

## **Rules Committee March 12, 2018**

**HILGERS:** [00:00:00] Everyone, thank you for attending this committee hearing for the Rules Committee. We are here today to consider two rules, proposed rules that would amend our Legislature's permanent rules. The first rule that we will consider will be from Senator Watermeier which is Rule, proposed Rule 10. The second rule is the proposed modification to Rule 2 which has been proposed by Speaker Scheer. The committee clerk for this committee is [00:00:25] Kyle Upp. [0.1] We also [00:00:27] have Claudia Granillo from Omaha [0.6] will be the page for the committee. We will not be using the light system given the anticipated amount of testimony for these particular rules. With that I'll introduce the committee members starting with Senator Harr.

**HARR:** [00:00:40] Senator Burke Harr, Legislative District 8, representing parts of midtown Omaha.

**KUEHN:** [00:00:46] John Kuehn, District 38.

**SCHEER:** [00:00:50] Jim Scheer, District 19.

**KRIST:** [00:00:51] Bob Krist, District 10.

**SCHUMACHER:** [00:00:51] Paul Schumacher, District 22.

**HILGERS:** [00:00:54] Senator Schumacher is the Vice Chair of this committee and Speaker Scheer is an ex officio nonvoting member of this committee. And with that we will start with Senator Watermeier and proposed rules change, proposed change to Rule 10.

**WATERMEIER:** [00:01:06] All right thank you, Chairman Hilgers. I thought I was second on the agenda. So if that's the way you want me, I'll be up here first. All right. Good afternoon, Chairman Hilgers and members of the Rules Committee. For the record my name is Dan Watermeier, W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of the state. I'm here today to introduce the change to Rule 10 which deals with the legislative elections contest and qualifications challenges. Last year the Executive Board created a special committee to consider an elections challenge to the qualifications of Senator Chambers. As the special committee worked through the process, we identified instances where it would have been helpful to have greater clarification regarding both procedural issues and substantive [SIC] legal issues. Once the final report was adopted, I asked staff to work on rule and statutory changes so if there is a future election or qualifications challenge we will have made the process clearer for the challenger, the respondent, and the special committee. As proposed, the rule changes covers the process and procedures that the Legislature will follow in an election or qualifications challenge. For example, committee selection, discovery, and committee proceedings are in the rules. The companion bill, LB744, put the substantive, substantive, substantive [SIC] legal issues in the statutes removing them from the rules. LB744 was passed by the Legislature earlier this year. In closing, I want to just stress that this rules change is very important so that our rules coordinate with LB744. I would appreciate your full support forwarding this on to the Legislature.

**HILGERS:** [00:02:38] Thank you, Senator Watermeier. Any questions for Senator Watermeier?

**WATERMEIER:** [00:02:40] I did ask the Clerk to come today if you have specific detailed questions. I mean Patrick will be glad to answer them I assume.

**HILGERS:** [00:02:47] Okay. Any questions? Seeing none, thank you.

**WATERMEIER:** [00:02:49] Thank you.

**HILGERS:** [00:02:49] Thank you, Senator Watermeier. Mr. Clerk, do you anticipate offering testimony in support of this particular rules change?

**PATRICK O'DONNELL:** [00:02:59] Only if the committee has questions, Senator. I mean I'll be happy to but I really hadn't. I will tell you, excuse me, I'm sorry, Mr. Chairman. Pat O'Donnell, P-a-t O-'-D-o-n-n-e-l-l. The version you have in front of you is essentially the same version that you saw in early January. We did clean it up with some internal references but it's essentially the companion piece to LB744 which was signed into law on February 28 of this year so. Otherwise, I'm just here to answer questions, Mr. Chairman.

**HILGERS:** [00:03:32] Thank you, Mr. Clerk. Any questions? Senator Harr.

**HARR:** [00:03:36] Thank you. Thanks for coming in, Mr. O'Donnell.

**PATRICK O'DONNELL:** [00:03:36] Yes, sir.

**HARR:** [00:03:37] Do you know who drafted these?

**PATRICK O'DONNELL:** [00:03:39] Do I know who drafted these?

**HARR:** [00:03:42] Yeah, this proposed rule change.

**PATRICK O'DONNELL:** [00:03:43] I do: myself, Amara Meyer, Janice Satra.

**HARR:** [00:03:48] Okay. So some of the questions I have is like briefs-- it seems as though we're getting very specific here. Do we want to start having page limits on briefs like you do in the courts or font limit or any of that kind of fun stuff? I guess I'm having some concern as we get more and more specific I'm worried that the rules of the courts might come into play here. Is that of concern to you?

**PATRICK O'DONNELL:** [00:04:15] I can't say that it is, Senator.

**HARR:** [00:04:16] Okay.

**PATRICK O'DONNELL:** [00:04:18] I mean, we did not discuss-- I mean, the reason that that whole brief language is in there was to provide the committee and ultimately the Legislature the opportunity to dispose of these cases without going through formal hearings like we did with the Chambers-Sciara action. Okay?

**HARR:** [00:04:41] Okay.

**PATRICK O'DONNELL:** [00:04:42] So that's why there's references to briefs. If the issues are so clear that a brief resolves it, then I think the board, the committee could make their decisions based on that without taking any formal testimony.

**HARR:** [00:04:54] And you've obviously read this Rule 10.

**PATRICK O'DONNELL:** [00:04:57] Yes, sir.

**HARR:** [00:04:57] And you are content with it.

**PATRICK O'DONNELL:** [00:04:59] Yes, sir.

**HARR:** [00:05:00] Okay. Any changes you'd recommend?

**PATRICK O'DONNELL:** [00:05:01] No. Though the one thing I will recommend to you is that at the hearing in January Senator McCollister raised with you the, the committee call, the rule calls for a committee of seven. And if you remember, Senator McCollister said maybe we should do something to make it nine or something less than nine because he was thinking about the whole board. You remember in the Sciara situation Senator Chambers recused himself, Senator Larson chose not to participate so it was a committee of seven. But that was a concern Senator McCollister raised. I have no problems if you decide you want to do that.

**HARR:** [00:05:37] Okay.

**PATRICK O'DONNELL:** [00:05:37] At some point, you know, you decide what's a-- what's a good number for disposing of something.

**HARR:** [00:05:44] Fifty eggs. All right thank you.

**PATRICK O'DONNELL:** [00:05:47] Yes, sir.

**HILGERS:** [00:05:48] Thank you, Senator Harr. Thank you, Mr. O'Donnell. Any other questions? Seeing none, thank you very much. I think before we call up any proponents, I think it's worthwhile for record purposes since it was mentioned the Rules Committee did hear a substantially similar rules proposal at our hearing in January which was transcribed or is in the process of being

transcribed. Those reviewing this transcript can refer back to that testimony as well. That is also the case with the second rules proposal that we'll be taking up a little bit later. With that, are there any other proponents wishing to testify in favor of proposed Rule 10? Seeing none, anyone wishing to testify in opposition? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, we do not have any letters regarding proposed Rule 10 so that will close the hearing on Rule 10. Thank you, Senator Watermeier. Oh, I didn't give you the opportunity to close. I apologize. You waived it, you did waive it. Thank you, Senator Watermeier. Now we have our second proposed rules change which is a proposed change to Rule number 2, Speaker Scheer.

**SCHEER:** [00:06:53] Thank you, Chairman Hilgers and committee members; again bringing back the-- mine will be identical to what you heard in the spring or early winter. It simply changes the rule as far as adopting our rules to, adopting them for the biennium rather than yearly basis. And again I would simply state that I think for the vast majority of senators on the floor if we had polled them on December 10 of last year would have thought that we had already passed the rules for the biennium. And it seems to me that once you pass the rules the body is the same. Everyone has the same expectations. If there's going to be any concern about the rules, they would be brought up the first year and it just would save us a little bit of time that could have taken more time than it did. Obviously it was quick this year but it could eat in substantially into the time that we have available to us as it did the first year of this biennium. So I think it makes logical sense to adopt rules on the biennium rather than on an annual basis.

**HILGERS:** [00:08:09] Thank you, Speaker Scheer. Any questions? Senator Schumacher and then Senator Krist.

**SCHUMACHER:** [00:08:15] Thank you, Chairman Hilgers. Thank you, Senator Scheer. You're talking the odd years. And that would be the new group coming in and we've seen 15 to 20 people

come in at once, no experience at all with the rules, no experience with whether or not there is good foundations with them, no experience other than what they might be told by somebody who was there before whether they were good or not good, whether they should be revised, whether they had value. I wonder what your reaction would be every even-number year. So before you mess with the rules, you at least had a year of experience under your belt.

**SCHEER:** [00:08:59] Well, I would simply I guess respond to that, Senator, that again our rules can be changed at any point in time. So if there were rules that came up during one's term, regardless if it's the first or second year of a biennium, it can always be brought up the Rules Committee, the Rules Committee can always hear that and it can go to the floor if brought forth by the Rules Committee as a change. My concern with doing it in that way, Senator, is you have senators that were not in place substantially making the rules that we are working with; and I don't know that I would feel comfortable doing that. Our rules should be our rules and they should be voted on by our membership, not a previous membership, for us to move forward on this so that would be my only concern in relationship to doing it in the even year which would provide the first year working on the old rules.

**SCHUMACHER:** [00:10:01] Thank you.

**HILGERS:** [00:10:02] Thank you, Senator Schumacher. Senator Krist.

**KRIST:** [00:10:03] Thank you, Chair. So just for the record there's no restriction on the Rules Committee meeting at any time during a biennium.

**SCHEER:** [00:10:11] Absolutely not.

**KRIST:** [00:10:13] And convening as we are doing today.

**SCHEER:** [00:10:15] Correct.

**KRIST:** [00:10:15] I just think that needs to be understood that just because we're adopting things for two years that the membership would understand that anytime you call for the Rules Committee to meet on a significant issue it can be changed.

**SCHEER:** [00:10:27] Yeah, and I think this is a perfect example. We've already adopted our rules but we are all sitting here entertaining changing them in two specific manners so the system does work. I don't know that they necessarily will be passed. I hope they would be. But that option, as I stated to begin with, always still remains with the body.

**KRIST:** [00:10:48] Thank you.

**HILGERS:** [00:10:49] Thank you, Senator Krist Any other questions? Seeing none, thank you Speaker Scheer. Anyone wishing to testify as a proponent for proposed rule change number two? Welcome back, Mr. Leach.

**NATHAN LEACH:** [00:11:03] Thank you, Mr. Chairman, members of the Rules Committee. My name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I'm speaking in favor of the proposed rules change and speaking on behalf of myself. I wasn't entirely sure which perspective to add to this, to this amendment. I absolutely support it as a step forward in ensuring that the body doesn't get bogged down in what we saw last year and with one third of the entire session being devoted to the rules. I think this is a good alternative, however, and I mentioned this in my testimony on the proposed rules change earlier this year. But I think something to consider is allowing the rules to stay in place

as permanent rules until amended by the body like we're doing right now. There's a number of important benefits to that. Currently when the temporary rules are adopted and then the body adopts its permanent rules, yes, those proposed amendments get referred to the Rules Committee and have a public hearing. But once the proposed permanent rules get to the floor, any senator can propose any amendment willy-nilly onto those permanent rules and those rules (A) don't have a public hearing and (B) don't have the same kind of thoughtful consideration that you typically have in legislative bodies that keep their rules on a permanent basis. The only issue with that, of course, is that currently when you amend the permanent rules it takes a two-thirds majority whereas when you adopt the permanent rules at the beginning of the annual session or if this were adopted the biennial session it requires a majority vote. So those are just some things to consider. But my concern with the rules process right now is making sure that the rules we have are not held hostage by a filibuster of competing sides fighting over specific nonpartisan provisions. And I'm also concerned, like was mentioned with, with term limits, a lot of new members coming in and not fully understanding the impact and the rule of those rules. I'd also add that in my experience and I think the Clerk would be a better point of reference for this. But when I worked in the Arizona State Senate as a page what that legislative body does is they keep their rules like I, like we would potentially be doing, keep them in place simply until amended. The U.S. Senate does that as well. I think bodies that typically have a rolling basis of membership will keep their rules in place. But like the United States House of Representatives it's my understanding adopts those rules every single two years because they have an entirely new membership. So just to kind of wrap up a bit. I think this is an important step in ensuring that we don't get bogged down every single year. Our Speaker stays elected for two years, our committee membership stays elected, our committee chairs, everything the body does is based on a bi-- even our bills which is very uncommon within legislative bodies for a bill introduced in the first session to carry over to the second session. It's kind of silly that everything we would do would be biennial and not our, not our legislative rules. So anyway with that I would answer any questions and I really appreciate, appreciate the committee's time. I've testified quite a

bit on issues related to this so thank you.

**HILGERS:** [00:14:39] Thank you, Mr. Leach. Any questions for Mr. Leach? Seeing none, thank you for coming down and testifying.

**NATHAN LEACH:** [00:14:45] Thank you.

**HILGERS:** [00:14:45] Your streak continues. Anyone else wishing to testify as a proponent for Rules change 2? Seeing none, anyone wishing to testify in opposition? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Speaker Scheer, you're invited to close.

**SCHEER:** [00:15:03] I didn't anticipate to have to close. I just wanted to just clarify for the record. It is, when we adopt our rules, it is a simple majority rule of 25. However when we bring back rules outside of that time period, it is not two thirds. It is actually 30 votes which is I think just considered a supermajority of the body at that point. With that I will close.

**HILGERS:** [00:15:25] Thank you. Any questions for Speaker Scheer? Seeing none, we did not receive any letters on this rule change either. So that closes the hearing on proposed Rule change 2 and the hearing for the day. Thank you all for coming.