislative Journal. This is just basic transparency and accountability in government to the elected officials and their voters, keeping in mind that the voters are the second house. If they're going to do their job and evaluate us, they need to know what we're doing. And this also makes sure that the...they're not entered into the record, they don't actually become public until we're done with all the voting. I think that was one concern. So when the whole thing is done, then they're recorded. It's that simple. It's that easy.

SENATOR HILGERS: Thank you, Senator. Questions for Senator Kintner? Senator Krist.

SENATOR KRIST: You and I disagree on this whole philosophy. You call it transparency; I call it a means of control. So let me just get right down to the quick of it. Either vote on transparency

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or don't. This just creates a downstream ballot so that the first one is not affecting the next one and the next one and the next one until it's publicized the day after. So again, either you want to release it and we all want to vote transparency, which I find is not good terminology for this, or...but this just means to me that you don't want, after we elect the Speaker, for that election to affect the next one or affect the next one or affect the next one. And then we would publish the next day.

SENATOR KINTNER: That's correct.

SENATOR KRIST: I completely disagree.

SENATOR KINTNER: Exactly.

SENATOR KRIST: And I honestly think that no matter where we go with this open ballot process, this has worked for this Legislature when it was nonpartisan for decades, and changing it will mean now once again, as I have been judged and weighed by my party and asked for resignation and asked for censorship, they'll have one other thing. Everything I do, every vote I make on every substantive matter, everything I do is public record. I still believe that leadership in this Legislature should be a matter of personal choice. Just as you go to the ballot and vote for Trump or Clinton,...

SENATOR KINTNER: Yes, I did.

SENATOR KRIST: ...we will vote in the Legislature, my vote will stay with the fact that that vote will be private. So I've said what I meant to say. Thank you.

SENATOR KINTNER: Senator Krist, you're right, we just disagree. I don't think there's a common ground here. You're for it or you're against it. I agree.

SENATOR KRIST: Thank you.

SENATOR HILGERS: Senator Harr.

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SENATOR HARR: Thank you. Thank you, Senator Kintner. Okay, we're going to disagree, but I am going to ask you some questions. Who makes the determination of legibility?

SENATOR KINTNER: The committee looking at it. We set a little committee up there to count the ballots. They're the ones.

SENATOR HARR: And so...

SENATOR KINTNER: So there's four people up there...there's three people up there, right?

SENATOR HARR: You know, my wife thinks my handwriting is not legible. I completely disagree with her. I can read it. Is it legible to a third party? Is it legible to the senator? Is it legible to the body as a whole? How do we make a determination of what legibility is?

SENATOR KINTNER: Senator Harr, there's three different people. The three people get a crack at it. If one can't get it, they got two more people. If three people can't read it, I think we can rule it's not legible.

SENATOR HARR: Where is that in here?

SENATOR KINTNER: It's not in there. You just add it after we use three people to count the ballots.

SENATOR HARR: Well, I mean...

SENATOR KINTNER: You can put it in.

SENATOR HARR: ...as I've learned, if it's not in writing it don't matter, lately, right? So where is it in here for you to have that ruling, because I will tell you what I think. If it's not legible I would say, oh, well, we have all the senators except for Burke Harr. Burke, is this your signature? I can't read it very well but I think it's yours. Yes, it is. Okay.

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SENATOR KINTNER: Yeah.

SENATOR HARR: I mean...

SENATOR KINTNER: Problem solved.

SENATOR HARR: ...is that the way we do it?

SENATOR KINTNER: Problem solved. There you go.

SENATOR HARR: All right. So but that's different than what you suggested.

SENATOR KINTNER: We have three people counting them. They're the ones that are going to make the determination, just like they make the determination now.

SENATOR HARR: But my signature...

SENATOR KINTNER: You know, the only difference now is we would probably know whose it is.

SENATOR HARR: It says, so member's signature, I will tell you my signature is not necessarily legible, my signature. Now if you want it to be sign my name, that's something different, right? If you ever go get half these autographs that people pay hundreds of thousands of dollars for, if you can read what those signatures say, God bless you, but I can't. I can read the number. Think I can always read what number the uniform is but I can't read what the autograph is necessarily.

So...and if we're going to do something so seriously as to take someone's vote away from them, we better be very, very clear how we're going to do it and why we're going to do it.

SENATOR KINTNER: Senator Harr, let's look at the second part of it: a signature and a district number. So if we cannot read the signature, we now have a district number, okay? So I'm pretty sure anyone of the 49 either sign their names so we can read it or write a district number so we can read it. We'll get it figured out. It's not that hard.

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SENATOR HARR: You know...well, you and I might disagree. Okay. And I guess my question is why you think this is necessary.

SENATOR KINTNER: If the people are going to be a second house...we don't have a second house. We don't have as many...we don't have as many checks and balances. So if the people are going to be the second house and they're going to evaluate what we do and what kind of senators we are, they need to know exactly what we're doing. Matter of fact I would say philosophically there's really not anything that we do that the disinfectant of a little daylight won't make better. That's it. That's just a philosophy that I have that the eyes of the public make us better senators all the way around in everything that we do.

SENATOR HARR: Okay. That's fair. Now let me...so let me dig a little deeper. Let me ask you another question because we are unique here in Nebraska. We are, and by rule, nonpartisan and by structure nonpartisan. And so we caucus. When we caucus, we caucus in public, correct? Right? When we determine Speaker, when we determine Chairmanship, we do it in public. Do you agree with that?

SENATOR KINTNER: We do it in public, well, somewhat, part of it is in public, yeah.

SENATOR HARR: But you'd agree with that, right?

SENATOR KINTNER: It's on the floor.

SENATOR HARR: It's done on the floor,...

SENATOR KINTNER: Yes, it is.

SENATOR HARR: ...done in front of cameras, done in public. You'd agree with that.

SENATOR KINTNER: That's correct.

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SENATOR HARR: Okay. Now U.S. Senate, House of Representatives, 49 of the other 50 states, everyone besides Nebraska, you know how they determine their leadership?

SENATOR KINTNER: Let me tell you the stiff. Forty-nine states through all...

SENATOR HARR: That's a yes or no.

SENATOR KINTNER: Yes. But I know essentially how they do it. It's all...it's not all the same. It's all different. Every state does it a little bit different.

SENATOR HARR: You would agree with me, and tell me if you disagree with me, all of them meet as a caucus in private.

SENATOR KINTNER: Uh-huh.

SENATOR HARR: And in that caucus in private the members of the majority party pick who they want to be the Chairs and who they want to be their leaders. Is that correct?

SENATOR KINTNER: That is not correct.

SENATOR HARR: Okay. Who doesn't do it that way?

SENATOR KINTNER: Let's take the Congress. They elect their leadership, who they're going to vote for in caucus.

SENATOR HARR: Who's "they"? Who's "they"?

SENATOR KINTNER: Each caucus, Republican, Democratic caucus. They vote for their leadership in caucus...

SENATOR HARR: (Inaudible). Where?

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SENATOR KINTNER: ...with a secret ballot in caucus. Then they come on the floor and they vote with a public ballot and they vote, on a recorded vote, of who they're voting for.

SENATOR HARR: So you may, in your caucus, vote against a member of your party in a private caucus, and it's a private vote, but then on the floor you vote for them. Is that what happens? Is that correct?

SENATOR KINTNER: Yes.

SENATOR HARR: Yeah?

SENATOR KINTNER: In Congress, not in any state.

SENATOR HARR: Why do you think, if you know--if you don't, that's fine--why do you think they do it that way where it's caucus, meet by caucus, and they make it a private vote?

SENATOR KINTNER: I do not know. I'm not in Congress.

SENATOR HARR: Okay. And that's great. And that's...that's what I'm trying to figure out is why. We have these private votes, everyone else does, and we are more transparent than most and yet because we do it all in public, all, there is no secret meetings to my knowledge, no formal caucusing. I mean the only formal caucuses we have are by Congressional districts or Committee on Committees. And I think what we do is a lot more forthright, a lot more in the open than what you see anywhere else. And I'm pretty darn proud of our Legislature. And, you know, I hear this comment about the people are the second house and it's funny. I was reading George Norris' autobiography to kind of get a feel for some of this because I knew some of this was coming. He never makes a reference. Always hear that George Norris says they're the second house. You know what he says? He doesn't say that. He says the exact opposite. What he says is your Governor, that's like this we need to run government like a business. Your Governor, they're like your CEO. We, the senators, we're like the board. We set policy. And the voters, they're shareholders. Right? So it's not a second house. It's not as though they're a second board. That is Senator Norris' ideas. And there are some...I agree with some of that and I disagree with some of

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that philosophy. But I worry about this, that this is meant to give us, the legislative body, power to political parties outside so we are held accountable, as Senator Krist said, held accountable to our political parties instead of to what we think. You know, there's some who will say, I only vote for the member who's most blank. I'll tell you who I vote for. I vote for the best. That's what I want. I want the best member out there. And I don't care what party they are. I want someone who can run a committee, who I know is going to be fair that I can trust. And I think that is what we should aspire to and that's what I think we should trust in. And this, this turns it over. This gives it to someone else. This gives it so that we are...so that the parties could say, did you vote with your party? Why didn't you or why did you? Good boy. Here, Lad, have a drink. I don't want that, Bill. That's my two bits. We're going to disagree on that. We'll have more chance to talk about it on the floor here Friday or whenever we decide to have...the Speaker decides to do this. But I just...that's where I stand. Thank you.

SENATOR HILGERS: Senator Krist.

SENATOR KRIST: I'm just going to make a point. Can anybody remove you from Appropriations?

SENATOR KINTNER: Can anyone remove me from Appropriations?

SENATOR KRIST: Pretty simple question, Bill. Can anybody remove you from Appropriations?

SENATOR KINTNER: I believe so, yes.

SENATOR KRIST: How could they do that?

SENATOR KINTNER: Your Committee on Committees can put me where (inaudible).

SENATOR KRIST: After you're on Appropriations, can anybody remove you from Appropriations?

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SENATOR KINTNER: I would think Committee on Committees could remove me Appropriations.

SENATOR KRIST: No, that's not true. You know what they can do at the national level and in 49 other states? You're not toeing the line, young man; you didn't vote the way we want you to vote; you're off of Appropriations. Check it out.

SENATOR KINTNER: True. I agree.

SENATOR KRIST: Listen to Senator Hadley...

SENATOR KINTNER: I agree.

SENATOR KRIST: ...talk about all the Speakers who look at him and say, you mean you don't have the authority to do that? Is that what you want? You caucused outside the building. You decided that this the way votes were going to go. You come back in here, you did it in transparency. You lockstepped everybody together, and now you're in here talking to us about being more transparent? That's really ridiculous, really ridiculous. Not only that but you think that putting the light of day would be good for everything? I do too. I do too. We're going to disagree on this and we're going to have one hell of a fight on the floor because this is the last bastion for me of "transparency" and political control.

SENATOR KINTNER: Well, I would say it doesn't have to be one heck of a fight. I think we make our points, we discuss it as gentlemen, and we vote. It doesn't have to be a big fight. I think that's probably the way we should do it.

SENATOR KRIST: That's one way to talk about it.

SENATOR KINTNER: We'll, you know, we'll get by either way. This body will survive either way we go. We will survive.

SENATOR KRIST: Absolutely.

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SENATOR KINTNER: So...

SENATOR KRIST: Thank you.

SENATOR HARR: Can I ask...

SENATOR HILGERS: Senator Harr.

SENATOR HARR: I apologize. And I got to ask a question because we are one house, right? We're a Unicameral. We're very unique. Do you consider us more like a House of Representatives or more like a Senate?

SENATOR KINTNER: More like a Senate.

SENATOR HARR: Okay. Thank you.

SENATOR HILGERS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Senator Kintner, first of all, a technical thing. Looking at your Rule 7, it reads now, "Before the ballot signed ballot is taken each person...." Is that a typo?

SENATOR KINTNER: Yeah, it should...the new language should be "Before the signed ballot," yes.

SENATOR SCHUMACHER: Okay. So really your proposal is...

SENATOR KINTNER: Well, that...it reads...I think "Before the ballot" is how it reads before, and I'm replacing it with "signed ballot."

SENATOR SCHUMACHER: So what you meant to say is the word "signed ballot" is not there but the underlined "signed" goes before the word "ballot."

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SENATOR KINTNER: Yes. Yes.

SENATOR SCHUMACHER: Okay. All right. So...

SENATOR KINTNER: Yes. Yes.

SENATOR SCHUMACHER: ...would you like to kind of amend your proposal so that we don't have something unclear here?

SENATOR KINTNER: Can I amend it right (inaudible)?

SENATOR SCHUMACHER: Well, I mean just your consent to that?

SENATOR KINTNER: Yes, I consent, absolutely.

SENATOR SCHUMACHER: Okay. Okay.

SENATOR KINTNER: Thank you for catching that.

SENATOR SCHUMACHER: Senator, I spent, oh, gosh, probably 15 years, give or take, as either Republican County Chair or on State Central Committee. So the party has few secrets from me. And I know that one of the perennial objectives was we, if we have a Republican majority--you're smiling because you know what I'm saying is truth--we have a Republican majority in the Legislature, we need to have all Republican Chairs. Why are there any Democrat Chairs? That's reality. I think it had something to do with what happened last week. I take it you're familiar with the structure of the party, huh? Okay. And there it starts out with little county conventions, which people are supposed to attend. And in the days of the Grange and maybe before the telegraph or whatever, people attended to have a little political discussion. Does the party generally have a great deal of difficulty even getting people to show up at those county conventions?

SENATOR KINTNER: Not in my county, no.

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SENATOR SCHUMACHER: Not in your county, but there's 93 counties, yeah, and they have a great deal of difficulty. And in counties like Platte County, maybe there's 15-20 people show up out of probably, oh, 5,000, 6,000, 7,000 registered Republicans. Okay? And now isn't it true that at those little county conventions they again have a list of how many people are eligible to go to the state convention based upon, I think it's, Presidential votes? Okay, that's right too. So my memory isn't completely gone. And they send like, you know, a small number of people to the state convention of the small number of people that attended the county convention. And some of those show up at the convention, some doesn't bother to even show up. But they get to the state convention and then, out of that small number of a small number, an even smaller number, including the county Chair, get seated on the State Central Committee. And then they used to, I think, have four Central Committee meetings in a year. Now I think they've reduced it to three because there wasn't much for substantive business that showed up at those four. It's down to three now. Did they keep it at three?

SENATOR KINTNER: You know, I'm not on the State Central Committee yet. So I know there's meetings. I don't know if it's three or four.

SENATOR SCHUMACHER: Okay. Well, unless they've done something differently, it's down to three now. Nothing really very substantive discussed at those three. And that Central Committee that's supposed to set policy for the policy...or for the Republican Party, elects a...or maybe it's the State Convention, an executive board, right? I'm getting close, aren't I? And that executive board, do you know if its meetings are public or not?

SENATOR KINTNER: I don't know. I've never been the Executive Board. They're probably open to members of the Central Committee, but not open to the public, I would think. I don't know.

SENATOR SCHUMACHER: You might be wrong on that, Senator. At least it was never advertised. Is the press at those meetings?

SENATOR KINTNER: Don't know. I don't know.

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SENATOR SCHUMACHER: I think the press probably realizes how many executive board meetings of the Republican Party they've attended. And then I am told, I never was on the Exec Committee, but that even the real decision making is in a smaller group than that. And so when we decide, of all the Republicans out there, who is a right-minded Republican and who is just a plain old Republican and who is a RINO--Republican in name only, I think that's what that means--who's making those decisions as to who's accountable and what's the standard that we're being held to? Who is it? Do you know? Where is the transparency in that process? Where's the transparency in the process of a week ago? There obviously were meetings, right?

SENATOR KINTNER: Not any that I attended, so if someone...if there's a meeting, please tell me. I like meetings, especially if they have something to eat. No, there was no meetings I've ever attended.

SENATOR SCHUMACHER: There was no meetings. There's no briefings. Now you remember this, I think, is being recorded, isn't it? There's no meetings involving the party.

SENATOR KRIST: Can you...can you answer instead of shaking your head, because the transcribers...

SENATOR KINTNER: Oh. No, oh, yeah, I'm sorry. Yeah. No, I don't know of any meetings. I've never attended any meetings and, no. But you know,...

SENATOR SCHUMACHER: You weren't at the Country Club?

SENATOR KINTNER: What?

SENATOR SCHUMACHER: You weren't at the Country Club earlier in the year...

SENATOR KINTNER: For?

SENATOR SCHUMACHER: ...with the new senators? You didn't get invited to that?

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SENATOR KINTNER: Huh-uh.

SENATOR SCHUMACHER: I didn't either, so don't feel bad.

SENATOR KINTNER: I've been in these meetings. I've been in meetings, but, Senator Schumacher, let me say this. I'm not worried about the workings of the Republican Party. I'm pretty familiar with it. Now maybe not as familiar as you because I haven't been a county Chairman. I don't serve the Republican Party. I serve my constituents and I serve the people of the state, and that's my only concern. That is it for me.

SENATOR SCHUMACHER: And you reflect the attitudes and the values of the people of your district, as do I. Is that correct?

SENATOR KINTNER: Yeah, the majority, yeah. You know, the majority, and there's obviously people that disagree. There's profound disagreements on how things should be.

SENATOR SCHUMACHER: And different ways to see things.

SENATOR KINTNER: Yes, different ways to see...

SENATOR SCHUMACHER: Okay.

SENATOR KINTNER: ...and I acknowledge that. I agree.

SENATOR SCHUMACHER: And let's...and you have a reading on your district of what way they think you should think about transparency. Is that correct?

SENATOR KINTNER: Um, yes.

SENATOR SCHUMACHER: And they would value this open vote higher than the vote in which you can vote your conscience and for whom you think would do a best job rather than who a party might hold accountable.

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SENATOR KINTNER: You know, when I...you know, I laid out where I stood and I said I stand for transparency. I post every vote. I'm the only senator that ever...I posted every vote I've ever taken here on Final vote. I posted every roll call vote. And when I ran for election, I said that I did that.

SENATOR SCHUMACHER: Yeah.

SENATOR KINTNER: I said I will be the most transparent senator in the history of this district ever. And they reelected me by a huge majority.

SENATOR SCHUMACHER: And you know what?

SENATOR KINTNER: So the only thing I could say is, they liked what they saw. We've not...I've not polled them on that but I told them where I stood and said if you agree with me, I'm your man; if you don't agree with me, there's another guy over here.

SENATOR SCHUMACHER: And your district and that might be the view of your district. I don't know your district. But I told my people that I valued the way we did it because it was a way to pick the best people and with the least possible stray repercussions from inside or outside the Chamber. And you know what? I was reelected too. So maybe different districts view different things differently. And maybe my district or Hilgers' district may have a different impression. Maybe they think it's more common sense to do it the way it's been done for years upon years. And that's okay too. So is anything stopping you from doing what was a bill that Senator Morfeld had passed and you'd take out your little iPhone and take a picture of your election little ballot that we send up to the Clerk and taking a picture and putting it on the Internet?

SENATOR KINTNER: Actually, I do have it on my phone. I did take a picture of all the ones (inaudible). Yes, I did. I did that.

SENATOR SCHUMACHER: (Inaudible) and nothing is stopping you from doing that and maybe getting brownie points with your constituents or maybe demerits with your constituents

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for doing that. And if my constituents, if I could run for reelection, would say, you know, that's just crooked not to do what Bill Kintner does. They can vote against me. But that's my decision, as a member of this body, trying to interpret what common sense my constituents expect me to exercise. And this imposes your view of what you expect of your constituents on me and my constituents or Senator Harr's constituents. We can make it as public as we want and we can take the consequences. And you know what? Probably it's going to make very little difference in any case whether or not a vote for a Chairman, not...in today's world, not the world's most powerful vote, means anything of substance. And if it does, we'll each stand our own consequences.

SENATOR KINTNER: I agree with that. The people ultimately sort this out.

SENATOR SCHUMACHER: They will.

SENATOR KINTNER: We're going to vote on this...

SENATOR SCHUMACHER: And they have.

SENATOR KINTNER: ...and the people will sort this out.

SENATOR SCHUMACHER: Well, suppose the Rules Committee doesn't advance this? Are we still going to vote on it?

SENATOR KINTNER: We'll see. We'll see.

SENATOR SCHUMACHER: Okay. Thank you, Senator Kintner.

SENATOR KINTNER: Yeah. Thank you for the dialogue. I appreciate that.

SENATOR HILGERS: Very brief. We have Senator Howard is next and she's going to Omaha. I would like to squeeze her in before she goes.

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SENATOR HARR: Okay. Thank you. I love the word "transparency" because it's what I want to tell you is transparent, what I don't want to tell you is irrelevant. Where do you draw the line on transparency?

SENATOR KINTNER: Where do I draw a line? I try to be as...I just try to be as transparent as I can.

SENATOR HARR: Are all actions that you do on state property and with state property transparent?

SENATOR KINTNER: I try to be as apparent as I can in my official capacity as a senator. So if I go to a school, I try to take pictures to say I was at this school. If I go to a football game, I say I was at the football game, this is what I was doing, I went to the...in the district. That's what I did.

SENATOR HARR: Okay. Did you hear my question?

SENATOR KINTNER: Yeah, and I told you in my official capacity as a senator, I try to be as transparent as possible.

SENATOR HARR: Okay. So is everything you do on state property as a state official?

SENATOR KINTNER: I don't know. I don't know. I think I see where you're going with this. And...

SENATOR HARR: I know.

SENATOR KINTNER: ...I think I see where you're going with this, but I don't think I'm going to play ball with you on that.

SENATOR HARR: Well, my question is where do you draw the line, because you have drawn the line here.

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SENATOR KINTNER: I drew the line where I drew a line; you draw the line where you draw the line. (Laugh)

SENATOR HARR: Okay. So my question is, I can give a rational reason why I draw the line where I do. My question to you is, why do you draw the line where you drew it?

SENATOR KINTNER: Because when I'm acting in an official capacity as a senator, I want people to know what I'm doing, where I'm spending my time as their senator when I'm on senator time.

SENATOR HARR: Yeah.

SENATOR KINTNER: And you know, and you can't always do it all. There's things you do; you can't do everything you do as a senator. And you can't take a picture of it, you can't talk about it because you do too much. When you and I sit down and we talk about a bill together, no, that's not transparent. I can't do everything. But for the most part, you know, the things I'm doing in an official capacity, I try my best to report that. It doesn't always get (inaudible).

SENATOR HARR: Senator Kintner, do you think there's a time and a place for discretion?

SENATOR KINTNER: Absolutely.

SENATOR HARR: Okay. Where is that? Is it when you're not acting as a senator?

SENATOR KINTNER: Well, there's a time and place for discretion. For instance, you don't say every thought that comes into your mind. You have discretion. You know, I...that's probably better...I better swallow that one. Just because I thought of it, I don't need to say it. There's discretion right there.

SENATOR HARR: I think you and I are going to disagree on what transparency is...

SENATOR KINTNER: Okay.

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SENATOR HARR: ...and where I draw the line, where you draw the line. I probably draw mine differently. In some places I'm further than you are, some places I'm...I might disagree with your word "transparency." Well, thank you very much. I appreciate it.

SENATOR KINTNER: You know what? I totally agree. We're going to draw it at different places. I understand that. I'm not sure if that makes anyone right or wrong. We just draw at different places.

SENATOR HARR: Thank you. I appreciate that. Thanks.

SENATOR HILGERS: Thank you, Senator Kintner.

SENATOR KINTNER: All right. Thank you very much.

SENATOR HILGERS: We have proponents for...on Rule 7 or 8? Do we have any opponents on Rule 7 or 8? Yes, please come forward. We do have a light system for public testimony, to keep things moving. Believe it's five minutes: green, it will be one minute left at yellow, and red after the end of the five minutes.

CHARLYNE BERENS: I'll be brief.

SENATOR HILGERS: Good afternoon.

CHARLYNE BERENS: Good afternoon.

SENATOR HILGERS: Please state your name and spell it for the record, please.

CHARLYNE BERENS: (Exhibit 2) Charlyne Berens, C-h-a-r-l-y-n-e, Berens, B-e-r-e-n-s. I am a professor emeritus from University of Nebraska-Lincoln. I taught in the Journalism College, but my Ph.D. is in political science and I've written two books about the Legislature. I might be naive or idealistic. It's a lot cooler to be cynical, but I'm going to go with the idealism here. I think the Rules Committee's work is extremely important and what I'm going to say applies not

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only to Senator Kintner's bills but...or rules proposals but also to Senator Kuehn's. Probably more than any other committee, you people are responsible for the institution of the Legislature, the structure, the procedures that make it productive and efficient and keep it nonpartisan.

Nonpartisanship is one of my biggest concerns, as somebody who has studied this body. It makes us unique, not just unique in the, you know, the footnote in the book but unique in the way this body operates and the way it accomplishes things. It was one of George Norris' biggest concerns too. He insisted that it was essential to a Legislature that would truly represent the people. The business of the state, he said, is simply not partisan. Electing senators without party labels on the ballot is a start towards that. It does make it a little bit nonpartisan. But the fact is that the parties...that no party structure within the body is really what makes this a nonpartisan Legislature. It's way more important. You vote for the leaders that you believe have the best judgment, can be trusted, have the most knowledge on a subject. Now the two proposals before you, four I guess, to change the rule for electing legislative leaders would both...all of them would make the votes public ultimately and, thus, will give the political parties in the state open-season on senators who they think didn't vote the way they should. And of course, they will punish and reward as they please. Over time, over time that party influence will be obvious in that the party with a majority of members in the body will automatically elect all the leaders from their party. And you guys pretty much managed to do that this year anyway. This would just codify the practice and we'll end up with a de facto partisan Legislature, just like everybody else's. Now you can call down the righteous gods of openness to support making this a transparent, public vote. In most cases, I would certainly agree that openness is the ideal. But in this case, the long-term negative consequences will far, far outweigh any benefits. The only people being hurt by the current secret ballot are party officials and offend a few other passionate partisans. Look, we voters are smart enough to know that you're a registered Democrat or Republican. We are not surprised if you vote the way a Republican might or a Democrat might, generally in line with those philosophies behind the parties, generally conservative, progressive, whatever. But we know also that in this nonpartisan Legislature you have to work with your colleagues and learn from each other and every other possible source as you make your decisions. That's a far, far cry from having a partisan structure with a majority leader and a majority whip and a majority caucus and minority. It's a far cry from a structure that would give the party enormous leverage, enormous leverage over how you vote on any given issue. Don't do this. Please, don't do this. Don't give up your independence and your ability to vote on the basis

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of your conscience and your experience and the hard work that you put into learning about the issues. Don't do further damage to the historic commitment of this nonpartisan Legislature. Thank you.

SENATOR HILGERS: Thank you, Professor. Senator Krist.

SENATOR KRIST: Professor, may I have your permission to get a copy of your script and to read it on the floor during debate? Because whether this goes out of the committee or not, I'm sure that someone is going to try to pull it out, and I would be honored to project a citizen and a scholar's opinion on the floor of the Legislature.

CHARLYNE BERENS: I would be honored to have you do that. In fact, I gave the clerk a copy. I revised it a little bit while I was sitting here for the last couple hours. (Laughter)

SENATOR KRIST: You can make any changes you want to.

CHARLYNE BERENS: Okay.

SENATOR KRIST: You can send it directly to my e-mail if you'd like to.

CHARLYNE BERENS: I will do that.

SENATOR KRIST: Thank you very much.

CHARLYNE BERENS: Thank you.

SENATOR HILGERS: Any other questions for Professor? Professor, on a personal note, thank you for coming down here. Thank you for being a constituent of District 21 and I'm very grateful personally for the time you've taken to talk to me about these rules and...

CHARLYNE BERENS: Thank you.

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SENATOR HILGERS: ...teach me on the institution that is our Nebraska Legislature.

CHARLYNE BERENS: I appreciate the opportunity. Thank you very much.

SENATOR HILGERS: Thank you much, very much, Professor. Any other opponents? Good afternoon. Please state your name and spell it for the record, please.

NATHAN LEACH: Mr. Chairman, members of the committee, my name is Nathan Leach, that's N-a-t-h-a-n L-e-a-c-h. I'm speaking in opposition to the amendment. I'm actually going to hold most of my prepared remarks for Senator Kuehn's amendment, but I did want to read a couple of definitions into the record. The definition of a "ballot," according to Robert's Rules of Order, Newly Revised 11th Edition, notes that voting by ballot is used when a society desires secrecy of members when voting on things. And so I think that if we're going to make the change, we might as well save the paper and use a roll call vote. Just the definition of a "ballot" doesn't lend itself well to using a ballot and then having it put into the record. It defeats the entire purpose of a ballot in terms of parliamentary procedure and general parliamentary law, so.

SENATOR HILGERS: Thank you, Mr. Leach. Any questions for Mr. Leach? Thank you very much for coming down and your testimony, sir. Thank you. Any other opponents wishing to testify? Anyone in a neutral capacity? Okay, we do have some letters. We'll read those into the record in regards to Senator Kuehn's proposal. That closes the testimony on proposals 7 and 8. We will, as I mentioned, Senator Howard was actually 11th on our list. We'll move her up because of her schedule. I know she's got to get to Omaha, so we will now discuss proposed Rules 11 and 12. Senator Howard, good afternoon.

SENATOR HOWARD: Thank you, Chairman Hilgers. And thank you, Senator Krist, for letting me go before you.

SENATOR KRIST: Anything for you, Sara.

SENATOR HOWARD: My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha, the true midtown Omaha, Senator Harr. I today brought two rules and I'll

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present them together because it just makes sense to do so that way. So much of our conversations recently have been about the difference between traditions and rules, what's a tradition and what's a rule. And over the summer I had the privilege of participating in the Toll Fellowship Program through the Council of State Governments and there I met a woman who we'll call "Susan," because Senator Kuehn knows who I'm talking about, who worked in a state just south of us and didn't vote the way that she was told to vote by her party and lost her office, lost her staff, and was moved on her floor. These are all things that sounded horrible to me, but they were also things that I would never consider happening in the Nebraska Legislature. And then when I went to the rules to see if there were any sort of firewalls to prevent it from happening, there's nothing in the rules that tells us how we choose our offices or how we choose our seats on the floor. What's really interesting to me and what was really exciting is that I've actually never met Professor Berens but I sat behind her and she signed my book. And I've been reading the book, and up until 1963 we actually let lobbyists sit in the back of the Chamber, right? And then in 1965 we politely asked them to leave. And then in 1989, Ron Withem, who was Speaker, I believe, at the time, noted that there was nothing in the rules that said that they couldn't be in there. It was just something that we had always held as a tradition. And so the reason why I brought these two changes was to really look at how some of our traditions, our most beloved traditions, maybe they should be rules. Maybe we won't all be around here for the end of time, although I'm sure Patrick has taken some sort of magic elixir and he'll live forever, just like Chuck, (laughter) and we won't have to worry that maybe some of our traditions will get lost along the way. I believe that the way that we choose offices and the way that we choose seats on the floor espouse some of our most egalitarian ideals. Even, you know, when John Norton, in 1937, was creating our rules, they were looking for a simple structure. They were looking for an open procedures process. And these two changes to the rules just codify what are already in our traditions that I would hope to see in years to come. I did, I believe, give Larry Bare a heart attack, which is always fun recreationally, (laughter) and he did let me know that the office selection policy was a little bit challenging for him as we look at the HVAC changes. And so I have an amendment to my rule that gives sort of a fail-safe. In case you are displaced because of renovations, you would get some deference into, if there were three options, you would get to choose where you were going. And so I submit that rules...that amendment to my rules change at this time. (Exhibit 3) I'm happy to try to answer any questions you may have.

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SENATOR HILGERS: Senator, do you need to leave this hearing?

SENATOR HOWARD: No, I've got till 4:30, so...

SENATOR HILGERS: Okay.

SENATOR HOWARD: ...get after it.

SENATOR HILGERS: Okay. Okay. Are there any questions for Senator Howard? Senator Harr.

SENATOR HARR: Thanks. Less a question than a comment, and I appreciate you for bringing this. I...it's funny you say that because I moved seats this year and part of the reasons I moved seats was because I felt that we were getting to be too much one party this side, one party that side. And so I purposely removed myself from one side and went across the aisle. And the beauty is here in the Legislature crossing the aisle is literal, not figurative. And I went over to the other side because I did see the importance of having a chance to talk to some of your friends and colleagues and to meet them as individuals and to meet them where they are instead along partisan lines and to say, oh, hey, I know this about you. And I will have to say I've had the pleasure of getting to know the senator next to me and I really appreciate it. And it's been a great experience (inaudible). We're at day five, right? But it has been a great experience and I have met a person in a way that I probably wouldn't have otherwise. So I commend you on your rule, rules, and appreciate that you are trying to codify the nonpartisan tradition of this body. So thank you very much.

SENATOR HOWARD: I would also note that one of our more odd traditions is that the person who had the seat before or the office before will sometimes leave something behind. For instance, Charlie Janssen left me 34 cents. Somebody left me a mountain lion postcard. I left a pamphlet about sexually transmitted diseases for Senator Morfeld. (Laughter) And I think those are the things that help us get to a more collegial atmosphere. When Les Seiler...when I take his bowling alley and he says, I'll tell you one thing, never open the windows because you won't close them again, these are the things that help us build bonds that are really significant and important.

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SENATOR HARR: And I will tell you Senator Pirsch, on the floor, left me a, as he is known to be, witty note and I left it there for the next person for inspiration. So I get what you're saying, yeah.

SENATOR HOWARD: Yeah. Thank you.

SENATOR HILGERS: Any other questions? Yes, Senator Schumacher.

SENATOR SCHUMACHER: Senator Howard, you always appear to me as way, way too kindhearted to take pleasure in giving anybody a heart attack. (Laughter) What did Larry Bare ever do to you? (Laugh)

SENATOR HOWARD: Well, I will say Chuck found me in the hallway and said, so, you don't like the way that we're giving out offices. And I said, actually, I do really like it and that's why maybe it should be a rule; and I would also like a power strip and a coatrack, thank you. (Laughter) (Inaudible) conversation and now it's in the record, so fingers crossed on those two things.

SENATOR SCHUMACHER: Just one technical question: You say that the seats shall be assigned by lottery pick.

SENATOR HOWARD: Right.

SENATOR SCHUMACHER: Are you thinking about keno lottery?

SENATOR HOWARD: I was actually...I think keno, maybe we could get one of those machines with the pulleys.

SENATOR SCHUMACHER: Well, that's a slot machine. I mean would that...that would be okay with me. (Laughter) Thank you, Senator Howard.

SENATOR HOWARD: Thank you, Senator Schumacher.

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SENATOR HILGERS: Are there any other questions for Senator Howard? Thank you, Senator.

SENATOR HOWARD: Thank you, sir. Good luck tonight, fellas.

SENATOR HILGERS: Are there any proponents on Rules...either Rules 11 or 12? Any opponents? Anyone in a neutral capacity? That will close the testimony on proposed Rules 11 and 12. We will go back to Rules 9 and 10. Senator Krist.

SENATOR KRIST: Thank you, Mr. Chairman. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha, including the town of Bennington. I'm here before you today to submit two rule changes, and they actually should be talked about together. Senator Kuehn has become quite the constitutional expert lately, so I will bring to light that our constitution tells us that we have to do three things. Actually, we have to balance the budget, which requires the jurisdiction of the Revenue Committee and the jurisdiction of the Appropriations Committee; and we have to provide for education in the common schools of the state, arguably from zero to 12 now with the special needs and special access programs. So I've submitted this change four times, I think, in the eight years that I've been here so far, and been on the Rules Committee for four years and have never managed to get it out of the committee because there's always been other priorities. But I am here asking you to put it out once again, particularly in the light that there are some disagreement that the Committee on Committees' process actually works. I'll have to say for the public record that I think that's bogus. The Committee on Committees' process does work. But when you put four people from a particular caucus who have never been there, never done that, never worn that T-shirt, you have a little confusion about how that process is supposed to work. And when you have a manipulator who wants to move people around in such a way, it also kind of doesn't make things work very well. But this, the combination of these two things, will make it very clear. They're divisible by three. So the Committee on Committees' process will sit down and say if Senator Hilgers becomes the Chairman of the Judiciary Committee, they would say, you are from caucus number two, therefore, I need another person. Caucus number one, I'll need another person from number one, I need two from number two, I need two from number three, and you would have six. Pretty easy. The three larger committees, though, I think the constitutional issues need to be addressed in that way. This allows for equal representation from the caucuses across

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the board and makes it easy for the Committee on Committees' processes to work. I would argue that--and we could talk about it in Exec--that I gave the example of Judiciary because I think that might be another one that we would want to make nine. But there's a math issue because we have to have 48 of us, because of the Speaker is exempt, 48 of us available on any given day for the committees. That's why I didn't go into a lot of detail in terms of the shuffling and who would be where. So I ask for your careful consideration and I will be here during Exec to talk more about the issue, and I'm ready for any questions.

SENATOR HILGERS: Thank you, Senator. Any questions? Senator Kuehn.

SENATOR KUEHN: Thank you, Mr. Chairman. Senator Krist, just for the purposes of history, for those of us who are new to the Rules Committee, provide whatever background you may think is valuable to the public record as to...other than just it didn't rise to the top priority of issues for the Rules Committee? Or what were other potential impediments to what seems like a relatively common-sense proposal?

SENATOR KRIST: Two years ago we were very committed to trying to get two rules on to the floor, and mine would have confused the issue because there were some people that didn't want their particular high-interest committee to have less people on it. And it was threatened actually by one of the Rules Committee members, who is not with us right now, no longer in the Legislature, that "if, then." So I withdrew it, in the spirit of collegiality and trying to get the two rules that we had talked about. In the past, I don't think that there's been a concern, a big concern about the Committee on Committees' process. And there were people who wanted to game a little bit of the system. This really allows for no gaming with the system, when you think about it. So those are the two things I would bring historically to the table, that and the fact that I think in the past we've been reluctant to buck tradition, to change tradition, and this was really a very nontraditional way of viewing the committee process. So I would say those three are historically probably the best example.

SENATOR KUEHN: And if I could follow up just real briefly, so I do believe we need to have, as a Rules Committee, a deliberative process on Committee on Committees and discuss in greater detail so we all have greater clarity, having been a part of the process this year.

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SENATOR KRIST: Right.

SENATOR KUEHN: Would you believe that this, as you have proposed Rules 9 and 10 are important to consider, stand alone for what we advance in our forthcoming committee report? Or do you feel this has an integral part in that ongoing discussion that we need to make as a committee and as a body about being more prescriptive and deliberative about our Committee on Committees' process?

SENATOR KRIST: I would answer that question by saying that this, if adopted wholly, would change the process of Committee on Committees. And that the rules and/or policies or procedures that would be put in place should be tailored to this. If they stay the way they are, I have no disagreement with you that tradition and the continuity that was not maybe provided needs to be expanded if we continue to do things the way we're doing them right now. So that's two answers to your question. This one, a whole different parameter; that one, obviously some written rules.

SENATOR KUEHN: That's fair.

SENATOR HILGERS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Senator Krist, you again bring a very interesting idea to the committee. Have you played with the math? Does this pose any mathematical difficulties? Are we going to run out of people or can we do this mathematically? Does it work?

SENATOR KRIST: I've talked to the Clerk for four years. He's getting tired of me talking to him about the what-ifs. It doesn't appear to be mathematically impossible to do the three and the rest of the standing committees at six. Putting another committee in there at nine may create some kind of a shuffle or a problem. But I think it's...I think the math works. Divisible by 3, having 48, will work I think in terms of the committees themselves. It could very well be, Senator, that we might have a committee that would have an extra member on it, but I don't think so. I think the math works.

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SENATOR SCHUMACHER: So you would have in most of the committees just six people on them?

SENATOR KRIST: Right.

SENATOR SCHUMACHER: Okay. Now with six people, with a term limited situation, do we start running the risk, with a smaller number, that we have an overbalance of new people who may not have an exposure to the committee, or of in a surge of partisanship, for example, have four people instead of what now is required, five, in order to move a bill?

SENATOR KRIST: Oh, I think your question goes to a larger philosophical question. We currently are removing people from committees for political reasons or for convenience that probably would provide continuity today, even with the committee structure. So it may be more critical that the two people that come from the first or the third or the second going on to a particular committee be staggered so that you have continuity coming in and be mentored, in terms of how that would be happen. We're not going to be able to change the term limited environment. That's too steep a hill. But I would argue that we would...if seven is okay, six is okay as well and I think that six will work.

SENATOR SCHUMACHER: Are you...and I guess we can talk about this more in Exec too. But basically, this is a bit of a framework. If we need, if we should decide to advance this kind of idea, tweaking it, amending it, putting subparagraphs or whatever is necessary on it.

SENATOR KRIST: Absolutely.

SENATOR SCHUMACHER: Thank you, Senator.

SENATOR KRIST: Thank you, Senator Schumacher.

SENATOR HILGERS: Mr. Speaker.

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SENATOR SCHEER: Thank you. Senator Krist, I like part of it and I don't like the other part of it. But the simplicity to mine is I like going from eight to nine and I wouldn't mind it for all the committees simply because it does get a non-tie-type situation. That's where it rubs me the other way when we are going from seven to six. Then my concern is we end up with, you know, a 3-3 tie all the time. And sometimes bills coming out of committees, there is closeness and it would...I think keeping the seven or the odd number helps in moving some legislation along, not always. And a lot of times they come out unanimous. I get that. But so I liked the eight to nine. I'm just maybe off on the moving from seven to six.

SENATOR KRIST: True. And I don't disagree with your concern, but I would say we have that problem today. Education is 4-4. Government is 4-4. I mean you'd have the same thing happen, you know, yet.

SENATOR SCHEER: That's what I meant. I like...

SENATOR KRIST: Yeah. Yeah.

SENATOR SCHEER: ...I like going to the nine.

SENATOR KRIST: Yeah. Yeah, I know.

SENATOR SCHEER: I just don't like going to the six, so.

SENATOR KRIST: Well, I have not done the math on nines, and I don't think there's enough people to do nines across the board. But I do think very strongly that even if you don't entertain doing any of the rest of it, I included the matrix in there that bumped to three...or bumped to nine members the three critical committees that I have talked about which are our constitutional requirements.

SENATOR HILGERS: Senator Harr.

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SENATOR HARR: Thank you, Mr. Chairman. So I just want to make sure I know what this bill does, because, background, you weren't in Committee on Committees.

SENATOR KRIST: No.

SENATOR HARR: What happened is you had three caucuses, one, two, and three. We did our draft and each caucus was content with their members where they were. And then we went to take a vote and you had certain caucuses where maybe...majority rules, right? I've heard majority should rule, majority should rule. And you had caucus for majority rule. And then you had one caucus that every member of that caucus voted against it and joined a couple of minorities. And we couldn't get it passed because you had, I'll say it, caucus three, wanted to interject what they thought caucus two should be. And then we had the conversation. It was frank, it was blunt, painful at times because I was the person they didn't want. And my question is, would this eliminate that situation? So if we did divisible by three, would you have a situation where, all right, caucus one, you guys meet, if you guys are okay, fine; two, you meet, fine; three, you meet; but then we don't vote on the overall package? It's just each caucus decides and if that's fine, it advances to the floor? Is that how you foresee it?

SENATOR SCHEER: That's (inaudible).

SENATOR KRIST: During...Mr. Speaker, did you want to add something to...?

SENATOR SCHEER: I'm sorry. No, I'm not in charge.

SENATOR KRIST: No, no. Go. I'm happy to.

SENATOR SCHEER: No, my concern was Senator Harr is taking us to a different part of the rules by Committee on Committees. This is only two spots, and I don't know that it's...

SENATOR HARR: Well,...

SENATOR SCHEER: ...your specific instance isn't necessarily applicable.

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SENATOR HARR: No, well,...

SENATOR KRIST: This...

SENATOR HARR: If we're going to go there, then I will go there. Because what I'm trying to do, actually, is similar to what you said, hey, I'm interested in talking broader. You know, when you said I'm interested in talking about it broader, I said, yes. And so what I'm trying to do is talk about the broader. I think, and correct me if I'm wrong, Senator, you would say that your amendment is a work in progress. Correct?

SENATOR KRIST: Yes.

SENATOR HARR: Okay. And so what I'm trying to get at, since this is a work in progress, I'm trying to see what does...what is the objective he's trying to obtain and where is he trying to go so that we can have a better idea so we can reach that goal. First of all, we can agree what that goal is, and then we can reach it together.

SENATOR SCHEER: Fair enough.

SENATOR HARR: Yeah.

SENATOR SCHEER: The conversation I was listening to was going more to the Committee on Committees' portion than committee membership, so.

SENATOR KRIST: And so if I could elaborate, proposed Rule 9 says: change Rule 3, Section 3: Education and Revenue Committees from eight to nine. You have a matrix that shows you how to do that which has the balance of the committees staying near where they are. We steal one from here and one from there in order to put one here and one here. That's a stand-alone. That is what I believe our constitutional requirements and the best representation for those heavy-hitting committees, I will call them right off the bat, because Revenue and Appropriations team up to balance the budget and Education is our responsibility by the constitution. That stands by itself. That's the one I've submitted, as I said, three times...four times. This one is a reaction on my part

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to the comments that have been made about the Committee on Committees' process not working. And I have to tell you, Senator Harr, and you know this for a fact, I was involved with Committee on Committees twice during the time I've been here, actually three times because I was asked to participate as a junior person and figure out what's happening. I decided, I pulled myself off of it, trying to get somebody else on there so there would be some continuity. And I've never had the interface with the other two caucuses telling me what I needed to put on to best represent my caucus. The ground just never was moved. We walked in with a plan. We actually changed and exchanged spots and we did it around the table saying, you're out of people, you don't have anybody else to put on there. But I've never seen, in my time that I was participating, I never saw a point where someone said, I'm not doing this until you do this or I'm going to put this guy there. We walked in as a plan on the second. Now from the second, from my perspective, there was give-and-take and there was discussion and sometimes it was, we really think that this committee needs to have another D or another R or another lawyer or another farmer or another something, okay, and we did that. But what you're describing to me is foreign. I never saw that in the time that I was on Committee on Committees. So this specifically targets the second part of the discussion which is, if you want everything to be divisible by three, you don't even have to talk about trading here and there, because whoever is elected Chair, that caucus gets another person, and the other two. I'm not trying to make this a political decision, but I'm saying the two of them are stand-alones. The second one has to include the first to happen. The first does not have to change the balance of the rest of them. In fact, the first change actually gives you more odd numbers on representation. You actually get more seven committee members.

SENATOR SCHEER: Correct. Yes.

SENATOR HARR: Okay.

SENATOR KRIST: That answer your question?

SENATOR HARR: Yeah. So I guess...I think so. I just want to clarify, would that...if your 10 went through, the intent is to get rid of, to a certain degree, Committee on Committees voting

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overall, but each caucus would decide and then there wouldn't be the need for the overall final vote. Is that correct?

SENATOR KRIST: I think the process...the Committee on Committees' process should stay together because you have four people that will be voting to decide who their representation is. But the process will change in terms of how that discussion would happen within the Committee on Committees. I think there's still a reason to have a Committee on Committees process to get together collectively and say, this is good for the first, this is good for the second, this is good...

SENATOR HARR: But if the second agrees, hey, we like our caucus, is that good enough? Or do you think another caucus should be able to interject and say, hey?

SENATOR KRIST: As I said, that concept is foreign to me. In the three times I have been involved, I never saw it.

SENATOR HARR: And I get it's foreign to you. Do you think it should have happened?

SENATOR KRIST: My judgment is that I may have made the wrong decision withdrawing my own name from the Committee on Committees because it would...I would have reacted differently if I were there. So I have to say the answer to that is I don't think it was the right way to do business.

SENATOR HARR: And I appreciate that. Thank you.

SENATOR HILGERS: Senator Krist, I have a question.

SENATOR KRIST: Yes, sir.

SENATOR HILGERS: I've been reviewing some research from the Legislative Research Office. It's actually a helpful memorandum from a couple years ago for Senator Mello that I'll get copies of the committee. It's very interesting on these points. In a couple of the observations that I have and I want to get your input, one is that for a couple of the committees--Education, Judiciary,

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and Revenue--we haven't had a change in those committees, the standing members of those committees in almost 80 years.

SENATOR KRIST: Yep.

SENATOR HILGERS: And there hasn't been a meaningful change to the standing committees in about 30 years. So I think your rule proposal is timely. I think 30 years is a good time to refresh these things and look at them. The other observation I had, which is what I want your input and my question is, is it appears at least that any changes to the standing committees have come only after maybe some sort of interim study or some sort of deliberative process amongst the entire body over a course of time. Can you give me your input on how you would view the rule change now versus maybe an interim study over the course of the interim to where we could review these as maybe in a holistic, comprehensive manner? And, you know, would you support such an interim study?

SENATOR KRIST: Sometimes I find it very valuable in the time that I've been here to launch on an interim study or do more investigation and collect more data. I wouldn't fight against an interim study but I think that what we've seen historically, the Judiciary Committee has always had between 120 and 160--I think I'm pretty on target--bills introduced into their committee going back to prior to...term limits didn't change that. I've got data that goes back 20 years and I did that deliberately to make sure that we were looking post- and pre-term limits. Ag has had exceptionally small numbers going into it. So that tells you, I think, the priority of the one-, two-, three-, five-day committee structure. I don't know that you'd want to change that. I think anybody who wants to do away with Agriculture in this state is going to shoot themselves in the foot and that's it because, of course, it is important. Combining committees has been discussed. That's like talking to the county seats about all, you know, joining their counties together. You want to get into a big discussion, that's another one. So I don't know what...I guess what I'm saying is I don't know what possible gain you would have from studying the entire process, because I think we have the numbers and we have the metrics. It would be...I think it's necessary that Rule change 9, if there's a step or a sequential chronology to how we want to move forward, 9 is the way to go almost immediately. Whether we move into 10 is a question I think that we'd have to talk about. But I'm not pooh-poohing interim studies because we have learned a lot from the Planning

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Committee and doing those studies, from actual interim studies, special investigative committees. But in this case I think we have most of the data we need. I hope that answers your question.

SENATOR HILGERS: It does. Thanks, Senator. Any other...go ahead.

SENATOR SCHUMACHER: Senator Krist, I'm trying to figure out what the procedural matter is here. If we were to pass this rule, would it take affect with the present committees or are we looking at two years from now?

SENATOR KRIST: Yeah, I think we should...we could discuss the ramifications of changing it immediately, but I would feel more comfortable to say that we are making changes that would direct changes in the future. And it's one of those rules that we talked about when you and I spoke, Chairman. Maybe it could have waited for next year but the discussion in terms of how it would have...the ramifications of 10 along with 9, you could look forward to putting it in place in 2019, would be the easiest flow.

SENATOR SCHUMACHER: Thank you, Senator.

SENATOR HILGERS: Any other questions? Thank you, Senator Krist.

SENATOR KRIST: Thank you.

SENATOR HILGERS: There any proponents for either proposal 9 or 10? Any opponents or people testifying in a neutral capacity? Seeing none, that will close the testimony on proposed rules 9 and 10. Next we have proposed rules 13 and 14, which have been submitted by Senator Hansen. Afternoon, Senator Hansen.

SENATOR HANSEN: Good afternoon.

SENATOR HILGERS: Please go ahead and introduce yourself to the committee.

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SENATOR HANSEN: Yes, thank you. Good afternoon, Chairman Hilgers and members of the Rules Committee. My name is State Senator Matt Hansen, for the record, M-a-t-t H-a-n-s-e-n. I represent District 26 here in northeast Lincoln. I have two rules proposals before you today. I know some of the previous senators had combined theirs together, but I think mine might be subject matter different enough to do them one at a time, if that's all right, Chairman.

SENATOR HILGERS: Absolutely, of course.

SENATOR HANSEN: Great. So first off, let me just start by...first off, just let me start by I know a few of you took the opportunity when I was running for chair of this committee to discuss rules proposals with me and I said at that time I was not considering bringing any rules changes. So that was true at the time, and so all of these have been new developments over the past week of ideas that have either come up through discussions with my colleagues or floor debate. I know I didn't want to surprise anyone; I know how surprises affect your reputation here in this Legislature. So just, now that that's on the record, my first rule was, in addition to Rule 1, I proposed a new Section 24. And obviously, again, with both these rules that I take no pride of authorship of any of the words, if there's a drafting error, if it goes better in another section, what have you, I take full...give full discretion or confidence in the committee to put it in the appropriate place. But my proposed new Rule 1, Section 24, would allow for committee staff to be, specifically committee counsels, to be put under the Clerk of the Legislature. My thought process on this is seeing it happen firsthand this time around where there were a series of committee staff who had jobs on Tuesday and didn't know if they were going to have jobs on Thursday pending elections on Wednesday, and those were elections that they had, in theory, no power over. Now, as a young attorney, I know the job market is tough enough to not have your entire opportunity to have a position reevaluated kind of...I want to say not at a whim, but reevaluated or kind of yanked out the rug, yanked out from under you. So looking at that, I know this has been a conversation going forward where we were looking for more stability and more process and making more of the committee staff agents of the Legislature as opposed to, you know, employees of the committee chairs. In terms of that, why I gave it specifically to the Clerk is, as opposed to taking away the committee chairs, you know, I thought about giving it to the Speaker, I thought about giving it the Exec Board, but again, those were all offices that were, again, elected that same day and I don't know if that actually alleviated the problem. I know the

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Clerk is also technically affirmed that first day; however, functionally, we've, I believe, only had three Clerks since the beginning of our Unicameral Legislature, and so functionally we do know who the Clerk is going to be. So with that, I'd be more than happy to discuss the idea further.

SENATOR HILGERS: Any questions on Rule...yes, Senator Krist.

SENATOR KRIST: Because they're separate and because I'd like to address a couple of questions to the Clerk, can I ask the Clerk to come up to the chair for a minute, please?

SENATOR HILGERS: Yes, you may. Good.

SENATOR HANSEN: Absolutely.

SENATOR HILGERS: Well, Mr. Clerk, I...

PATRICK O'DONNELL: Yes, sir.

SENATOR KRIST: I'd just like to have a discussion for the record. It's my understanding, having conversation with you and addressing these issues when I was Chair of the Executive Board, that the consistency of the legal counsels and representatives for the standing committees has been talked about a time or two. I think it was Speaker Kristensen, Doug Kristensen, who brought a proposal for, or had talked about a proposal. Can you tell us, was that...my recollection is that the...let me just stop there. Can you tell us what that proposal or what was initiated at that point?

PATRICK O'DONNELL: Well, there had been over the years probably two times, maybe three times where there has been, well, characterized, a serious discussion as to the staffing structure for committee staff. Senator Kristensen, as I recall, his proposal we talked about creating a...one of the options was to create...there was a bill in the Legislature a number of years ago called for creating a legal counsel to the Legislature. So legal counsel would conceivably issue something that looked like Attorney General's Opinions and, at the same time, be given authority to supervise the committee counsels in the place, in the environment, and work for the legal counsel. And the theory was you centralize people, you create expertise, pools of expertise. I will

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tell you that, at least in a couple of those...when I say three, at least in two of those proposals some of it was designed as a...I don't want to call it budget cutting, but an opportunity to save some appropriations because, in some instances, maybe we don't need 14 or 15 or 16 committee counsels, if you assign people properly. So there have been a lot of different motivations to do that, Senator, but you're right, there have been conversations. Kristensen's, I remember his specifically. And then we talked about it again in the downturn of 2009 and '10 at the Exec Board level. Speaker Flood was very interested in talking about the concept. It never went anywhere; it never went anywhere actually either time. The bill to create the legal counsel of the Legislature was on the floor at one point but it never...it was...I don't think it was ever considered or certainly never adopted. Does that answer your question (inaudible)?

SENATOR KRIST: It does and it's...I think I wanted to establish some legislative record of where we've come with this and this conversation is not necessarily a new one. We talked a few years ago, you and I and I think Nancy Cyr, about developing a common training program so that at least the legal counsels had a base from which they could draw and potentially could be interchangeable if we had an issue.

PATRICK O'DONNELL: Right.

SENATOR KRIST: So I appreciate you coming up here and thank you for establishing the record.

PATRICK O'DONNELL: Okay. Yes, sir. Yep.

SENATOR KRIST: I didn't mean to throw you out of your chair. I have one question for you, if I could, Senator Hansen, if I could continue.

SENATOR HILGERS: No, please go ahead, Senator Krist.

SENATOR KRIST: The Clerk's position, in concept I think that every senator who's ever had a staff would say that person works for me and I can say who that person is going to be and I can hire them and I can fire them. In concept I understand what you're saying and I agree with you.

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The problem you're going to have is, again, this is the discussion of let's combine the county seats; you know, nobody wants to give up the power to have their own staff and to be able to hire them as they will. Would you entertain, though, a process whereby a committee chair, I guess for continuity purposes, would retain the existing legal counsel for a period of time before making the changes to the new person? I mean is that...are these amendable? Let me put it that way.

SENATOR HANSEN: Most definitely they are amendable.

SENATOR KRIST: Okay. Thank you very much.

SENATOR HANSEN: And just to elaborate a little bit more, if I may?

SENATOR KRIST: Yeah, go ahead.

SENATOR HANSEN: I'm certainly open to that. I knew there would be kind of...I knew this was an ongoing discussion and I knew that there were lots of different avenues that have both been proposed and probably need to be examined. You know, it's something where the committee staff has to...the committee chair has to provide an opportunity to evaluate committee staff. Or if we as a Legislature provide some sort of severance package for people who aren't retained past day one to ease the job transition, I think anything in that variety would make a lot of sense and be a very responsible thing to do kind of from a responsible employer's standard.

SENATOR KRIST: Thank you.

SENATOR HANSEN: Thank you.

SENATOR HILGERS: Mr. Speaker.

SENATOR SCHEER: Thank you. Just a comment on it. And as Senator Krist stated, my concern with this is sort of twofold. If the committee people are employed by the Clerk, not necessarily will, but it could prove that there would be confrontation between the committee chairman and that staff to the extent, you know, I want you to stay late tonight, our committee is going to run

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until 7:00; no, my clock only goes until 5:00, that's all I'm getting paid for and so that's all the longer I'm staying. You know, you lose some of that control. And like it or not, if we're all going to be honest, there are personality differences. And some people...I may like you and I may like Senator Krist, but you two may not like each other. And so, you know, those personality things that come into play between the person that was elected I think has to be guarded. And I am sympathetic to the people that would lose their positions because somebody didn't win an election for a chairmanship. But to be quite honest, that's the same thing that our staff go through at the end of the four years, as well, because, at least in my class, there were several that woke up the next morning in November and they were going to be unemployed, as well. So I don't know there's a good answer to it, but I don't know taking all the jurisdiction from the employees away from the chairman is the right answer either. But I certainly understand where you're coming from.

SENATOR HANSEN: Thank you.

SENATOR HILGERS: Thank you. Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. I keep thinking about a line, and I'm not sure if I read it in a book or just made it up, but that what is corruptible will at some point be corrupt. And right now I guess with the committee chairs functionally making most of the decisions as to hiring and firing and the committees typically not getting involved in that decision--I suppose they could if they wanted to--but with that particular way you've got smaller spheres of influence. And as you deal with the probability or possibility of influencing being transferred or being centered outside the body, perhaps in political circles, you come to a scenario where you may have a particular party under the influence of a limited number of outsiders in control of the Executive Board who, in turn, hires the Clerk who, in turn, has a new rule like this, very wide-ranging authority with a whole bunch of staff and I think, these staff, probably a little better paying end of the staff pay scale. And what happens when all of a sudden these staff positions become on a uniform scale, instead of diversified among various decision makers, under the control of a--trace the chain of authority--a small and of people external to this body and maybe looking like a bunch of nephews or nieces or brothers-in-law who couldn't find a job? Do you see any risk of that?

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SENATOR HANSEN: So just clarifying your hypothetical that the...are you saying that, either it be the Exec Board, the Clerk's Office, or whatever agency we give authority on this, that they might use that as an opportunity for nepotism or something similar?

SENATOR SCHUMACHER: Well, nepotism I think is in favor of the officeholder. We may have a higher level here if you bring in the power of an outside political clique...

SENATOR HANSEN: Okay.

SENATOR SCHUMACHER: ...who then through a disciplinary mechanism influences the people on the membership of and the votes on the Executive Board who, in turn, may appoint a Clerk who is right-minded, and that Clerk then gets to select these fairly influential, decision-making positions and that reward people in the partisan chain of command. And, you know, I think we fractionate that some now under the present system in that, you know, if there were such corruption, it would be limited to one committee or one chair, or hopefully not many more than that. But this packages all that authority under one head. And that head, and I think Patrick is, as much as he might like to be, not going to be here forever, no matter what kind of elixir he takes from Senator Howard. So, you know, those are possibilities particularly if this trend that we saw last week develop continues. So that would concern me; help me think through that.

SENATOR HANSEN: No, I agree that is a concern. I do think that is a possibility. I think that's something, though, as you point out, is, if there was a nefarious group trying to control the Clerk via the Exec Board or via the Speakership or however we arrange this, in theory, that group would have enough power to control the committee chairs. So I'm not necessarily sure if that impacts it enough or if by leaving it in the realm of the committee chairs it then diffuses the power among enough people. I think that's certainly a fair concern and one that is why we have the committee structure and you guys get to debate this after I get to go home.

SENATOR SCHUMACHER: We better go home pretty soon. I got cats that need feeding.

SENATOR KUEHN: Did we talk you into that too?

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SENATOR HILGERS: Any other questions on...I'm sorry, Senator Schumacher.

_____ : (Inaudible) surgical procedure for the (inaudible).

SENATOR HILGERS: Did you have further questions on Rule 13? Are there any other...

SENATOR SCHUMACHER: No. No, I don't. Thank you very much.

SENATOR HILGERS: ...any other questions on Rule 13? We'll take proponents and opponents in a second. Senator Hansen, do you want to speak to Rule 14?

SENATOR HANSEN: Oh, I'd be happy to. So Rule 14, this came up when we were discussing the Committee on Committees report on the floor and there was lots of discussion as to kind of the roles and procedures of the Committee on Committees. And I understand that different caucuses get to do different things and different...there's always been different perspectives. So what I attempt to do with my proposed Rule 14 was in Rule 3, Section 2, is basically put the rules as they were explained to me two years ago by Senator Coash and Senator Campbell when they controlled my caucus: specifically, that the four members of the Committee on Committees--from the 1st Congressional District, in my case, which were those two as well as Senator Garrett and Senator Schumacher--were going to make the decisions for our caucus, that our personal preference in terms of committees would have some influence, but as would seniority, and that generally once you got on a committee you got to stay on that committee. So this is kind of my proposed, my understanding as when I walked in. I guess as a freshman I didn't realize this wasn't literally written down somewhere. This is my attempt to then codify, kind of establish rules and procedures. Specifically, I included the...it takes three of the four just to have a majority, you've got to break a tie break, but understand...but that's my attempt there. I have not served on Committee on Committees either of my two long sessions here in the Legislature, so I cannot speak to what happened specifically in either year. But this was my assumption as to how the process was working behind closed doors.

SENATOR HILGERS: Thank you, Senator Hansen. Any questions on...Senator Krist.

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SENATOR KRIST: Just a comment. I have been here long enough to see members removed from committees on...in subsequent years and in my estimation it was for good reason. And when a senator...the only thing that we can do for someone who is not upholding the standard or does not follow the unwritten rules or rules, is to make sure that that senator understands that what they did may be costing them their job or their committees. So I don't know that taking that away from the Committee on Committees process or from the caucuses, because we can extend this to the caucus pretty much as well, if there is just cause, a reason that that person should not serve in that capacity, I think that's a vote of his caucus and it's also a vote that should be carefully considered. So I understand where you're going and I understand that continuity is important, but I think there are reasons why we have to reserve judgment. And I say that, Senator, not to...I say that in order to put some kind of legislative record together in terms of the things that have happened before and have happened recently didn't happen because someone was being punished or they were being thrown away, it's because there was just cause in terms of etiquette or rules or tradition. So I just want to be up-front with you, I can't support that.

SENATOR HANSEN: Okay. If I may speak to that, just like I said with the first rule, it's definitely amendable and I'd be happy to work more with the committee if the rest of the rule is something that seems viable. Even when I wrote it, I wrote it down and went...goes like, okay, I know people say this, but this does feel a step too far. So I felt like proposing maybe the strongest possible version knowing it was more likely to have that section removed, as opposed to vice versa, was my intent. So I had some of the same concerns but I didn't necessarily have the legislative history behind it.

SENATOR KRIST: Okay. Thank you.

SENATOR HILGERS: Any other questions for Senator Hansen? Yes.

SENATOR SCHUMACHER: Just I...as Senator Krist was talking there, I seemed to remember, I think it was on the Revenue Committee that somebody with seniority, and you say they should consider seniority in here,...

SENATOR HANSEN: Um-hum.

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SENATOR SCHUMACHER: ...I think bumped Senator Brasch off. Am I remembering that right?

_____ : (Inaudible.)

SENATOR SCHUMACHER: And so Senator Brasch had to leave a committee. So in the event that somebody with seniority decides that they want on a committee and somebody on a committee is already there and would have to be bumped to let them on, which I think was this case, which...or do we need to address or which...who should have...pull rank there? I mean, is it the more senior member or the person who is already, they're a freshman member maybe, who filled the slot before?

SENATOR HANSEN: That's a good question. Speaking to Senator Krist's point, maybe it is you can't be removed from your committee without just cause or some sort of higher standard. Certainly I, mine, I just included...my intent was just to include seniority and preference. I don't think either of them are binding in any order and then that was not my intent.

SENATOR SCHUMACHER: Okay, thank you, Senator.

SENATOR HANSEN: Yes. Thank you.

SENATOR HILGERS: Any other questions for Senator Hansen? Thank you very much, Senator Hansen.

SENATOR HANSEN: Thank you.

SENATOR HILGERS: Are there any proponents for either Rule 13 or 14? Any opponents or those testifying in a neutral capacity? Seeing none, that will close the testimony on proposed Rules 13 and 14. We will switch up the order slightly since we're getting to the point where the remaining introducers are members of this committee, we have to be here anyway. So, Senator McCollister, would you come up next. You have proposed Rules 26 and 27.

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SENATOR McCOLLISTER: Thank you, Senator Hilgers, for the courtesy and the opportunity to go a bit early. I think you'll discover that my suggestions are not contentious and they're simply an effort to...and they're not to change the balance of power inside the Legislature at all. My first rule, Rule 26, would change the current three-day-a-week schedule for Judiciary Committee to a five-day schedule. And I simply offer that as a suggestion because that poor committee, with four days, I believe, was just overworked. And so it's just an effort to maybe rearrange some of the committee's schedules to give them the time they need to not have to stay in the building until the late hours hearing all the bills. So that's the first rule change I'd offer. And secondly, Rule 27, and this shouldn't be contentious at all either, is to simply make it possible to offer bills for 12 days instead of the 10. Things seem to get backed up pretty badly. We've seen that in the bills that I've offered this year. So perhaps two extra days would be a good thing. And we've talked to the Bill Drafters and the Revisor's (Office) and they think that would be a good suggestion as well.

SENATOR HILGERS: Thank you, Senator. Any questions for Senator McCollister? Mr. Speaker.

SENATOR SCHEER: Just a comment. Obviously with the Judiciary change, it does change then numbers and so forth, so there's bigger complications to that. And on a lighter note, on Rule 27, giving us 12 days instead of 10, I'm not sure the general public would want us to have another two days to introduce bills, but that's just a comment, so.

SENATOR McCOLLISTER: (Laugh) Good point.

SENATOR HILGERS: Senator Harr.

SENATOR HARR: Thank you. I think they'd be happy that we have two less days to pass bills though, so. (Laughter)

SENATOR McCOLLISTER: And a shorter session in general, yeah.

SENATOR HARR: And on your first rule, I think it is absolutely terrible...

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SENATOR McCOLLISTER: Oh!

SENATOR HARR: ...because I'm coming with four days and I think that's the right answer. (Laughter) I think, you know, and I will steal a little of my own thunder by saying, we have to do something different on Judiciary. And I applaud your bringing something. I'm not sure five is the right answer; I'm not sure four is; I'm not...I think we should probably have a conversation about it. But I think it is an idea whose time has come and was proven last time and by the difficulty our own caucus had in finding someone to go on Judiciary, so.

SENATOR McCOLLISTER: Well, I'd contend that some of the workloads for some of the committees is pretty light. You know, I've been on Natural Resources for two years, I'm on again this year, and the workload is not bad at all. It's a three-day committee so, you know, rearranging some of those schedules might be a good thing; whether it's four or five I don't know, but it might be time to do that.

SENATOR HARR: Yep. I agree. Thank you.

SENATOR HILGERS: Any other questions for Senator McCollister?

SENATOR SCHUMACHER: Senator, have you sat on Judiciary?

SENATOR McCOLLISTER: I have not, thank God.

SENATOR SCHUMACHER: Okay. Well, you know, it would strike me that you talk in terms of this being binding or at least making more palatable the workload for the senators. But if those hearings run late into the night, and a lot of times Judiciary has really contentious issues, I would tend to think that spreading them out over more time would be better for the public who has got to sit there and listen to, you know, all the testimony before they get a chance to talk.

SENATOR McCOLLISTER: Absolutely, that's a good point.

SENATOR SCHUMACHER: Thank you, Senator.

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SENATOR HILGERS: Senator Krist.

SENATOR KRIST: Having had the experience on the Judiciary Committee and being back there, I can tell you that where you have it, the rest of the committees, with the exception of Appropriations, I think have it over Judiciary is we're often out of time to Exec. The actual hearings are too long, they go too late. You make the good point about the citizens themselves. But then you got to find the time during the time to Exec on those bills properly.

SENATOR McCOLLISTER: Well,...

SENATOR KRIST: And the four days or five days, I mean, I agree with you. I put that change in last year and then withdrew it as part of a structural...so I think in Exec we're going to have a conversation about is the structure correct, are the number of days correct, and look at the number of bills that are presented, and we'll glean some metrics from that as well. But thank you for bringing that.

SENATOR McCOLLISTER: I don't know if it would be possible to subdivide that committee, you know, some of the jurisdictions; that might be another way to go, yeah. Having never served on that committee, I don't know if you could divide out the responsibilities such that you could have two Judiciary Committees but...

SENATOR HILGERS: Mr. Speaker.

SENATOR SCHEER: Well, in response to Senator Krist, and we talked a little bit earlier when you were introducing something, I guess to the extent of an interim study, and I'm not real sure--you know, we keep talking about this committee doesn't do hardly anything and this one does that, and so we get all these varied ones--if this isn't really begging the question that we really have a sincere interim study over all the committee process and membership and days and times that it meets based on workload and other things, because I think probably if we went back historically it might have been based on workload, because I'm sure, you know...maybe Ag used to have a ton and it has very little and maybe Judiciary wasn't the hot button; and even to the extent that the rules, that maybe so it's not such a major deal, that it be addressed as an interim

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study every, you know, ten years or eight years so that it doesn't become a thing that's gone on for 30 or 40 years without being at least...

SENATOR KRIST: When you...I'm sorry, could I?

SENATOR HILGERS: Oh, yeah, yeah, please go ahead.

SENATOR KRIST: When you brought up this point of an interim study, I specifically was answering the questions based upon going to nine for three.

SENATOR SCHEER: Right, sure.

SENATOR KRIST: This changes the scope of the structure itself and I think that an interim study would be very appropriate, do we have the right number of days, and affording both the public and the citizen senators an opportunity to do their job more effectively and more efficiently. And it's not tough to get the metrics. The metrics are out there, I mean, the number of bills that are submitted, the numbers that have been passed, the numbers that have been brought in. But taking our time with it might be (inaudible).

SENATOR HILGERS: Senator Harr.

SENATOR HARR: Thank you, Mr. Chairman. I find that interesting if you divide it by subject matter. If you did guns, gays, abortion, and marijuana, that would be a three-day committee, and then you could probably do the rest on the other day or days. But, yeah, you're right, that would be something interesting.

SENATOR KRIST: Can I volunteer for the first one? (Laughter)

SENATOR HILGERS: Yes. Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. I think the Speaker raises a good point. A lot of times things change. A lot of those subject matters of gun rights, abortion, gender rights,

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those are all, you know, fuming things that have a fairly recent vintage and maybe weren't a big issue when these numbers were set, like...and they may ebb and flow with different things. Revenue right now, there's a lot of stuff comes before the Revenue Committee and highly technical that has long-ranging implications and sometimes not enough time to Exec and try to put together a comprehensive proposal then to get ripped apart because we knee-jerked one way or knee-jerked another or need to do something now or there will be a petition or whatever. And so Revenue is another one that right now probably is at a high point of bills referred to it, so maybe somewhere along the line in this whole process we should have a review of workload because issues (inaudible). And once we get...eliminate property taxes and income taxes, Revenue won't have anything to do and, (laugh) you know, then maybe we can go down to be a two-day committee.

SENATOR HILGERS: Any other questions for Senator McCollister? Thank you very much, Senator.

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman.

SENATOR HILGERS: Thank you for your time and your patience. Are there any proponents wishing to testify on Rule 26 or 27? Any opponents or those testifying in a neutral capacity? Seeing none, that will close the testimony on 26 and 27. And, Senator Harr, thank you for your graciousness in allowing Senator Craighead to sneak in here very briefly. She is...will be introducing proposed Rule 22.

SENATOR CRAIGHEAD: Thank you.

SENATOR HILGERS: Thank you, Senator.

SENATOR CRAIGHEAD: Good afternoon, Mr. Chairman and members of the Rules Committee. As Chairman of the Committee on Committees, I can tell you that we faced many challenges. Senator Harr is smiling. I believe that what we need to do is look at putting into place clear guidelines via the Rules Committee for this process. This is an issue we may or may not want to take up today. But during the session I would like to work with the Rules Committee for

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more clarification and guideline. Now, for those who may or may not know, the only rule for the Rules Committee is that the committee must have a majority for the preliminary and the final report to move it on. That is the only rule. The rest is tradition, not rules. That's all I really wanted to say about this today, but I do look forward to working with you during this session and hopefully we can make a few more changes and get some guidelines into place.

SENATOR HILGERS: And thank you, Senator Craighead. As a brief comment, Senator Craighead and I have had some conversations, as well as members of the committee separately, about, you know, traditionally this committee meets once, it doesn't do anything until the next session, but that this might be an opportune time for this committee to work during the session and potentially in the interim on working on some proposed rules, if any, to govern the Committee on Committees process, so.

SENATOR CRAIGHEAD: Yes.

SENATOR HILGERS: Are there any questions for Senator Craighead? Yes, Senator Harr.

SENATOR HARR: Thank you. So this is a proposal. Are you saying that this is a work in progress and that you will continue to work on this? Is that...?

SENATOR CRAIGHEAD: Yes. Yes.

SENATOR HARR: Okay, just wondered.

SENATOR CRAIGHEAD: But I think today there is so much to take other...there are so many other things that we're dealing with and other rules that, rather than delving into this which is moving in a different direction on this today that, yes, let's work on it during the session.

SENATOR HARR: Discretion is the better part of valor. Thank you.

SENATOR HILGERS: Any other questions for Senator Craighead? All right, thank you, Senator.

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SENATOR CRAIGHEAD: Thank you.

SENATOR HILGERS: Anyone wishing to testify on proposed Rule 22 as a proponent, opponent, or neutral capacity? Seeing none, that will close the testimony on the proposed Rule 22. And finally, Senator Harr. Thank you for your patience.

SENATOR HARR: Yeah. I got to remember where they are. Here you go.

SENATOR HILGERS: And, Senator Harr, you will be introducing proposed Rule 15, 16, 17, 18, 19, and 20. Is that correct?

SENATOR HARR: I hope I have it all. I might a trip back here. With your...well, first of all, my name is Burke Harr, H-a-r-r. I am from Legislative District 8 in the Dundee, Benson, greater Omaha area. With your permission, I'm going to do the first three, well, yeah, fiscal notes, because I see I have some...

SENATOR SCHEER: Interested parties.

SENATOR HARR: ...I won't say opponents, but I'll say some friendly "how to make this bill better" people here. So we live in an era of tight budgets and that has become the norm. When I came here, my first year I was told, if you have a bill that has a fiscal note, don't waste your time on it, we're going to cut 5 percent across the board, I think is what it was. And that was the rule and, by God, we lived by it. And then things started to turn around a little bit, thanks to our friends in the agricultural industry. And we had a little money and it was nice. They weren't heady days, but they were nice days. We still weren't into the land of either/or and...not "either/or" but "and." But we had, thanks to the hard work of the Appropriations Committee, we had some money for the floor, not a lot, we were still simple folk. But what I found was that no matter if a policy was good or bad, that wasn't the most important thing about a bill; the most important thing about your bill is your fiscal note. You can spend all summer on it, you can spend all fall on it, you can drop it like we're dropping bills right now, but until you get that fiscal note you don't know if you have a bill. And you know when you find out about it? Twenty-four hours ahead of time, and that makes or breaks your bill. And Senator Kuehn has the distinct

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privilege of serving on Appropriations and Appropriations spends billions upon billions upon billions of dollars, and good, we need them. And I don't say you're not doing it responsibly, but there are times when a fiscal note is, you know, maybe this one is off a little, but this one is off a little, too, and they kind of...they average out. We on the floor have a different situation. We are rabid dogs and we're going after that bone and we will fight to get our bone. And that leads to hurt feelings when that fiscal note isn't what we thought it would or should be. And when we get it and it's 24 hours ahead of time and we say, I've been working on this since July, what do you mean? Well, see, you missed this assumption here. Oh. Well, maybe, maybe you get a chance to do something on it. There are three of us here who have served on Revenue. When we try to do bills, we try to do them in a revenue-neutral manner and it's a crapshoot. I have a bill right now where I want to eliminate deductions and I want to do it in a revenue-neutral manner. We don't have access to that data. Whatever you want to say, this tells you, I've been working on this all summer, I still don't have an answer, I'm going to still drop the bill and probably have to put "XXX" in it, I don't know, but that's why I want to do a summer fiscal note. And I'll come back to that. But the problem is, and it's not...I'm not angry at the Fiscal Office. They're doing their job and they're doing a good job and they're good people. But we introduce a bill. We get a (inaudible) fiscal note 24 hours ahead of time. Then somehow we say we're going to...we waste a whole committee hearing and we sit there and say, yeah, I'm going to amend this, I don't know what it's going to look like but this is the idea of the bill I want to do, and we can't talk about the specifics of a bill. And we say we'll deal with it in Exec Session and we'll try to...we'll have an idea of what the fiscal note is going to be. And we continue and we continue and then on Final Reading we get another fiscal note and let's hope it's right, let's hope it's neutral, let's hope it's small or maybe zero. Right? Then we're a happy camper; but if it's not, your bill is dead. And like I said, we kill more bills because they have fiscal notes than we do because of whether they're good or bad policy. And if fiscal notes are going to take this much priority, I think it is important that we treat them with the respect that they have garnered. And so I want to see 72 hours ahead of time. Now I know that's difficult. I get that. I understand that. A wise man told me benchmarks are the key. His benchmark is 70 days. He looks at 70 days and he works his way backwards from that benchmark. So right now the benchmark is 24 hours beforehand. Let's just move that benchmark to 72 hours beforehand and work your way backwards. That's what I'm looking to do. You know, maybe it's me. I only prepared for...I wrote term papers the night before, so I didn't care what day it was due; all I cared about was the due date and I was going to

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have it done by the due date. And that's what I'm trying to do on this. So what I've done is I've tried to take it from five days to four for agencies to respond. Hopefully, hopefully soon, we'll have all that data. I'm going to come with a bill that says we should house all the data so that we can...if we are in control of the purse strings and we are the ones who make the budget, don't you think we should have access to that data so we know how much things cost? This summer I sat there and asked, do you guys ever look at your fiscal note, Revenue, to see if they're on or off? You know what the response was? Nope, we don't have time to do that. We're spending billions of dollars and we don't know if our fiscal notes are right or wrong? I think we have a duty to do that and I'm going to come with that. My three proposals that have to do with Fiscal, I don't know what the fiscal note is. I think it might be wise that we ask for a fiscal note before we advance it to the floor. I know that would make things difficult for you, Mr. Speaker, but because there is a cost associated, but we're spending billions of dollars, gosh darn it, we'd better know how much this costs. And we'd better have some control and we better be able to say, be able to justify, well, this is what the fiscal note is, I have 72 hours. And then we have 72 hours to fiddle with it, to change some of our assumptions so that when we do our committee hearings they aren't a waste of time. Yes, it's more work. Yes, it is. I understand it. I get it. I get it, I get it, I get it, I get it. But we have placed fiscal notes on a pedestal and then we've at the same time said, you, Senator, don't worry about it, it is what it is. Well, no, it isn't. We have ways of changing language to change fiscal notes. So that's the first part. That's the timing and that's the preparing fiscal notes. That's 15 and 16. Seventeen, again, folks, fiscal notes, fiscal notes, fiscal notes, they are what rule this Legislature. And we can work on something and not know until March what the cost is. That's not a way to do/make legislation. It wastes our time. It wastes staff's time. It is a waste of resources because we're spinning our wheels, doing a lot of work, and then we get the fiscal note 24 hours and say, nevermind, move on, nothing to see, instead of having a constructive relationship starting here, with the goal here, and working along to say, okay, it has a fiscal, all right, we've got to redo that, why does it have this fiscal note? Maybe we agree with that assumption, maybe we don't, or maybe we change our bill and we come along, we say, oh, okay, now I know what I'm doing. This, having worked with outside groups who get to work with the Governor's Office who has access to the data, that's how it operates, that's how they write bills. We are handicapping ourselves. We are literally tying one hand, maybe two, behind our backs and saying, throw a dart, gosh darn it, I hope it works. Now we can look at prior fiscal notes and they are a good indication, but that's all they are is an indication. And maybe my

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assumptions are different than a prior fiscal note or maybe I want to tweak it a little bit. This is not an indictment of our Fiscal Office; it's not an indictment of our fiscal analysts. What it is, is, you know, I sit up here for the last week and I've been crying tradition. I feel like Fiddler on the Roof. But what I really am talking about is what is the right way to do things. And, you know, sometimes tradition is the right way, but it's always not how have we done it; how can we do it better, that's what I'm trying to do. How can we make Legislature better? How can we use our time efficiently? How can we use our staff's time better? The Chairman of Appropriations is here. Mr. Calvert is here. I'm going to be interested to hear what they say. I've had numerous conversations. Again, it is not personal. Is there a cost? You bet there is, but we're spending billions of dollars and when we reserve...this year, I don't know, are we going to get money on the floor, Mr. Chairman, to spend? Doesn't look like it, right? So guess what, you have a bill that has a fiscal note? (Crumples paper) Throw it away, that's wrong, that's not the way to make legislation. Right? And when we don't know what it is, that infuriates me to no end because we don't until the day after we introduce...till the day before our committee hearing, whether we're going to have a bill or not. No money on the floor, right? So I understand their frustration. Understand mine, that's all I'm asking. I'm asking to spend some money. Thank you.

SENATOR HILGERS: Mr. Speaker.

SENATOR SCHEER: Thank you. Senator Harr, you're looking at changing the rules but again I'm thinking we really even, if we were to pass that, legitimately they couldn't gear up fast enough to help us this year. They don't have enough trained people to just shift over and bring another ten people down to facilitate that. So I'm wondering if it's amenable that we're...I mean may be best-case scenario that we look at this as being effective January 1 of, for example, '18,...

SENATOR HARR: I would...

SENATOR SCHEER: ...you know, because honestly, you know, I hate, sort of like some of the other things, even if we pass now, it really can't happen now. So should we really be looking at, you know, the amount of time here, we're the Titanic, we don't turn real sharp, so even if we wanted to do it, legitimately when we could get it done by?

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SENATOR HARR: Right. You know, the answer is I would be tickled pink if we did it and I don't care what day it takes place. I'd probably like to see June 1, 2017.

SENATOR SCHEER: Well, June 1 would give you the opportunity then...

SENATOR HARR: Right.

SENATOR SCHEER: ...to work during the summer as well, so.

SENATOR HARR: Yeah, to do summer fiscal notes and also to give them time to gear up now, give them time to do the summer fiscal notes; it would also...to give them training during that period. It would also give them a chance to do it next session.

SENATOR SCHEER: Yeah, I just was trying to think (inaudible).

SENATOR HARR: Yeah. No, I am very amicable. Like I said, I'd be tickled pink if we did this because, as Mike knows, this is one of the banes of my existence is the fact that we put these fiscal notes on pedestals and then we don't have a chance to really know what they are. And so, yes, yes, yes, yes, I would be very amicable to that.

SENATOR SCHEER: Thank you.

SENATOR HILGERS: Any other questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Part of not having a fiscal note ahead of time makes for a bad practice that I think as I perceive I've seen and that is you start out with a program that, say, costs \$8 million. Okay? And that's just too much and it's not going to fly; car's got four wheels. Well, what happens if we take off another wheel and we get it down to \$6 million? And pretty soon you're down, just to get the fiscal note down, you're down to a car with one wheel and it really doesn't work very well. And it is, you're right, a tremendous waste of time and it produces ineffective programs because, the idea is, well, you get the program in force and maybe you can roll out an extra couple wheels in the next couple years. And it's terribly

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inefficient not to know. Now, how you can get such an estimate or an estimate you can argue with, I still don't know how to do that.

SENATOR HARR: Well, I mean, we're going to have to spend some money. Right?

SENATOR SCHUMACHER: Right.

SENATOR HARR: We're going to have to invest in economists because...and we're going to have to have access to data that we don't have currently, not that we can't get it. And there's some we can't get, I'll concede that, and we'll work with some of those people. You know, that's one of the other problems is we are a separate branch from the executive. Right? And I've had this happen where when I ask...start asking questions to get numbers, they're willing to work, I'll...you know, I'll say that, not always, but sometimes, some departments more than others, some Governors more than others. But you're also tipping your hand. Right? And maybe you don't want to tip your hand. Maybe you want to do separate...something separate or different and you don't want the executive branch to know until it's a final product what you're doing. There is incentive there. Yeah, we're going to have to spend some money and the question is, is it worth a million bucks? And I'm throwing that number out. I have no idea. I'd love a fiscal note on this. Is it worth it when we're in a budget crisis? And the answer is, a penny saved is a penny earned. And we've got to look for efficiencies and if we can find ways to better spend our dollars so that we know where it is, we meaning legislators, not just others, or when we ask that question how it's being spent, I think we're better informed. Then, the better informed we are, the better we can make these decisions what are our priorities instead of, you know, just, like I said, a shot in the dark, hope it works, if not, come back next year. And if you're in your last year, well, you know, I hope you mentored somebody.

SENATOR SCHUMACHER: One thing we haven't been doing is seeing how close a shot we are.

SENATOR HARR: No.

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SENATOR SCHUMACHER: And if we're putting so much weight into these fiscal notes and it turns out that there's a...

SENATOR HARR: There are some (inaudible).

SENATOR SCHUMACHER: ...wide distribution of accuracy on them, not for anybody's fault but simply because the future is hard to tell, then how...is there a way to do it better?

SENATOR HARR: Right? I mean, so, and it's not an indictment, there are assumptions. And, you know, I heard Mr. Calvert say this morning, if they're within 13 percent on corporate taxes, they're happy. Right? And there are a lot of assumptions, a lot of guesses in there on what things will cost or not cost. But if you don't go back and evaluate what you've done, how are you going to learn? And so I think there is a chance for us to go back and learn and, you know, maybe it's happening already. I've asked a couple times, like I said, do you go back and look and see where your fiscal note is accurate? There are outside services that provide predictions for the future; the question is do they provide analysis of where they were wrong and where they could learn, because we base our laws on those assumptions. And if they're wrong, and they are, how can we correct that, because are we spending hundreds of millions of dollars when we thought the fiscal note was \$8 (million)? I mean, I know of a situation like that. I'm not sure if it was \$8 (million) but it was very small in comparison to, say, actual cost. And do we need to go back and change the law because it ended up being much more generous or an effect we didn't want? I mean it doesn't have to be fiscal notes where we did that. Before our time, there was that where you could drop babies off. Right? And it ended up being a terrible piece of legislation to...or at least it was perceived as terrible and we had to have a special session to change that. We don't do that when we have terrible fiscal notes. Yeah, I'd love to see a review of it to see, hey, is this working or not? It would be wonderful, but, you know, ifs and buts were candies and nuts, but I'd sure as heck love to see us have the...invest in ourselves so that we can professionalize how we make bills.

SENATOR SCHUMACHER: Thank you, Senator.

SENATOR HILGERS: Senator Krist.

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SENATOR KRIST: So for the legislative record and maybe for some of the newer senators who are sitting here listening, I've had subject matter, it was safe haven, by the way, not "drop a baby off," ...

SENATOR HARR: There it is, thank you.

SENATOR KRIST: But I've had...

SENATOR HARR: And that, you were here for that.

SENATOR KRIST: I've had fiscal notes that have come back with a legislative fiscal note that has been darn near zero, if not zero, and four or five agencies behind there logging on to "I need two men, two years, and \$2 million, I need four men, four years, and \$5 million, I need whatever, whatever." It is worth noting that the only fiscal note that we have to accommodate is the legislative fiscal note that's attached.

SENATOR HARR: Yeah.

SENATOR KRIST: It is also worth noting that if the fiscal note that's attached to that is a matter of memorandum or the total package, is out of whack, in some cases it's because whatever agency is out there, code or noncode, doesn't want to do what you want them to do--problem number one, my estimation.

SENATOR HARR: Yeah.

SENATOR KRIST: Number two, we spend a lot of time telling people what it's going to cost. We don't spend a lot of time showing people how much we've saved. Case in point, how much is it going to take to change the entire juvenile justice system? X. How much did we save? Well, population of YRTC-Kearney and -Geneva has been cut by 50 percent. We're still..they're still asking for the same amount of money they had when they had 200 people in there but, you know, you'll have to deal with that, Senator Kuehn, and others.

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SENATOR HARR: Well, yeah.

SENATOR KRIST: The point I guess is that I will say this. You've said several times no indictment against the current staff. I have nothing but good things to say...

SENATOR HARR: Me too.

SENATOR KRIST: ...about that staff. But you've talked about interim studies. This might be the perfect subject matter for an interim study that would go into great detail in terms of how much is the cost, what is the projected savings, and it's a different modeling for the economists but in...Mr. Calvert and I have had this conversation.

SENATOR HARR: Well, you know, and, you know, if we're going to go down that, what is the cost of a life saved? Right? So we are much more effective in our results of YRTC. We may be spending more but our results are better and we're taking kids who may have been a liability, right, who never got their high school degree--high school is the cutoff, below that they're a liability--now we've got them through, we've got them a high school degree, maybe even a vo-tech license.

SENATOR KRIST: So your argument is, what do we save by reducing recidivism...

SENATOR HARR: Right.

SENATOR KRIST: ...in the corrections system or in juvenile justice? I get it. I (inaudible).

SENATOR HARR: Yeah, and that's a different road I'm not going down right now.

SENATOR KRIST: Yeah.

SENATOR HARR: I'm going strictly down...and I think that is a tougher road to go down. I'm trying to go after low-hanging fruit and that is I want to...we'll never eliminate death by fiscal note, but I want us to go in with our eyes a little more wide-open on what our costs are so we can

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prepare for bigger pieces of legislation, one, through the summer interim. And I'm limiting it to...I think I limited it two and, if not, I will, right, which I always find interesting we can amend a bill as many times as we want and we have staff for that and we can figure that out but we can't do it here. But that's for another day. But also, gosh darn it, give us a little heads-up so we can be prepared because here's what happens. We get our fiscal notes, we're in another committee. Maybe that committee, if it's a three-day or a five-day, we get that committee or we get that fiscal note, hopefully at 1:30, you know, and by and large we do. Some we don't but vast, vast, vast majority we do. And then you got that night and by the time you're done with your hearings, the people you need to talk to have already gone home. Next morning maybe you have something on the floor and maybe you don't but, guess what, you're spending your time on that fiscal note trying to figure out, well, how did they come up with some of these assumptions? And maybe I agree with some of those assumptions and maybe I don't and, if I don't, how do I fight it? And if I do, how do I change the law so that we can eliminate that assumption and figure out that cost? And so that's all I'm asking for is a little time, a little love, and a little chance to talk and to communicate. Communication, amazing what we can settle in this world through just communication. That's all I'm trying to do.

SENATOR HILGERS: Senator Harr, a question and point of clarification first. I agree wholeheartedly with, Senator, your comments regarding the interim study. This sounds like the type of thing that we would get benefit from sort of a holistic look at this with some time maybe to work with the Fiscal Office. But my clarification point briefly was you mentioned...you've described this look-back concept where you look back at (inaudible).

SENATOR HARR: Yeah, that's not in these rules.

SENATOR HILGERS: That's not in here, right?

SENATOR HARR: No, no, no.

SENATOR HILGERS: Okay, correct.

SENATOR HARR: That's my dream.

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SENATOR HILGERS: That's on the wish list.

SENATOR HARR: That's on my wish...I will mentor a young person, maybe a Prep grad, I don't know, to take that role on.

SENATOR HILGERS: That's all I wanted; I wanted to clarify.

SENATOR HARR: Yeah. Yeah, yeah, yeah.

SENATOR HILGERS: Are there any other questions on proposed Rules 15, 16, or 17 for Senator Harr?

SENATOR HARR: Did I get to...yeah, 15?

SENATOR HILGERS: Well,...

SENATOR HARR: Come back on the Judiciary, is that how you want to do it or...?

SENATOR HILGERS: Well, I'll leave this to your preference. I know...let me ask Senator...Chairperson Stinner, are you going to speak in opposition to this, or Mr. Calvert, are...

SENATOR STINNER: I'm trying to think.

SENATOR HILGERS: Or neutral.

SENATOR STINNER: (Inaudible.)

SENATOR HARR: Well, yeah, because my other...Judiciary won't...we've talked about that one, kind of, but then that redistricting is going to take a little while and I'd like to let these folks...

SENATOR HILGERS: That's what I was thinking. Is that okay with you, Senator Harr? So...

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SENATOR HARR: That is perfect.

MICHAEL CALVERT: I'll be neutral.

SENATOR HILGERS: Are you going to testify as well, Mr. Calvert?

MICHAEL CALVERT: Yes.

SENATOR HILGERS: Okay. Thank you, Senator Harr. Get your exercise. We'll come back.
Chairman Stinner.

SENATOR STINNER: Thank you, Mr. Chairman. Members of the Rules Committee, for the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I'm here on behalf of the Fiscal Office concerning these three proposals, as well as...

SENATOR HILGERS: Chairman Stinner, I'm sorry to interrupt you, just for the record's sake, I'm sorry, are you going to testify in favor of, opposition to, or in neutral?

SENATOR STINNER: You know, I think I'm going to testify neutral.

SENATOR HILGERS: Okay.

SENATOR STINNER: But I will make some statements that will sound like it's opposed.

SENATOR HILGERS: Okay.

SENATOR STINNER: But it...and the reason why, I enjoyed the commentary and I think I share some of the frustration. I like what I heard as far as maybe prospectively these are things that we need to look at. I am dealing today with three rule changes with the reality of what we have in Fiscal Office today. And really, when I look at Rule 15, first of all, go from five days to four calendar days, I'd probably put working days, but I get what you're trying to do. And I do share the frustrations that everybody shared. A lot of times that fiscal note is not what I wanted. Lots

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of times I disagree with maybe the assumptions, I'll go back and talk to the analyst. And I get what you're talking about in timeliness and being able to craft your legislation, recraft it, rethink it. That's, I think, something for future discussions. But today, when those bills come down to the Fiscal Office, I know within a day or two that those bills are read and determine what department, what do I have to do, start to template out what this fiscal note should look like. They contact the agency. You know, when you've got 80 bills going through Revenue, you know what happens. There's peak load there; you're kind of subject to the agency. I think they can hit a lot of that three-, four-day time lines with other agencies but there are differences to that. So to put it from five to four, I'm really kind of deferring to the Fiscal Office. The Fiscal Office, I mean, the average tenure there is greater than 20 years. They've dealt with all of this stuff so they know how the workload comes in, they know how to manage it, they've got the expertise. So I'm deferring right now to them. And I believe that the overall product that they turn out is pretty darn excellent and I don't want to give up excellence for the sake of trying to hit some time lines. And that's why I'm saying you're the purveyor of all of that stuff, you guys tell me what numbers you can hit. And that's what I'm here for today. I'm saying, you know, let's leave it at five because that's what they told me they could hit and that they can comply with. And there may be some exceptions to that. As you know, in Revenue it just piles up. But you also have to understand the agency, commission, board that you're trying to talk to, you know, they may be understaffed, they may...you know, it might be a complex piece of legislation that they have to do a lot of work. Right now, we're peeling back staff, not replacing things, probably bad timing to talk about this kind of stuff, and of course the volume of bills that they have to do with. The second one I'm asking, you know, as I read 72 hours versus 24, there's two ways that I'm reading that. It's peak time, there's times where you can't comply with 24; there's certainly times where you can't comply...or most of the times they comply with 24 but can't comply with the 72 simply because of the peak workload. And to me, I never staff for a peak. But if I'm hearing right, maybe we ought to reconsider or maybe rethink that. And, you know, the other solution maybe is that you limit the senators' number of bills that you can introduce. How's that? That might help the Fiscal Office spread this workload out and stay on top of it. But what I'm trying to do is to balance time with staff, with the knowledge that I have, and with what I see happening in Fiscal over the last two years. This last one I think you have to understand that on September 15 the agencies all submit their budgets. And I don't know if you've ever seen what they submit. I mean it's deep and it's detailed and that's where the Fiscal Office really spends their time during the fall trying to get

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those...trying to get ready for the budget season. So when they tell me that they're...this is a very busy time, this time framework doesn't work, I guess give them the staff that we have today and you can say, yeah, we can staff up, we can hire. It takes, first of all, you have to find the people; secondarily, I think you got to train them and that might be a two-, three-year runway to get the staff. You want a dynamic tool? We've talked a little bit about that. You know, what's the other side of that? We never do talk about the cost savings, legitimate concern, because I want to know it, I want to know when we...yeah, that's all I get is the cost side. But that's...you're called a little bit more dynamic model and I think Congress uses a dynamic model. I've kind of checked into it. It's...they're really expensive but maybe it's something that will make us better decision makers. And I'm all about that and I'm all about accuracy and quality and really kind of even the look-back idea, to take a look at was that fiscal note accurate, what level of compliance, and, you know, just how broad that was in terms of assumptions. I don't have a problem with any of that type of talk. So I understand what you're saying. I think prospectively is the best way to maybe address this. Right today, to pass these rules I think would be very, very restrictive and hurt the quality as opposed to trying to hit these numbers.

SENATOR HILGERS: Thank you, Senator. Senator Krist.

SENATOR KRIST: The dynamic modeling that I've discussed several times with your staff and with others, if you look at the DOD modeling function and GSA's function, they do project in long-term savings and the cost of doing business. For example, we know that we are in a budget cut time and we know that some of the things that are going on right now are cutting budgets that potentially are already part of an appropriations process and contracts have been let. So the fact that you cut that budget will cost you; if they would default on 2013 numbers, on contracts, they'd have to pay 2016, '17, and '18 numbers if you put those contracts back into place. I don't see...

SENATOR STINNER: We've got to be able to measure outcomes and that's what you're saying and I 100 percent agree with you.

SENATOR KRIST: And that's what happened in 2009. We were...there were a lot of unintended consequences in those cuts. We've had these discussions. But just to say that this is a bad time

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and we can't potentially move forward, I don't find that to be the answer. I think the answer is, if we all agree that there are other more efficient, more effective, more less traditional models in moving forward, then let's invest in the future. That doesn't mean that we're going to change anything today and it certainly doesn't mean that we're going to change anything potentially in the next two to three years. But we have to start having the discussion.

SENATOR STINNER: One of the things that we did implement, Senator Mello passed last biennium, was evidenced-based, and that's information that we're getting. We got a long way to go on the evidence-based, but especially in times like this where you have to prioritize, that would be a handy model to have...

SENATOR KRIST: Right. Thank you.

SENATOR STINNER: ...and perfect it and that's something that we just continue to try to perfect.

SENATOR HILGERS: Senator Krist, any other questions for Senator Stinner? Okay.

SENATOR STINNER: Thank you.

SENATOR HILGERS: Thank you, Senator. Mr. Calvert, please. We're using a little discretion of the Chair to go a little out of order with the proponents and opponents but we would like to hear from the Fiscal Office. Thanks. Please.

MICHAEL CALVERT: Okay. Michael Calvert, C-a-l-v-e-r-t, I'm the Legislative Fiscal Analyst. And my comments will be in a neutral capacity and I will address all three parts of the proposed rules change. There are going to be a few things that I'll probably repeat and affirm as to what the Chairman spoke to. The first rule item deals with Section 7(b) changing the number of days that an agency has to prepare a fiscal note. I believe the Chairman said that...well, the process when a bill is introduced, we receive a copy in our office almost immediately, quick turnaround. It goes through a process of assignment to our fiscal note coordinator and assigns out those bills to individual analysts. They're assigned a group of agencies. The bill relates to Department of

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Economic Development so the bill goes to Jeanne Glenn. We send out fiscal notes within a day or two. We send out fiscal note requests within a day or two of receiving a bill. Okay. And it is virtually immediate. The notion of a five-day, four-day, three-day requirement of any kind in terms of an agency response really is pretty meaningless because what agencies do is they manage their load based on the timing of hearings. And, for example, Department of Revenue may be assigned 80 bills within the span of the first ten days of introduction; they're not going to turn around in five days and get those, that fiscal note response back. They're going to look at the hearing calendar knowing that some things are going to be up for hearing in two or three weeks and they will manage the timing and the distribution and return of their fiscal note to our office. So in that sense, I mean, whatever number you pick, by and large, they're not going to comply with. Department of Revenue just won't be able to, for example, or any other agency that's got a large number of bills. So Section 7(b), the five-day time period just doesn't really change much of anything. Section 7(d) changes the due date for the fiscal note to be delivered to the Clerk from a 24-hour to a 72-hour period prior to the public hearing. Currently we really comply with the 24-hour period almost every time with some exceptions usually in the early part of the session as...when a bill gets introduced, if there's a quick turnaround in terms of scheduling a hearing, we run into problems with agencies being able to respond in a timely basis, there's no doubt about that. And I'd like to be able to improve upon that situation but sometimes it's just simply unavoidable. I think if you change it to a 72-hour period it'll likely increase the number of exceptions in the early part of the session since a greater number of agency responses simply will not be received in time to analyze them and prepare our own response prior to the deadline. The other thing you have to understand, too, as part of the fiscal note process we have a requirement to give the Department of Administrative Services Budget Division the opportunity to comment on the agency fiscal notes. They don't comment on our fiscal notes but the agency fiscal notes, so that time frame gets to be a little bit problematic. Possibly 48 hours might work. I'm not sure if internally there might be some batching in terms of the process and how we process fiscal notes. I mean it's a fairly long, drawn-out process. It's pretty much electronic. How we batch those, maybe we could manage that a little bit differently, I'm not sure. I think the real key, though, it comes down to agency compliance and getting the material back to us. We're not solely dependent upon the agency response, but in many instances, you know, an analyst's comfort level in terms of writing a fiscal note is greatly enhanced if they have something in hand from the agency. Okay. On some instances you rely on original research or some other background

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information that you've got and maybe an analyst isn't willing to go out on a limb and do that. But we've got a higher comfort level if we've got the agency response. So I, you know, maybe something different in terms of I'm not sure 72 hours is the magic number. I just don't know. How many agencies, especially the large agencies that have a lot of bills and a lot of fiscal notes, to deal with how they're going to be able to comply with that I just don't know, I don't have an answer for that. So we probably need, you know, with a 72-hour time frame in the rules, we'd probably need to have agency responses back to us at least five days prior to hearing because of the processing time of what we'd get from the agencies, integrating it with DAS budget, and writing our own fiscal note and getting that all finalized. The last rule change, Section 7(l), (m), (n), and (o), is the...I would characterize as an interim fiscal note process. The timing in November and December is right in the midst of a peak period for us in terms of the analysts preparing handouts, doing their work and analysis in terms of the work they have to do for the Appropriations Committee. So that timing is extremely unfortunate, very, very difficult. You just can't control for the factors in terms of what kind of requests will come our way. I mean even I noticed that the rule was rewritten from an earlier draft to limit it to two requests per member of the Legislature. Well, but then you can't control the subject matter. I mean you could have 25 or 30 bills that go to the analyst that does Revenue bills. You could have 30 or 40 of them go to the analyst that handles Department of Education, the school aid formula, because the school aid formula happens to be a hot topic that particular year. Those instances would be a serious problem for those analysts and the work that they have to do. We have a statutory obligation to support the Appropriations Committee in their budget deliberations. That process becomes a serious problem in my estimation. It causes...it would cause me some...well, you won't care if it causes me heartburn or not, but it would. I think we've got a problem there. So you can't really control for the topic. You could have several analysts bearing the brunt of that circumstance and you can probably virtually predict it's going to be somebody with school aid, somebody with the Health and Human Services, Liz, for example, or a lot of Revenue bills, so that will be Doug Gibbs. A couple comments that were...I have to take issue with a little bit in terms of an ex post (facto), an after-the-fact process on evaluating the consequence of our fiscal note estimates. On the expenditure side you capture your feedback through the budget process. We look at those things in terms of an annualized cost of a fiscal note into the future and to try and identify to what extent that is in the request. Does it seem valid and consistent with what are our expectations? So I mean there is a look back and that's part of our routine budget process.

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Revenue side is more problematic because sometimes you don't know if that dollar entering into the treasury was as the result of that particular bill or not. But you do have some verification and some validation through the revenue forecasting effort because those revenue changes are embedded into our estimates for revenues. And part of the problem, as Senator Harr correctly pointed out that plus or minus about 15 percent on corporate income tax is a pretty good record on a year-ahead forecast, part of the problem is the uncertainties attached to those estimates on those tax types because you don't have the data and Department of Revenue doesn't have the data. So we try and do that verification process as best we can. So bottom line, the interim fiscal note process is...I have some real serious concerns about. The other parts, it's up to you.

Questions?

SENATOR HILGERS: Thank you, Mr. Calvert. Any questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. You know, as we think about that issue of how do we get enough time for everybody to respond and do something a little better than shoot from the hip sometimes, I suspect, is it our schedule that messes things up? I mean between bill introduction and the time that we resume activity, right now there's no term, we go right away, right into hearings, and these things, whether they're major items or small items, are reported. Should we go into recess for three weeks? Or how long would it be so we could clear the system out?

MICHAEL CALVERT: I think that's been talked about periodically and, you know, I'm not sure I'm the best judge of that. And there are all kinds of issues you would have to account for. I don't know. To me, on the surface of it, yeah, it sounds pretty good. Now one of the problems I can remember many years ago was a senator thought, well, gee, let's have a seven-day session in December, take a break so everybody can scurry around and do what they need to do, and then come back sometime in January. Well, Merry Christmas! You know, that becomes kind of a problem there in terms of working with agencies when you've got a lot of people standing down. So I don't know. I think it's worth looking into frankly.

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SENATOR SCHUMACHER: How long...I mean let's just pretend that last day of bill introduction we go into a recess time for X days or weeks. How long would it be to catch up? How long should X be?

MICHAEL CALVERT: I'm not even sure I could hazard a guess; you know, you're talking a week or more easily, I would think. And part of the problem, too, is just the scheduling of hearings is that we have periodically tried to be aware and be in contact with committee counsels in terms of the hearing schedule and it was kind of like, okay, here's a bill that's really, really complicated, let's try and not put it at the front end of the schedule. But there might be other imperatives out there that a chair has to deal with that causes them to do that and that's where we start running into some problems.

SENATOR SCHUMACHER: Well, I mean,...

MICHAEL CALVERT: The complicated stuff comes up early...

SENATOR SCHUMACHER: It seems to me that it might be well within the realm of possibility if two weeks' recess would allow the schedule to be...or the workload to be digested so that a lot of those bills, if you know it's...the fiscal note is way off, you may want to put on the bottom of the priority list for hearings and everything else if they're functionally dead in the water.

MICHAEL CALVERT: Yeah. Anything...

SENATOR SCHUMACHER: I mean I thought you were going to say six weeks that we need to...

MICHAEL CALVERT: I'm open to negotiate. (Laughter) I don't know. Senator, I don't know.

SENATOR SCHUMACHER: Okay.

MICHAEL CALVERT: You know, it's going to be case by case, circumstance by circumstance. You know, I really don't know the answer to that. A longer break in between like that? But on the

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other hand, that's absolutely no real guarantee that anything is going to dramatically improve in some where...you know, I've heard pretty...not consistently but I've heard spot comments of the inaccuracy. Well, some of the inaccuracies are just inherent, I mean, and some of them are unavoidable. And it's not because of indifference. Some estimates for a fiscal note on the tax side are nigh unto impossible. I can't give you a highly confident estimate in terms of what we're losing in terms of Internet retail sales. I mean you can do all the statistics you want, but I can't guarantee it's going to be that accurate. And imagine you have some legislation that is akin to that sort of thing. It's very difficult.

SENATOR SCHUMACHER: With very little memory in the Legislature anymore, and I think Senator Harr may have alluded to it, something that maybe with the best of efforts everyone thought was going to be a \$10,000 fiscal note turns out, because the corporate accountants are a lot slicker than we can anticipate, turns out to be \$100 million in actual expenditures. What mechanism can we build into the system to flash red lights for the people who come in who were never here and never even heard the arguments for the original bill to begin with to say, wait a minute, this one is off by...it's ten times more than what they thought it would be, so that these things don't lay just dormant as continuing errors and somebody is really laughing all the way to the bank. I mean, is there a way that we can build a mechanism into this as not exactly quite what Senator Harr had in mind, I'm sure, with these rules, but, you know, as long as the issue is here?

MICHAEL CALVERT: Well, the staff...

SENATOR SCHUMACHER: How can we catch a problem like that?

MICHAEL CALVERT: ...staff experience and knowledge and background. You know, for my analysts, if there is something on the expenditure side in particular that is inconsistent with what they recall and their experience, I mean, we maintain some historical files that I can go back and refer to some of the work done on past analysts, okay, if I need to. I mean those things don't emerge very often, but if an analyst comes across something on an expenditure budget that is inconsistent or the agency keeps requesting for something that, by and large, we know just doesn't make any sense in terms of what the analyst has learned, we raise those issues as part of

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the budget process. Now on the Revenue side of things, I mean, you probably are going to end up having to rely on your Revenue Committee staff as much as anything, and their knowledge and experience, and legislative intent that attached to any legislation. And to some extent, I try and do that just through the revenue forecasting process to try and get a better idea as to, well, there were some changes with respect to, let's say, cigarette tax or something. I'm not coming up with a good example. But I work along with our forecaster close enough to the revenue side that, you know, things start to emerge, I bring it to someone's attention. The formalized mechanism? I guess you rely on your committee staff as much as anything to know something about past history and why things maybe aren't working according to what people thought. I don't know how else to answer it.

SENATOR SCHUMACHER: We've handicapped ourselves (inaudible) because we don't have access to the data over at (Department of) Revenue, and the lag in between, and yet, you know, you repeatedly hear these rumors, whether they're accurate or not, or reports that things on the revenue side are costing a whole lot more than what we anticipated or what was guesstimated in the first. In some way, we need to have an early warning system to get those things on the agenda, say, whoa, we thought this was going to be \$10 million and it's now \$100 million, somebody better do something.

MICHAEL CALVERT: Okay. Well, let's...let me answer that by...I'm going to suppose for the moment that you're talking about tax incentives.

SENATOR SCHUMACHER: Well, or another change. I think the thing I'm thinking about, I'm not sure if it's the same thing Senator Harr is thinking about, another change in how we handle where the state and which income is allocated. And all of a sudden you find out that the accounting profession gets really, really sharp on how they allocate income from Goodwill and expenses for this and manage to move income away from Nebraska to another state and that has a profound amount of money involved.

MICHAEL CALVERT: Well, we're kind of getting down to a level of detail I'm not sure...yeah, I (inaudible).

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SENATOR SCHUMACHER: Yeah. I mean somewhere there's a big problem there.

MICHAEL CALVERT: Yeah. I just don't have an answer on that. I really don't. Yep. Through our process and work, if there is something abnormal, some inconsistencies, we try and track them down.

SENATOR SCHUMACHER: All right, thank you.

SENATOR HILGERS: Senator Krist. And I'm going to step out briefly so you have the bridge, Senator.

SENATOR KRIST: I'm just going to make a quick point. No matter what we do, no matter what we do on the rules side, what I'm hearing is it's the response from the other agencies that we would be waiting for.

MICHAEL CALVERT: That's really the key.

SENATOR KRIST: And to tell them we're reducing it or increasing it in any way, unless we're ready to do a statutory change, we really have no teeth in the game. I mean, I know you have a good working relationship with those other agencies and the other folks that you would get the information. But I think we need to realize that we're beyond the rule discussion; if we're really going to enforce this, it would have to be statutory.

MICHAEL CALVERT: May I comment?

SENATOR KRIST: Yeah, absolutely.

MICHAEL CALVERT: That's all well and good, but I'm not sure what kind of penalties you can build into statute either.

SENATOR KRIST: Yeah, they...

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MICHAEL CALVERT: I just don't know. I've contemplated...this has come up before.

SENATOR KRIST: Right.

MICHAEL CALVERT: And how do you leverage an agency that can't or won't? I don't know.

SENATOR KRIST: Okay, thank you.

SENATOR SCHUMACHER: And, Senator Kuehn.

SENATOR KUEHN: Thank you, Mr. Vice Chairman. If I may, Mr. Calvert, would you want to, just for the record, briefly describe the process that senators have access to now in the interim...

MICHAEL CALVERT: Sure.

SENATOR KUEHN: ...to get basic data? I've come to the Fiscal Office and you guys have done some extensive prework on ideas I had which let me know they were bad ideas in some cases, some cases really bad ideas. Would you explain just for the record, and maybe that leads to a discussion that...

MICHAEL CALVERT: Sure.

SENATOR KUEHN: ...we need to have about better educating senators about the opportunities available for your office in the interim.

MICHAEL CALVERT: Simply said: ask; call; if you have a draft you want to talk to an analyst about, find out who is assigned Department of Revenue or who is assigned that particular agency. On an informal basis we'll go through and spend time with you to try and help in terms of an estimate, technical issues. I mean just the other day one of the new senators asked me about a bill and I said, well, gee, let's go talk to Doug Gibbs. We talked for a few minutes and a problem was solved rather quickly. So the door has always been open in that regard. Now the aspect that's important to understand is that's a controllable situation. I mean I can...if I have a

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situation where we have overload, it becomes a lesser priority if we're in the midst of trying to put together a budget or briefing the Appropriations Committee. Now, I mean, the worst thing I can do is just say no. And I've also encouraged contact directly with the analyst. You don't have to filter it through me. So, yes, we're available; we want to help; we want to make a contribution. If it's an estimate you need, we will try and get you there. But before we actually have a bill, before we actually survey the agencies, we're not bound to it but we can give you a clear indication.

SENATOR KUEHN: And so in the kind of summer, if we're going to call it that, summer fiscal note option, how would you see that really any different, because you're still talking about a set of assumptions to which you can't be bound in a work in progress?

MICHAEL CALVERT: Yeah.

SENATOR KUEHN: Do you see any really...that we're adding anything other than what you're already doing at an ad hoc basis now?

MICHAEL CALVERT: Yeah, it's a formalized process that in my estimation makes it harder to manage and deal with and I can't manage the workload because if I get 50 bills dealing with a tax subject that goes to that particular analyst, there's nothing; with a rule like this, we're obligated to do something. In the other circumstance, if I all of a sudden have that kind of avalanche upon one particular analyst, I say, okay, you can't be doing this right now, give us more time, let's do this differently. You're going to have to accept something that's not quite so polished. Okay? So that for me is a concern right there.

SENATOR KUEHN: Thank you.

SENATOR SCHUMACHER: Any other questions from anyone? Thank you, Mr. Calvert.

MICHAEL CALVERT: Thank you.

SENATOR SCHUMACHER: Okay. It looks like, Senator Harr, number 18 is up next, right?

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SENATOR HARR: I just want to maybe close on the last one first.

SENATOR SCHUMACHER: Okay, okay.

SENATOR HARR: I don't know if you all saw what just happened. Without a fiscal note, I just got death by fiscal note. Right? No one questioned the policy. No one questioned the problem. Right? What was the problem? It's going to cost too much money. You have just firsthand, right in front of you, seen my problem and my frustration. You know, maybe you don't schedule for your peak, but you do schedule for your clients. And guess you who your clients are? We're their clients. We're the ones that they work for. And you know what, none of my problems were addressed. It was just it was going to cost too much money. Well, let's spend a little money. Let's do the right thing. If you're worried about an avalanche, what's that tell you? There's a pent-up demand. If there isn't a pent-up demand, you don't need to worry about an avalanche. So that's why I'm here, that's why I'm doing what I do. So with that, I will move on, since I got the last word, so thank you. Next is...

SENATOR KRIST: 18.

SENATOR HARR: ...Judiciary? Is that what I'm doing next?

SENATOR SCHUMACHER: This is the one on electronic devices if we're at 18.

SENATOR HARR: On which one?

SENATOR SCHUMACHER: If we're at 18, we're at electronic devices.

SENATOR HARR: Oh, electronic devices, yes, yes. That's a simple one. Right? So back in the day...today you can't go out behind the glass, and there was a reason for that, right? It was because we don't want people outside the body affecting what we're doing on the floor. And, look, I run a business, I think everyone in here has a business outside of and I understand the importance of being able to communicate with your home office. But when we're on Final Reading, the perception when we're on our personal laptops or when we're texting people or e-

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mailing from our phones, I'm as guilty as anyone, but the perception outside the body is they're talking to people outside. Right? And so I think there has to be some sanctity about when we're on final vote, Final (Reading), that says only state...now that's not eliminating it completely because they can still e-mail you. But I think when we're on Final Reading we maybe have to match our electronic decorum with our traditional decorum of separation. So it's just that simple. It's nothing more, nothing less. That's it, I guess.

SENATOR HILGERS: Okay. Any questions on proposed Rule 18 for Senator Harr?

SENATOR HARR: Uh-oh.

SENATOR SCHUMACHER: And my cats are getting hungrier so I better keep this short. The other problem with electronic communications--you just addressed Final Reading here--there's absolutely no transparency in any of that, talked about transparency. I mean, you can get signals in from the lobby, from all kinds of interest groups. And if they happen to have the right number to text to, those are just...

SENATOR HARR: Right. Yeah, and it is. It's a problem. I agree with that. And hopefully, that's something over time we can address. What I'm just trying to do is lay the groundwork and we can grow from there.

SENATOR SCHUMACHER: So your suggestion is no...on Final Reading, which is probably the, for all practical purposes, the most irrelevant of our readings, that you cut off the communication with the outside.

SENATOR HARR: It's a start. And what it does is it mirrors our rules as far as no one else on Final Reading can be on the floor, right? Staff can be on the floor any other time. And so what it does is it mirrors the solemnity we already give Final Read electronically with what we do in the other traditional ways. Can we expand it? You bet. But I just want to start there; and I want people to realize that life goes on, but at least match that solemnity and we'll grow or we won't. But we'll see how the members think it goes.

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SENATOR SCHUMACHER: Is it your contention then that because people can see it on television they make this assumption that if they see someone--and I'm not sure how you...cell phones I understand how you could maybe make an assumption that somebody's communicating with the lobby. But you also might be reading the next bill on the...

SENATOR HARR: Well, that's why you still have your state computer.

SENATOR SCHUMACHER: Right. And so...

SENATOR HARR: That's why I left that. And like I said, I'm just trying to match the solemnity that we showed Final Read previously in the electronic...advance it to the electronic age.

SENATOR SCHUMACHER: But how does the person know whether or not you're reading the next bill that's up on Final Reading or even this bill or if you're...

SENATOR HARR: You don't.

SENATOR SCHUMACHER: So we accomplish then...

SENATOR HARR: But what we've done is eliminate it. We've eliminated a large portion of it so you're not sitting there texting, whether it's your office or your lobbyist or special interest group or your wife.

SENATOR SCHUMACHER: So when I look at this, basically it's sitting there texting on these things that you're really addressing on my hand-held...

SENATOR HARR: That and...well, yeah, yeah, and your personal computer so that when you're doing Final Read you're not doing other work. Right? Hopefully, you're only doing government work on your government computer. We sign an oath to that.

SENATOR SCHUMACHER: It's hard for somebody to know whether or not if there's a laptop open before you whether that's a personal computer or the state laptop.

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SENATOR HARR: The ones who care will because they'll know what our computers look like and if they see something different. Now maybe, you know, me personally, I have an Apple. When we had Apples, I...my monitor was bigger, but other than that it was the exact same one, but I had an 18-inch. But, you know, now I have an Apple and that's not an Apple. So if someone sees an Apple, they're going to say...that's when the Red Coats come in and go, get that out of here. Don't be doing your personal work on government time during Final Read.

SENATOR SCHUMACHER: Thank you, Senator.

SENATOR HILGERS: Mr. Speaker.

SENATOR SCHEER: Well, the only comment I would have is we're sort of trying to rule ethics and integrity. Because as we both know, if we're on Final Reading, it could be one that Patrick is going to speed read, but it's still going to take eight or ten minutes for him to run through, the vast majority will probably get up and go use the restroom or do something during that time. You walk outside of the floor, you're no longer on the floor so the phone comes out, you're doing whatever you want to do, you may be making a phone call in the lounge in that five- or six-minute period of time. So, you know, if the person in the body has the integrity, they're not going to be doing things they shouldn't be doing to begin with. If they want to do something they shouldn't be doing, I'm not sure you ever make rules heavy duty enough to stop them from doing (inaudible).

SENATOR HARR: You won't, you won't. You know, I used to have...our dean of discipline used to say there's only one kind of discipline--self-discipline. Of course, we have ways of encouraging it. And I think by codifying in our rules that we want to take Final Reading seriously it shows to us and to our fellow members the importance we put on Final Read. There's always a work-around any law, any rule. But what we are doing is setting an example and saying this is who we are; this is who we want to be. That's all I'm trying to do. You're right. You know, I would hope if it's too long of a bill the Speaker would use his prerogative to waive Final Reading. But that's just me.

_____: (Inaudible).

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SENATOR HARR: (Laugh) And we'd have one person who votes against it.

SENATOR HILGERS: Questions for Senator Harr on proposed Rule 18?

SENATOR HARR: Okay.

SENATOR HILGERS: Okay. Want to move in to proposed Rule 19?

SENATOR HARR: And 19 is?

SENATOR HILGERS: I'm sorry. That is the change the number of standing committees.

SENATOR HARR: Ah. So we've addressed this somewhat already. The hour is late and I don't want to beat a dead horse, but Judiciary--and I have the numbers, maybe--carry a lot more than the other three-day committees. Not only do they carry a lot more, the gravity of their subject matter are, as Senator Schumacher referred to earlier, hot button issues. And they attract a lot of attention, sometimes intentionally, sometimes not intentionally. But, you know, it is not unusual--matter of fact, it's common--that they are the last committee going every day, three days a week. And so it was...and I kind of like McCollister's idea of maybe separating the jurisdiction within there, but that's not what I came with. What I came with was a four-day. This was an idea originally not brought by me but brought by Senator Lautenbaugh. And the idea is to give it...you know, maybe spread that work out a little bit. And so in order to do that, I had to look at some of the other committees to make the numbers match. And so what I did was...Senator Brasch gave a great speech last week about how important ag is to our state. So I had two choices, which was incorporate Ag into Natural Resources, which, you know, I can't do that. Right? So the other option was to look at what other...what are the other two lowest jurisdiction one-day committees to make that work? And it happened to be General Affairs and Urban Affairs. And I know, you know, General Affairs the last couple of years, they meet two or three times and they're done. Urban is always done before the other committees other than that. So the idea is to merge those two. It was in no way an indictment or anything against those two committees, but it was merely, you know, distribution of work evenly. And so, you know, Judiciary is, it's a very important committee because they deal with constitutional issues and they

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deal with issues close to people's heart and I understand why. I sat on there for two years and I thank my lucky stars that Senator Chambers came back and asked that I leave because it is a tough committee. And so, like I said earlier, we had trouble saving...or finding people to go on that committee originally from our caucus and I understand why. I didn't want to go back. So the workload is heavy and the subject is serious and so I just thought it would be good to give them another day and that's all.

SENATOR HILGERS: Any questions? Senator Krist.

SENATOR KRIST: A couple comments about Judiciary and I think I don't want to beat the dead horse either because I'd like to ride it home. But the point I guess I'll make is that Judiciary by itself within the referencing process, we shouldn't be taking bills away from Judiciary if the jurisdiction clearly is in Judiciary. And I think that an effort to make their work lighter--public record, okay, that's all I'm doing--an effort to make their workload lighter by sending it someplace else is a disservice to the citizens of the state of Nebraska because what's going to happen is if you send a prolife bill to HHS and they don't do what they're supposed to do and we get sued or it's declared unconstitutional, guess who is paying for that?

SENATOR HARR: And we have.

SENATOR KRIST: Not us, it's the citizens of the state of Nebraska.

SENATOR HARR: Um-hum.

SENATOR KRIST: Something needs to be done about Judiciary. I believe it should be four, potentially five. I think we need to introduce some kind of long-term interim study and plan in order to make those processes, put those processes in place before we lose the continuity that we have with this body and move on to the next one. But for the record, just shifting the load someplace else is an extremely dangerous thing to do.

SENATOR HARR: Thank you. And that's why I brought this, right, because I've seen a couple bills go to other places. And I understand Referencing (Committee). I mean I think they're trying

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to lighten the load, I'll give them the benefit of the doubt. There are some guns bills that went to Government as well. And so I think they're recognizing that there is an issue. And so the question is, how do we address that issue when we're dealing with serious constitutional issues?

SENATOR KRIST: Agreed. Thank you.

SENATOR HILGERS: Mr. Speaker.

SENATOR SCHEER: Senator Harr, I'm going to ask you to do something that's going to really tick off Chairman Wayne and Brasch, but we've talked about doing the interim study and so forth and in the essence of time I would respectfully ask you to withdraw the rule change. If we're going to address them all, this certainly can be part of it. But, you know, to have everyone get up and testify when, indeed, if the intent of the group is to try to do a long-term study, it certainly would, yeah, move things along more expeditiously.

SENATOR HARR: Okay.

SENATOR KRIST: Is that a yes?

SENATOR HARR: Yes. Yes. A thousand times, yes.

SENATOR KUEHN: For the record, I can legally beat a dead horse and I won't. (Laughter)

SENATOR KRIST: We're not talking about literally.

SENATOR KUEHN: Just saying.

SENATOR KRIST: Just saying.

SENATOR KUEHN: I have the scope of practice (inaudible).

SENATOR HARR: (Inaudible.)

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SENATOR KRIST: I would never beat a horse.

SENATOR HILGERS: (Inaudible) so that's withdrawn.

SENATOR HARR: What's that?

SENATOR HILGERS: That one is withdrawn. You have one more still left.

SENATOR HARR: Oh, yes, and the hour is late. I have one left, don't I?

SENATOR HILGERS: Yes, you do.

SENATOR HARR: Okay.

SENATOR HILGERS: This is redistricting; this is Rule 20.

SENATOR KRIST: 20.

SENATOR SCHEER: 20.

SENATOR HARR: So now we head into the heady stuff again. And this one I will not withdraw because I think this is serious.

SENATOR HILGERS: Senator Harr, do you mind if I just briefly interrupt just for Senator...Chair Brasch and Chair Wayne. I think because that rule has now been withdrawn, there won't be any testimony opposing or in a neutral capacity.

SENATOR BRASCH: I thought you were grouping (inaudible).

SENATOR HILGERS: Oh, okay. That's why you're here? I'm sorry. I assumed incorrectly, yes.

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SENATOR BRASCH: I would also...I'll strike my comments (inaudible) and I'll be very brief, very brief.

SENATOR HILGERS: Yes. Yes, please. Yes, I was going to...

SENATOR BRASCH: Just while we were speaking about electronic devices I want to note that your Apple watches, I get messages...

SENATOR HILGERS: Senator, would you mind introducing yourself.

SENATOR BRASCH: Oh. I am Senator Brasch, L-y-d-i-a B-r-a-s-c-h. I represent District 16 and I just wanted to add comment. When he...your mobile phone is not your only device that communicates, so are we going to have to strip down at the...and take off our watches and take off, you know...I just think that we're reaching too far and that we are statesmen and stateswomen and that, you know, believing that we don't have the integrity, you know, on Final Reading to understand the gravity of that I find very surprising. But messaging does not stop at a phone and that was my comment. I...a lot of people are getting the watches now and I can read messages on my Fitbit. So my comment is I think you're going a little too far on that. And I have no other comments. Any questions?

SENATOR HILGERS: Any questions for Chairperson Brasch? Thank you very much.

SENATOR BRASCH: Take off your watch.

SENATOR HARR: My watch only tells time, barely.

SENATOR BRASCH: (Inaudible.)

_____: (Inaudible). (Laughter)

SENATOR HILGERS: And my intent at the end was to ask for any testimony on the others but...so why don't you...I apologize, Senator Harr. You can continue with the redistricting.

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SENATOR HARR: I'm back. Guess who's back! So this one I'm not going to withdraw and I...thank you, Senator Brasch. Again, I'm just trying to match our policy, as I stated earlier, with the other. Maybe we need to repeal that you can't leave the Chamber during Final since that questions our integrity. Redistricting, so in 2016 the Legislature passed Senator John Murante's LB580 which adopted, which was called the Redistricting Act. It was a bill that he and Senator Mello spent a great deal of time on. Senator Murante actually wrote a really good opening. I don't know if I'm going to read it, the whole thing, but I'll just summarize it. So this was originally a bill introduced and started by Senator Karpisek. Senator Mello and Murante began discussions on what sort of legislation would go forth in the Legislature to enact some sort of redistricting reform so that we did not have the issues that other states have. Since that time, he worked closely with the redistricting elections standing committee through NCSL, he went to several meetings, and he worked with them to better understand what other states do relative to the redistricting process to see how we could improve upon our own. LB580 was that bill. I don't know if everyone in this room voted for that bill...well, I know everyone didn't vote for this bill, but those who were there, just quickly, since you weren't, the act established the Independent Redistricting Citizen's Advisory Commission, a nine-member commission to prepare recommendations for redistricting to the Legislature by creating six redistricting map plans. The commission would have to conduct four public hearings across the state and allow for public comment on the map before introduction of any legislation. Three commission members were to be appointed by each legislative caucus; no more than five were to be affiliated with the same party. It passed the Legislature and on April 18, 2015, sadly, Governor Ricketts returned it with these objections: he feared the commission would be hyperpartisan; Article III, Section 5 of the constitution requires the Legislature to conduct redistricting legislation, not anyone else; and only the unelected advisory commission can redraft...or draft redistricting bills; that those bills did not receive formal public hearing by a legislative committee; the Legislature may not properly delegate to an advisory commission power that is solely conferred upon the Legislature by the constitution; and that it was unconstitutional to have the Secretary of State provide formal Opinions regarding the constitutionality of proper maps; and it infringes upon the duties of the Attorney General. This rule that I have here encompasses much of LB580 but also takes into account some of the Governor's concerns. The commission, or in this case now committee, is composed of seven members. Each legislative caucus appoints two members. No more than three committee members may be affiliated with the same political party. The six members appointed

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by the Legislature caucus then appoint the seventh member, a chairperson who cannot belong to any political party. The committee must still conduct four public hearings across the state and the provisions which require the Secretary of State to provide formal constitutional Opinions are completely struck. Folks, it is our prerogative to make the redistricting plan and it is our prerogative to determine how we are going to make our redistricting plan. If the Governor does not like how we make our redistricting plans, he has an option, he can veto our bill; otherwise, tough tutu. He can object to the product but he can't object to the process. That's our prerogative. That's what the constitution gives us. That's what this bill...excuse me, this rule does is it says to us how we want to conduct ourselves. It's no different. This committee that we will vote on will vote it up or down, there are no changes, just like Committee on Committees. Right? And we're giving it to, we are voluntarily allowing others whom we trust to come up with a plan. We don't trust them, guess what we can do. We can vote it down. If it's voted down twice, then we go back to the way we've traditionally done it. If the courts find it unconstitutional, it comes back to us, we can make our own rules. But we're the decision makers. We decide how it is and this is how we're going to decide how to do it. That's what I'm trying to do here today. It is not a complicated bill, not a complicated rule. I will bring a bill similar to this--I think I dropped it already--but I appreciate the Governor's comments and feedback and that's what I've addressed some of his concerns. And I think we have a better, better situation.

SENATOR HILGERS: Thank you, Senator Harr. Mr. Speaker.

SENATOR SCHEER: Well, as you, I'll say, misspoke twice,...

SENATOR HARR: Uh-oh.

SENATOR SCHEER: ...we're really talking about a bill and this is a rule. Just let me finish. It essentially is a bill, a previous bill that was approved, I'll grant you that.

SENATOR HARR: Yes.

SENATOR SCHEER: Regardless if it's voted and approved, by doing this we would have robbed the public their opportunity to have a hearing on this. And now, granted, we're having a

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hearing now. But every other committee has a minimum of a seven-day period of anything that is going to be on the agenda to be heard. That didn't happen. They had one day. So consequently, this is...it is not the normal procedure or protocol for a bill--what I will call a bill--of this magnitude. It, you know, it was contentious, no question about it, Burke, Senator Harr, so, you know, and to me, more importantly, that bill was passed by previous Legislature. If we're going to look at it, if you've introduced a bill, then I think that's the appropriate venue for it. This Legislature would then look at it as a legislative product, not a rule. That would be my concern is...

SENATOR HARR: Okay.

SENATOR SCHEER: ...(1) we did not get public input, at least what I believe would be appropriate public input, and we do have a legislative process and an avenue which you have already taken the liberty to utilize as far as a bill. So I find it sort of duplicative.

SENATOR HARR: And that's a fair comment and that's why I (inaudible) suspended it and did a rule. But rules are...the purpose of rules is to determine how we as a body govern ourselves. Right? And so this, whether it's a rule or a law, is how we govern ourselves on redistricting. The constitution gave us sole authority to redistrict and to determine how to redistrict. This is just us telling ourselves how we're going to do it. I will tell you that it's a rule this year and, you know, I'm going to go out on a limb and say I don't have your support. But that being said, if it were to go to the floor, people would have a chance to comment. It would also have a chance to...we can amend our rules two years from now when redistricting is more relevant than it is at this point. So that's why I'm bringing it now and not waiting two years...well, (a) I won't be here in two years I guess. But you know, I think it is within our prerogative to make our own rules of how we want to govern ourselves.

SENATOR SCHEER: Fair enough but...and (1) I wouldn't make the assumption that I either support or won't support something. I'll wait and see what the bill would be. I won't...I would not...

SENATOR HARR: Yeah.

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SENATOR SCHEER: And I'm not voting so it's immaterial.

SENATOR HARR: Yeah.

SENATOR SCHEER: But one of my problems with this as a rule versus a bill is truly the public input. And as you can see, it is 6:30 at night. I don't know if perhaps, you know, Jack is going to testify on this, I don't know, maybe, maybe not, but it is immaterial. But I would believe, under normal circumstances,...

SENATOR HARR: Yeah.

SENATOR SCHEER: ...and if you have introduced the bill, I will guess that there will be other people there to testify.

SENATOR HARR: I had Nancy Cyr here earlier. I don't know what happened to her. (Laughter)
But, yes, I...your concerns are valid.

SENATOR HILGERS: Senator Krist.

SENATOR KRIST: I think...I don't think, I know, besides Senator Murante who was LA Murante, I'm a lone survivor of the redistricting effort.

SENATOR HARR: Nope, nope.

SENATOR KRIST: Were you guys here? Your class was here?

SENATOR HARR: Our senior class was here, yep.

SENATOR KRIST: Your senior class was here.

SENATOR HARR: Yeah.

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SENATOR KRIST: Okay.

SENATOR HARR: So there are six of us,...

SENATOR KRIST: Okay.

SENATOR HARR: ...seven with Murante.

SENATOR KRIST: So we have a vivid memory of how we didn't decide to move forward. There was a group of people that decided by a rule that they would do things a certain way and they took it to the floor.

SENATOR HARR: We did it by rule.

SENATOR KRIST: By rule, by rule.

SENATOR HARR: Um-hum.

SENATOR KRIST: Now this is too extensive for me. I would agree it needs to be a bill. But we all need to start thinking about when you're here for redistricting is how are you going to proceed, because you put some partisan hack in charge of the thing and you're going to end up with another fight on your hands like we had. So by rule, you're absolutely right. And I apologize for not including your senior class in there. But you will have to decide who is going to be on that committee, who is going to lead the charge, who has the...maybe the background, I mean, but maybe by then you elect somebody who's been a county commissioner again, or election commissioner again, and you'll have somebody here.

SENATOR HARR: Um-hum.

SENATOR KRIST: But besides Nancy Cyr and the folks in the Legislative Research Office, it'll have to be a rule by which you proceed.

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SENATOR HARR: And I think it was...wasn't it Senator Watermeier's nephew or...it was someone's nephew, as well, worked in the...he still here? It was someone in the...that we hired in the Legislature who did a great job. Right? We brought in an expert who did a...you know, I was...

SENATOR KRIST: Well, I think Nancy Cyr has hired some folks now that understand...

SENATOR HARR: Oh, she has. Yeah.

SENATOR KRIST: ...the geo system better than we would have ever found.

SENATOR HARR: And it's never too early to start planning for tomorrow.

SENATOR KRIST: But I do think that there is a realization that if you look back at history and you understand it, there has to be a rule and a process in place in order for you to proceed internally before you start the process. So plant a seed.

SENATOR HARR: Plant a seed.

SENATOR HILGERS: Any other questions for Senator Harr? Thank you, Senator.

SENATOR HARR: Thank you. Oh. Yes, sir.

SENATOR HILGERS: No. I said thank you, Senator, I'm sorry.

SENATOR HARR: Phew.

SENATOR HILGERS: Thank you. Thank you, Senator. With that, do we have any proponents on proposed Rule 20? Anyone wishing to testify in opposition or in a neutral capacity? Is there anyone--I did not go over this earlier--is there anyone except for Chairperson Brasch who is willing to...who is here to testify or would like to testify as a proponent of Rule 18 regarding electronic devices? Anyone in opposition or a neutral capacity? And then I did not...with

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proposed Rules 15, 16, and 17, is there anyone here who wishes to testify as a proponent for that set of rules? Those are the fiscal note rules. Anyone else who wishes to testify in opposition to it or neutral capacity? That closes the testimony for proposed Rules 15, 16, 17, 18, 19, and 20. Next is proposed Rule 21, which is mine, so I'll hand the bridge back to you, Senator.

SENATOR SCHUMACHER: Okay, "Captain."

SENATOR KRIST: Can you transport me down?

SENATOR SCHUMACHER: What's that?

SENATOR KRIST: I said, could you transport me down?

SENATOR SCHUMACHER: (Laugh) Transport.

SENATOR KRIST: "Captain."

SENATOR SCHUMACHER: Yes. (Laugh) Activate phasers?

SENATOR HILGERS: Good evening, colleagues. My name is Mike Hilgers, H-i-l-g-e-r-s. I'm the elected state senator for District 21 which covers northwest Lincoln and Lancaster County. And my proposed rule, proposed Rule 21, would amend Rule 7, Section 10 of our current rules which is the rule that relates to cloture. My proposed rule, really, the genesis of this rule comes from the increase in the number of filibusters that we have had over the last several years. Senator Bolz's chart I have in front of me, which is very helpful, and the number has skyrocketed, historically skyrocketed--as of last year, we had 24 filibusters. And as I sat in orientation and as I've spoken to other senators, what I hear time and again is that this body has been traditionally a 25-vote body, obviously the number of votes required to pass a bill, to it's becoming more and more a 33-vote body which, of course, is the number that is required to end debate and move a bill forward on a motion for cloture. In fact, I've recently in our orientation heard Speaker Hadley say those very words. There's two parts of this I think in my view. The first part is the total number of votes required to invoke cloture and cease debate. Right now

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that's 33. That is not three-fifths; that is two-thirds of the elected membership of the body. That actually, if you look at other legislative bodies around the country, including the U.S. Congress, that's actually high; I don't know if it's the highest. Our research has not found very many with two-thirds. The U.S. Senate used to be two-thirds. They modified that some years ago to a three-fifths threshold. But traditionally what you will see, if you look at various jurisdictions or governmental bodies, is that a two-thirds threshold is used for significant pieces of legislation, so, for instance, a constitutional amendment or for a treaty. If we were to change, if we were to do an equivalent change from the...as the U.S. Senate did, that would be--to three-fifths--that would be 30. I'm not...my proposal does not address at all the number required to invoke cloture. What it does is address, or attempt to address, a slightly different issue which is the burden of the moving party to invoke cloture. And what I mean by that is, if we had a rule that said it takes 33 votes and we know that every senator would be present and every senator would be voting, there would be no purpose for my rule because you would always have 49 lights of some kind. Currently that's not the case. For some bills, not all but some, there will be a senator who is absent; there will be maybe a senator who is present and not voting. And so what you have are a total of maybe 47 lights or 46 lights or 48 lights. The number, the 33 threshold, is not relative. It's not relative to the number of members voting. It is an absolute number. And so what happens is, when you already have a high threshold, those present and not voting or absent votes, or folks who are absent and not voting, really become de facto no votes. And what you see is someone who attempts to invoke cloture and cease debate is really having to achieve a super...not a supermajority but a super-supermajority: 33 of 46, 33 of 48. I mean in some cases you may get closer to 80 percent. Again, it doesn't occur in every instance, but it does occur and it has occurred as recently as last session. And so my proposal attempts to not go at the number, because I'm...the purpose of the filibuster is very important to me, it's very important to this body, which is protecting minority rights and especially when you have a Unicameral system of government; without that other check of the other house, it's important to have the minority rights protected. And you will hear no argument from me; in fact, you'll hear zealous defense of that from me. What it does instead is ease the burden slightly for those who wish to invoke cloture; instead of having 33 votes, green lights, instead what it would propose is that you would have 17 red lights, the motion would fail. It's sort of a negative in a way. But what would...if the motion for cloture, a senator...what would happen is if a senator would move for cloture and if there were 17 red lights against that motion, then the motion would fail and debate would

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continue under our parlance and the bill would die. Now I'd have...there is a separate amendment that is not in my current rule that I would like to discuss in a second. But what this would do is it would flip the burden slightly on those who want to kill a bill via filibuster and it would require you to make a public vote. If you are absent or if you were present and not voting, that vote would essentially count toward ceasing debate and not as it is now, which is essentially it counts towards killing the bill. The amendment that I propose and it is not in here, and the reason it wasn't in my initial proposal is because I...it's a little awkward, this wording, you know, have this...the way it's worded currently is the motion fails if you have 17. Well, the reality is we have motions and motions pass and they pass not by the failure of something; they pass because there is a positive force. That positive force is some amount of green lights. So there would be amendment that would be necessary, and I would be happy to have this conversation with the committee in Exec Session, or now, that would essentially have some affirmative passage of green lights necessary to pass the bill. It could be 25; it could be 30; it could be 27. We could pick the number. Under our normal rules it would be 25. But it would be a necessary but not sufficient condition for the motion to invoke cloture to pass because 17 red lights would kill it. That's a necessary amendment. So my...this is incomplete but that...so the committee is aware, that is my proposed amendment to my proposed amendment I think to complete the proposed rule. I am very sensitive, sitting here as a freshman who has been in this body, on day six to propose a rule of this nature. I do not have the experience that Senator Krist has or Senator Harr or Senator Schumacher, Senator Scheer, any of the senators here. I have not gone through these fights and I'm very sensitive to that and I will tell you that I take it very seriously to propose a rule at all, because far be it for me to go into someone's house the first day and say we ought to change this, very sensitive to that; however, in my experience, organizations benefit from new ideas and fresh ideas. It is not my decision just to impose the rule. What I am trying to do is provide it to the body, to the committee so that we can bring your wisdom to bear and debate it and consider it. Sometimes those...that leads to better results if you've got sort of that fresh perspective. Sometimes it doesn't but the purpose is to have that discussion. I think it's a...I think it would be a valuable addition to our body. A little unorthodox, it's a little different from how we would normally think about a motion to invoke cloture, but I do think it would be something that would be of value and would help streamline the process of getting legislation passed. I have had a number of conversations with senators, as well as the Clerk and some others, Professor Berens as well, to try to sanity-check this proposal and, you know, so far I haven't...there hasn't been the

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concern to withdraw it but at the same time this is part of the process to propose it to the committee and get feedback and get your thoughts. So with that, I would take any questions if you...

SENATOR SCHUMACHER: Thank you, Senator. Senator Krist.

SENATOR KRIST: Let me give you a scenario. We're dealing with an aviation package that is of extreme nature and you have somebody who is sitting on an airport authority board, nonelected, appointed position, which is legal, you have somebody who owns an aviation business that it really affects, and he doesn't want to get caught up in the voting for a particular issue one way or another, and you have three or four people--and this is...this happened last year--that have either walking or bacterial pneumonia who aren't here. You've just reduced, because we recuse ourself from taking the vote, I'm using aviation because that's my profession, you've just eliminated the number in the body by six. How does this...how does...the number is the number. But you've tipped the advantage now to the other side by simple math reduction of the people who are available. That's why I can't support it. I just honestly think that the number is the number and it has worked for this body. And I'm the last person that's going to say that I'm not going to listen to fresh ideas, because I think it's great. But when you have seen the political maneuvering and the people who basically...and I'm going to tell you, in four years you're going to want to get reelected, so how you vote, whether you vote or not, by simply saying I'm not going to vote, being called guilty of voting the wrong way, it is your right to not vote, vote green, vote red, but if you're not here or you're caught in this mess and you don't vote, then you're counted on a side that you don't want to be on. So inherently that's my overall objection. You make a good point. We've had too many cloture votes. We've had too many things taken to the extreme. I made a point with the Speaker when we talked about this a few minutes ago or a few hours ago. The whole reason we had the amber light debate that went on forever and the lighter debate that went on forever is because there was nothing else to talk about during the first couple of weeks of the second half of the biennium. We didn't have anything substantive that was carried over from the past year so we had these silly debates on the floor that lasted forever and nobody really cared because we talked about what we wanted to talk about. And certainly there is one member of this body that talked about a lot of things he wanted to talk about, whether it had to do with amber lights or not. I think you get my point.

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SENATOR HILGERS: Absolutely.

SENATOR KRIST: Yeah, so it's not that I don't want to listen to fresh ideas; it's that there are circumstances involved where potentially in that scenario I talked about that Speaker should have probably just pulled it off the floor and we should have sat around or adjourned for the day. That didn't happen.

SENATOR HILGERS: You mind if I grapple with that hypothetical briefly?

SENATOR KRIST: Absolutely.

SENATOR HILGERS: So in your hypothetical there's...we essentially have six folks who aren't available; they either recuse themselves or they're sick.

SENATOR KRIST: Right.

SENATOR HILGERS: So we've got a 49...instead of a 49-member body, we've got 43 voting on this particular issue. And so what I would say, my response, and I understand, Senator Krist, we may just be at different viewpoints, but what I would think of that is I would say, well, the current rules, that means it's almost...it would be nearly...it would be very difficult, I should say, to have that...now you have 33 out of the 43 that need to vote to invoke cloture...

SENATOR KRIST: Right.

SENATOR HILGERS: ...which is significant percentage. And maybe a couple of the folks who were sick were of that 33 and you've already got a group that's burdened, is stretched, but I mean 33 is a big number.

SENATOR KRIST: Right.

SENATOR HILGERS: Whereas, the other way, you would still have, if, you know, the number changes, the same amount, still six. But if it's a...you know, if it's a...there's a little bit...it seems

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like there's a little bit more room to grow there, from my perspective, from the opponents potentially. I don't know about that particular issue that maybe it's easier to get the 20 or the 21 in that instance than it is to get to the 33 or 43. So I think it's exactly the type of hypotheticals to work through as we consider this proposal and I appreciate your comments and question very much.

SENATOR KRIST: All right, thank you.

SENATOR SCHUMACHER: Any other...Senator Harr.

SENATOR HARR: Thank you. Thank you. And thanks for the fresh idea. I do appreciate it. I'm still grappling with what the heck it means and what its consequences are. And I guess my first question is, and you touched on it, and it's, do you know any other body, any other circumstance where a minority of no votes prevails the day?

SENATOR HILGERS: Only a minority of no votes?

SENATOR HARR: Well, so going to this 17 no votes equals...

SENATOR HILGERS: There was a proposal that...we had researched this and I don't want to say that there isn't one out there. We did a...

SENATOR HARR: And now by "we," we mean who?

SENATOR HILGERS: My staff and myself.

SENATOR HARR: Okay.

SENATOR HILGERS: And so what I...what we found was one proposal that, again, had an affirmative vote piece to it, so it was the...really, the driver was the negative side, this reverse cloture idea. But it still had the affirmative. So I haven't seen anything that just does what's in this current proposal. I did see one. I think it was...I'd have to go back and look. I'm happy to get

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this off the mike and get this information to you, Senator Harr. I believe it might have been the Democratic Caucus in the U.S. Senate had considered this change maybe 20 years ago. Again, it was...

SENATOR HARR: Did they do it?

SENATOR HILGERS: No, they didn't.

SENATOR HARR: Okay.

SENATOR HILGERS: And it would have had the affirmative...again, it had the...I want to be clear that it had that affirmative vote element...

SENATOR HARR: (Inaudible.)

SENATOR HILGERS: ...but still had the core of what I'm talking about.

SENATOR HARR: So why do we want to do this? Is it because you think this will discourage filibusters?

SENATOR HILGERS: I think it...the...oh, I'm sorry.

SENATOR HARR: Or at least confuse us on filibusters? Because it's confusing me right now.

SENATOR HILGERS: Right.

SENATOR HARR: I guess I don't understand how this creates a greater deterrence.

SENATOR HILGERS: Well, it's not about creating a deterrent, it's just making it...I think it's...if you're looking at...if you're of the view, and I'm of the view, that it's an incredibly high burden to 33 and if it's becoming increase...you know, increasing in its use--we're at 24--you either could do what we talked about with Senator Bolz, which is to have a deterrent of some kind, or you

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could just make it easier at some...you could make it easier for the movant to invoke cloture. Now you could do that either by changing 33 to 30 or 25 or something, or you could do this. And I think this is an incremental change because it doesn't have anything to do with the overall number of votes. If you have 17 minority votes that want to kill a bill and they vote, you've got it.

SENATOR HARR: But it's a difference with a distinction. Right? It's not a difference without a distinction. There's a...

SENATOR HILGERS: Absolutely. That's the whole point of the proposal is that there is a difference, absolutely, there is a difference.

SENATOR HARR: All right. So I...let's name a controversial bill: Medicare. Okay, so Medicare, and I'm slow, so let's pretend I want Medicare expansion, hypothetical. Before I would have voted yes, and if I have 33 yeses it goes forward. Now let's assume Senator Krist is against it so he goes the eight hours and now he's got to find 17 no votes. Right? Is that correct?

SENATOR HILGERS: If Senator Krist is against it, yes, he would have to have 17 red lights.

SENATOR HARR: Okay. And if I'm present and not voting because I have a conflict, that doesn't count towards a yes or a no. Or does it?

SENATOR HILGERS: It would not...so it would not count, officially count as a red light just...but it's equivalent now if you're present or not voting. It's not an official green light or a red light but it effectively counts as a red light because...

SENATOR HARR: But now...you know what, I'm running against Senator...I've got an opponent that I want to run against: Senator Krist. And now I can say Senator Krist voted against expanded Medicaid? Is that the purpose for doing this? I mean I don't understand why we're doing it.

SENATOR HILGERS: Oh. Yeah.

SENATOR HARR: I just don't understand why we're changing the burden.

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SENATOR HILGERS: Because it's slightly easier...well, two reasons really. One is it makes it a little...what I think is a high burden, but it makes it easier without...I understand that it does in some ways change how the votes are counted. But it doesn't...if you have 17 against the bill, you have 17. And in my view, Senator Harr, if you are going to stand up and use the filibuster, which ought to be rare, ought to be rare--we can debate how often is rare--but it's a powerful mechanism that ceases debate where you might have majority support. You may have 30, 31, 32 green lights. If you're going to use that, you ought...

SENATOR HARR: I've been in that situation. Right? And...

SENATOR HILGERS: My view is you ought to be on record to saying, hey, I'm against this and I'm willing to take that vote. That's my view. So I think those are the two interrelated.

SENATOR HARR: So that's the reason is you want someone on record to say they're against it, as opposed to someone on record saying I'm for it? Is that...

SENATOR HILGERS: Well, that's part of it. I think the biggest reason, I think by switching the burden it makes it slightly easier to defeat...have the motion...defeat the bill but have cloture pass.

SENATOR HARR: Well, it still requires the same number of votes.

SENATOR HILGERS: Except that the real difference is the absent and not voting, how do those effectively translate into the calculus. Right? Right now, the absent are present and not voting. Really, they aren't green lights so they effectively...they're not actual red lights but they're effectively red lights because they're not going towards the close...to invoke cloture. Under my proposal, those would effectively be...

SENATOR HARR: I'm not sure...

SENATOR HILGERS: ...they would effectively be votes to invoke cloture because they weren't red lights.

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SENATOR HARR: I'm not sure that's right because if I have present and not voting now,...

SENATOR HILGERS: Um-hum.

SENATOR HARR: ...they don't really...I still have to get 33 which means...

SENATOR HILGERS: Right, but it takes a vote out of the bucket.

SENATOR HARR: This is above my pay grade but I just...I don't...I feel like it's too (inaudible) and I can't figure out why. But it's...it just doesn't...and I don't know why but I've never heard of this concept before. It's always we want to be in the...it's what you talk about.

SENATOR HILGERS: Yeah.

SENATOR HARR: You want to be in the affirmative.

SENATOR HILGERS: Yeah. Well, and there would be affirmative piece. And, look, I...it's a little different, I understand.

SENATOR HARR: Right.

SENATOR HILGERS: But Unicameral is a little different and it's...

SENATOR HARR: Maybe I need...it is. Maybe we need a little time to think about it. Right? Yeah. Okay. Did you have that second amendment?

SENATOR SCHUMACHER: Senator Krist.

SENATOR HILGERS: So...what's that?

SENATOR HARR: Do you have that second amendment we can review?

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SENATOR HILGERS: Oh! I don't have...I wanted it...I don't...I can have the language. I don't have it on me right now. I was kind of playing with it. I wanted to get the committee's thoughts. If I have...I don't have the...of course I forgot my proposed rule.

SENATOR SCHUMACHER: We'll have time to Exec it and to have his amendments whenever the committee gets around to this one.

SENATOR HARR: Okay.

SENATOR SCHUMACHER: Senator Krist.

SENATOR KRIST: Just for the record, I don't care which side of the fence you're on, but the side of the fence that was...owned the Congress over the last eight years made some serious changes that now they have to live with. So because you're the ruling class, you probably don't want to tip everything in your advantage because someday you may not be the ruling class--just a perspective.

SENATOR HILGERS: Well, and, first of all, I'm not part of any ruling class. I'm 1 of 49 that...

SENATOR KRIST: No, I didn't suggest that.

SENATOR HARR: No.

SENATOR KRIST: What I suggested was a couple times you said "easier." Well, this is a difficult...it's supposed to be difficult.

SENATOR HARR: Yeah.

SENATOR HILGERS: Um-hum.

SENATOR KRIST: And to discourage this from happening to save time, I don't see the deterrence being there. But again, this is conceptually...I'm like Senator Harr a bit. I finally got to

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the point where I could explain to my constituents after eight years what the hell a cloture vote was. And now I'm...you know, now what do I do?

SENATOR HILGERS: Yeah.

SENATOR KRIST: Oh, by the way,...

SENATOR HILGERS: There's a reverse cloture.

SENATOR KRIST: ...here's another curve ball for you, right? No. Anyway, thanks.

SENATOR HILGERS: No, I appreciate that.

SENATOR SCHUMACHER: Have any other questions? Bottom line on this is you have revisions to this proposal this time.

SENATOR HILGERS: I do have a revision, yes, Mr. Chairman.

SENATOR SCHUMACHER: Okay. All right. We can't consider those until we know what it is. So any other questions for the senator? Are there any proponents of this idea? Any opposition to this idea? Anybody just plain neutral? Anybody care about my cats?

SENATOR KUEHN: I do.

SENATOR SCHUMACHER: Oh, well, good. Thank you. Thank you, Senator.

SENATOR HILGERS: This is I think the last introducer/presenter for today, Senator Kuehn with proposed Rules 23 and 24.

SENATOR KUEHN: And 25.

SENATOR HILGERS: And 25, you're right, correct.

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SENATOR KUEHN: Thank you, colleagues. I am Senator John Kuehn, J-o-h-n K-u-e-h-n, representing District 38 in south-central Nebraska. I have three rule proposals. The first two I'm going to handle and group together. Rule 25 I'll handle separately. Proposed Rules 23 and 24, not to retill already plowed ground, I understand we addressed these. The body took a vote regarding my position a week ago today. I am under no illusion that that vote count would be different or change. I am presenting to you essentially what I presented on the floor a week ago out of my feeling of responsibility of due diligence and that I believe there is a constitutional conflict with our current rules. I understand that this committee has full discretion to accept or reject my belief in that matter and pass it forward to the body to accept or reject. So what you'll note is the changes are to...the proposed changes are to Rule 1, Section 1 which is the officer elections associated with the Speaker, the Chairperson of the Committee on Committees, Vice Chairman of Exec Board, as well as the Exec Board; and then Rule 3, Section 8 which includes the rest of the standing committee chairpersons. You also note that this is different than probably previous discussions about committee chairs, etcetera, in that I do assert that according to the constitution, which is established and I provided for you an interesting historical document which is a copy of the actual petition language of Initiative 330 in 1934 which ultimately established the area of constitutional law to which I'm referring which is Article III, Section 11, which firmly establishes that the voters of Nebraska, when they signed the petition to place Initiative 330 on the ballot to establish our nonpartisan Unicameral system, clearly had the expectation that all votes would be by voice and that the answer to any question at the desire of any member shall be entered into the Journal. So I have made a rules proposal which would simply harmonize our existing rules with that constitutional requirement. A couple of things I would like to point out: First and foremost, this establishes that all of our official votes would be subject to this rule. This means that if no senator should call for a record vote, then no record vote would be recorded. It is the discretion of the body as established in the constitution. I would also like to point out that it does simply not include chairmanships but also the vice chair process which we take in committee, as well as the votes that are taken to establish assignments by the Executive Board on special committees and special committee chairmen. The final issue I would like to point out is there's been many comparisons about this particular voting process to the voting process that takes place that we as individuals do in the ballot box during the November elections and during our May primaries. And this is a key distinction that I think is important for this body to consider when talking about the difference between a ballot and a vote. And in 1933 the Supreme Court

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did establish clearly that there is a distinction between a ballot and a vote. When you walk into the ballot box and in private you select your candidate for any elected office, you are functioning as a private citizen and you are functioning in a ballot process. Conversely, the constitution states that we are voting. By virtue of Nebraska Supreme Court in 1933, Day v. Walker, voting is different than a ballot. Voting is a public process. It is a by voice process. And additionally, when we vote in an official capacity as a state senator, we are not voting as a private citizen. We are voting under our duly elected oath of office which we took which states to uphold the Constitution of the State of Nebraska. And we can continue to have a robust discussion about the politics and the policy implications of how those votes are taken. And I think that that discussion and conversation is valid. However, it would be my contention that the oath of office to which I took two years ago didn't say I only swore to uphold parts of the constitution which I agreed with, but to uphold the entire Constitution of the State of Nebraska. And so it is my assertion that our current rules are not in compliance with the constitution. Again, if we believe as legislators that it is in the best interest of Unicameralism, nonpartisanship, etcetera, that this particular activity of voting as a body is important to remain secret, I think the appropriate place to address that is constitutionally. So with that, I'm happy to entertain any questions that the committee may have.

SENATOR HILGERS: Senator Krist.

SENATOR KRIST: Thank you, Chair. The handout that you gave us on page 12 you have it highlighted...

SENATOR KUEHN: Um-hum.

SENATOR KRIST: "Legislative Journal; vote viva voce; open doors; committee votes." Explain to me as we go down through that your interpretation of, I think it's four or five lines down where it starts, "The doors of the Legislature and of the committees of the Legislature shall be open, except when the business shall be such as ought to be kept secret."

SENATOR KUEHN: Correct. So the distinction is you're referencing the idea of business ought to be kept secret. The difference is two sentences prior which states that "the yeas and nays of

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the members on any question" which does not just mean bills but rather any question, and I think that's the point of the constitutional interpretation. So...

SENATOR KRIST: And so your interpretation of the constitution is that the except clause in there does not apply to anything.

SENATOR KUEHN: I think the except clause in the constitution in terms of the burden then is upon us to determine as to why that secrecy is maintained. And so there has not been case law nor has there been statute that has justified why a vote as opposed to business should require secrecy. And again, I fully appreciate that that may be an issue which courts have to decide. I am doing my diligence as a member of this committee to point out that I feel there is an inconsistency, and this committee will make a determination where they feel that that's relevant or not.

SENATOR KRIST: So we're making public record.

SENATOR KUEHN: Um-hum.

SENATOR KRIST: And so as public record I would respectfully submit that the constitution gives the Legislature the authority to make an exception where it thinks that secrecy is a valid part of doing business. And so I have to disagree with your interpretation. Quite frankly, I don't want the courts to tell me how to interpret this. I think it needs to be interpreted inside the body and having a discussion is valid. But I do think the constitution is written, in my opinion, to give us the discretion. Otherwise, I don't understand...I would not think there would be any reason for that except clause or except sentence that is put in there.

SENATOR KUEHN: I think, for example, we addressed last year issues of disclosure of candidates for president of the university system. So human resources issues, for example, we have certain business before the Legislature, whether that be, for example, in Performance Audit issues in which we are conducting private confidential audits. We have established as senators that we have certain limitations on freedom of information requests when we're dealing with constituent issues via our communication. So there's certain aspects of the business of being a

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senator which for the protection of individuals involved--namely, voters and constituents--do require secrecy. And so there is always that exception in any public body that those items should be maintained a secret. And so I think that is...business is a distinct different function than our role as voting as a state senator.

SENATOR KRIST: Well, I think you've made my point. I mean, this is an internal business that we have the authority to decide as opposed to a public policy decision that is made with a public vote. So we'll see how it goes. Thanks.

SENATOR KUEHN: And, Senator Krist, if I may, you'll note we've had conversations about this issue many times before.

SENATOR KRIST: Right.

SENATOR KUEHN: And one of the things that arose from our conversations that you will see included in the second part of the rule is not just confining those voice votes to those that are taken for chairmanships but the vice chairmanships, the appointment to special committees, all of that to extend and be comprehensive in the application of the constitutional rule.

SENATOR KRIST: So if you carry this thing to the nth degree, total transparency, are you going to publicly report straw man votes in a committee?

SENATOR KUEHN: Define what you mean in terms of...

SENATOR KRIST: Have you ever been on a committee where the chairman says let's get a read on this, let's take a straw vote?

SENATOR KUEHN: Well, I think when we start talking about, you know, the Executive Committee process, again, our Executive Committee process is in...in which point those types of votes where we're not taking an official vote but we're getting a sense of the committee, I think that a member of the committee could have an opportunity to ask that that be recorded and the media are present in the room for those. So certainly there is no secrecy involved. The media

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would have the ability to count the hands or to understand where things and people were. So I think, again, individual committee operation is also a function of the chair and how they wish to establish that. But we've allowed the media into our Executive Sessions exactly for that process.

SENATOR KRIST: Can I continue?

SENATOR HILGERS: Absolutely.

SENATOR KRIST: The media has agreed, at least from my chairmanship experience, that certain things will not be reported out...

SENATOR KUEHN: Right.

SENATOR KRIST: ...and they've had the luxury of being in the Executive Sessions.

SENATOR KUEHN: Um-hum.

SENATOR KRIST: I think that's destroying a relationship that exists within a committee process because, and here's why, Senator, if you take a straw vote and you're saying everything should be public, the first thing that's going to happen is there's going to be a lobbyist outside that door or there's going to be a political party that's going to twist that person's arm and say, you're the only no vote, you're the one that can change it.

SENATOR KUEHN: Um-hum.

SENATOR KRIST: So if I were a chairman, I certainly wouldn't take any straw votes. And I'd say as an Exec Board Chair past, if you're going to make all those things public inside the Exec Board, you're taking your executive function in terms of picking the best people and, again, pressure on the way that they're voted. And I believe the extension of that except clause goes to the point of us doing interim business as opposed to voting on policy that affects the citizens of Nebraska. One more point I'll make and then I'll shut up. I've spent the last four or five years, every time I get into a town hall, every time I talk to my constituents in District 10, do you care,

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and the answer across the board, with the exception of a very loud minority of one particular party: no, you do what you need to do to run the place; what I'm interested in is tax relief; what I'm interested in is this; what I'm interested in is that. I think this whole thing, again, stems back to the point where we're going to allow some people to put undue pressure on us; and I think that straw vote is an excellent example. And the executive function of actually deciding who's on special committees and all that is another good example of how there will be pressure to bear on making sure that certain people are there or certain groups are represented. So that's all I have.

SENATOR HILGERS: Thank you, Senator Krist. Any other questions for Senator Kuehn?
Senator Schumacher.

SENATOR SCHUMACHER: You know, in your research on this, a couple words in the constitution stand out--the yeas and the nays.

SENATOR KUEHN: Um-hum.

SENATOR SCHUMACHER: Yes or no. The other is the word "question." And it seems to me that it would be interesting to know if there's any learned scholars what is a question? Does that mean, as I would take it to mean, the issue of public policy and shall this become law...

SENATOR KUEHN: Um-hum.

SENATOR SCHUMACHER: ...shall this bill advance, which is answerable as yes or no.

SENATOR KUEHN: Um-hum.

SENATOR SCHUMACHER: And that the election of chairmen, I think probably Norris and the entire system of the Unicameral was to minimize the importance of chairmen or chairwomen, is not a question but it is a choice of administration, a choice of leadership, not a question on public policy that affects the voters but rather of the administration of the internal administration of the body. And so was there any research on what is the question?

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SENATOR KUEHN: Yeah. And I guess I'd respond in a couple of ways. One is in terms of some of the legal scholars with which I have conversed over the last year and a half actually as I've been exploring this, question does refer to anything before the body. And we see this as a very real example on almost a daily basis when the presiding officer will say something like, the question before the body is, shall we adjourn. That is a question and it's frequently phrased as such in the routine operation of the Legislature. We could argue that adjournment for the day is not a function of policy but is rather a function of how we organize ourselves. And so the term "question" versus issue versus ballot does have distinct legal language. So to that end, I think that that is...that word is relevant and is important. The other with regard to the role and yeas and nays, I fully appreciate that how you respond a yea and nay in the affirmative on, for example, a vote between two individuals is not necessarily as readily apparent as a yea or nay on a motion or a bill. That said, we have to also recall that at the time previous, if my history is correct, committee chairmanships at that point in time were selected by a completely closed-door process and also were not an elected position. It wasn't an issue which came before the body as a whole. So while I fully respect how we would work out the details of that, I feel it's important to bring before the body what the constitutional expectation is. And again, I think it is the appropriate place if we feel that that complication is burdensome to the operation of the Legislature that we need to address it appropriately with either statute or amendment to the constitutional language. It's the inconsistency that I'm concerned with rather than at this point in what I've chosen to bring to the attention of the body.

SENATOR SCHUMACHER: Do you at all have concern that what this ends up being is an intrusion by partisans basically into the way the Legislature works?

SENATOR KUEHN: No, because you fear partisans much more than I do in the sense that I hear about mythical party influence that somehow is going to whip me into shape. And to be quite blunt and hope not to be flip about it, I don't know what in the world any party is going to potentially do to me. Conversely, what I fear more than a party in part because both...any party process, whether you like political parties or not, any political party process as a requirement for participation means that you must be a registered voter. You don't have unregistered individuals from wherever participating in a county convention for the Democratic Party or a state central committee for the Republican Party. Parties, whether you like them or not, are still composed of

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voters of the state of Nebraska. On the other hand, what we seem to continually ignore in this discussion about influence is the influence of special interests for which they may not be even residents of Nebraska, for which they may not be even voters, if you want to know who I fear in terms of whether or not my vote is in line, I fear large interests, which many of us know, in the education lobby. I think in this last election we saw significant dollars put forth by private companies who stood to gain from gas tax and from infrastructure bank participating in the process. So I understand that political parties, again made up of registered voters, can be easily made into being a bogeyman. The irony here is you have a much richer pedigree in political party participation than I do. My only participation in a county convention has been when I have been invited as an elected official to address a legislative update. And it's no different than a Rotary Club meeting. I have never been a county delegate. I've never actively participated in the process. The only time I could meet once with my state senator at the time was because he was at a state central committee meeting so it's the only time I've ever been to one of those. So while we love to make the parties a mythical bogeyman, I have yet to understand what they could possibly do to whip me, to change my vote, quite frankly, to alter the outcome of any reelection that I may have. Conversely, voting the wrong way against some special interests that are very powerful in this state and who still have the ability to influence senators in a private fashion, and we all know that they do in secrecy, have the greater impact and ability to affect my election, my reelection, my perception by my constituents. So I think we need to be clear about what we really fear. And that would be my response to the partisan nature. Yeah.

SENATOR SCHUMACHER: But what if we fear all of the above? And I think I can--I think I've already shared it with the body and I think Senator Krist did too--there is direct influence or whatever those things are where the party has taken a distinct position against a member of the Legislature and then from that point on, for all practical purposes, that party...that person, no matter what their past loyalty or service to a party has been, has been excommunicated.

SENATOR HILGERS: Senator Krist.

SENATOR KRIST: It was a great speech and I believe that you believe what you just said. I respect what you just said. But ask Seiler and Davis and let me go down the list if the way that they voted and the stands that they took were unpopular with people with lots of money. And

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some of those people are in the corner office. So don't tell me that politics and political parties don't have the power and they're not bogeyman. I've been asked to resign from the Republican Party more times than you probably shoot a horse in the last week. But I'm still here and I really do believe that the encroachment of the party and the organization of what...Democrats the same way. They're going to pay for what they did for the last eight years in the Obama administration because the Republicans are going to come in and take those rules and kick their butt. I got here the same way you did. I never participated in anything that Paul participated in. I got appointed and here I am. And I got elected twice more. But I believe that you believe what you just said. I'm just saying there's another side to the conversation.

SENATOR KUEHN: And again, I think this discussion is healthy and it's worthy of advancing. I understand I'm doing my diligence in pointing out what I think is a constitutional inconsistency. And this is not a...in this committee the body has spoken in a week's time. I'm simply following through and being consistent with my position. And this is not a hill to which, you know, I'm going to carry to a conclusion. We just talked about respect and civility and the body has spoken. So I am comfortable with that and understand that that's where they're at. I'm presenting my opinion in the formal rules process. And I think it's a discussion and debate we're going to continue to have going forward for many years.

SENATOR KRIST: Thank you.

SENATOR HILGERS: Senator Harr.

SENATOR HARR: All right, I don't want to beat the dead horse. But...and your speech was eloquent. And whether that interest is a political party or someone who has an interest in tax results, right, why do we want to give them more power? I mean I don't care if it's a party. I don't care if it's the lobby. I don't care if it's a union. I don't understand why we want to give an outside group more power when they already have power through their money and their pocketbook and now we're just...it's what you talked about.

SENATOR KUEHN: And again, we're approaching it from different perspectives. You assume power is given up with publicly disclosing our decisions. I think conversely by avoiding the

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opportunity for individuals to be influenced as to whether they vote a certain way as a result of deals that are not open to public view actually gives them more power. And I respect that you see power transferred in different ways. I see power as taken forward when it is in full view.

SENATOR HARR: But what you said was I'm not...Senator Schumacher said, aren't you afraid of the parties, and you said, no, I'm not afraid of the parties, I'm afraid of the outside interest groups. Right? And the reason he...the supposition was if we vote publicly you're given the power...the parties more power and you said, no, I'm worried about the others. And so you are giving those other ones more power.

SENATOR KUEHN: They have the power already. And the challenge is, is that they...

SENATOR HARR: And that's what you and I disagree about.

SENATOR KUEHN: They are exerting influence over our committee process. And if you have not...

SENATOR HARR: Can you name one that does?

SENATOR KUEHN: I haven't been here very long, but I certainly am aware of discussions and hypothetical propositions of who would be best. And I think, again, the appearance of impropriety is and sometimes, which we'll talk about in my next rule proposal, sometimes the appearance of impropriety can be just as powerful as impropriety itself.

SENATOR HARR: Right.

SENATOR KUEHN: And when everything...when our votes are open to public scrutiny by the media, by each other, the media will figure out who the partisans are and they'll write about it. Our voters will figure out who the partisans are and they'll be aware.

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SENATOR HARR: Right. Just like I gave the Governor deference when he said he didn't get involved in the committee chair races. Right? I agree with you. But, I mean, it seems like you're trying to have it both ways. But that's just my opinion.

SENATOR KUEHN: And I have no basis by which I could even comment or respond I guess to that assertion so.

SENATOR HILGERS: Any other questions for Senator Kuehn on proposed Rules 23 and 24? Before we go to proposed Rule 25, just that we'll close off the testimony here, is there anyone who intends...is here to testify as a proponent of Rules 23 or 24? Chairperson Brasch, proponent you said? Yes, please.

SENATOR BRASCH: I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent District 16. I would agree the eloquence and the detail that Senator Kuehn just described I believe is accurate and right on task. The reason I am coming forward is because over my...starting my seventh year, I have seen what the secret vote has done to some senators who did not get seats they thought they were going to get because they were secretly promised a vote and then not given that vote and they felt a word was broken. I've seen it numerous times. And I believe that when we vote in public across the board I don't know how it is going to affect the party or the lobbyists. The lobbyists do not bother me much. And a friend of mine asked a lobbyist, why don't you bother Lydia, that wasn't the exact word. And he said, because we can't change her mind basically. I think being transparent is helpful. I...the fear about the people who endorse individuals when you talked about the colleagues who did not regain their seats back, the incumbents, I, too, ran against an incumbent. And when you are serving and not representing the majority of the will of your constituency, the people who go to the voting place, they don't know how much money was given, wasn't given. An endorsement went to...by a past Governor to Jon Bruning and we saw Deb Fischer move forward. It's the person and their connection they have with their constituents. I have been a registered Democrat until I was 36, and from that point on I'm a registered Republican. You will see in my district I do have town hall meetings and District 16 is more and more curious on what is happening here because what their beliefs have been and what they thought their candidate's belief was, was not in alignment. That's what's upsetting people and that's what's upsetting people not only in Nebraska but across the country. And I do believe that

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if you put your votes out there it will matter or it won't matter, but I believe to our colleagues it will. And we are "collegiates" or our collegiality, you know, comes in our actions. And I believe it does come with transparency. I know it's late and I just wanted to be on record as supporting this. And if you have questions, I'm happy to answer them.

SENATOR HILGERS: Thank you, Chairperson Brasch. Any questions for the Chair? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Senator Brasch, I'd just like to give you the opportunity to clear the record. Senator Krist said that nobody cared about amber lights. You cared, didn't you?

SENATOR BRASCH: I did, and it wasn't even my bill. My constituents called.

SENATOR SCHUMACHER: (Laugh) Thank you.

SENATOR BRASCH: Thank you.

SENATOR HILGERS: Any other questions of Senator Brasch?

SENATOR KRIST: Eight hours.

SENATOR HILGERS: Thank you very...

SENATOR BRASCH: Quality hours.

SENATOR HILGERS: Thank you very much, Chairperson.

SENATOR BRASCH: Thank you.

SENATOR KRIST: Count them any way you want to.

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SENATOR HARR: Can we talk about this hearing?

SENATOR HILGERS: Any other...are there any other proponents for proposed Rules 23 or 24? Anyone here wishing to testify as an opponent? Mr. Leach. Good evening.

NATHAN LEACH: Mr. Chairman, members of the Rules Committee, my name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I should have made my statements for Senator Kintner's proposed amendment, but I didn't want to give him the honor. And Senator Kuehn is closer to my hometown of Kearney so I felt it was more appropriate. First of all, I'm not a lawyer, I'm 21 and think I'm smart obviously. But I did want to point out a number of things to do with this constitutional question just off my less educated reading. The Legislature is given a number of distinct powers, and one of them is, of course, to determine its own rules of proceedings which is why, for example, that rules amendment with the citizens commission would actually be legal even if it conflicted with statutory requirements. Another right that the Legislature has in Article III, let me get this right, Article III, Section 10 that I think is important to read into the record is that "A majority of the members elected to the Legislature shall constitute a quorum; the Legislature shall determine the rules of its proceedings and be the judge of the election, returns, and qualifications of its members," and emphasis added to this, "shall choose its own officers, including a Speaker to preside when the Lieutenant Governor shall be absent." This power to choose its own officers is a distinctly different legislative power than to decide questions and particularly to pass bills on Final Reading and things like that. And so when we talk about the question and whether a member of the body can request a roll call vote or the ayes or nays to be entered into the record, that's an entirely different...the article that is being cited by Senator Kuehn is talking about questions that have to do with...questions like bills and the question whether you should adjourn or things like that. So it's a separate constitutional act. Choosing its own officers is obviously a very well protected constitutional act. I mean, even Senator Kuehn said that when this constitutional provision was put into place the Legislature chose its own officers behind closed doors, which means that that power to determine its own rules or determine its own officers is so protected that the Legislature didn't even have to determine it on the floor. So I think it's a little disingenuous to argue that the act of electing an officer by ballot is anything close to deciding a question the same as adjourning or passing a bill. That really wasn't what I wanted to say necessarily. I just think it's an important perspective to be had into the

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record. I graduated from Kearney High in 2015 and went to UNK for a semester and then moved to Arizona where I worked as a page in the Arizona State Senate. And I was frankly appalled. I mean, everything that every single member of that body did was determined by the D or the R next to their name. And I loved the experience; I got a lot out of it, but it was appalling. I mean, a Democrat would stand up and propose an amendment and it would be a very important amendment to be discussed. And the majority leader would stand up and say, I respectfully oppose this amendment and sit down; no more debate. No Democrat amendment would ever, ever get out of committee. There was no debate in that body that had any substance. All of it was standing up and occasionally a couple of members who were hot-headed, kind of like I'm being right now, would stand up and say, I oppose this, and they'd talk about some ideological swings of the bills. There was nothing quality that occurred in that body. And being in the Arizona State Senate, I really found that where I wanted to be was a legislature like this where there was quality debate, where members had the right to focus on issues that mattered that related to their constituents. In this institution, to me I view as something that is part of my heritage as a Nebraskan. I think it's extremely important that we preserve it. And I think that removing the right to vote by secret ballot endangers that heritage. It endangers our tradition. And I think it is something that we ought to preserve at all cost to ensure that we have a Legislature that can be something we can be proud of and can continue to have. Thank you.

SENATOR HILGERS: Thank you, Mr. Leach. Any questions for Mr. Leach? Senator Schumacher.

SENATOR SCHUMACHER: Please don't go to law school. You'll just whoop us old guys.
(Laughter) That's all.

NATHAN LEACH: Any other questions?

SENATOR KRIST: Any other...and when you graduate from law school, call me because I will probably need you.

SENATOR HILGERS: Thank you, Mr. Leach. On a personal note, I appreciate...I don't think I've seen you move from that seat back there.

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NATHAN LEACH: I did get water.

SENATOR HILGERS: You did? Well, I don't take back the sentiment.

NATHAN LEACH: I appreciate it. Really, the thanks goes to the clerk. He gave me a copy of Mason's Manual of Legislative Procedure when I was down here. And I've always had a passion for parliamentary rules and law and I don't know why. It's an irrational thing to find interesting, but there you go.

SENATOR HILGERS: For the record, it wasn't the first official proposal we could have received, because we only receive proposals from members. But I believe that the very first attempted proposal was from Mr. Leach moments after the committee was formed.

NATHAN LEACH: Well, if you can believe it, that whole 17 idea that you proposed, two years ago when I was in high school, I sent an e-mail to Speaker Hadley and I said, Speaker Hadley, we should turn around the question to cease debate. And instead of doing shall debate now cease, switch it to shall debate now continue and that would do exactly what you're proposing. And then I heard that the same thing was being proposed, and I was like, well, I don't know who came up with that, but...(Laughter)

SENATOR KRIST: You need to stop while you're ahead.

NATHAN LEACH: Yeah.

SENATOR HILGERS: Thank you very much. Any other opponent? Opponent?

SENATOR BOLZ: Yes.

SENATOR HILGERS: Senator Bolz.

SENATOR BOLZ: Senator Kate Bolz, that's K-a-t-e B-o-l-z. I represent District 29 in the Nebraska Legislature. I won't take up a lot of your time this evening, but I didn't want this

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discussion to pass without at least one representative of the body standing in opposition. I think that this is something that threatens the nonpartisan Unicameral nature of our Legislature. I believe that this kind of strategy will bring outside partisanship inside our body in a way that will inspire Washington-style politics. And I am such a believer in our Nebraska Unicameral system. I have so valued working with all of my colleagues in this body and getting real things done for real people that make a difference in their lives. And so I'm here today in opposition. I think you understand my point of view and I'll leave it there.

SENATOR HILGERS: (Exhibits _____) Thank you, Senator. Any questions for Senator Bolz? Thank you, Senator. Any other people wishing to testify in opposition? Anyone wishing to testify in a neutral capacity? Before we close the testimony on proposed Rules 23 and 24, I do wish to note for the record we have received a number...late this after...today right before the committee--we will get copies for each of the committee members--a number of pieces of correspondence that I would just briefly read, not the text, but the authors and senators who wish to have this into the record, we received correspondence from Mr. Pat McPherson out of Omaha; Mr. Matt Litt with the Americans for Prosperity. We also received a note from Ms. Angelica Morones-Harris; Arlene Speas, S-p-e-a-s; Dwight and Bette Trumble; Dr. Bryan Van Deun; Debra Portz; a note from Mr. Doug Kagan from the Nebraska Taxpayers for Freedom; Mr. Floyd Zabel; Mr. John Orr; Ms. Juanita Thurow, T-h-u-r-o-w; Ms. Nora Sandine; Ms. Rachel Terry; and Ms. Susan Gumm. Those will be entered into the record. We'll get copies for all the members of the committee. And with that, proposed Rules 23 and 24 the testimony is now closed. And that leaves last but not least 25th on our scorecard, number one in our hearts, proposed Rule 25, Senator Kuehn.

SENATOR KUEHN: Thank you. Again for the record, John Kuehn, J-o-h-n K-u-e-h-n. This is the first...and I appreciate that Senator Harr started this discussion earlier today. I think it's much along the same lines and it is the first attempt to what I think needs to happen within our body of a broader discussion about ethics and how we ensure that the public perception of our ethical behavior when we are in our role as senators is assured. And so what I am proposing is an addition in Rule 3, Section 11 which is conduct during committee hearings. Current existing rules allow the committee chairperson to allow or disallow the utilization of electronic communication devices during committee hearing. Just as we all recoil at the idea of members of

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the lobby sitting within our Chamber historically and the appearance to the public of a camera shot with the paid special interest behind us as we are conducting our business, I think we would similarly recoil at that image were it to happen in our public committee hearings. Public committee hearings in the Nebraska Legislature is one of the greatest traditions and what I truly believe distinguishes us not only from every other legislature but almost every government body, local, state, or federal that exists. And while we are in hearings, I think it is imperative that we not only be listening to the individuals who have come to testify, but we ensure that the communication that is taking place is all on the public record. So what I have proposed is simply a restriction that while a senator is participating in the committee, while you are seated in your spot at the committee, that the utilization of mobile, portable, or wireless communication devices between any registered lobbyist and a member of the committee would be prohibited. It specifies clear guidelines for ethical behavior. It assures the public that what's happening in the committee process is aboveboard and is all part of that all-important transcript and committee record. It does not inhibit the ability of special interests to communicate with a senator if they so desire. The senator can leave the room, can excuse themselves, and can go communicate, can go ask questions, can go find resources. But I firmly believe that when seated in the chair that it is important that our focus is on the citizens and individuals before us and communicating with the colleagues sitting next to us. So with that, I will entertain any questions you may have.

SENATOR HILGERS: Thank you, Senator. Any questions? Senator Krist.

SENATOR KRIST: What's the enforcement policy?

SENATOR KUEHN: I think that's a great question. That is where, again, we've talked about a lot of important issues that I think this committee needs to address in the coming years. And I think that enforcement for all of our conduct rules there isn't, as we know and I think we've discovered, there isn't a clear-cut guidelines as to what we enforce. So I think initially just like our rules for conduct on the floor at this point there is no clearly defined enforcement policy. But I think and I recommend as a member of this committee that we need to explore and identify what potential ethics rules and other ideas may need to be brought to the body and how we enforce those ethics rules. I think that's important.

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SENATOR KRIST: So...may I?

SENATOR HILGERS: Yes.

SENATOR KRIST: So I don't need to talk about specifics. I can just talk about something that Senator Schumacher brought up earlier. We've had the discussion. It was the decision of the Executive Board and voted unanimously that people should be aware of the rights, responsibilities, and privileges of being issued a piece of equipment.

SENATOR KUEHN: Um-hum.

SENATOR KRIST: He contends that he's not going to sign a piece of paper to get a computer.

SENATOR KUEHN: Right.

SENATOR KRIST: I contend that if you get yourself in a position as Senator Kintner did ignorance is no excuse and that at some point you have to take responsibility and ethically deal with those things. My position is pretty much on the record. I don't believe the Attorney General did what he needed to do to follow through. I know a snowplow driver who works in southern Nebraska who crossed a line and plowed somebody's driveway in Kansas and he was severely disciplined and fined for using a piece of Nebraska equipment someplace else. It doesn't make any difference to the Attorney General because he wouldn't have had any jurisdiction because the computer was someplace else. What you're touching on may be a first step, but unless the Executive Board of the Legislative Council and NADC establishes an ethical boundary and some logical boundaries, what you're suggesting is not enforceable. And I know at least two Chairs right now that are as guilty as anybody else. They're communicating with people sitting in the back of the room while the hearing is going on. I've seen it. I looked over and watched what's been happening. I've got committee members going back and forth feeding each other questions.

SENATOR KUEHN: And I do not disagree and I agree wholly in the enforceability. I knew that when I proposed this and I fully agree with your assertion that there needs to be greater clarity. And whether that is via Exec Board or NADC or whether that's this committee, I think we as a

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body need to start having that discussion; and that's truly what my intent behind this is, is to bring to the attention and start highlighting where does that discussion begin.

SENATOR KRIST: Thank you.

SENATOR KUEHN: Truly.

SENATOR HILGERS: Senator Harr.

SENATOR HARR: Thank you. Honor, right?

SENATOR KUEHN: Absolutely.

SENATOR HARR: That's the way we do it is it's your word is your bond and it's honor.

SENATOR KUEHN: Absolutely.

SENATOR HARR: You know, you've been to school where you had honor codes.

SENATOR KUEHN: Absolutely.

SENATOR HARR: There's only one kind of enforcement and that's self, right? You have to. And if someone doesn't want to do it, I think it's incumbent upon us to call that member out...

SENATOR KUEHN: Absolutely.

SENATOR HARR: ...and to call that lobbyist out. And that's how we'll do it. No one wants to be embarrassed. And I think...I'm not worried about enforcement. I think if I catch someone and I say, hey, here's the rule, just like, you know, my other one that we talked about earlier--it's honor. And I don't know where that got lost, right? I don't want to have, no offense, I don't want to have a code of ethics where we can play gotcha politics and we're the NCAA. I think we should be

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holding ourselves up to a high level, and the enforcement is here's what it is and here's what we should do. And I like this. I think it's the exact right thing to do. Thank you for bringing it.

SENATOR KUEHN: Appreciate that.

SENATOR HILGERS: Senator Schumacher.

SENATOR SCHUMACHER: Your proposed rule is restricted to registered lobbyist, but what about mayors out there, constituents out there, other branches of government, people in departments, and the message that shows up from 402 blah, blah, blah dash blah, blah, blah, blah who you don't know who it's coming from? Maybe some burner phone. I mean this, it seems well-intentioned, but would you prohibit communications from other branches of government?

SENATOR KUEHN: You know, again, I think that the electronic use policy right now as it is written is up to the discretion of the chair. So, for example, in my previous two years in Appropriations during public hearings, the use of electronic devices is simply not allowed. So in that sense, the individual chair, in that case Chairman Mello, exercised his authority under the existing rules to say it doesn't matter who it is. You know, if you have a major emergency, if it's your cat calling, saying, my bowl is empty...

SENATOR SCHUMACHER: (Inaudible).

SENATOR KUEHN: ...that either, if it's imperative then staff contacts you and you excuse yourself from the committee hearing, or not. So I think individual chairs have a prerogative. We all know that that prerogative is not utilized universally across all committees and that different committees have different freewheeling policies regarding the use of electronics. Registered lobbyist is a distinct group because they have to register and so it's an easily identifiable group and it's a place to start. And I think the idea and the public perception of someone feeding questions into a member of the committee is the most dangerous and that's where I chose to start. And I'll be honest why this is important to me is ten years ago is the first time I ever testified before a committee of the Nebraska Unicameral and first time ever being...that's not true. I guess I did way back in undergraduate, but as an adult I was here and my first experience in the body I

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sat in the audience through a hearing that ran, much like this, late into the evening. And I spent the entire afternoon sitting next to an individual, and I didn't know who they were or what their role was, but I watched them on their flip phone continuously sending items and then watched a member of the committee almost within minutes go next and ask a question. And over the course of an afternoon and into an evening you get bored and you start watching around and truly my first adult experience in the Unicameral was watching something I'm attempting to prohibit take place. And I will say that I left the hearing doubting whether or not the process was stacked against an individual citizen like me. And so I agree that there is a whole host of individuals that we as a body may decide should not be communicating with senators while they are seated in their chair in a public hearing. I think it's a discussion I'm very willing to have. I chose one group that was easily identifiable by virtue of the fact that they must register. So that's the logic behind it.

SENATOR SCHUMACHER: Thank you.

SENATOR HILGERS: Any other questions for Senator Kuehn? Anyone wishing to testify in opposition to proposed Rule 25? Anyone in a neutral capacity? Okay, I think that's our last rule. I know, Mr. Gould,...

JACK GOULD: Yes.

SENATOR HILGERS: ...you've been waiting for a long time.

JACK GOULD: With bated breath.

SENATOR HILGERS: And I appreciate it very much for your patience and for your willingness to come down and testify in front of your Nebraska Unicameral, so we...

JACK GOULD: Thank you, and I appreciate you giving me the opportunity.

SENATOR HILGERS: Absolutely. So would you mind introducing yourself, sir, and--you've seen the routine by now--spell your name for the record.

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JACK GOULD: My name is Jack Gould, that's J-a-c-k G-o-u-l-d. I am a registered lobbyist but I am...I volunteer, unpaid lobbyist who must register. I'm here representing Common Cause Nebraska and my...I have three comments. They are mostly cautionary. The first one has to do with the, quote, tradition of being a nonpartisan Unicameral. I don't view it as a tradition. I think it's something that has been ingrained into Nebraska's thinking. We teach it in our schools; our representatives in Washington brag about it saying that we are nonpartisan and that we are a Unicameral. And for those reasons I think most Nebraskans expect their representatives to be independent thinkers who come to this body with an open mind, a willingness to express themselves, and should not be restricted in any way for what they say or what they do. I think as we look at the question of partisanship, I don't think I've seen any of you ever send out a flier to your constituents saying I promise that I will obey all party programs, that I will vote the party line, that I will always obey any dictates that come down from the executive branch. I've never seen that in any electioneering brochure. I've seen a lot of negative things, which is tragic, but I've never seen anybody say that they wanted to go along strictly with the party line. Second concern is the fact that no one in this body should be punished in any way for what they say on the floor or for how they vote on a bill or for voting to override a veto. I think that that is something that happens within this body which is shameful. And this group, this Rules Committee, has a responsibility to ensure that any rules that are presented to this body don't reinforce any kind of that behavior. And finally, I think that when you start talking about limiting speech on the floor, you have to be extremely careful. We don't want to be in a situation where any individual or any minority or any minority party is somehow singled out or punished by rules that are contrived for a political purpose. Now I know that's not anything that would be discussed on the surface, but these things happen behind closed doors, they happen in caucus meetings, and they are not things that the public expects. It's the kind of thing that erodes our democratic process and erodes the confidence of the Nebraska people toward this body. So I just wanted to bring those three issues to the forefront. I thank you for waiting and for giving me the opportunity to speak.

SENATOR HILGERS: Absolutely. Thank you very much. Any questions for Mr. Gould?

JACK GOULD: Yes, sir.

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SENATOR HILGERS: Senator Krist.

SENATOR KRIST: Thank you for all your work that you've done. And I...you have pointed out to me on several occasions how to do things better and I appreciate that. I think that one of the things that I see happening more and more, we had a person that was unopposed for election this year who signed pledges that he would not X, Y, and Z. I think that that falls into the category of pressure in terms of political pressure, party pressure, because it's an agenda, those are agenda items: I won't do this, I won't do that, I won't do these. I've told candidates that I've talked to and the folks who have talked about running again in my...in District 10 in the next few years, don't make promises, make the best promise you can that you're going to serve and represent your constituents in your district and the state of Nebraska, because what you're about to hear and what you're about to see will form a set of opinions that may conflict with those things that you would have said I promise I will do this. Case in point, I think a lot of us were chastised for doing certain things on the floor and that comes with the vote, that comes with the responsibility. But had I made a statement that I would not do something, I would not be representing my constituency to the best of my ability because I wouldn't have been able to listen to the facts and develop my own opinion on it, along with those opinions of my constituents that were brought to me. So I, you know, I'd almost like to go back to the world of abiding in terms of the expenditures for money, and appreciate the fact that anyone who runs a candidacy, runs an election and abides to a certain level is pretty much doing it on his own, he or she is not taking money or getting money from right or wrong places. So again, I'm pontificating. It's late at night. That's what I do. But I just want to make sure that you understand how much I appreciate what you...

JACK GOULD: Well, just in closing, and that comment, I recognize the fact that it takes tremendous courage to be a senator. And it often means standing up for issues that are not necessarily popular with everybody. But you represent the people and it's important that the people be heard and that this be a respected body that doesn't deal in underhanded behavior or try to undermine other individuals. Thank you.

SENATOR HILGERS: Thank you, Mr. Gould. Thank you. I believe that concludes our public hearing. We'll be adjourned. Thank you all.