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Urban Affairs Committee
January 16, 2007

[LB11 LB28]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, January 16, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB11 and LB28. Senators present: Mike Friend, Chairperson; Amanda McGill, Vice Chairperson; Steve Lathrop; and Kent Rogert. Senators absent: Abby Cornett; Ray Janssen; and Tom White. []

SENATOR FRIEND: Good afternoon, everyone. My name is Mike Friend, and I am...this is not Education, it's not Business and Labor, it's not Ag. If you're in...if you're looking for those places, you're in the wrong spot. This is the Urban Affairs Committee. And I wanted to start with some introductions real quickly, as folks join us. Like I said, the Governor has had some briefings and some things going on. We'll have a smattering of folks coming in at their convenience. First, I just wanted to...like I said, I'm Mike Friend. I'm from Omaha, northwest Omaha. And committee members, I guess, from...well, let me introduce Beth Dinneen. A lot of you already know her. Beth is the committee clerk, and Bill Stadtwald is the legal counsel. Amanda McGill, from Lincoln, is the committee's Vice Chair. Steve Lathrop, from Ralston, Omaha, Millard? Steve, help me. []

SENATOR LATHROP: Ralston, Millard. You're doing fine. []

SENATOR FRIEND: Okay. We have some annexation issues there, so we'll take care of all that. (Laughter) Steve is...Steve and Amanda, both newly elected. Welcome to the committee. Our Page today, Matt Pederson. And if the name sounds familiar, it should. Matt is the grandson of Senator Don Pederson, who has helped me greatly in the past. So hopefully Matt will have learned something from that tutoring, I guess, the past tutoring. Excuse me. Senator Rogert, welcome. []

SENATOR ROGERT: Mr. Chairman, pardon my tardiness. []

SENATOR FRIEND: That's all right. We're just going through introductions. And wanted to let you know right out of the gate, some changes this year. So I'm going to be fairly...I'm going to adhere to this stuff, and I'm going to bore you every week with a dissertation here. The dissertation starts off with turning off all the cell phones, if you would. Everything is...everything in the hearing room is transcribed and, obviously, tape recorded. We would appreciate that if you would turn those off. Those wishing to testify on a bill should come to the front of the room when the bill is to be heard. As someone finishes testifying, the next person should move as close as they can to the table. Days like this, with two bills, it's not as big an issue, but if we have a heavy work load, that helps quite a bit. The green sign-in sheets are for testifiers, on the table by the door. They need to be completed by all wishing to testify, including senators and staff introducing the bills. And you need to submit a form for each bill that you testify on.

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Please complete the form prior to coming up to testify. When you come up to testify, please place the form in the box on the testifier's table. Don't turn the form in, please, before you testify; after you're done, if you would. And please print. It's important to keep the form...complete the form in its entirety. And if the transcribers have any questions on the testimony, they use those sheets, so. If you don't wish to testify, you want your name entered in the official record as being present at the hearing, please enter your name and information on the white sign-in sheet found on the table by the door, and the list will be part of the official record of the hearing. If you just want to be listed on the committee statement as a testifier at the hearing, you must complete a green sign-in sheet anyway, even if you're not going to testify. And state your position on the bill--those for, against, or in a neutral capacity. And as you begin your testimony, please state your name and spell it for the record. A lot of you are familiar, especially advocates and lobbyists, familiar with the process. But they're cracking down a little bit. They want those spellings. So I'll probably stop somebody. I don't want to do it, but I'll probably stop somebody in the middle of a testimony if I don't hear that name spelled. If you have handout material, Matt would be happy to accept it, I'm sure, and deliver that, circulate it to the committee. And, let me see. If you don't choose to testify, you may submit comments in writing. If you don't want to fill out the green sheets, don't want to be on the list, if you will, submit that stuff to Matt and we'll have that read into the official record. And I don't think we'll have any trouble with this issue, but no vocal display of support, or, I guess, negativity, in the room, if you will. Judiciary may be a different subject matter, but here it's usually not a problem. With that, I think we can get started. Like I said, we have a light load today. We're going to try to get an Executive Session in afterward, and go through some briefing for some of the new members of the committee. With that, I would ask...we have LB11, and I believe Tait Berg is here for Senator Mines, on behalf of Senator Mines, to introduce LB11. Mr. Berg. Oh, by the way, before I forget, you know, I've been getting these cookies for about the last two years of my life, and I'm always trying to figure out where they came from. Kathleen Dolezal, thank you. I don't think everybody in the room got some, just the real special people up front. (Laughter) I'm kidding. You're all special. But Kathleen, thank you. I was always wondering. With that, LB11. Mr. Berg, please open. [LB11]

TAIT BERG: Okay. Mr. Chairman, members of the committee, my name is Tait Berg, T-a-i-t B-e-r-g, and I am the administrative assistant for Senator Mick Mines of District 18. And let me first begin by expressing Senator Mines' regrets that he could not be here today. And the legislative aide is herself in another committee, so here I am. LB11 changes the annexation procedure in cities of the first class when the property owner asks to be annexed. Under current law, when a city of the first class annexes property, they must develop a plan for providing services to the annexed area and a method for financing the services, and hold a hearing. LB11 provides that an owner of property that is contiguous or adjacent to a city of the first class may petition to have the property annexed. The mayor and city council may grant the annexation without having to complete a plan and hold a hearing, as is currently required by the statutes for

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first-class city annexation. This allows for a shorter process when the owner asks that the property be annexed. This should reduce the time and expense in these situations, where both sides agree to the annexation. This bill is virtually the same as LB289 in the last legislative session. LB289 was on General File when the session ended. Lynn Rex, from the League of Nebraska Municipalities will testify after me, and can answer any questions you could have. [LB11]

SENATOR FRIEND: Thank you. Thank you, Mr. Berg. Tait,...and I'm reading the bill summary here. Is...it's in the form that the committee enhanced it, correct? Do you know off the top of your head? [LB11]

TAIT BERG: I do not, actually, but... [LB11]

SENATOR FRIEND: I'll talk to Lynn about it. Thanks. [LB11]

TAIT BERG: All right. Well, thank you. I encourage your support for LB11, and I waive closing. [LB11]

SENATOR FRIEND: Okay. Were there any questions for Mr. Berg from the committee? Seeing none, thanks for your opening. [LB11]

TAIT BERG: Yeah. Thank you. [LB11]

SENATOR FRIEND: Those in favor, step forward, please. [LB11]

DENNIS SMITH: (Exhibit 1) Good afternoon. Hello. My name is Dennis Smith, D-e-n-n-i-s S-m-i-t-h. I'm the public works director for the city of Norfolk. I'm here in support of LB11. LB11 will provide flexibility and streamline the annexation process for first-class cities. LB11 will only be applicable if all of the property owners to be annexed are in support of the annexation. The provisions of LB11 will be primarily used as new development is occurring contiguous to the existing city limits. Provisions of LB11 could also be used with existing development if all of the existing property owners were in agreement. Just recently, the city of Norfolk had a 40-acre development immediately west of the city. The requirement for the annexation study and hearing created a delay in the developer's ability to have a paving district created to help finance the infrastructure for the development. The developers desired the city services and were desirous of being a part of the city. The provisions of LB11 would have allowed the city of Norfolk to move this project more quickly through the review process. The provisions of LB11 would have been helpful this winter, as the city of Norfolk worked with an organic soybean processor who desires to site a facility in Norfolk. The site he'd chosen was adjacent to the city of Norfolk, on property that is blighted and substandard. The prospect desires to use TIF to help remove abandoned building foundations, reconstruct a failed storm sewer, and other utility infrastructure systems needed for its project.

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Since TIF is only applicable to projects inside the city limits, it was necessary to annex the site to Norfolk. The annexation process, which formally started on December 4, 2006, will be completed tonight. The provisions of LB11 would have allowed this annexation process to be completed on January 2. The formal time savings would have had the potential to allow the prospect to start construction two weeks earlier. Additional time would also have been saved in completing the formal annexation study. Fortunately, other circumstances in the company's time line have delayed the project time line, so the annexation delay didn't cause the prospect to locate somewhere else, either in Nebraska or out of state. Again, I am testifying in strong support of LB11, and would entertain any questions you might have. [LB11]

SENATOR FRIEND: Thank you, Mr. Smith. Are there any questions from committee members? Mr. Smith, just a quick one. Just to make sure that I'm clear, what LB289 would have...let's say LB289 last year would have passed, financial savings for the city of Norfolk in the long run...or, in the short term, I should say. The long run...I mean, are these the only pitfalls? Are these the only concerns that you've seen? Give me a hypothetical, or maybe an analogy that's real right now, on projects, you know, for the future that you're maybe, you know, leaning toward legislation like this, where it could actually help. [LB11]

DENNIS SMITH: Well, I gave you the best two examples we have, is...in that the one...but that occurs quite frequently, where we have development occurring adjacent to the city, and the developers are desiring to be a part of the city and want to use some of the financing mechanisms that are available only to cities. But with the process we have to go through, the numerous steps of doing the study and then having a formal hearing and the time line of advertising that, and some of those things. [LB11]

SENATOR FRIEND: And it just occurred to me, if I remember correctly, that one of the reasons...I mean, this came out of committee and people just weren't that...the subject matter wasn't that interesting to them. But one of the comments, if I remember correctly, was that...were these things are being done anyway. I mean, we're talking about timing issues, as opposed to something...and maybe handing a mayor and a council, probably, more...I mean, if a landowner right now wanted to do these things, all we're talking about is administrative problems that get in the way. What we're doing is streamlining a process, if a bill like this passes. [LB11]

DENNIS SMITH: We're streamlining and shortening the process. That's really the biggest benefit, is to being able to shorten that time frame. You know, as these developments occur, you have lots of time where you're working with the property owner, the developers, and are developing those mechanisms for financing the infrastructure and the other things that are needed. But you don't have that in a formal process. Well, then you still have to put that formal process together, then have public hearings, and... [LB11]

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SENATOR FRIEND: Well, and one more quick thing, though. Is it...are we bringing a first-class city in...are we bringing it correct? I mean, our second- and third-class cities, it's my understanding, can already do this. [LB11]

DENNIS SMITH: I'm not familiar with first- (sic) and second-class cities. I...my whole career has dealt with first-class cities. [LB11]

SENATOR FRIEND: Okay, and that...yeah, that was probably somewhat rhetorical. I can talk to Bill about it, and we can...the committee can go over it. But that's all I had. If there were any other...? [LB11]

DENNIS SMITH: I do have a copy of my testimony for Denise (sic). [LB11]

SENATOR FRIEND: Seeing no questions, thank you, Mr. Smith. [LB11]

LYNN REX: Chairman Friend, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities, and we're before you this afternoon in strong support of LB11. As has already been indicated, this was a bill that was introduced last year and died on General File due to lack of time for consideration. And for that, I think, the core element of this is that it takes two elements--one, all the landowners that are adjacent or contiguous agreeing and wanting to be annexed; and then secondly, not that the city has to, but it's the city's choice whether or not to do that. And so we think that this provides the protection that the public needs, because obviously, it's going to be a city council meeting, it's done subject to the Open Meetings Act, people have notice of it. There are the examples like Norfolk has talked to you about. There are also examples where you have three or four houses and those landowners want to be annexed because they want city services. So this is one of those bills that I would agree with you is not...I don't think it's controversial and I don't think it's probably on anybody's radar screen as going to change the world, but it's really helpful in terms of streamlining the process for people that want city services readily; for, basically, industry as well, if they want to be...if they are owning property and they want to be annexed and have the availability of some of the tools that cities have that others don't have in terms of enhancing economic development. You'll note that the operative words on this are on page 4 of the bill, starting with lines 4 down to 13. Paren (7) basically outlines the fact that it's got to be contiguous or adjacent. Secondly, it also talks about, in paren (8), the fact that what they don't have to do then is walk through the steps that are now there for first-class cities. And in answer to your question, Senator Friend, first-class cities have a different set of statutes than do other municipalities in the state of Nebraska, and the reason for that is because of some cases involving the city of Hastings back in the early eighties. And the Nebraska Supreme Court had some notions about what Hastings should or should not do, and the Legislature in response decided that they would, for first-class cities, put in additional procedures for them. And those procedures, I think,

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are very applicable, and obviously, it's the law. But it's also very doable when you're dealing with projects where there's controversy, where there's projects when people may not want to be annexed, or when basically they want to be annexed and the city doesn't want to. But I think this allows for streamlining a process that is going to be doable for cities. It's going to save money. And certainly, if you look at the last two weeks, what's happened in terms of our weather, there are some things it probably could have helped with our construction efforts, too, by the ability to streamline it. I'd be happy to answer any questions that you might have, but we do strongly support this measure and we appreciate Senator Mines introducing it and we'd appreciate the committee advancing it, too. [LB11]

SENATOR FRIEND: Thank you, Lynn. Were there any questions from the committee for Ms. Rex? Seeing none, thanks for the testimony. [LB11]

LYNN REX: Thank you very much. Thank you for your time this afternoon. [LB11]

SENATOR FRIEND: Next proponent, please. Welcome. [LB11]

ROD STORM: My name is Rod Storm, R-o-d S-t-o-r-m. I am the city administrator for the city of Blair. The city of Blair urges and supports the change proposed in LB11. The requirement to draft an annexation plan is time-consuming and cumbersome. The development of a plan as outlined and contemplated in previous sections consume two and three weeks of staff time to prepare. In the case of the city of Blair, most of our annexations are for either new subdivisions of 10 to 80 lots where we're already working with the developer on a developer's agreement to outline what improvements need to be made and who will do the work and how those improvements are going to be paid for, or where an individual desires certain city services and the city is willing to provide them if the property is annexed to the city. For us to go back and spend additional time necessary to prepare an annexation plan hearings is quite frankly a time-consuming exercise of little value and draining staff time from other important projects. A lot of our subdivisions, being smaller within a city of the first class the size of Blair, we find that developers come in the first of July and want to be able to subdivide a parcel of property into that 8, 10, 12, 20 lots. And to be able to get the streets and pavements in there, timing is very critical. To be able to stop and have to go back and spend a couple months with the hearing process and the development of the plan necessary for the annexation of property under the normal process can and oftentimes delays the project upwards of six to eight months. If we don't hit that critical time frame on those types of things to be able to get that project bid, to be able to get it constructed in the fall, that all lays over in the spring, costing, most times, additional tax funds, improvement funds. It costs the developer time that he could have had those houses and so forth going up, which in turn puts value back to the community. So we strongly urge you to support LB11, and advance it to the floor. Thank you. [LB11]

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SENATOR FRIEND: Thank you, Mr. Storm. Are there any questions from committee members? Seeing none, thanks for the testimony. Are there any more proponents on LB11? Any...no more proponents? Any more...are there any opponents? No opponents to LB11? Any wishing to testify in a neutral capacity? No one neutral? Mr. Berg has waived closing. And that would close the hearing on LB11. With that, I guess we can quickly move on. I see Senator Adams is here. Looking forward to his opening on LB28. Welcome. [LB11 LB28]

SENATOR ADAMS: Thank you, Senators. Senator Greg Adams, A-d-a-m-s, the 24th Legislative District. LB28 that you have in front of you is really a matter of correction for the sale of personal as well as real properties. Section 17-503, years ago, set the procedure for cities of the second class and villages to sell personal and real property--the procedure of three notifications, the procedure of a 30-day remonstrance period. And that still holds. Nothing has changed. Since that period of time, throughout the course of several years, 17-503 has been amended several times, and in the process of amending it, what has transpired is that the sale of personal property by villages and by cities of the second class has had some language left out that's critical. And what am I talking about? Specifically, 17-503 said that those procedures of three weeks, three separate notifications, a 30-day remonstrance period, held unless the property, personal or real, was being conveyed according to federal or state grant guidelines, program guidelines, or if the property was being conveyed from one political subdivision to another. A street and alley, all of those were exceptions to the rule. Well, as the bill...or the law has been amended over the years, that portion that says that if a city of the second class is conveying land over to the school...or personal property, excuse me, over to the school, or if they're complying state and federal grant programs, that language has been inadvertently left out of the statute, and needs to be corrected. And so what LB28 would simply do is to say that for the sale of personal property by villages of the second...or by villages or cities of the second class, that the exemptions that were...are originally in 17-503 would also apply in this case. And that's all I would have, unless you have questions for me. [LB28]

SENATOR FRIEND: Thank you, Senator Adams. Are there any questions from committee members for Senator Adams? [LB28]

SENATOR ADAMS: Thank you. [LB28]

SENATOR FRIEND: Senator, thank you. First proponent of LB28, please. [LB28]

GARY KRUMLAND: Senator Friend, members of the committee, my name is Gary Krumland, spelled G-a-r-y, and the last name is K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB28. And I appreciate Senator Adams introducing this bill. As the senator mentioned, this bill has to do with the conveyance of personal property in cities of the second class and villages. As you

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probably know, that's the smaller cities, those below 5,000. And as he mentioned, at one time the law was combined for real and personal property conveyances in these cities, and there was an exception that said that if it's conveyed to another public agency or in compliance with federal regulations, you didn't have to go through the elaborate process that was in the statutes for notice and bidding. Over the years, there's been some changes, and culminated in 2003, there was a bill adopted that separated personal property conveyance from real property. And part of the reason was, is that because of Internet sales and things like that, cities wanted more flexibility in selling personal property. I think one example at the time was a city got hold of some baseball cards and wanted to sell it on eBay and could get a lot more money for it than if they just advertised. And so they were separated. But at the time, the exception that was in the other statutes that allowed personal property conveyed to other government agencies was omitted. And I'm pretty sure it was inadvertent, since I helped draft the bill and I forgot to put that in there. So I'll take responsibility for that. But what this does is just clarify that the policy that the Legislature established that when one government entity is going to convey personal property to another, is included in the statutes. And it helps with government cooperation, it benefits taxpayers, and we just ask the committee that advance this bill, and we think it corrects an oversight that was made in the law a couple years ago. I'd be happy to answer any questions. [LB28]

SENATOR FRIEND: Thank you, Mr. Krumland. Any questions from committee members? Seeing none, thanks for the testimony. Next proponent, LB28. [LB28]

BRUCE DALLUGE: Chairman, members of the committee, my name is Bruce Dalluge. The last name is D-a-l-l-u-g-e. I've been city attorney for various communities in Nebraska for over 20 years. One of the communities that I'm currently city attorney for is the village of Elk Creek. And that's...I would like to just present you with a couple of real-life examples of how this does affect some of the smaller cities that we have. And I would just, as a side note, indicate this is the first time I've ever testified in front of a committee, so if I'm a little nervous or something, you have to bear with me, so don't be too hard on me. The...in the village of Elk Creek, a couple examples I'd like to give. In regard to the first example, the village of Elk Creek had a small grade school, K through 6 school. When it went through the process where the smaller school districts were dissolved, that school building was sold, and the village of Elk Creek decided it would be nice to have that. A very small town, it's a big asset. They could have their city meetings there. They really didn't have a city hall. Some of the town was thinking about maybe economic development later down the line, and it would be an eyesore if somebody bought it. It's a huge, you know, thing that most people could not handle. If an individual would buy it just off the street, it would go down and depreciate the value of their community. So they ended up buying that. And included in that purchase was the desks, the chairs, the cabinets, the stuff you'd have in a normal small school. The...in the fall of 2006, when school was ready to begin for that year, the city of Tecumseh, their school, which is probably about seven miles from the village of Elk

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Creek, found out at the very last minute that their school was going to have an additional student, you know, population, and they were going to have to equip another school room. And so they're thinking, hmm, the village of Elk Creek just bought this school, they have all these desks, chairs, cabinets, they're used. You know, either we could buy them at a very reasonable rate, or maybe they would just give them to us. And so the village called and said, Tecumseh would like to acquire some of these things. They're really in a time crunch, because school is going to start in a few days, and they need these items. Can we just either give them to them or sell them to them at a very reasonable rate? And my initial response was, sure; they're a public entity, we can convey those to them without going through the public bidding procedures. And I said, but I'll check. You know, I always want to say I'll check the rules. Well, as I go back through the book--again, I've been doing this for a long time--the old rule was, sure, it's not a problem. But as I looked, I found out, hmm, things have changed, that exception no longer is there. So I had to call back the village and say, I'm sorry, you can't just do this on an informal basis; you're going to have to go through an actual sale procedure, which would mean, basically, they had to conduct a special meeting...and this is a very small town. These people are, you know, part-time jobs. You know, this isn't anything that they do all the time for a living. So they've got to conduct a...you know, convene a special meeting. They then have to pass a resolution to, you know, sell the property. They then have to post the notice. The last...you can publish in the paper, or, if it's under 5,000, you can post a notice three places in the community. And you have to wait seven days after the posting before you can sell it. So by this time, by the time you have the notices for the meetings, the notices for all this, you're probably two to three weeks down the line. So after all this effort, they go...they finally said, okay, we're going to do this. However, what happened, the school, the Tecumseh public school system, needed the stuff that they had to have, so by the time the village went through all this process--they paid me to draft the resolution, to draft the notices, all that kind of stuff--they got to the end, and the school had already purchased almost all the stuff that they needed. The school had to go out, buy brand-new stuff, when they could have got either a very, you know, reasonable deal, or maybe even some of the stuff for free, if they would have been able to go through this procedure where one entity can convey to another, you know, public entity. When I talked to the village afterwards, they said, you know, we like to help our surrounding entities, but because of all the actual work we went through, we're not sure we'd go through this, you know, process again--all the extra work it cost, you know, they had to pay me, all the expenses that were involved. You know, it's amazing, but this small community of Elk Creek--you know, this is a town of probably 200 or 300 people--they had another example of this within a three-month period. And in this example, they had a van that the community no longer needed. And the city does not have its own fire protection. They are protected by a rural fire, you know, district. The rural fire district in turn was looking for a van the exact same size to carry their stuff to and from the fires, to bring people when they didn't need to bring the big, you know, tanker out. And so the village says, we'd just like to give this vehicle to the rural fire district so that they can have this, because they actually give us our

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protection, we don't have to have our own, we don't have the cost and expense of doing this. And again, already just researching the issue from the school issue, I had to tell them, no, basically you'd have to go through the normal process, you'd have to go through the sale process. And the worst thing about this is, if you actually put the van up for sale and if you go through this whole, you know, process, have the public sale on the back side, well, what are the chances that the rural fire district is going to be able to purchase it? There might be four or five other people there that also want to buy this. So not only can you not get it from point A to point B, because you're not sure that that entity is going to be able to be the successful bidder on the back side. So again, I guess on behalf of the village of Elk Creek and the other communities that I represent, I know that if this provision to exempt the conveyances from one public entity to another, would definitely save time, you know, would save expense, and in some cases it would actually allow this to happen, where, you know, two entities could want to work together, and there may be no physical way to, you know, make it happen. So I think this would actually allow this to happen. I thank you for your time, and if anybody has questions, I'd be more than happy to try to answer them. [LB28]

SENATOR FRIEND: Thank you, Mr. Dalluge. Any questions from the committee for Mister...it's Dalluge? [LB28]

BRUCE DALLUGE: Dalluge. [LB28]

SENATOR FRIEND: Dalluge. Sorry. Seeing none, thanks for the testimony. [LB28]

BRUCE DALLUGE: Thank you. [LB28]

SENATOR FRIEND: Thanks for coming down. Next proponent of LB28. No more proponents? Anyone in opposition of LB28? No opposition? Anyone testifying in a neutral capacity? Seeing none, Senator Adams has waived closing. That will close the hearing on LB28, and the hearings for the day. I appreciate you all coming out. [LB28]

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Disposition of Bills:

LB11 - Advanced to General File.

LB28 - Advanced to General File.

Chairperson

Committee Clerk