



Cloture shapes debate in the Nebraska Legislature

By Travis Moore, Research Analyst

The Unicameral Legislature is a widely known, unique feature of Nebraska governance. Less widely known, perhaps, is another feature of Nebraska's one-house Legislature: Use of the cloture rule.

Nebraska is one of only 10 states to require more than a simple majority vote to end legislative debate on a bill.¹ This may be because the filibuster is an uncommon occurrence in most other states, where debate is more often circumscribed by limits on how long and how often individual members can speak.

The Council of State Governments calls the filibuster a historical curiosity in nearly every state except Nebraska, where the filibuster or the threat of one factors in most legislative sessions. In this regard, Nebraska's Unicameral Legislature is more akin to the U.S. Senate.² Both bodies make use of the cloture rule to end extended debate.

The Current Cloture Rule

The Legislature's current cloture rule is found in Rule 7, section 10 of the [Rules of the Nebraska Unicameral Legislature](#).

The rule allows the primary introducer, a co-introducer with consent of the primary introducer, or a committee chairperson— for bills introduced by a committee— to invoke cloture at any stage of debate. The motion is not debatable and takes priority over all other motions, except a motion to recess or adjourn. However, the President of the Legislature (also referred to as the presiding officer)³ can rule the motion out of order if he or she believes there has not been full and fair debate. The presiding officer's ruling cannot be challenged.

Since 2002, the Speaker of the Legislature has established timeframes for full and fair debate, as well as implemented

other informal practices to control the agenda and manage the legislative workload.

A successful cloture motion requires 33 votes (two-thirds of the body). If successful, subsequent votes are taken on all pending matters regarding the underlying bill, including amendments, amendments to amendments, and other motions. If the original amendment has been divided, then a vote is taken on the original undivided amendment. The final vote is on a motion to advance the underlying bill.

If a cloture vote fails, debate on the bill ends for the day. When the bill comes back up for consideration, two additional hours of debate must occur before another cloture motion can be considered.

Adoption of Nebraska's Cloture Rule

It has long been the practice of Nebraska legislators to introduce multiple amendments and offer various motions as a method of extending debate and forestalling a final vote. Determined to find a way to conclude extended debate, legislators started considering the adoption of a cloture rule.

In 1978, a proposed rule change would have allowed a bill's primary introducer to make a cloture motion at any stage of debate. Once the motion was made, an additional 30 minutes of debate would have been allowed, followed by a closing. The motion would have needed 30 votes (three-fifths of the body) to pass. The proposal was unsuccessful.

A second unsuccessful rules proposal was introduced in 1981. That proposal would have allowed cloture to be invoked after two-and-a-half hours of debate on a priority bill and one hour of debate on all other bills.

A special budget session in October 1981 saw the adoption of a cloture rule— which mirrored the 1978 proposal— to the Legislature's temporary rules guiding the special session.

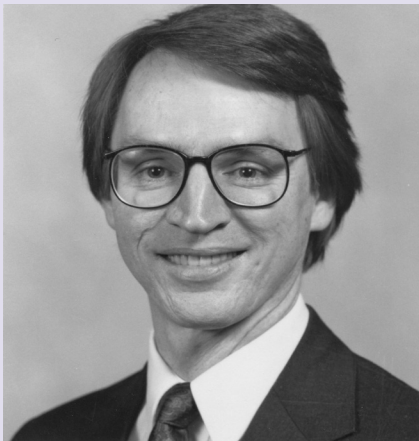
1. The following 10 states require more than a simple majority to cease legislative debate: Alabama, Alaska, Arkansas, Florida, Hawaii, Idaho, Maryland, Nebraska, South Carolina, and Tennessee.

2. The Senate adopted a cloture rule in 1917. That early rule required a two-thirds majority vote to invoke cloture and allowed each senator to speak for an additional hour afterwards. Over the next 50 years, the Senate successfully invoked cloture only five times. Current Senate rules require at least 16 senators to sign a cloture petition. After being read on the floor, the motion must lay over before a vote is taken, which requires a three-fifths majority to end debate.

3. Article III, sec. 10 of the Nebraska Constitution and Rule 1, sec. 5 of the Rules of the Nebraska Unicameral Legislature prescribe that the Lieutenant Governor presides as the President of the Legislature. In the Lieutenant Governor's absence, the Speaker serves as acting President. Rule 1, sec. 7 permits the President to name any member to perform the duties of the presiding officer.



Cloture — Yea? or Nay?



Senator Don Wesely of Lincoln encouraged colleagues to think about the rule's effect on the Legislature's image. "I understand some will say we don't want an image of filibusters all the time. ... The other image is that we're open in our debate, open to our consideration of ideas; it may not be pleasant, may not be what we like, but as least we consider them. And that is what democracy is all about, democracy is not an easy process, it's not a clear-cut, streamlined system, it's one in which we have to consider, openly, the different issues before us. And sometimes that takes some filibusters to make some points, and in my estimation that is a price worth paying."



Senator Chris Beutler of Lincoln argued, "what we are seeking to take away today is not the right to free assembly or the right to free debate or the right to speak as many times as you want on any subject that you want. What we are curtailing today, in a modest sort of way, is the right to nonsense and the right to obstruction."



Senator Scott Moore of Seward said, "I simply feel that the citizens of the State of Nebraska deserve their laws to be processed in an orderly fashion. And I happen to think it is wrong ... when a very, very small minority, two or three people, can hold this body up and keep things from happening."



Senator Brad Ashford of Omaha said, "I can't imagine any proposal that is more adverse to our interests as legislators than this one. I would rather spend all session on one issue than to give in to a proposal which could limit wholesome debate on issues."

*Photos courtesy
Unicameral Information Office*

In 1991, the Legislature's Rules Committee offered a successful amendment to Rule 7 that laid the foundation for the cloture rule as it exists today. Key components of the rule required: (1) eight hours of debate prior to invoking cloture on a bill at any stage of debate; and (2) 12 hours of debate prior to invoking cloture on an appropriations bill introduced by the Appropriations Committee at any stage of debate. The cloture rule was first used during the 1992 legislative session.

During floor debate on the proposed cloture rule in 1991, proponents acknowledged the importance of discussing each bill, but stressed that getting to a vote on each proposal was equally important. Further, proponents argued that members with a minority viewpoint abused the rules to

extend debate and prevented advancing crucial legislation.

Opponents feared the rule would negatively impact the Legislature's authority and stifle the democratic process, emphasizing the importance of having full and fair debate on each piece of legislation.

Proponents countered these concerns by arguing that invoking cloture required meeting an extreme threshold and, by doing so, the majority would be allowed to do the work of the people.

Changes to the Cloture Rule

In 1994, two amendments were adopted to the cloture rule. The first amendment clarified the voting process for



pending amendments and underlying matters leading up to a vote on the cloture motion. First, a vote is taken on all pending matters and all underlying amendments. Next, a vote is taken on the motion to invoke cloture.

The second amendment added language to give a motion to recess priority over a motion to invoke cloture. Prior to this change, only a motion to adjourn had higher priority.

Two changes were adopted in 1995 affecting the procedure of invoking cloture.

The first change reversed the changes made in 1994 by requiring a vote on invoking cloture prior to a vote on a pending amendment, other motions, and advancement.

The second change clarified that for divided amendments, a vote is taken on the original undivided portion of the amendment being considered.

A significant change to the cloture rule occurred in 2002. The change removed the prescribed hours of debate requirement and replaced it with language allowing the presiding officer to rule a cloture motion out of order if, in his or her opinion, there had not been full and fair debate.

Since 2002, lawmakers have repeatedly tried unsuccessfully to reinstate a specific amount of debate time before invoking cloture. As recently as 2019, proposals were offered to require a minimum of eight hours of debate on General File and four hours of debate on Select File and Final Reading.

What is Full and Fair Debate?

The legislative rules allow the presiding officer to determine what constitutes full and fair debate.

Since the removal of debate timeframes for invoking cloture, the practice has been that the Speaker establishes guidelines and informs the body as to his or her definition of full and fair debate at the beginning of each legislative session.

In 2002, full and fair debate was interpreted as eight hours of debate on both General File and Select File, and four hours on Final Reading. This timeframe lasted through the 2004 legislative session.

During legislative sessions in 2005 and 2006, full and fair debate was considered eight hours of debate on General File, six hours on Select File, and two hours on Final Reading.

From 2007 to 2015, full and fair debate was defined as eight hours on General File, four hours on Select File, and two hours on Final Reading.

During the 2016 legislative session, the length of debate on General File was reduced to six hours.

In 2017, the Speaker intended to define full and fair debate based on the length of the legislative session. For a 90-day session, full and fair debate would have been eight hours of debate on General File, four hours on Select File, and two hours on Final Reading. For a 60-day session, debate timeframes would have been six hours on General File, three hours on Select File, and one-and-a-half hours on Final Reading.

But because the Legislature spent the first 30 days of the 90-day session debating the rules, the Speaker did not implement the proposed 90-day session timeframes. Instead the timeframes for the 60-day session were used.

Since 2017, the Speaker has defined full and fair debate as six hours of debate on General File, three hours on Select File, and one-and-a-half hours on Final Reading. However, the Speaker can permit cloture earlier, if he or she determines that full and fair debate has occurred.

The Speaker consults with the bill's principal introducer and opponents to the measure, and takes into consideration the quality of debate and the number of members participating to make the determination.

Informal Practices by the Speaker

In addition to establishing the definition for full and fair debate, the Speaker has implemented additional informal practices since 2002.

First implemented by Speaker Mike Flood and still used today is the practice that when a motion to invoke cloture fails, the bill is considered finished for the year, unless the bill is later designated a priority bill.

The second informal practice, implemented by Speaker Jim Scheer, is referred to as the "three-hour rule." This rule breaks up debate at the half-way mark for bills being filibustered. The Speaker stops debate and places a "Speaker's hold" on the bill. The bill is not rescheduled for consideration until the principal introducer provides the Speaker with a vote count, and the Speaker verifies that the introducer has enough votes to invoke cloture.

"I think members by and large are comfortable with how cloture works. They may not always like it, but they understand why we do it."

- Patrick J. O' Donnell,
Clerk of the Nebraska Legislature