## Executive Board Committee April 06, 2016

#### [LR547 LR601]

The Executive Board of the Legislative Council met at 12:00 noon on Wednesday, April 6, 2016, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR601 and LR547. Senators present: Bob Krist, Chairperson; Dan Watermeier, Vice Chairperson; Kathy Campbell; Colby Coash; Galen Hadley; Tyson Larson; Heath Mello; and John Murante. Senators absent: Ernie Chambers and Dan Hughes.

SENATOR KRIST: Welcome to the Exec Board. Today's hearing schedule, we will be hearing LR601, Senator Hilkemann, review present facilities and determine the needs for options for developing a regional certified crime lab in the Omaha area; and LR547, Senator Larson, provide the State-Tribal Relations Committee and the Legislature conduct a study examining the policy tools available to the Legislature to enhance economic development for Native American population. Let's go around. Senators, introduce yourself, please.

SENATOR COASH: Senator Coash, District 27 here in Lincoln.

SENATOR MURANTE: John Murante, District 49, Gretna and western Sarpy County.

BETH DINNEEN: Beth Dinneen, committee clerk.

SENATOR KRIST: Bob Krist, District 10, Omaha and Bennington.

JANICE SATRA: Janice Satra, committee counsel.

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

SENATOR LARSON: Tyson Larson, District 40, O'Neill.

SENATOR KRIST: Joining us is Senator Mello, first, and Senator Watermeier. We're going to be using light signals today, five minutes because of our time constraints in this point in the Legislature, so be respectful of the light signals. Five minutes: to start out with it will be green, the last minute it will turn yellow, and when the red comes on I'd ask you to wrap everything up. If you're going to testify and come up here, you need to fill out a sheet, please. They're outside the door. And when you come up to testify, please state and spell your first and last name. That's for the transcribers so that they get it right. Joining us also, Senator Campbell from Lincoln. With that, Senator Hilkemann, you're up.

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SENATOR HILKEMANN: Good afternoon, Chairman Krist and members of the Executive Board. I am Senator Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, representing District 4 in west Omaha. And I'm here to introduce LR601. This resolution comes as the result of conversations I had with several state senators and various stakeholders over the last several months regarding establishing an accredited regional forensic crime lab in Omaha. These stakeholders included the city of Omaha, UNMC, Douglas County, the state of Nebraska, Nebraska Highway Patrol, the Nebraska Attorney General, among others. So the question came up: If there's going to be a regional accredited crime lab built in Omaha, should the state be involved? And secondly, if we are involved, at what level should we participate? I hope that by having this study we can gather all the possible stakeholders and learn more about the interest and the needs in such a project and will help answer those two questions. With that, I will be happy to answer any questions that you may have and look forward to following the testimony. [LR601]

SENATOR KRIST: Thank you, Senator Hilkemann. We've got the sick ward up here, so apologize (inaudible) coughing but...Senator? [LR601]

SENATOR HADLEY: Thank you, Senator Hilkemann. I want to make this very clear. This is a resolution to review and study, correct? This is not a resolution where we have already determined the correct action. [LR601]

SENATOR HILKEMANN: That's correct. [LR601]

SENATOR HADLEY: Okay. [LR601]

SENATOR HILKEMANN: Exactly. [LR601]

SENATOR HADLEY: That's all I wanted to know. [LR601]

SENATOR KRIST: Any other questions? Thank you, Senator Hadley, Senator Hilkemann. Let's take the first proponent, the first person in favor of the bill. Welcome, Chief. [LR601]

TODD SCHMADERER: Good afternoon, Senator Krist, Speaker Hadley, members of Executive Board. My name is Todd Schmaderer. I'm chief of police for the city of Omaha. It's S-c-h-m-a-d-e-r-e-r. I'm representing the Omaha Police Department and city of Omaha with the sole purpose of advancing our forensics and our crime laboratory services in the Omaha area. City of Omaha, Douglas County, University of Nebraska Medical Center have been in discussions to explore an independent, full-service, and accredited crime lab that would be on the campus of UNMC.

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Independent, full service, and accredited--those are the three hallmarks that you need in order to have an A-plus crime laboratory. Currently, in the city of Omaha and Douglas County, we don't meet either one of those tenets. We're 0 for 3 on those 3 hallmarks. So I support this resolution to study the state's role or potential partnership in this possible venture. We do have the opportunity to advance our crime lab services, be a model for the country. Crime victims, defendants included, in the Omaha area expect their agency heads and elected officials to give this the best push. I am in support of this study. I'm available for any questions if you have them. [LR601]

SENATOR KRIST: Senator Coash. [LR601]

SENATOR COASH: Thank you, Senator Krist. Chief, if one of your officers picks up an offender and confiscates some drugs, says that...or what they think is drugs,... [LR601]

TODD SCHMADERER: Uh-huh. [LR601]

SENATOR COASH: ...for example, maybe it's a synthetic marijuana or something of that nature,... [LR601]

TODD SCHMADERER: Sure. [LR601]

SENATOR COASH: ...and they send that to the crime lab, about how long is that going to take before that crime lab can turn around and let you know this is what they found? [LR601]

TODD SCHMADERER: Well, it definitely varies and that's one of the reasons and one of the advantages to having the independent full-service lab. It would speed up that process. Right now the Omaha Police Department will send its evidence four different places. They send it to the state lab, send it to UNMC in the area of DNA, or will utilize the Douglas County Sheriff's Office. And also, we'll do some of our own testing. So you have a hodgepodge of events that take place. The full-service aspect of it would speed up that time frame. And oftentimes, when we're gathering evidence on some of our...I don't want to say lower level crimes but they're not our high profile, larger crimes, we'll say a burglary, sometimes it will take six months to get evidence back. Can you imagine the...if we could have identified an offender within that time period? The arrest and the prevention of future crimes could have taken place. So that is one glaring area that we're looking to address. [LR601]

SENATOR COASH: Thank you, Chief. [LR601]

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SENATOR KRIST: I'll ask the question and then it will open for anyone to come up and speak to, but I'm aware of, and I'm sure you can speak to, the lack of accreditation and the lack of certification of the people who work in the laboratories. Would you like to say anything about that, Chief? [LR601]

TODD SCHMADERER: My comments here today are to move this venture forward. I have great respect for the Douglas County Sheriff's Department. They stepped in and they filled a void. It's now time to take it to the next level and this is with the three hallmarks of independence, full service, and accreditation. And I'd like to leave my comments at that. [LR601]

SENATOR KRIST: Fair enough. [LR601]

TODD SCHMADERER: All right. [LR601]

SENATOR KRIST: Thank you. Any other questions? Thank you, Chief, for coming. Thanks for coming down. The next proponent. Welcome, Marty. [LR601]

MARTIN BILEK: My name is Marty Bilek. I'm Mayor Stothert's chief of staff. It's M-a-r-t-y Bi-l-e-k. Today I'll be speaking on behalf of Mayor Stothert, and basically what I'm going to do is just quickly give you an overview of where we've been over...or what we've accomplished and what we've done over the last couple of months in this regard. As Omaha's mayor, my top priority is public safety. My desire is for the police department and the criminal justice community to operate effectively and efficiently. Perpetrators must be arrested, prosecutions must be successful, and penalties must be swift and fair. With that goal in mind, last fall I became aware of an opportunity to improve crime lab services available to area law enforcement. There were already discussions underway to move the county's coroner's office on to the campus of University of Nebraska Medical Center. Forensic pathology and autopsies would be performed there, and the Nebraska Organ Recovery System would collocate for efficiency. But since UNMC already performs forensic DNA analysis for area criminal justice agencies, it begged the question: Why not move all crime lab services to the campus of UNMC? As it is now, forensic tests are performed by five different labs in the Omaha area, depending on the nature of the test. Ballistics and fingerprints analysis are performed by the Omaha police. Controlled substance analysis, blood-alcohol content testing, fire debris analysis, and fingerprint analysis are performed by the Douglas County Sheriff. The State Patrol has a full-service lab and is the only area lab that does urinalysis. UNMC currently does DNA analysis. And the county coroner oversees forensic pathology of the deceased. We now have an opportunity to consolidate all crime lab services into a single facility on the campus of UNMC. The county coroner would oversee autopsies also performed at this location, and donor organs would be retrieved there as

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well. Once completed, there would be an opportunity to launch a forensic science program or forensic pathology program where classroom training could be augmented by real-life experiences in the crime lab. The city of Omaha and UNMC are willing partners. Also important, however, is the prospect of having an independent crime lab under the auspices of UNMC without law enforcement affiliation. Many consider this professional separation a best practice that will eventually be required. Most important, however, would be the accreditation that would be built into any plan for a new crime lab. Accreditation would give the laboratory and the scientists that work there a high degree of credibility and believability when testifying before jurors. Several options have been discussed as funding mechanisms. The Omaha-Douglas County Public Building Commission would be an option, however, the county will need to be a willing partner for this option to be available and viable. Another option would be for UNMC to bond the facility and charge back debt payment. Lastly, a private developer could construct a facility using a TIF loan, which would mean low lease payments. Building a one-stop, fullservice, accredited crime lab on the campus of UNMC that provides forensic services to area law enforcement would likely become a model for the criminal justice community across the country. Thank you. [LR601]

SENATOR KRIST: Thank you, Marty. Any questions for Marty? Senator Mello. [LR601]

SENATOR MELLO: Thank you, Marty, for your testimony. And maybe I could have asked this of the Chief and maybe you could just share a little perspective. There was a recent story in regards to the concern regarding Douglas County and the \$5 million that was used in civil forfeiture funds to build the Douglas County Sheriff's crime lab and the concern of having to repay those funds back to the federal government if the crime lab was moved from that facility. Can you give any perspective from the city in regards to any discussions that have been had in regards to try to mitigate that \$5 million loss to Douglas County and Douglas County taxpayers? [LR601]

MARTY BILEK: Yes, Senator. That's a very good point. And I suspect Chief Deputy Tom Wheeler behind me will also be able to speak to that. What I can tell you, that the current crime lab, the Douglas County crime lab, was renovated and equipped with forfeiture money, the same forfeiture money, coincidentally, that's being discussed on the floor of the Legislature. There was about \$4 (million) to \$5 million used for that purpose. The federal government allows you to spend that money. When you seize that money from drug dealers, they dictate how that money can be spent, and, basically, it can only be spent for law enforcement purposes. So there could be the possibility that that space that's currently a crime lab will always have to be used for law enforcement purposes by the Douglas County Sheriff's Office. That is an obstacle for us. However, the attorneys in both Omaha and Douglas County are talking with the Department of Justice, who makes these decisions, to determine if there's a waiver process. Or it's also possible that the sheriff's office would still need to use that space because the crime scene investigators,

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the people that go out to the crime scene, will still need to be housed somewhere because they're not a part of what we're talking about here. Only the lab personnel would be relocated to the UNMC campus. The sheriff's office also has a canine facility in that building that would also stay. So the bottom line here is even if the Department of Justice were to say that that \$4 million of renovated space always has to be used for law enforcement purposes, at the end of the day probably only a fourth, I'll just estimate, would actually be in play. The rest of it would continue to be used for law enforcement purposes like it is now. [LR601]

SENATOR MELLO: Okay. Thank you, Marty. Appreciate it. [LR601]

SENATOR KRIST: Is anybody here from UNMC? So I'll address one question to you, if you don't mind. I know you've had some conversations with Dr. Gold and Bob Bartee, and they are in the loop. You've talked. They are participating in those conversations. Could you confirm that for us, please? [LR601]

MARTIN BILEK: They are. Dr. Gold, Vice Chancellor Bartee, and an assortment of others with UNMC, their facilities manager, their attorneys, their DNA...their pathologists or DNA specialists have all been talking to us about the prospects of moving, relocating to a new facility, and with it the coroner's office would move there. The learning opportunities, creating a forensic science department within UNMC and teaching from that location, they've all considered that as very desirable outcomes. [LR601]

SENATOR KRIST: Okay. Thank you for putting that on the record for us. Any other questions? Thank you, Marty. [LR601]

MARTIN BILEK: Okay. You're welcome. [LR601]

SENATOR KRIST: Next proponent. Seeing none, next opponent. I'm sorry. Senator Kolowski, opponent? Oh, proponent? [LR601]

SENATOR KOLOWSKI: Proponent, please. [LR601]

SENATOR KRIST: Okay. [LR601]

SENATOR KOLOWSKI: Thank you. State Senator Rick Kolowski, District 31, R-i-c-k K-o-l-o-w-s-k-i. I wanted to come before the committee just to back the motion to move in this particular direction with this crime lab. As you heard from a number of the speakers, the accredited, full-service aspect of a certified crime lab becomes extremely important in a community. And having

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those skills and abilities of those people working with law enforcement and the prosecutors' offices but independent from them is extremely important. Another aspect of the whole thing I want to share with you, because I have a son who's in this field as a forensic scientist, Dr. Jason Kolowski. He's spent 12-13 years at the Office of the Chief Medical Examiner in New York City and recently in Washington, D.C., where he's now working with an independent company after being with the D.C. crime lab. And he was a DNA specialist during those times as well. Having a son in the forensic science field, I'm very familiar with what they do, how they do it, and the importance of the things you've heard described thus far today as far as the independence of the lab especially being a very, very key ingredient in all this. The other aspect I would like to simply elaborate upon, in talking with my son and also the same kind of things I found as a high school principal, was the retention of staff. The training and certification of staff becomes crucial and then the retaining of them, because of the turnover problems then retraining and all the things you'd have to go through as part of that accreditation and certification. You want to maintain a high level of competency and degree of excellence of your staff. That makes a difference in all that you do as a forensic science lab. So I'd stop there and be open for any questions. Thank you. [LR601]

SENATOR KRIST: Any questions for Senator Kolowski? Thank you very much for your testimony. [LR601]

SENATOR KOLOWSKI: Thank you. [LR601]

SENATOR KRIST: Okay. No more proponents? How about opponents? Welcome. [LR601]

THOMAS WHEELER: Good afternoon, Senators. My name is Tom Wheeler, T-o-m W-h-e-e-le-r, chief deputy of the Douglas County Sheriff's Office. I'm here on behalf of the Douglas County Sheriff's Office to speak about this resolution. I believe at this time it is premature and, therefore, oppose it. Douglas County Sheriff's Office, Omaha Police Department, Mayor's Office, Douglas County Board, and UNMC have been in discussions over the last several months to review all the available options to creating a combined crime lab. I believe we are making progress in identifying a plan that will meet the needs of law enforcement, prosecutors, and taxpayers. Our next meeting is scheduled in early May. You may be aware of a plan offered by the city that would include erecting a new structure at the campus of UNMC, but you may not be aware of an alternate plan under consideration that would expand the existing crime lab space. Before I offer a brief explanation of the plan, it's important to understand what's occurred over the last five years. In 2011 Douglas County built a state-of-the-art crime lab inside the Thomas Fitzgerald Home. In addition to building the lab, a 10,000-square-foot third floor, which is just above the lab, was roughed out and prepared for future expansion. In late 2014 the county partnered with the city to conduct drug testing and fire debris analysis for police and fire. The lab

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also does testing for more than a dozen local agencies in the region, as well as federal agencies that work in this area. In late 2015 Douglas County contracted with a consultant to assist us in achieving accreditation for the lab, crime scene investigators, and our latent print examiners. We expect to be accredited later this year. Accreditation is critical for the lab for several reasons, but I want to mention two. First, for prosecutors and law enforcement, accreditation brings credibility in the courtroom. Second, accreditation provides a layer of separation from undue influence on the crime lab. Now the Douglas County crime lab proposal that is also on the table would include establishing a combined crime lab in the existing Fitzgerald space, the first tenet, first piece. Second piece is to invite UNMC to create a toxicology, which is the urine testing you've heard about, lab in the existing but currently unoccupied DNA lab space. Toxicology is a needed service in our area and it would provide UNMC an opportunity to expand its offering. And three, create a joint city-county governance structure that may include a seat for UNMC should they wish to participate. Along with accreditation, shared governance will promote an even greater degree of separation and autonomy for a new combined lab. The metro crime lab group is currently vetting the plans on the table. I believe these local partners should be given an opportunity to continue their process and determine what is best for the region without involvement with the state at this time. Thank you. [LR601]

SENATOR KRIST: Thank you. Any questions? Senator Campbell. [LR601]

SENATOR CAMPBELL: Thank you, Senator Krist. Deputy Sheriff, when Douglas County moved in the direction of establishing the lab or the new...and brought money in, did you sit down with the city of Omaha and any other potential partners and talk to them about it? [LR601]

THOMAS WHEELER: No. At the time that we did this, there was not a crime lab with the city. There wasn't a crime lab at the sheriff's office, at least not the type of crime lab that we're talking about. The sheriff took the initiative to build this crime lab and it's where we're at right now. [LR601]

SENATOR CAMPBELL: Is there some reason why there wasn't joint discussions? [LR601]

THOMAS WHEELER: Well, I could maybe offer a similar comparison. The Omaha Police Department is currently developing an outdoor firearms range. It's a range that the sheriff's office will likely use and other local law enforcement. We were not consulted about the construction, the development, the plan for that range, and I don't believe that we should have been. I think this was the PD's range to build and suited as they saw. [LR601]

SENATOR CAMPBELL: Thank you. [LR601]

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SENATOR KRIST: Any other questions? Senator Mello. [LR601]

SENATOR MELLO: Thank you, Chairman Krist. And thank you, Chief Deputy Wheeler. You heard my question for Chief of Staff Bilek in regards to the issue surrounding the \$5 million of forfeiture funds. It's ironic that we've been debating this issue on the floor of the Legislature over the last week as well. Can you shed any more light than what Marty gave us in regards to that issue being on the table in light of the possible multiple plans or multiple options in regards to ensuring that Douglas County doesn't have to repay back those civil forfeiture funds? [LR601]

THOMAS WHEELER: Sure. I think Marty accurately represented the current situation. The space has to be used for a law enforcement purpose. We can't repurpose it for another government use. At this time, we don't have another plan for that space and we additionally have those 10,000 square feet that were roughed out that we don't have a current plan for. I would also add that since 2011 we've spent hundreds of thousands of dollars on crime lab equipment. This is very sophisticated, technical equipment and it would fall under sort of the same situation. I don't know that we could give the equipment to a lab that wasn't part of law enforcement. We may have to sell it to them at some market price and then that money would have to go back into the forfeiture fund. Those issues are being researched by the county attorney at this time. [LR601]

SENATOR MELLO: Okay. Thank you. [LR601]

SENATOR KRIST: So at the risk of being blunt, as I'm often accused of being, it sounds like there's a little bit of a turf war going on, and it sounds like the discussion now that's being assisted by this study is, in my opinion, warranted. But my big concern is we've spent a lot of time on corrections, reinvestment programs, LB605, and everything that's come from it. And the turnaround time for verification having to do with seized equipment or urinalysis or DNA is unacceptable. You can't leave people sit around for six or eight months or you can't take the lack of action. The action required takes verification of the lab sample. So... [LR601]

SENATOR CAMPBELL: Can you be accused... [LR601]

THOMAS WHEELER: Can I address that, Senator? [LR601]

SENATOR KRIST: Sure. Absolutely. [LR601]

THOMAS WHEELER: The turnaround times you were speaking of are not for the Douglas County crime lab. We average about 30 days at this time. I think that compares favorably to the state lab and other labs around the country. With regard to the turf war, I don't see it that way.

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The sheriff's office is willing to share governance and cost sharing with the county and with UNMC if they want to be involved. Our main opposition to the current plan offered by the city is the significant cost that we believe will come with it. It's not about not sharing the crime lab with our partners. [LR601]

SENATOR KRIST: Okay. Thank you for your comments. Any other questions? I know. I know. We're conducting a hearing and they can have a call of the house. Would you go in and tell them that the Exec Board is not going to participate in the call of the house and we all should be excused. Thank you. Thanks for your comments. Any other opponents? How about neutral testimony? Okay, that concludes the hearing on LR601. Did you have anything to wrap up? Senator Hilkemann waives. Thank you very much for coming in, all. LR547. You're up, Senator Larson. Go ahead, Senator Larson. Thank you. [LR601]

SENATOR LARSON: Good afternoon. Good afternoon, Chairman Krist and members of the Exec Board. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I come before you today to present LR547. LR547 is an interim study resolution I introduced in an effort to further identify the issues and solutions relating to the purpose of LB1104, a bill I submitted with the intent to promote... [LR547]

SENATOR KRIST: Can we hold one second. Do you need us in there? [LR547]

PATRICK O'DONNELL: Well, I need those who aren't excused in there because we're under call and that's what the rule requires. You're excused but I don't know about the rest of you. [LR547]

SENATOR KRIST: The Speaker told me that he didn't want anybody excused and that...but that's okay. Let's turn off the tape. [LR547]

PATRICK O'DONNELL: Sorry. [LR547]

SENATOR KRIST: We'll reconvene after the call of the house. Okay, we have a quorum back. I apologize for the inconvenience. Senator Larson, if you'd like to start your opening again, that would be great. [LR547]

SENATOR LARSON: Yes, Senator Krist. Good afternoon, Chairman Krist and members of the Executive Board. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I come before you today to present LR547. LR547 is an interim study resolution I introduced in an effort to further identify the issues and solutions relating to the purpose of LB1104, a bill I submitted with the intent to promote economic development, growth, and stability relating specifically to the Native

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American reservations. The Santee Sioux Indian Reservation, the Ponca headquarters, and a portion of the Winnebago Indian Reservation fall within the boundaries of Legislative District 40. And as such, I've become familiar with the vast array of economic concerns that Native Americans face on an ongoing basis. I have reached out to the tribal leaders and have had an opportunity to meet with them as well as representatives from all the tribes to discuss these familiar concerns. LB1104 was designated by the State-Tribal Relations Committee as their priority bill for this legislative session and has been supported in general concept and intent by the individual tribes, the Commission on Indian Affairs, as well as other interested parties. The bill, as it has evolved from the introduction to the most recent amendment, has been fine-tuned to address the concerns that were presented prior to and pursuant to the legislative hearing. Specifically, a deliberate attempt was made to focus on any concerns presented by the committee members and the Department of Revenue. I understand this legislation was a significant undertaking for a 60-day session, of which time has been most valuable. The purpose of LR547 is to further examine and research and address the intricate details of LB1104 and the issues that prompted this legislation and find workable solutions that will benefit Native Americans in Nebraska as well as the state of Nebraska. I have provided members of the committee with an amendment to LR547 that creates a special committee of qualified individuals to conduct and accomplish this study. As originally drafted, LR547 calls upon the State-Tribal Relations Committee, which is not a standing committee, to conduct the study. I share this information to provide insight as to why the LR has come before the Executive Board and to provide an explanation as to why I am proposing this amendment. Thank you for your time. And I would strongly encourage the support of this interim study resolution. [LR547]

SENATOR KRIST: Thank you, Senator Larson. Any questions for Senator Larson? [LR547]

SENATOR CAMPBELL: I'm sorry, Senator. [LR547]

SENATOR KRIST: Oh, I'm sorry, Senator Campbell. [LR547]

SENATOR CAMPBELL: Senator Larson, just will the members of the Tribal Relations Committee also be a part of this? [LR547]

SENATOR LARSON: Yeah. We will...so the amendment specifically calls for the Chairman of the State-Tribal Relations... [LR547]

SENATOR CAMPBELL: Okay. [LR547]

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SENATOR LARSON: ...or his or her designee; Chairman of Revenue or his or her designee; Appropriations Chair, his or her designee; then two members chosen by the Exec Board. We will definitely include State-Tribal Relations Committee as a whole. But obviously what has...the Chairman or one of their designees will be involved specifically so they will be able to have as much impact as they want. [LR547]

SENATOR KRIST: Perfect. Thank you. Any other questions? I'm sorry, Senator Campbell. My field of view (inaudible). [LR547]

SENATOR CAMPBELL: No, that's fine. Thank you. [LR547]

SENATOR KRIST: Anybody else? Okay, thank you. Thank you, Senator Larson. Any proponents? Any opponents? Any neutral testimony? Okay, that ends the hearing on LR547. If you could clear out for a second, please, we need to go into... [LR547]