

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Rules Committee
February 18, 2010

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The Committee on Rules met at 1:00 p.m. on Tuesday, February 23, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing. Senators present: Scott Lautenbaugh, Chairperson; Annette Dubas; Steve Lathrop; Kent Rogert; Dennis Utter; and Mike Flood (ex officio). Senators absent: None.

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SENATOR LAUTENBAUGH: I'm sure you're all thrilled to be here and witness one of these rare get-togethers that we have. To my right, I have Senator Rogert; Senator Dubas; and Senator Utter. And to my left, I have Senator Lathrop. We are...Senator Flood, Speaker Flood, is an ex officio member, I guess, but not a voting member, and I think we'll go ahead and proceed in his absence at this time. And first up is Senator Avery. []

SENATOR AVERY: Thank you, Mr. Chair. My name is Bill Avery. For the record, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I'm proposing a rule change that actually grew out of a bill that I had taken to the Executive Board this session that would require the Clerk of the Legislature to publish Conflict of Interest Statements in the Legislative Journal. That bill was LB717, and the reason for it was to make these statements of conflicts of interest more transparent, more open to the public, and more easily accessible to all including fellow senators. During the hearing on LB717, Speaker Flood suggested that the provisions of the bill would be best addressed in the rules of the Legislature, not as a statutory change because if we put it in statute, then that would have the Governor approving or disapproving of our own rules. And he thought that...and I think he made a good point that separation of powers probably would be better served if we were to take it to the Rules Committee. Because of that, I am now here to ask you to consider a rule change and advance this to the floor. Let me give you a little bit of history on how this came about. We had an interim study this past summer. LR163 asks the Government Committee to look into all of the jurisdiction of the Nebraska Political Accountability and Disclosure Commission and all of the activities. During that interim, several meetings were held with various stakeholders. At one of those meetings, the issue of conflicts of interest came up. We discussed the provisions of current law, and it was decided then that we probably ought to find a way to make these statements more easily available to the public and to the press and to other senators because the current procedure is for a senator who has a potential conflict to prepare a written statement describing the matter and delivering a copy of that statement to the Accountability and Disclosure Commission and a copy to the Speaker. The Speaker then follows the statement with the Clerk of the Legislature where it's held as a matter of public record. The rule change that I'm asking for would simply ask the Clerk to enter an acknowledgement of the Conflict of Interest Statement in the Legislative Journal. If we do this, then it will make it easier for people to find out who has conflicts, and let me explain another reason why this might be important. In current

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law, members of the Legislature who have a conflict of interest are allowed to vote, and there's no requirement in the law that says you can vote even though in most other political jurisdictions including the city of Lincoln; the constitutional officers if they have conflicts, they are required to remove themselves from having influence over any kind of action or decision that the body might take. Since we are allowed to vote, even when we do have a conflict, it seems to me to be reasonable to ask that these statements be as public as possible. So we're not asking for any change in the law itself, just in the manner in which the statements are made available. Let me recommend one small change to you. The statement that is being proposed, be Section 19(J), it refers to the Nebraska Accountability and Disclosure Act. Technically, that should read, Nebraska Political Accountability and Disclosure Act. It's a minor thing, but it probably ought to be consistent with current statute. That's all I have. Thank you. []

SENATOR LAUTENBAUGH: Thank you, Senator Avery. Any questions for Senator Avery? Senator, briefly, there's an old...I'll paraphrase an old saying about the vice presidency. There's an old man who had two sons. He sent one off to sea, and he sent one off to be published in the Journal, and neither was heard from again (laughter). Do you believe that by doing this, we're actually going to increase public awareness in any meaningful way about conflict filings? []

SENATOR AVERY: I guess you'd have to define what you mean by meaningful way. I think that it...if you make it more easily accessible, my guess is that the people who will benefit most will be the press and ourselves. I think now we have about 13 Conflicts of Interest Statements filed...I didn't know that. Did you? Probably not. []

SENATOR LAUTENBAUGH: No. []

SENATOR AVERY: You know, and how meaningful is it? It's another step toward transparency which I think is a vital function of what we do. If we're not transparent, then that undermines public confidence in what we do and how we do it. It's a small step but important. []

SENATOR LAUTENBAUGH: Senator Rogert. []

SENATOR ROBERT: Senator, can you...you said, but I...will you restate, how you're able today to...for somebody to become aware of a conflict of interest? How do you get that information? []

SENATOR AVERY: I didn't actually state that. The way you do it now, you would have to know, number one, that the Clerk has these on file. I did not know that when I first looked into this, and the Clerk would make it available. You could go to the Accountability and Disclosure Commission and ask, but I think you might have to ask about specific senators, and I don't know if you could go in and say, let me see all the

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Conflict of Interest Statements. []

SENATOR ROBERT: Where? Which...now you said two things. []

SENATOR AVERY: And it would be the eleventh floor... []

SENATOR ROBERT: No, no. You just said two things. Do you have to ask for specifics in either office or can you just ask for all of them in the Clerk's Office and, specifically, in the Accountability and Disclosure...? []

SENATOR AVERY: No, excuse me, different places where you can find them. The Speaker has a copy. The A&D Commission has a copy, and the Clerk has a copy. They're three places but... []

SENATOR ROBERT: And you don't know whether any of those spots, you can just go ask for all of those if you want them? []

SENATOR AVERY: Patrick O'Donnell is here. He can answer that; I can't. I don't know if you can get them all at one time or not without asking for specific ones. []

SENATOR ROBERT: Okay. The reason I ask is that you mentioned that the press would be beneficial for this rule. []

SENATOR AVERY: Um-hum. []

SENATOR ROBERT: It would seem to me that if the press had an interest, all they would have to do is go ask the Speaker's Office to see all those, and they could certainly see them, but I'll ask the Clerk about that when he comes up. []

SENATOR AVERY: Yeah, this will make it much easier for all of us, and I'm... []

SENATOR ROBERT: You're going to read the Journal? You're crazy. I can't read that and stay up. []

SENATOR AVERY: (Laugh) I would expect, though, that the press would read the Journal every day. []

SENATOR ROBERT: I would have to ask them, but I doubt it. []

SENATOR LAUTENBAUGH: Any other questions for Senator Avery? Seeing none, thank you, Senator. []

SENATOR AVERY: Thank you. []

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SENATOR LAUTENBAUGH: Any proponents? Any opponents? Any neutral testimony?
And that closes the hearing on the proposed... []

SENATOR AVERY: No, we have a...we have a (inaudible) testifier. []

SENATOR LAUTENBAUGH: Oh, I'm sorry, Patrick. []

PATRICK O'DONNELL: So ask me...I'm not sure I know what you're asking. []

SENATOR ROBERT: Well, Senator Avery mentioned that there are several places you
can go get these Conflicts of Interest Statements. []

PATRICK O'DONNELL: Right. []

SENATOR ROBERT: Can I as a citizen or a member of the press walk into your office
and say, I want to see all the copies of Conflict of Interest blanket? []

PATRICK O'DONNELL: Yes. []

SENATOR ROBERT: That answers my question. []

PATRICK O'DONNELL: I mean, most times we don't get a lot of inquiries, as you might
expect, but... []

SENATOR ROBERT: Sure. []

PATRICK O'DONNELL: ...it's usually directed at an individual member. I want to see if
Senator, you know, Smith has filed a conflict, and it's... []

SENATOR ROBERT: But you keep them all in a file or do you keep it in an individual
(inaudible)...? []

PATRICK O'DONNELL: Yeah. No, we do it in two-year increments. So, and I don't even
know if the Speaker keeps them because the statute is kind of awkward. The member is
supposed to file it with the Speaker, but as a practical matter he...I mean, five minutes
after you give it to the Speaker, it's down in my office,... []

SENATOR ROBERT: Sure. []

PATRICK O'DONNELL: ...so that's when it becomes a matter of public record. So, you
know, the only other comment...I'm not...remember, the Legislative Journal is the
record. []

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SENATOR ROBERT: Sure. []

PATRICK O'DONNELL: Okay, even though you're right. There probably aren't a lot of people that look at it. It is the record... []

SENATOR ROBERT: Official record, um-hum. []

PATRICK O'DONNELL: ...that people would, down the road, go to, to determine whether or not that's an appropriate entry is up to you to decide. But that's...okay? []

SENATOR ROBERT: Okay. Thanks. []

PATRICK O'DONNELL: Okay. []

SENATOR LAUTENBAUGH: Sorry. Thank you, Mr. Clerk. I'm sorry I overlooked you there. []

PATRICK O'DONNELL: It's easy to do, Senator. []

SENATOR AVERY: (Laugh) It happens all the time. []

SENATOR LAUTENBAUGH: Moving on, we have a Proposed Rule Change number two, and I'd like to note that Speaker Flood has joined us as well. Senator Nelson, are you ready to proceed? []

SENATOR NELSON: Thank you, Chairman Lautenbaugh. My name is John Nelson spelled J-o-h-n N-e-l-s-o-n from District 6. I'm here proposing to amend Rule 5, Section 5 by inserting a new subsection H and, basically, it amounts to a proposed rule that...that would provide that every senator who designates their priority bill would notify the committee where that either is being heard or will be heard that it's a priority bill. And the committee would continue to hear the bill and post notice and do everything like that, but the action that they would have to take would be to advance it out to the floor for discussion out there. And they would be the first ones up and would give...certainly give their reasons as to whether...if they...that's just assuming they thought it was a bad bill or was not a bill that they would ordinarily have sent out, what their reasons were for doing that. And so, it's a senator's priority bill, one that he or she feels is very important, and it gets out to the floor for some discussion at least. If the committee then moves to postpone it indefinitely or take some other action or if they put it out in amended form, then they give the reasons for that. And then there can be questions asked by members of the whole body, and at that time, it would be up to the whole body to decide whether that priority bill should move forward or whether it should be killed or die at that point. There's a provision here that the committee would have to act within ten days after the

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final deadline for filing priority bills. That way...that requires that some action would be taken. I think that this is, in my mind, a matter of fairness that every senator's top priority should be discussed by the entire body. We have a situation now, and I'm not going to say that it's abused, but in the case of Retirement Committee, three senators could basically kill a bill. In other committees, four can do it. And I think with priority bills, they should not necessarily be killed in committee if they're important. Then it's...I think they should be sent out, in my opinion, so that the...all the members of the Legislature can discuss that. Bad bills that are brought out reluctantly by the committee are probably not going to go anywhere anyway, but at least they're out there. And the committees still retain their significant powers with hearings and it's just a matter of, as I said, fairness, not keeping a bill within the committee, never letting it get out, never taking any action on it, and basically killing the bill at the end of a short session. So, that's my proposal, Senators. I appreciate the opportunity to come and present it to you, and I will answer any questions that you might have. []

SENATOR LAUTENBAUGH: Senator Rogert. []

SENATOR ROBERT: I had a few things, but I also took some notes on your testimony, and when you say that the committees will still maintain their significant powers, this to me takes away their most significant power and the power of the process. You know, what do you think a committee's power and process or involvement in the process is? []

SENATOR NELSON: Well, they are...they are a screening committee, basically, I think, to... []

SENATOR ROBERT: Except in this case. []

SENATOR NELSON: Except in this case. But they're still a screening committee, Senator Rogert, because they can...they hear the testimony; they can make a determination on their own, and might very well be, you know, it...if it never got out of committee, that would be the end of it right there. But this perhaps does change...to that end, it does change their power a little bit in that they have no choice in the case of a priority bill to send it out so that they can give their reasons. And I might add, you know, I don't have a lot of bills. As it turns out, I had a couple that were killed by committee this year. I didn't know why. I never heard. I could, you know, imagine, but generally, my impression is that committees don't necessarily have to say why it is that they kill a bill. In the case of a priority bill, they would have to give their reasons as to why they think it's a bad bill if they don't want it to advance. []

SENATOR ROBERT: What is your...how do you determine the process goes, say a committee kicks out a bill with the recommendation to indefinitely postpone? What do you...how do you...and what...are they putting out a confirmation report of sorts that we have to adopt or not, or do you just put it to General File with an asterisk that says,

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committee didn't like it, but we're putting it out anyway? []

SENATOR NELSON: Are you talking about my proposal here? []

SENATOR ROBERT: No, a priority bill. Yeah, under your proposal. []

SENATOR NELSON: Well, that...I was thinking in terms of just the usual bills that they put out, and I didn't see that that ever happened, but would you just go by...? []

SENATOR ROBERT: Well, I mean, it says they should designate General...send our priority bills to General File with a recommendation. You know, putting a bill to General File, in my opinion, is a recommendation. We have enough people in committee that think it should pass; we're putting it out. We would have to change the way in which we put bills out as a priority designation, meaning the recommendation is that a confirmation report (inaudible) that you have to adopt; you have to vote that down, or do we just send it out there and everybody gets a note and says, well, we didn't like it, but we kicked it out anyway? []

SENATOR NELSON: Well, in the instance of these priority bills, yes, that would be a change. That's what the committee would have to do. A large majority where they're not priority designations, I don't know the committee gives any recommendations other than the fact that there were seven for and no against. []

SENATOR ROBERT: Except that to me shows a recommendation to pass. If there's enough votes to get it out, ultimately that means the committee thinks it should pass. []

SENATOR NELSON: Um-hum. A vote of four to three and it goes out on the floor is not necessarily a recommendation on the part of the committee. []

SENATOR ROBERT: Except it's a majority. []

SENATOR NELSON: Yes, it's a majority. That's right. []

SENATOR ROBERT: And all we need is a majority. []

SENATOR NELSON: And...that's...so that's the protection in most cases. This would be an exception to that just in the case of priority bills and giving a little more significance to that and the reasons for getting them out. []

SENATOR ROBERT: What about the ten days? You know, say prior to designation this year was last Friday at noon. We still have hearings that go on until Thursday this year. Some days it could be longer. What if it hasn't been heard yet or it gets heard; there's a couple of days left between the deadline and this ten days? The committee feels that

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there still needs to be significant work on a bill to make it...that legally, constitutionally, or just makes sense before they kick it out. If we can't get to that, does the bill just automatically come to General File? Do we break in the law or break in the rules? []

SENATOR NELSON: The ten days, Senator, was just kind of an arbitrary figure because we were concerned about the committee not doing anything at all and that they ought to have a deadline to meet if they possibly can. Now, maybe that can be a little longer. My concern was that here we are halfway through the short session already, and we just...our priorities were due last Friday. You don't have a lot of time even with the ten days. There's not a lot of time to debate the bill and move it on. So the committee can certainly...this committee could amend that if they thought that that was too short a time. []

SENATOR ROBERT: Well, and I understand, and in regard to that, I think the Speaker would maybe say that having a bill as a priority doesn't designate...guarantee that it becomes heard on the floor anyway. It just says that he's going to try. []

SENATOR NELSON: That's true. []

SENATOR ROBERT: Okay. That's all. Thanks. []

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

SENATOR UTTER: Senator Nelson, there is a provision in the rules to bring a bill out of committee now, right? []

SENATOR NELSON: Yes...yes. You're...you know as well as I what it is that it takes 30 votes to get it out of committee. And a question came over the noon hour whether that had to be with the blessing of the Speaker or not. I'm not sure about that. All right, and any senator can take...move to have it brought out of committee, but it doesn't happen very often. []

SENATOR LAUTENBAUGH: Any other questions for Senator Nelson? Seeing none, thank you, Senator. []

SENATOR NELSON: Thank you. []

SENATOR LAUTENBAUGH: Any proponents? Hello, Senator Janssen. []

SENATOR JANSSEN: Hello. My name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I'm supportive of Senator Nelson's proposal. And just hearing about it, I have not fully read it, I have a lot of the same questions that Senator Rogert was asking. But on the premise of it, I'll tell you why I support it. Many times a personal...I guess, we all have an

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axe to grind or whatnot, but this is more of a general thing. I put a bill forward, LB1001. It was certainly a priority of mine. I didn't prioritize it because it never came out of committee this year, and it's a bill...it's a very contentious subject. It's dealing with illegal immigration, as many of you probably know. Last year I ran an amendment on this bill, on a different bill that basically did the same thing. This was met with some resistance on the floor as going around the rules or doing it a certain way, said do it the right way, do it the right way, put it through committee and bring it up. Not only did I put in a bill this year to do exactly that, I requested an interim hearing. It received the lowest possible priority for an interim hearing, and then proposed the bill...had several proponents. I had 14 cosponsors, and that's without even really going around and actively soliciting a ton of supporters. I didn't ask everybody. I went to 14 people, and I got 14 yeses on this bill. I've asked twice for executive sessions. I've gotten two executive sessions, but I've gotten nothing back other than nobody cared to move the...nobody cared to make a motion on it. This isn't an insignificant bill. This isn't a bill that people would not have an opinion on. When you get 14 cosponsors, I certainly think of seven members on a committee. They should be able to at least give me a vote one way or the other on this proposal. So that's basically the story of why I think we should adopt this measure. []

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

SENATOR JANSSEN: Thank you. []

SENATOR LAUTENBAUGH: Seeing none, thank you. Any other proponents? Any opponents? Any neutral testimony? Seeing none, that will close the hearing on Proposed Rule Change number two. Thank you all. Motion to go into exec? []