

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

Executive Board Committee
February 23, 2015

[LR7CA LR31CA]

The Executive Board of the Legislative Council met at 12:00 p.m. on Monday, February 23, 2015, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR7CA and LR31CA. Senators present: Bob Krist, Chairperson; Dan Watermeier, Vice Chairperson; Kathy Campbell; Ernie Chambers; Galen Hadley; Dan Hughes; Tyson Larson; Heath Mello; and John Murante. Senators absent: Colby Coash.

SENATOR KRIST: We have a quorum so we will begin. Please turn off your cell phones. Although handouts are not required, if you do have handouts, we need 15 copies. If you don't have them, Brandon, who is from Omaha, our page today, would be happy to make those for you. If you need copies, please just give them to him. Each witness appearing before the committee must sign in using the green form provided at the entrance of the hearing room. Sign in on the green sheet only if you're going to testify. When you sit in the chair, please give us your name and spell it, first and last, not for us necessarily but for the transcribers so that they know how to spell your name correctly and make the record correct. We're going to be using the light system. It's five minutes. It's going to be green for four; yellow for one; and when it turns red, we'll ask you to please wrap up any point that you might have at the time. If you're not testifying, you can also sign in at the back and submit a letter to us and we'll make it part of the record. So with that, we'll do some self-introductions, and then we'll get Senator Schumacher up here. Starting at my left:

SENATOR HUGHES: Dan Hughes, District 44, ten counties in southwest Nebraska.

SENATOR MURANTE: John Murante, District 49, Sarpy County.

SENATOR CAMPBELL: Kathy Campbell, District 25, Lincoln.

BETH DINNEEN: Beth Dinneen, committee clerk.

SENATOR KRIST: Bob Krist, District 10.

JANICE SATRA: Janice Satra, legal counsel.

SENATOR WATERMEIER: Senator Watermeier, District 1, southeast Nebraska.

SENATOR HADLEY: Galen Hadley, District 37, Kearney and part of Buffalo County.

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SENATOR KRIST: The only one I know that will be absent today is Senator Coash. I expect the other members will be floating in shortly. With that, Senator Schumacher, please. And we'll start with what's on the agenda in order on the sheet, which is LR7CA, a constitutional amendment to limit the service of members of the Legislature to two six-year terms. Senator, Welcome.

SENATOR SCHUMACHER: Thank you, Senator Krist, members of the Executive Board. I'm Paul Schumacher, P-a-u-l S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature and here today to introduce LR7CA which deals with the issue of term limits. Nebraska became a term-limited state. After a series of petition drives and court cases, finally settled down and resulted in two four-year terms being the limit that anyone can serve in the Legislature. As any initiative petition process is, it has some rough edges and does not have much opportunity to fine tune what it puts into law. What's put on the ballot once you start getting signatures, that's what you have to ride through to the end. I think it's fair to say that the term limit phenomena in Nebraska has both been good and bad. Those of us are here because of term limits probably think it has a good facet because the people who were before us were term limited out and otherwise probably would have stayed around and around and around in the pattern that had been the case for many, many years. But as those of us who have been here as short of time as we're permitted to be here realize, there is some distinct downside. And the distinct downside is the lack of institutional memory and the lack of experience, particularly at the committee level. I think we've all seen the phenomena of people moving from committee to committee for their first two or four or six years so that the depth of knowledge and experience on any committee is really very shallow insofar as the committee members are taken. Look at the Revenue Committee. The majority of the people dealing with these tax issues and tax relief arguments have not been on the committee more than two years. Sometimes takes that long to figure out what a deduction, an exemption, and a credit is let alone the economic and political forces that are behind the requests for various tax angles. And quite frankly, it's probably possible for a sophisticated group to slip something past us in the form of what looks like innocuous language but really turns out to pack a big, big, big financial punch over time. And I'm sure that's the case with many of the committees. What this amendment does is says, okay, the people got it right on two terms. But the impact of two four-year terms is problematic. Other deliberative bodies such as the United States Senate and our Board of Regents are six-year terms. Six-year terms diminishes the influence of the lobby and the need for what has become a really very, very high rate of fund-raising necessary to get elected to the Legislature, particularly the first time around; and sometimes, as in Senator Burke Harr's case, to defend a seat. Talking hundreds of thousands of dollars now in play for an election to the Legislature on both sides of the ballot. That's not the kind of money you can raise from the ordinary citizens at fund-raisers in \$25 and \$50 increments. It's big money and big politics. And this theoretically should have a 50 percent reduction in the influence of that kind of a game on the system. The way the math works out and under the bill there would be half the Legislature elected, two years later another half, and then no legislative election for four years. So you'd have a stable body for four years in which you

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could work to develop the relationships and political philosophies and theories that maybe could be passed into law that is really, really hard to do on the fast turnaround of four years and new people coming in every four years. And because voters are rightfully cynical about the process, it does one other thing. It says that none of us who would vote to put this on the ballot can benefit by it. So if this goes on the ballot, it would be because we all, without any personal benefit whatsoever, believe it is a right and wise thing to do and it is good for government and hopefully will address what is understandable, voter cynicism in an age when government can't be seen to do anything right and when people are always looking for an ulterior motive to things. So it's a simple proposition. The voters as a practical matter, even if they wanted to tweak the system now, really can't because our initiative process has been made very, very, very expensive by recent changes in the initiative law and in its interpretation by the Supreme Court. When something becomes one or two subjects is really quite unclear. And it may be that if you put something on the ballot two five-year terms you have two issues or two terms for five years you have two issues: whether it should be two terms or whether or not they should be for five years. So...and the Supreme Court's rules are harsher in petitions than they are for the Legislature. So basically a simple proposition to go before the voters. And if they want to tweak their past actions, they have access to their document, the constitution, to do so. And if they choose not to tweak their past actions and say that two four-year terms are where they want to sit at, then that's the way it should be. But we need, I think in the context of what we all individually know from our experience here, to give them the opportunity to tweak them and to tell them why. That would be my opening. [LR7CA]

SENATOR KRIST: Thank you, Senator Schumacher. Senator Larson, did you have a question? [LR7CA]

SENATOR LARSON: Yeah. Thank you, Senator Schumacher. And it's not that I disagree with the idea, I think did I hear that under what you had it would be one election and then another one and then there would be an off election? [LR7CA]

SENATOR SCHUMACHER: Yes. [LR7CA]

SENATOR LARSON: Do you think especially understanding how our Founding Fathers wrote the U.S. Constitution and the rationale behind the Senate with every two years, a third of it being up every two years, that should a, we'll call it a movement happen in that biyear election that's getting skipped over, do you think you're disenfranchising that movement by not possibly including that in an election? Do you understand kind of what I'm saying? Because that was the purpose of the Senate. It wouldn't be as responsive as the House. But over time if that movement could sustain, it would be able to build that representation. And I kind of feel like you'd be shorting it possible seats. You understand where I'm at on that? [LR7CA]

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SENATOR SCHUMACHER: We do it with Board of Regents. The four-year gap we have in all of our county offices, we have in the office of our five constitutional offices. And it becomes when you're...I actually sat down with Bill Drafters and tried to figure out how you could divide this into three cycles with 16 people plus one elected each particular cycle. And that was pretty cumbersome to do in terms of the transition between two four-year terms and two six-year terms. The math didn't work out right and the thing got to be so long that you began to look at it and say, is this going to be confusing to the voters? And so this seems to be a good transitional mechanism. If you wanted to ride it out longer and say, okay, we got a phase-in time and then we have...we'll shift to three two-year terms, I suppose you could; but that gets awful confusing. [LR7CA]

SENATOR LARSON: My other question is what happens so if you have--and this is just a very technical question--so I get elected and in year one I have to...or whatever, it could be year three I have to resign and the Governor appoints it? Under our current law, usually that next bielection my seat would be up for an election. Does the gubernatorial appointee not have to go again until...because if they're in that gap? Do you get what I'm saying? When there's that four-year gap, does that gubernatorial appointee not have to stand for election until, you know, do they get three free years instead of just the one year or do you start in that bielection wasn't an election, therefore that's starting their term? I just think there's a few issues there. [LR7CA]

SENATOR SCHUMACHER: And I see that issue, Senator Larson. I guess you would pick up where the guy who resigned or who died left off. [LR7CA]

SENATOR LARSON: So you'd get three free years and then at that point would you only get one more term because you had...because that would only put you at nine years? [LR7CA]

SENATOR SCHUMACHER: Yeah. I think you would be cut short. [LR7CA]

SENATOR LARSON: Okay. [LR7CA]

SENATOR SCHUMACHER: And I think that may be the way if a U.S. Senator... [LR7CA]

SENATOR LARSON: No. U.S. Senator they'll have a special election to fill out the rest of...so if there's four years left on the term, they'll have a special election to fill out those four years. And then another election is how that will...for example, when John Kerry became U.S. Secretary...or whenever he moved and Scott Brown...they had a special election and Scott Brown was able to fill for two years because that's when that seat was coming up or else it would have been four years. [LR7CA]

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SENATOR SCHUMACHER: And I don't think that's that big of issue here; but if the committee thinks that it is, I suspect we could expand that out. But then do we start getting into the two and three issue thing? And so I think one message from the Supreme Court to us is and more to the petition process than the Legislature but to everyone is keep it simple. [LR7CA]

SENATOR KRIST: Yeah. I think we're going to hear LR31CA that touches on the terms and how many here next so we may end up obviously talking about those two issues together. Any other questions for Senator Schumacher? Senator Hadley. [LR7CA]

SENATOR HADLEY: Thank you, Chairman Krist. Senator Schumacher, I think I really believe this has some merit. And I think the biggest problem that we have now is the loss of institutional knowledge and bringing people up to speed and such as that. I like the idea that this will not benefit anybody that's in the Legislature right now, particularly after 2020, makes it so that it doesn't look like it's self-serving for our particular group here, which I think in the past we haven't had that. And I think that should allay some fears. But I certainly think that this...I've spoken to a lot of business groups and one of the things I always ask them, you know, would you...if I speak to the bankers, I always ask, would you like to have a rule that all your vice presidents have to be fired after eight years? Or if you're speaking to a hospital, all your department heads have to be let go after eight years? Of course, the answer is always no because of that knowledge that's been built up. Thank you. [LR7CA]

SENATOR KRIST: Thank you, Senator Hadley. Senator Campbell. I'm sorry; did you want to respond, Senator Schumacher? [LR7CA]

SENATOR SCHUMACHER: I was just going to respond briefly. On the experience issue, one thing that's going to become acute in the next probably six years or so is the baby boomers who are the senior staff are probably going to be leaving. So that's going to just overlay a level of complication as to anybody with institutional memory or experience with the various forces that are out there. [LR7CA]

SENATOR KRIST: And to that point, just in around the Legislative Council and this staff that supports us, there are five that probably will be and the Clerk being one of them so to your point. Thank you. Senator Campbell. [LR7CA]

SENATOR CAMPBELL: Senator Schumacher, since we've had term limits I certainly have been a proponent of 12 years. That's not really my question here. But what makes you think that Nebraskans have changed their mind since Senator Carlson's constitutional vote in 2012? [LR7CA]

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SENATOR SCHUMACHER: I think that the electorate focused on two terms. Kind of a subpart of that was how long was the terms. Three four-year terms seem to fly directly in the face of what they had been saying. But they haven't had an opportunity to say two four-year terms or two six-year terms. And the other thing I actually think made a difference in that last effort is that people who were in the Legislature who put that on the ballot probably triggered a level of cynicism that they just wanted to go out drinking with the lobby again. And people figured you're trying to get yourself extending your terms. You're just wanting greedy for power. I think this is a fair thing to present them. If they say no, you didn't...what about no don't you understand, then we will understand. But I think since they have no way of really putting this on the ballot officially themselves, we may have an obligation to them to let them have that opportunity to say no or yes in addition to what we know is a real management issue here with the shortness of our terms and of staff. [LR7CA]

SENATOR CAMPBELL: I do have to say and I didn't pull the amendment up and maybe Janice knows, but I thought Senator Carlson's also would not have affected any of us. If I remember from the discussion on the floor, I thought he was pretty clear about that. I see some heads nodding. Is that your recall? [LR7CA]

SENATOR KRIST: That's true. [LR7CA]

SENATOR LARSON: I think it did affect him. [LR7CA]

SENATOR HADLEY: I thought it did. [LR7CA]

SENATOR CAMPBELL: You thought it did affect us? [LR7CA]

SENATOR LARSON: (Inaudible). [LR7CA]

SENATOR SCHUMACHER: If you were in your first term... [LR7CA]

SENATOR LARSON: I think it would have affected everybody. [LR7CA]

SENATOR KRIST: We can look at it and talk about it in Exec. [LR7CA]

SENATOR CAMPBELL: Thanks. [LR7CA]

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SENATOR KRIST: I got to say I think the reason that the voters didn't even give it a second thought is because not only do they want to stay around, but they want to get a pay raise at the same time. [LR7CA]

SENATOR SCHUMACHER: That's exactly right. [LR7CA]

SENATOR KRIST: And this issue will be discussed on its merit this time if it's out of committee and that is that term limits are adversely affecting our own competency level sometimes. [LR7CA]

SENATOR SCHUMACHER: You're right. [LR7CA]

SENATOR KRIST: Any other questions for Senator Schumacher? Thank you, sir, for bringing it. Are you going to stick around for closing? [LR7CA]

SENATOR SCHUMACHER: I probably will, yes, thank you. [LR7CA]

SENATOR KRIST: Okay. First proponent for LR7CA. Welcome. [LR7CA]

RON SEDLACEK: Thank you. Good afternoon, Mr. Chairman. My name is Ron Sedlacek. It's R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce. We are certainly supportive of Senator Schumacher's bill and for the very reasons that he had introduced the bill. We were opposed to the original iterations of term limits and including the one that was passed by initiative. We were supportive of the three four-year term proposal and actually had asked senators to take a look at that positively, if you recall, in order to extend term limits to at least three terms. I believe that you're correct in your assessment. It was the idea of not only the extension of the terms but then also asking for the pay increase in the manner in which the increase has probably had some effect. I wish the issues would have been separated at that time, but nonetheless, that's what was presented to the voters. We would be supportive of this resolution and would be supportive to the extent of trying to educate the voters as to why this is a wise decision. So with that, I'll take any questions. [LR7CA]

SENATOR KRIST: Thank you, Mr. Sedlacek. Any questions? Thank you very much for coming. Next proponent. Welcome. [LR7CA]

WALT RADCLIFFE: Thank you, Senator Krist, members of the Executive Board. I appear...my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e, and I appear before you today as a registered lobbyist on behalf of both the Nebraska Realtors Association and the Nebraska Cable Communications

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Association. And quite frankly, I would probably be here to testify regardless if I didn't have a client directing me here. We would be very supportive of what Senator Schumacher is trying to accomplish with this resolution. I'm not going to get into the whys and wherefores of term limits. I think we've heard that. I will say I think the six years is a concept that's worth trying. It seemed to work for the Regents and the PSC. But what I'd like...there's just a couple nuts and bolts things that I'd like to just put out for all of us to understand. I would urge you to put this bill out this year with...in whatever form you want. Senator Larson, if you want to do, you know, stagger it for three years or every three terms over six, I think that's fine. And very honestly, I think, and I'm speaking now in behalf of clients, I think we should go out and do some polling and see, back to what Senator Campbell said. What makes us think anybody has changed their mind? I mean, I think it has to be approached like a campaign is approached and done aboveboard for everybody to see and know about. And there are enough people, groups, entities out there that would be supportive of a well-directed campaign. Senator Chambers remembers when the legislative pay was raised from \$4,800 to \$12,000. That was the last time, Senator Chambers, and you know as well as I do, that a concerted effort was really done in front of the electorate, except for per diems in front of the court, to really affect the membership. And I think it would be nice to have something out on the floor that we could legitimately go out and poll on and talk to people about. And to be very honest with you, it's going to take...if you want to change term limits--let's assume we get across that philosophical hurdle--and this is a change in term limits, like it or not, I mean it extends the period of time. If you want to do it, the vast majority of the Legislature has to support it. It can't be something that passes 32 to 17 because you're not going to hear from half of the 32 and the 17 will be yelling louder than the balance. So it has to be something that the leadership, which is this board and others in the Legislature, supports and is willing to go out and tell the public why they support it. I think the failed efforts this last time around with regard to term limits and salaries shows what happens when there isn't a concerted effort to do something. And I think that was just too much, too fast, too soon. So I'd be happy to answer any questions. [LR7CA]

SENATOR KRIST: Thank you, Mr. Radcliffe. Any questions? Thank you very much. Thanks for coming. [LR7CA]

WALT RADCLIFFE: Thank you. [LR7CA]

SENATOR KRIST: Next proponent. Next opponents. Any opponents? [LR7CA]

SENATOR CHAMBERS: Just one second. [LR7CA]

SENATOR KRIST: Welcome, Senator Chambers. [LR7CA]

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SENATOR CHAMBERS: Thank you. Mr. Chair and members of the Exec Board, I have been in the Legislature longer than anybody. I am what...I can use that word that is used often...I am the only survivor in the sense of term limits. I was here a long time. I sat out four years and I came back. I can remember the way it was. I can see the way it is now. And I think some of the people who may have thought term limits was a great thing before they got in the Legislature have come to realize that two terms is not enough to really learn what has to be learned and then be able to make use of it. Just about the time people realize that this is an institution that needs to be nurtured, it needs to be protected, not by academicians and well-intentioned people on the outside but by those who are members of it, about the time a person comes to that realization, then you're out of here. When they were trying to get term limits in the first instance, I was opposed to it. And I'd name some of the senators with whom I'd had a lot of difficulty and indicate how glad I'd be if they weren't here, but I said I don't want you to leave that way. People have a right if they choose to send a mule skinner to send a mule skinner. And it's not for me to say who they ought to send. So I am not in favor of anybody being put out of this Legislature because of an artificially contrived way of doing it. I don't think the public recognizes the damage that was done to the Legislature. They gutted a branch of government which, in my opinion, will never recover again. It will never be what it was, not just because I won't be here forever. But there are things that build up over a period of time when you have overlapping individuals who carry over and can pass something on. But when a sizable portion of the Legislature is gone, people begin to come in after a point saying I'll be there two terms and that's it. If I can find a way to get myself a job, then that's what I'm going to do. If it can be a steppingstone to someplace else, that's what I'm going to do. But it's not looked at as someplace where you put time in it. I had no...and I'm not going to go on and on, but there are a few things I really want to say. I don't usually testify on bills that are not mine. I'm not a person who grew up saying I wanted to be in politics. I believed in voting. You had to be 21 when I registered, and I never missed an election voting. But I never, ever during those days thought I would run for any office. People began to ask me to run so I would run for write-in like for the school board or something, knowing I couldn't win, but to discuss certain issues. When a man who had been appointed by the Governor, he's an elderly gentleman, I don't know if he's as old as I am now, but he was a little disconnected from reality. And he stood on the floor of the Legislature and said, God had put white people in charge and all we are supposed to do is go along with what they want to do. And the community was outraged. Even when I was in high school, people would ask me would I come and talk to the media about housing, the police, employment and I was a kid literally. So they asked would I would run for the office and I said, sure because there would only be two years at most that I would have to serve because it was the middle of a session, middle of a term; and I ran and I won. I tried to get other people to run. And the ones who did try to run apparently lacked credibility because I'm not egotistical enough to say that they liked me that much. But at any rate, had I known when I first ran that I would be here as long as I am, I would not have run. But once I got here, my attitude was that I'm a part of this body and I chose to be here so I'm going to do all I can to make it what I think it ought to be. Then pretty soon it

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was not an antagonistic, confrontational kind of thing; but I began to look at what needed to be done structurally to improve this place. I looked at the employees first and I thought that they should get a better salary than they were getting. If we could keep people here, then they would develop the expertise that would come with it so I always supported salary increases for the employees. I tried to embarrass the Legislature into spending money for the Legislature itself because we appropriated for everybody else--the courts, the executive branch--but we always travel cheap and that's kind of the way it is now. Everybody else is taken care of. I was able to make a little bit of headway there. Now to sum all this up: It takes a while, and it shouldn't take other people as long, to overcome the negative attitude I came here toward the Legislature. I would say I'm in the Legislature but I'm not of the Legislature. Now I'm in one of those situations where I'm not a weepy, teary person so I'm not going to break down. But I really regret and view with, I hate to use the term, a degree of sadness what's happening to this old gray mare because she ain't what she used to be. And as new people come in, they cannot know those things that you'll learn only from experiencing being in the Legislature. And some of the new people I think are starting to see now that it's nothing like what they thought it would be when they were on the outside. I think, like Mr. Radcliffe said, we need to send a bill out there. I don't care if it says 30 terms, 1 term to get something on the floor that will allow us to engage in a public debate and try to get the kind of support from our colleagues that would be needed to put something on the ballot. And I would take it as my personal responsibility to try to persuade those who are not persuaded that this is what we ought to do and think beyond just our term. We should want something left after we're gone. And sadly but wisely, I now acknowledge and recognize the fact that I can't be here forever. So after about 120 more years, I'll be gone. But if you have any questions, I will take them. I had to get that into the record, though, I felt.
[LR7CA]

SENATOR KRIST: Thank you, Senator Chambers. [LR7CA]

SENATOR CHAMBERS: Thank you. [LR7CA]

SENATOR KRIST: Okay. Any more proponents? How about opponents? How about neutral? Senator Schumacher, would you like to close? [LR7CA]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the committee. I think you all know the issues as well as anybody does and what responsibilities we may have in regard to this. You have a resolution before you. I take no particular pride in authorship of it. If it's deemed that the better way to do it would be three two-year terms if you can get that worked into the language better than I could, you know, that's fine. I think it's an issue that needs to be discussed and I think probably it would be in the interest of the people to let them have a chance to tweak their decisions on this. I have nothing else. [LR7CA]

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SENATOR KRIST: Any other questions for Senator Schumacher? Thank you sincerely for bringing this. [LR7CA]

SENATOR SCHUMACHER: Thank you. [LR7CA]

SENATOR KRIST: (Exhibits 1 and 2) Thank you. Okay. I have some letters to read in, in support from the Nebraska Corn Growers and from the Nebraska Cable Communications Association. That will close the hearing on LR7CA. And, Senator Bloomfield, you're up next, LR31CA, constitutional amendment to change legislative term limits to two consecutive full terms. Welcome, Senator Bloomfield. [LR7CA]

SENATOR BLOOMFIELD: Thank you, Senator Krist. Good afternoon, everybody. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d. I represent the 17th Legislative District, and I'm here today to introduce LR31CA to the committee for your consideration. It's a very straightforward bill that would address the issue created when a member is appointed to the Legislature. Since term limits took effect, we've had several instances of members who were appointed to fill a vacant seat who found out because of when they were appointed they were not able to serve two full terms. LR31CA would allow an individual to serve two consecutive full terms regardless of when in the legislative session he was appointed. Over the years there have been attempts to change the number of years that make up a term. You've got another one before you now with Senator Schumacher's idea. This language would not have to be changed if the length of the term were extended. It would still apply. As I said, this is very straightforward and would address an issue I think we can all agree needs to be addressed. This change will have no effect on my length of service nor should it. There are other senators who have been appointed that could be affected, however. Senators Garrett and Schnoor will each, under current law, be allowed only six years. Senator Seiler will be allowed nine. And Senator Kintner, who was elected mid-term, not appointed--I don't know how that fits into the wash--it would take some different language I would imagine. Senator Kintner, I believe, would get ten years as it stands. But what I want to do is simply say that you get two full terms plus whatever you were appointed to fill. And if we need to put language in there that doesn't affect the current senators such as Schnoor, that's up to the committee. And if there's language that has to be addressed to affect Senator Kintner, that also falls in your ballpark. I'll try to answer any questions you might have. And it's not fun to snicker. It's not proper to snicker. (Laugh)
[LR31CA]

SENATOR KRIST: (Exhibit 1) Just go ahead and hand us the loaded gun, will you, please? (Laughter) Any questions for Senator Bloomfield? Thank you, sir, for bringing it. First proponent for LR31CA. No proponents. Any opponents for LR31CA? Any neutral? Senator Bloomfield waives closing. And now let us read into the record again a couple of letters...one

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letter of support from the Nebraska Corn Growers. That will conclude our hearing. Exec Board still stick behind for just a few minutes here. [LR31CA]