

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

Floor Debate
February 19, 2013

[LB1 LB2 LB16 LB21 LB27 LB30 LB33 LB35 LB38 LB39 LB72 LB87 LB88 LB91 LB100
LB102 LB111 LB112 LB113 LB117 LB137 LB146 LB155 LB165 LB173 LB208 LB211A
LB279 LB283 LB290 LB324 LB337 LB377 LB398 LB408 LB426 LB484 LB616 LB628
LR29CA LR52 LR53 LR56]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-seventh day of the One Hundred Third Legislature, First Session. Our chaplain for today is Senator Carlson. Please rise.

SENATOR CARLSON: (Prayer offered.)

SPEAKER ADAMS: I call to order the twenty-seventh day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SPEAKER ADAMS: Are there any corrections to the Journal?

CLERK: I have no corrections.

SPEAKER ADAMS: Are there messages, reports, or announcements?

CLERK: I do, Mr. President. Communication from the Governor to the Clerk. (Read re LB1, LB2, LB16, LB30, LB35, LB72, LB87, LB91, LB100, LB102, LB111, LB112, LB113, LB146, and LB155.) I have appointments to the Environmental Trust Board to be referred to Reference for referral to standing committee for confirmation hearing. E&R reports LB39, LB173, LB279, LB290, LB408, as correctly engrossed. I have notice of hearings from the Transportation and Telecommunications Committee and the Appropriations Committee signed by their respective Chairs. Enrollment and Review Committee also reports LB88, LB38, LB283, LB616, LB628, LB337, LB426, LB117, LB165, LB484, LB398, and LB27 to Select File, some of which have Enrollment and Review amendments attached. And last, Mr. President, new resolution, LR56, offered by Senator Carlson. That will be laid over at this time. That's all that I have, Mr. President. (Legislative Journal pages 455-459.) [LB1 LB2 LB16 LB30 LB35 LB72 LB87 LB91 LB100 LB102 LB111 LB112 LB113 LB146 LB155 LB39 LB173 LB279 LB290 LB408 LB88 LB38 LB283 LB616 LB628 LB337 LB426 LB117 LB165 LB484 LB398 LB27 LR56]

SPEAKER ADAMS: Thank you, Mr. Clerk. (Doctor of the day introduced.) Mr. Clerk, we'll now proceed to the first item on the agenda. While the Legislature is in session and

Floor Debate
February 19, 2013

capable of transacting business, I propose to sign and do hereby sign LR52 and LR53. Are we prepared, Mr. Clerk, to proceed on the first item on the agenda? [LR52 LR53]

CLERK: We are, Mr. President. Mr. President, LB21 on Select File. It was considered last Thursday. At that time, there was discussion. Senator Lautenbaugh had provided or filed a motion to...and there was a motion considered...there was a motion filed that was left pending, Mr. President, that motion be to recommit the bill to the Business and Labor Committee. That motion is pending. [LB21]

SPEAKER ADAMS: Thank you, Mr. Clerk. Senator Lathrop, we'll recognize you for a brief summary of the bill itself. [LB21]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning. We're back on LB21. This, of course, is the bill that we've come to refer to as the mental-mental bill. It is intended to extend the period of time after a three-year look at this provision and it's intended to make this the permanent law of the state of Nebraska, subject to some, you know...subject to whatever future Legislatures may do with it. It will become the law. It will provide protection under the Workers' Compensation Act for first responders who suffer a mental injury that has as its origin a mental stimulus. So someone who sees something horrific and develops a posttraumatic stress disorder would be covered by this. This was all pursuant to an agreement that was part of a bill passed about three years ago. That agreement was that the bill would have a sunset provision. It would be removed if the bill did not generate all the claims that were predicted, and it has not. The agreement also included that it would not include any hitchhikers. And a hitchhiker is an amendment to the bill that takes in some other portion of the Work Comp Act as it's passed through this body, and that brings us to the motion filed by Senator Lautenbaugh to bracket the bill, and now to recommit to committee. Thank you. [LB21]

SPEAKER ADAMS: Thank you, Senator Lathrop. Senator Lautenbaugh, as the introducer of the motion to recommit, we give you a moment to summarize. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This is, as you recall from last Thursday, my motion to recommit following on the heels of my motion to bracket. And I think it's important that I be clear yet again, because I've gotten a couple of e-mails on the topic, not many, but a couple. I don't want to kill this bill because I have a bill that does the same thing, and a few other things that we'll continue to talk about this morning. What this motion would do is send it back to the committee for further consideration. Maybe it could be put up on the day that my bill that's in committee gets a hearing, God willing, and we could talk about them both together. But one thing that I will address this morning, I guess, is I don't recall being a party to any agreement saying I would not try to attach an amendment to this bill repealing the sunset. And I think as the record will demonstrate as we discuss it this morning further,

Floor Debate
February 19, 2013

this really is the only way to actually get some issues on the floor in the workers' comp realm. So, we'll continue to explore the motion to recommit. And understand, I think you were told last week that if the bill was bracketed, well, it would die. I tried to bracket it until April, I think 18th, and it would die this session if we did that. Now I can stand here and tell you that that's patently false, if that's not the will of the body, because we could attach it to another bill. We could attach it to a committee priority. It could be a committee priority. My bill could be a committee priority, my bill could be my priority. We could suspend the rules. The horror, the horror, we could suspend the rules. That black art that you can't find laid out anywhere except in the rules. So when you're told vote for this, or don't bracket this, or the bill will die, don't believe it. Read the rule book. And I understand this is Senator Chambers' bait and that's probably why I'm saying it because there's no one who loves to discuss the rules--well, more than me as Rules Chairman, of course--but second only to me, would be Senator Chambers. And happily, he's with us this morning. But I really, really...you heard from a couple of different speakers, well, this will kill the bill, this will kill the bill. I got e-mails from people outside the body saying, well, you know, you could kill the bill by attaching the amendments. No, you can't, unless that's the will of the introducer of the bill. Similarly, bracketing it will not kill this bill, would not have killed this bill. Can't make...put too fine a point on it, but sending it back to committee also won't kill this bill. But these are things you can do to continue to talk about a bill, yet keep it alive, while you discuss other issues. And we will discuss those this morning including the amendments that I've proposed and I look forward to the discussion. Thank you, Mr. President. [LB21]

SPEAKER ADAMS: Thank you, Senator Lautenbaugh. The floor is now open for debate on the motion. Senator Lathrop, you're recognized. [LB21]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I just have a couple of thoughts on where we're at and maybe this will take you back to last Thursday and the debate that we had for Thursday morning, and that is what we're trying to accomplish, and if this were successful what it means to the way we run this place. We had a bill dealing with Omaha Public Schools and changing the number of board members. That was on the floor, it went through and passed, of course. This would be the equivalent essentially of saying, send that back to...that OPS bill back to the Education Committee until the TEEOSA bill is heard. Or having it on the floor and saying, this deals with education so now I'm going to amend it with the state aid formula bill. Your answer might be, well, it hasn't been heard yet. There's a timing to this. We haven't heard the state aid bill in Education yet, right, so I want to jump ahead and avoid the process of a hearing. That's what these amendments do. And the justification or the rationale is, well, my bill hasn't had a hearing yet. I have to tell you, and for those of you that are chairmen of different committees you'll understand this, and for those of you that are not yet chairs of committees, you'll appreciate this, but we look at the first ten days we introduce bills. And as a committee chair, my legal counsel will go through and list all the bills that have been referenced to the Business and Labor Committee. And I try,

Floor Debate
February 19, 2013

when people say I have a reason to have this heard early, late, in the middle, we try to accommodate the concerns people express to us. Are you obliged to tell me? No. But if nobody tells a committee chair that they have a preference or they want it heard early, then it's up to the committee chair. If I don't have anybody telling me one thing is more important than the next, why would this one be on the first day. It couldn't have been anyway, but the point is that there's nothing...there's no grand conspiracy here, there's no grand conspiracy here. And the concern that Senator Lautenbaugh is expressing is part of the process. It is commonplace. I have bills that I put into various committees over the last six years, seven now, that have never seen the light of day. They have a hearing, nothing happens to them. I might even have a couple over in Education that won't be going anywhere and that's part of the process. We put these bills into committees. The committee develops a certain measure of expertise in the subject matter. It is important that we let the process work its way through. It's important that we do that and not circumvent that process by filing amendments on to bills on the floor that are the subject matters of bills in committee. I would encourage you to vote against the motion to recommit. I would ask you to avoid encumbering LB21 with any other amendments as this bill, while Senator Lautenbaugh may not have been in the room and may not be party to, or bound by any agreement I had with the very people he works with on the bills he's talking about, it's kind of the way things are done around here. And frankly, this is a very simple measure. It's intended to help the first responders... [LB21]

SPEAKER ADAMS: One minute. [LB21]

SENATOR LATHROP: ...and attempts to encumber it. As much as you can say you want the thing to pass, that's not, in fact, the case when we're going to recommit the thing to committee. So I would encourage you to oppose the motion. Thank you. [LB21]

SPEAKER ADAMS: Thank you, Senator Lathrop. Senator Chambers, you're recognized. [LB21]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, it is indeed good to be here. At my age, any day that you wake up, you know who you are, you know where you are, you can set out on a trip and wind up at your predetermined destination and remember that's where you intended to go, that is a good day. And I'm saying that because I'm going to emphasize more and more throughout this session how elderly people have to not run from age. It is what we are. Embrace it. We cannot be other than what we are and by our wearing our age gracefully, it will stop younger people from dreading reaching the advanced stage in life where some of us find ourselves. Now, getting to the subject at hand, I will make a motion at some point or other, perhaps, to recommit a bill to committee. And I will make it in order to create time for me to discuss along the way to trying to kill a bill, or persuade the introducer to negotiate. So I am not opposed to the motion to recommit. I will not oppose every

Floor Debate
February 19, 2013

motion to recommit in advance of knowing what that motion might pertain to as far as the bill. I'm not going to support adding amendments to LB21, but I think Senator...I'm having a senior moment, to make a point. I think Senator Lautenbaugh...I appreciate the help from the youngsters back here. (Laughter) See, that's what we need. More people respect your elders and when you see one of us stumbling and you know what we're trying to say, give that assistance. And the best way to teach lessons is by way of object lessons. So from time to time that's what I will give and you will not know whether I've actually lost my way or not. That's for me to know and you to speculate about. But Senator Lautenbaugh is merely showing how the rules can and ought to be used by an individual who is dead set against a proposition that is before us. I will do that on occasion, if I need to. I don't do it just because I know how and am able to do it. On this bill, people have raised questions which they say are serious. I will take them at their word. Of all the things I am, one I am not is a mind reader. But sometimes I can divine motives, but I will not ascribe any particular motive to anybody on this bill, except my own. I want to see the bill passed. I'm convinced that it ought to be passed this session. Senator Lautenbaugh is miffed, he is irritated, he's annoyed, he is chafing, and you chafe when you're rubbed until you become raw. He has been chafed and he's going to use the rules to try to make his point. I delight in seeing much time eaten up at the beginning of the session. It leaves less time for the foolishness that will come later on. Senator Lautenbaugh, the young cub, filled with energy and vinegar, plus what they used to tell us in the Army, a youngster was filled with (laughter) is going to make my job a lot easier. [LB21]

SPEAKER ADAMS: One minute, Senator. [LB21]

SENATOR CHAMBERS: And I will hold the Legislature's feet to the fire, but the issues I take will be different from those that Senator Lautenbaugh is pursuing. I will not vote to recommit this bill to committee because in my view there's no basis to do so. It had a hearing, properly conducted, properly notifying the public, and I don't know what recommitting it to committee would be for other than if I did such on a bill to try to delay it in hopes of ultimately killing it. That would be my motivation. Thank you, Mr. President. [LB21]

SPEAKER ADAMS: Thank you, Senator Chambers. (Visitors introduced.) Continuing on, Senator Lautenbaugh, you're recognized. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I've been described now as chafing this morning. I've somehow become chafed. I also read on-line last night that there was going to be a filibuster today because I was so upset at Downton Abbey killing off two characters this season. (Laughter) Nerds. Anyway, that is not...neither of those things, well, at least the Downton Abbey part has nothing to do with this. We just heard an analogy that doing this to this bill would be like holding the OPS bill to attach TEEOSA to it. Well, let me expand on that analogy. What this would

Floor Debate
February 19, 2013

be like is if TEEOSA had been introduced time and time again and bottled up in committee, and the only way you could give voice to TEEOSA would be to attach it to my OPS bill, leaving aside that the OPS bill did not deal specifically with the same subject matter as TEEOSA. But, that's what we're being told. I would submit to you that this is nothing like this. You heard that this was to avoid having a hearing. Well, folks, we've had some hearings. Let's talk about LB909. I introduced that last year, it had a hearing last year, and it was that employee misrepresentation one. Basically provided if you put false information on your employment application about your medical status, and then had an injury that was related to that status, you did not recover. In other words, what we were saying is, if you lied on your application you didn't get benefits. And that had long been the law in Nebraska until the Supreme Court said it's not really in the statutes so you can't have that defense anymore. So my bill, LB909, was to reinstate that longstanding defense. Could I have a gavel, Mr. President? To be clear, my bill, LB909, was to reinstate that defense. That bill was opposed in committee by the trial attorneys in the AFL-CIO. That bill died in committee. There was never...there's no committee statement. You won't find it. There was not a motion to advance it, nothing happened. It just died. Now ask yourselves, does this sound like I'm trying to avoid a public hearing on the bill that we just had last year, or am I trying to find a way to bring this issue to the floor? And please ask yourselves--and I'm hoping we're all paying attention--please ask yourselves if what I've just described sounds anyway controversial to you. That we had a longstanding defense that said if you lie on your application, you don't get benefits, it got struck down, I tried to reinstate it, and here we are still talking about it two or three years later. How am I supposed to give voice to that concern otherwise? There was a reference that there was some agreement. And upon elaboration you learned, well, yes, there was an agreement with somebody, it just wasn't me. Well, that's fine and I'll tell you what. The person who brought these amendments to this bill that we're going to be talking about in a bit, that was me also and no one said, Scott, bring your amendments. What happened was, I heard this bill on General File and I stood up and said, hey, wait a minute, I've got a bill that does the same thing and a couple other things that I think reasonable minds would agree are not controversial. And I know what's going to happen to my bill now because it's like Groundhog's Day. I've been there before. I know what's going to happen because it happens over and over. So to say I'm trying to avoid a hearing somehow on these concepts, one of the other ones deals with the interest rate. [LB21]

SPEAKER ADAMS: One minute. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. The interest rate on workers' comp awards. Senator Schilz brought that. Senator Smith brought that over the last few years. I brought it as a floor amendment because again it won't come out of committee, and we fell one vote short of attaching it to a bill because it was Senator Lathrop's bill and he said if you attach this, I will kill my own bill. So when you're being told this is not proper and this is not the right thing to do and this is not how we do business, you're

Floor Debate
February 19, 2013

kind of being misled a bit about how we do business because this is completely consistent, especially when time and time again you have a concept that's bottled up in committee. I suppose I could make a motion to pull my bill from committee, which is also specifically provided for in the rules, and you'll find there will be an argument, well, that's not how we do things here, despite the fact that it's in the rules. I hope... [LB21]

SPEAKER ADAMS: Time, Senator. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB21]

SPEAKER ADAMS: Senator Lautenbaugh, you are next in the queue. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I hope all of you are paying attention to this simply because it won't always be me in this circumstance. I know you're not all paying attention but I hope you are because it will not always be me in this circumstance. You will find a bill that gets stuck in committee and you will ask yourself these questions. Do I pull it from committee, do I try to, and have everybody say, oh, you know, tut, tut, that's not how this is done, young cub, move on. Or, you can try to do this and bring it like a floor amendment. Which, by the way, happens every session repeatedly but is somehow beyond the bounds of fair play today. I made it very clear last week. I was interested in a compromise on this. And I think a reasonable compromise might be some of these things that we've had hearing on after hearing on after hearing on, but aren't really controversial except to the trial attorneys, could actually be attached as amendments. To those of you who are paying attention, my third amendment says that employees can elect to have their first report of injury confidential if they want. The employees get to decide if that's confidential. Who could possibly be opposed to that? Well, I can tell you, it would be the trial attorneys, the same people who oppose the employee misrepresentation amendment, the same people who oppose adjusting the interest rate. Now, there's a point at which you have to ask yourself, just because the trial attorneys say it's a bad idea, does that mean it's a bad idea? I would submit to you, no. We're supposed to think for ourselves. You've been led to believe that, well, I had a group that put me up to all these amendments and they were somehow party to some agreement that I wasn't a party to. That's not true. I did this on my own because these are elements of my bill. And if, again, if you're going to say it's not proper to say, well, there's another bill in committee that deals with the same subject so we're not going to let the first bill out of committee. If an individual is going to say that's not proper, then that individual shouldn't make that argument in other circumstances. It's either proper or it's not proper. Sauce for the goose, sauce for the gander. The difference is in that other circumstance, the bill that's being held up is not one that's been bottled up in committee at the behest of the trial attorneys and labor for years and years and years. And that's a telling difference. And I would love to have a public hearing on the employee misrepresentation bill and see which concerned members of the public show up and say, it is important that we protect the right of

Floor Debate
February 19, 2013

people to lie on their employment applications. That's somewhere in the constitution, probably near the back, that we have a right to lie on an employment application, and they'll be cold, dead in the ground before we take that away from them. No one is going to say that. And we have the advantage of having had a hearing on this last year. And again, the AFL-CIO and the trial attorneys showed up in opposition. I don't know how you can argue that reinstating a longstanding defense that provides that you cannot lie on your employment application and still get benefits, how that can't be controversial, how that can...or how that can be controversial, how that can sit in committee all year last year, and then just die. And you know what you would have heard last year, those of you who were here if I had brought it out as a floor amendment, or, heaven forbid... [LB21]

SPEAKER ADAMS: One minute. [LB21]

SENATOR LAUTENBAUGH: ...tried to do it by pulling it from committee, you would have heard, that's just not how we do things here. That's just not how we do things. Well, I'm sorry, folks, but there's a book of rules that says how we can choose to do things. And when I was told last week that the committee's are sovereign, I'm here to tell you, that's not true. The committees are bound by the rules. And when you're told we have certain practices, you have to decide which ones of those you actually believe. I think it's best just to read the rules and live and die by them. And I guess that's what we'll do. But I remain open to discussion. I remain open to compromise, but we're not getting there and I guess we'll talk until we do. Thank you, Mr. President. [LB21]

SPEAKER ADAMS: Thank you, Senator Lautenbaugh. Senator Chambers, you're recognized. [LB21]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, what is unfolding here for those of you who have not attended law school or witnessed trials, is the discussion between lawyers. In the law you are not required to be consistent. You are expected to give the argument that fits the circumstances of the case with which you're dealing. Circumstances that would lead you to say one thing today may lead you to say the opposite thing tomorrow in a different case and that is not lying. That is the duty of an advocate. A slavish consistency is the hobgoblin of little minds. When you are preparing a defense for your client, you are permitted to use conflicting or contrary defenses, statements which conflict so both cannot be true, but you're allowed. For example, the young man second from the left is my client. He is accused maliciously and viciously of having returned a teapot to a Tea Party member which was dented and hurt, not the Tea Party member, the teapot. So I would argue that the teapot was damaged when my client received it. The alternative, the teapot was not damaged when my client returned it. The third, my client never received the teapot in the first place. That is the type of thing that occurs. The Legislature is like a debating society. Every bill that needs to be passed this session will pass. A lot of things that are pointless and

Floor Debate
February 19, 2013

ought not be introduced in the first place such as that Agenda 21, will go by the wayside as they should. Senators don't know how to tell nutty constituents, I'm not going to waste the Legislature's time and look like a fool bringing this because you're a fool. And the client would...the person would say, well, I voted for you, was I a fool then? And your response is, well, even a stopped clock is right twice a day. But we have to look at what the Legislature is supposed to be about. I think when the rules are skillfully used, everybody can learn. If it's an issue with which you disagree, then you are happy to have somebody stand up and provide a ferocious opposition. If what is being opposed is something that you like, then you become irritated, but that's the way of the world. If you have convictions, then you're going to stand for them regardless of what other people may say, how ugly they may look, or any of the other stratagems they may attempt to utilize to discourage you. I'm going to encourage discussion anytime it takes place. When I was out of this Legislature, bills would go through here like a jet-propelled plane. No discussion, no legislative history. The Governor would say, do it, and it was done. [LB21]

SPEAKER ADAMS: One minute. [LB21]

SENATOR CHAMBERS: You've heard that old saw, when I say jump, you say how high. That's not the way it was with the Governor. If the Governor said jump, the Legislature jumped and asked the Governor, is this high enough? There will be a change and there must be a change, and change can be difficult and painful. But if you pass through that pain and come out on the other side as you certainly shall, you will be stronger for it. Don't say, what doesn't kill you, makes you stronger. What doesn't kill you sometimes can make you tired. [LB21]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Chambers. Senator Murante, you're recognized. [LB21]

SENATOR MURANTE: Thank you, Mr. President. Good morning, colleagues. I'll yield my time to Senator Lautenbaugh. [LB21]

SENATOR GLOOR: Senator Lautenbaugh, 4 minutes 55 seconds. [LB21]

SENATOR LAUTENBAUGH: Thank you, Senator Murante. Thank you, Mr. President. Again folks, I can't stress strongly enough what we're actually trying to do here. And you're being told, well, this may not be the right way to do it, or this is somehow beyond our traditions, or this is somehow not proper, but folks, again, I can't stress enough, if the rules allow it, the rules allow it. And Senator Chambers makes a good point and it was one that I tried to make earlier, and that is, that these rules will work for your benefit too at some point. I'm not going to stand up in here and talk to those of you who are

Floor Debate
February 19, 2013

new because I know how grating that is. And a lot of what we do is not, you know, impossible to pick up relatively quickly, so, no, I'm not going to talk down to you folks about that, which I guess implies I'm going to talk down to everybody as a group and that's not my intention either. But I'm serious about the three amendments that I've brought. And I know, again, the interest one has had three...scratch that, at least two different hearings over the last few years and has never made it to the floor. It was out here as a floor amendment and lost by one vote. So now here we are again trying to give voice to it again. And a lot of you understand, this is part of an ongoing struggle. I mean, Senator Chambers is right. This is two attorneys arguing about something and who wouldn't enjoy that for a couple of days? Those of you who had jury duty know what I'm talking about, but this is a dispute between the plaintiff side and the defense side. And we've been told, well, there are agreements not to do this. Apparently I wasn't a party to them, that's admitted now, but there was an agreement. We also had a sit down last year to try to decide what we could do in the workers' compensation realm. And the trial attorneys came and representatives of the defense side came, and I was there and Senator Lathrop was there, and we were trying to come up with a package of things that we could put out so each side, if you will, got something, each side could agree to something. And what we were told a few minutes into the meeting was that the trial attorneys didn't want anything last year, so there was not a deal to be had. So I got up and left because that to me was the end of the meeting. But that, if you want to know how things are done that aren't in the rules, that has been the practice because when you don't talk or compromise, you have something like this where you have two sides that routinely disagree, and one side is trying to, you know, promote its issue, and the other side is trying to say, wait a minute, we introduced sort of a compromise bill that does what you want and does a few things that we have wanted, and we want to get there. And this may seem uninteresting, this may seem like inside baseball, but this is kind of a big deal because we are supposed to try to work together when we can, and we are supposed to try to compromise when we can, and I stand ready to do that. I stood ready to do that last year. I'll probably stand ready to do it next year. But to say, as some of the e-mails we've gotten, oh, you should pass this because it's so important that it pass this year, and it's so important that there not be any amendments attached. Well, why is that? [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR LAUTENBAUGH: Why is it important that this bill pass with nothing attached to it? I don't know that any other bills have that level of urgency that, by God, you cannot amend. Maybe we should just amend the sunset so it doesn't sunset in 2014, it sunsets in 2016, so we have more time to think about this and maybe consider the other proposals out there. But that's not what I'm really interested in yet. I've kind of tipped my hand as to what interests me. I put them in the form of an amendment, three amendments and filed them last week. That's what I'm interested in accomplishing, as well as I can't stress enough, the bill that we're talking about because it's part of my bill.

Floor Debate
February 19, 2013

That's what I want. And Senator Chambers said something funny last week, as always I'm easy to get along with, just give me what I want. Well, we're all like that to a certain extent, or... [LB21]

SENATOR GLOOR: Time, Senator. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. (Visitors introduced.) Continuing with floor debate, Senator Chambers, you're recognized, and this is your third time, Senator. [LB21]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, use your brain. Use your brains. Pay attention to words. Pay attention to the rules. The words used to condemn you may contain your salvation within them if you pay attention and apply them properly. If the rules can be used for one thing, within the rules you can find your way out of it, but you don't respect the rules. The rules provide a way out. The rules provide an answer, but if you don't want the answer, then just keep getting your head knocked against the wall. People say that owls are wise. They are not. Their eyes are big and I guess people think those eyes look like eyeglasses and the stereotype is that people who wear big eyeglasses are smart, or that smart people wear big eyeglasses. So this guy put on some clothing that would allow him to blend in with the trees. They call it camouflage. And he took a stick and put a ball of cloth...it might have been a sock filled with cloth on the end of it where this owl roosted. The owl came and the guy punched him with the stick and the owl flew away. The owl came back. He punched him with the stick again. That went on and on until the guy climbed down out of the tree. Now, if that's wisdom, the word needs to be redefined, or a word other than wise needs to be applied to an owl. Things are not always what they appear to be. If you all are going to sit here and stew, if that's what you're doing, and you won't go to the rule book, I'm going to let you sit here and stew. I'm not going to the rule book and stop anything. I delight in extended debate. I won't call extended debate a filibuster. That's an empty-headed, feeble-minded way to deal with something without having to really deal with it. People on legislative floors think and talk in cliches and slogans. There's no depth of thought, no profundity of argument, just sounds, chattering, full of sound and fury, signifying nothing. They speak though they say nothing. If this were the third grade, or a church, you'd expect endless repetition. It takes that to fix things in the minds of those who cannot concentrate, who cannot focus, or in order that they might begin to grasp what you're saying. There's not a person in here who has gone to church who hasn't heard the same thing over and over and over and over and over. And the Catholics, I used to listen to a Catholic program on Sunday night and it drove me crazy. It made me think Catholicism is a cult. Magic. I could even say it now in my sleep, but I don't want to offend anybody. But I wondered why they didn't just say it one time and then say, multiply it by 20, because it's supposed to be the Man Upstairs, which makes

Floor Debate
February 19, 2013

Him seem kind of stupid to me, but who am I to judge, He who created me. For it is He who has made us and not we ourselves. But the rule book holds your salvation. It holds your escape. But if you don't want to escape, continue like the owl. [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR CHAMBERS: But instead of saying who, who, who, say, how, how, how. Read. Use your brain. And with that, I'm through talking about this bill. Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Chambers. The Chair recognizes Senator Smith. [LB21]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. I wanted to stand up here for a couple of minutes here and just talk about the underlying bill. I know that's something that we're really not discussing here, and I know that there's much more to this debate today than what's in the underlying bill. And I do not necessarily want to challenge Senator Lathrop's...the way he's run his committee nor his intended consequences to this bill. I think Senator Lathrop thinks things out very well. I know he's a very caring person. I know he has the best of intentions and he has made a great effort to come and explain to me some of my previous concerns about the unintended consequences to the employees in prescreening and such. So I appreciate my former neighbor and friend taking the time to explain that. I did want to stand up and talk a little bit about the underlying legislation, and for the colleagues that are new to the discussion of mental-mental, it came about before I came to the Legislature. I did have a brief interest in this last session whereby I was on the Business and Labor Committee. And there are...I understand the sunset and I guess I'm not inclined to rush the removal of the sunset. I do have some continuing concerns with the underlying bill. It addresses first responders, both paid and unpaid by the cities and towns that they work in. And the underlying legislation provides them work comp coverage through the...a problem or a mental injury that's unassociated with the physical injury. And the towns and the cities would, whether the agency is a volunteer agency or it's a part of the city, they would provide that work comp coverage out of...you know, by going out on the open market and buying work comp insurance, or through the League Associated Risk Management, which I think the majority of cities probably purchase their work comp through that association of municipalities. And currently, there are some ways in which first responders are injured with...on the mental side of it, they do have some coverage through the Critical Incident Stress Debriefing process. It's the Critical Incident Stress program. It's in our statute 71...it begins with -7101 and you can read about that. There is some provision in our statutes to care for our first responders. Also, there is some provision available to our first responders through their individual coverage and through individual employee assistance programs to receive assistance whenever there is a mental disability accompanied by a physical injury. So there are...there's ways currently

Floor Debate
February 19, 2013

out there for our first responders to receive the assistance and the help that they need. So what if this goes forward and the sunset is removed? I believe, colleagues, that there is a necessary increase to the cost to our citizens and to our cities. And this is through insurance premiums, and it's through additional costs associated with collective bargaining where the first responders are actually employees of the cities. I ask you, colleagues... [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR SMITH: Thank you, Mr. President. I think...I ask you, colleagues, not to necessarily go out into the Rotunda and ask a special interest group what they think about this. I ask you to call your cities and your towns and ask the administrators what potential impact there is to its citizens. Are there currently provisions to help our first responders? Is this potentially a hidden tax on our cities? And so, please think cautiously about this. I believe at this time the best course of action is to recommit this to committee, and there's no need to rush the removal of the sunset at this time. There are unintended consequences. I don't doubt the good intentions with this bill, but there are unintended consequences. Please look into this, colleagues. Thank you very much, Mr. President. Thank you, colleagues. [LB21]

SENATOR GLOOR: Thank you, Senator Smith. Senator Mello, you are recognized. [LB21]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. A couple of points to my friend and colleague Senator Smith, I would reiterate that the fiscal note does provide a zero cost to LB21, and ultimately as I reiterated on General File when we debated this issue two years ago, the fiscal note ultimately was brought down from an abnormally high number that was given for it to put forward by the Department of Administrative Services to ultimately the Legislative Fiscal Office in consultation with national insurance groups, that said it would have a minimal impact and which over the last couple of years has, in fact, had a very minimal impact both to city governments as well as the employees who try...who have actually not used this benefit yet. But the main reason I spoke this morning or stood to rise and speak on the recommit motion is a reminder, I guess, a little bit of the conversation we did have Thursday and with all due respect to my friend and colleague, Senator Lautenbaugh, we do have rules for a reason. And the reality is that this motion in what Senator Lautenbaugh is trying to do on LB21 is an anomaly, colleagues. I believe it's actually only been used one or two times over the last two years. Senator Janssen did it in regards to the prenatal bill we did last year where he ran an amendment to the prenatal bill that was strikingly similar to a bill he had in the Health and Human Services Committee that did not get out of committee and did not have a vote on it, in which ultimately the committee, the Legislature did not adopt in part maybe because of the substance. But the underlying process issue which is, if a bill has not been voted on by

Floor Debate
February 19, 2013

committee, you essentially are trying to pull a bill from committee with what you're trying to do. And what my friend, Senator Lautenbaugh is trying to do today is exactly that. We do have a rule that governs this issue and I question whether or not this falls even outside of the rule change that Senator Lautenbaugh in his Rules Committee made two years ago, which said that you need a vote of 30...a 30 vote to pass an amendment to a bill if that amendment is similar to underlying legislation held in a committee within ten days of the public hearing. The issue at hand, colleagues, is we haven't even had a public hearing yet on the amendment Senator Lautenbaugh is proposing. That should raise enough concern right now. Now, if we want to embark on being trailblazers in regards to changing our rules on the fly, then that's a policy debate we can have. Ultimately, I think we've passed that period of time when there were no rules changes made by this body, given to the Rules Committee in which there was no action taken, which would say our rules necessitate that what Senator Lautenbaugh is trying to do, I think with his underlying amendments, falls outside of the rules process. Now, that's a whole nother debate I'd be more than willing to have with my friend and colleague, Senator Lautenbaugh and Senator Lathrop. But the issue at hand is this, these amendments that Senator Lautenbaugh wants to have this body vote on, hasn't had public hearings. And to try to make the logical leap of saying, well, because LB21 deals with this issue, and my bill while it deals with a variety of other issues also has this issue in it, we should recommit LB21 back to committee to see what happens. I would throw up the other logical explanation to Senator Lautenbaugh, we can move forward on LB21, he can have a hearing...public hearing still on his bill and work with the Business and Labor Committee to work out a compromise to kick out the other components of his bill that are not included in LB21. That is the process we normally follow, colleagues. [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR MELLO: That is a process that is built on consensus and it's built on trying to find essentially a solution to a problem. We ultimately don't just unilaterally determine that we want to take bits and pieces of other pieces of legislation and throw it in a bill, and if we don't get our way with that proposed amendment, that we try to kill the other bill. I've heard very little opposition to the underlying piece of legislation. And as I mentioned before, I'm not standing in opposition to Senator Lautenbaugh's amendments to the bill. I'm standing in opposition to the process because the moment we start to try to trailblaze new rules and new processes, is the moment we start going down a slippery slope as a body and as an institution, which we have processes and methods and rules set up to guide us. I believe the motion to recommit and the underlying motion they needed to bracket last week, falls outside of that process, and it threatens the institution itself. Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Mello. Senator Lautenbaugh, you are recognized. This is your third time, and you're the last speaker in the queue, should you

Floor Debate
February 19, 2013

choose to close, Senator Lautenbaugh. [LB21]

SENATOR LAUTENBAUGH: I will choose to close, Mr. President. Thank you for that helpful suggestion. Well, you just heard how it's done, folks. We're supposed to compromise. And in this circumstance that means giving one side what it wants and hope that later in the session they'll look favorably upon you as a result. I wonder how that compromise is going to work out as we roll on ahead when I've got nothing to offer, and I'm there, as is frequently the case, saying, well, here are my ideas, wouldn't it be nice to discuss them on the floor. And when Senator Mello talks about how, well, these...I'm trying to avoid the public hearing on these bills. That's what this is all about. He must have been out of the Chamber when I pointed out the multiple times the interest rate amendment has had a hearing, and how my employee misrepresentation amendment had a hearing just last year and then languished in committee. We've had the hearing. And there were some remarkable statements made that, well, this doesn't happen very often so we're plowing new ground here. If you think about it, those two things can't be true necessarily. But fine, if these amendments are so improper, if once we get to them they're just not going to go anywhere, then to quote the movie, I'll be your Huckleberry, I'll withdraw my motion to recommit to committee, and we'll move on to the amendments. Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Members, you've heard the closing on the motion to recommit to committee. Mr. Clerk. [LB21]

CLERK: Senator, I'm sorry. Did you want to withdraw this pending motion? I heard the word "withdraw." That's why I'm confused. Okay. Thank you. [LB21]

SENATOR GLOOR: So ordered. Mr. Clerk. [LB21]

CLERK: Mr. President, Senator Lautenbaugh would move to amend. Senator, I have first of all, AM191. (Legislative Journal page 426.) [LB21]

SENATOR GLOOR: Senator Lautenbaugh, you're recognized to open on your amendment. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. AM191 is the interest rate amendment that I've talked about ad nauseam for some of you, I'm sure. What this does is it changes a peculiarity in workers' compensation law. It changes the judgment rate of interest rate on a workers' compensation award from 14 percent, which is the amount used for delinquent taxes throughout our statutes, basically, to the prevailing judgment rate for other legal matters, which I believe hovers currently around 2 to 3 percent. I believe historically, this amendment...or this interest rate was chosen during a time of high interest. We aren't there now. Looking around the Chamber I see very low interest as a matter of fact. But I think it's important that we pursue this and understand why.

Floor Debate
February 19, 2013

There's nothing new under the sun, folks. I've been down this road before with this exact same floor amendment, and I believe there might be an error in the amendment and that it strikes the underlying bill and replaces it with my language. That's not my intent. This was meant to be added, so if we have to correct that with a floor amendment, we will. If I'm misreading my own amendment, well, so be it. But that said, we had this discussion on another workers' compensation bill that was before us a year or two ago. And that one dealt with authorizing the Workers' Compensation Court to move its location out of the Capitol. They found themselves in kind of a jam because they had signed a lease and then they remembered in the law, it says they must be located in the Capitol. So it was incumbent upon us to pass that bill. It was imperative that we pass that bill. After a couple of passes at trying to adjust the interest rate in the committee and get it out on the floor by others, I tried to attach it to that bill as an adjustment. And the body was told if we do that, that bill would have to be killed. Some of you may wonder why. I wondered why at the time. And we were told, and I believe several members of the Revenue Committee that time didn't vote for the amendment because they were going to do a look at the whole thing, and why all these prevailing interest rates were so high. I pointed out at the time that was kind of nonsensical because there's a whole industry that is grown up around buying delinquent tax certificates, and the counties would go nuts if they weren't getting 14 percent, we would never address the whole totality of that statute regarding delinquent tax payments. I stood on the argument that the interest rate should be tied to the judgment rate because it is in effect a judgment, not delinquent taxes. That amendment lost by one vote, one vote. And so here we are again. I've got a bill in committee that does the same thing, but we've had public hearings on this two or three times since I've been here, once by Smith, once by Schilz. I can't even recall anymore if I introduced this bill independently or if I just had the floor amendment. But that's what this amendment is designed to do, not to replace the removal of the sunset--again, if I have to correct that drafting error, I will--but to adjust the interest rate to reflect judgment rates for other legal matters. And I would hope you would look favorably upon this. Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Lathrop, you are recognized. [LB21]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning once again. I stand in opposition to AM191 and I want you...I want it to be clear that this subject is a bill that is yet to have a hearing. Okay. And so the question today, sometimes if this is your first year, you haven't seen this yet, sometimes you'll get on the floor and somebody will do something, maybe it's a pull motion, whatever it is, and a vote on an amendment becomes about procedure. Okay. It become about procedure and the...I'd look at it this way. Senator Lautenbaugh said, you may need these rules one day, and the answer I'd have to that is, you may have them used against you some day. We're going to have to decide today whether this is an appropriate course. And I'm going to give you a little...another rule that could be employed by Senator Lautenbaugh

Floor Debate
February 19, 2013

and that's a pull motion. And Senator Flood, who used to sit here was the Speaker for six years, used to stand on the floor when we would occasionally get a pull motion and say, these things may be provided for in the rules but understand as soon as we go down this road, there's a problem. So here's the problem with a pull motion. Is it in the rules? Yes, it is. The difficulty is, as soon as there's a pull motion on this, then I'm going to send some over to Government, then we'll have some over in Health and Human Services, we'll have 12 of them over in Judiciary Committee, and pretty soon our Speaker will not be dictating how we go through bills in an orderly fashion. It will be done by the person willing to file a pull motion. And so for the six years that I've been here, we have voted against attempts to do a pull motion, not on the merits, not on the merits, but on the idea that if we go down this road, this place will become unworkable. Now, while you're sitting in your chair listening to this debate, think of that bill that you can't get out of committee. Okay. Think of the bill you can't get out of committee. Do you...maybe it's still sitting there waiting for a hearing. Maybe it's something that's had a hearing and you want to do a pull motion. I can tell you that starts a cascade of procedural problems that takes the orderly conduct of the Legislature away from our Speaker who is effectively a traffic cop for bills and turns it into chaos. This is a sibling to the same process. It's doing the same thing but in a different way. What it does, and I'm not talking about the merits right now. I'm not talking about the merits. And believe me, Senator Lautenbaugh's bills will have a hearing like every single bill. We will listen to the evidence and the testimony on both sides and we'll make a decision about those after we've had a hearing. This is about how we run a railroad. How we run the Legislature, because if this works today, it could work on your bill. What about that priority bill you put out here in a month and you've written to your constituents and you said, by gosh, today, my priority has been designated, it is dealing with branding, or whatever the subject might be, and in comes a bunch of amendments on things that haven't had hearings. Or we're down to five days. Your priority bill is up and in comes a pull motion, or three or four or ten and now we're going to deal with whether we have... [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR LATHROP: ...pull motions and whether we're going to recognize that as a suitable way to get a subject matter to the floor of the Legislature. I would submit it's not. I would also suggest to you that the problem Senator Lautenbaugh has expressed today are common problems people have. And I'll also suggest that the fact the bills have had a hearing, similar bills, not identical, similar bills have had hearings is no different than the problems you face trying to get bills out of committee. It's just the way it is. It's the way it is. And I'll tell you another thing about these bills having had another hearing. That doesn't...that isn't a hearing for the bill that we're now looking at as amendments. We have different people on the committee. We may have different people come in and testify for, we may have different people that come in and testify against, and I know some of them are different... [LB21]

Floor Debate
February 19, 2013

SENATOR GLOOR: Time, Senator. [LB21]

SENATOR LATHROP: ...than what we've seen before. And so... [LB21]

SENATOR GLOOR: Time, Senator. [LB21]

SENATOR LATHROP: Thank you. [LB21]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Lautenbaugh, you're recognized. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I want to come back around to this. If this is really against the rules, if what I'm doing is really wrong, then someone needs to take out a little yellow pad and do something about it. Or, maybe we can dispense with that talk at this point and actually focus on the merits of this oft-heard proposal to adjust the interest rate to the judgment rate. Because again, we do publish the rules for a reason and they tell us how we're going to do things. And you just heard that what this is, is tantamount to a motion to pull, even though this deals with one subpart of one bill, and so it's improper. But we have a way to handle things that are improper. Someone files a motion. We have a hearing and we have a vote. But some things that I can't accept keep getting brought up in this debate and words do mean things. You saw me bridle a little bit at the suggestion that the committees were sovereign last week, and I don't think that person meant what he said, but the committees aren't sovereign. Understand that. We have rules that talk about the committee. We have rules that talk about what they can do. We have rules that talk about how you get around the committee if they repeatedly won't do something. And to say, well, we can't ever allow that to happen, or it would be chaos in here because everybody would do it, I don't know that anybody is planning to stand up tomorrow and do this same thing. I do know if it was a serious risk someone might have proposed a rule change saying, boy, take that out of the rules because if it's ever used, we're all done for. If it's ever used, none of you are going to get anything done. Your priority bills will languish and we'll enter into a dark age. Well, that's not what's happening here, folks. This is a very simple amendment. And if it's against the rules what I'm doing, I can't stress enough, there's a way to challenge that. To be helpful, it's in the rules. You can look it up and you can file your motion. You can call me on this. But if there's no motion forthcoming, then I'm hoping that you will take my word and assume that I'm right when I stand here and say, there is nothing wrong with this, it is procedurally proper. And to say, well, your bills in the future might get some riders on them as well, well then we vote on that. Another word that was used earlier was that the Speaker won't be able to dictate the order of events if we do things like this. Again, I don't think the word was meant as said, but the Speaker doesn't dictate. The Speaker proposes and we have ways to change the order of the agenda. We have ways to suspend the

Floor Debate
February 19, 2013

rules. We have a lot of tools at our proposal...or disposal, I should say. And I'm using one right now and this is, bringing an amendment to a bill. If it's improper, someone should say something other than just implying that it's improper because it's like something else that we think would be improper. So, I'll be interested to hear the debate. I would like us to actually talk about this provision because I'm not bringing this just to slow down this bill, and I do think it's important. And again, we're talking about this is procedurally wrong so we can't discuss the merits. Well, I disagree. [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR LAUTENBAUGH: If this is really wrong, then it should be ruled out of order, disallowed. But if that's not forthcoming, then I would hope that those of you who have employers in your districts, and I'm looking around the room, I don't know who that would be who doesn't have employers in their district, I would hope you would have a passing interest in why there's a 14 percent interest rate on workers' compensation awards. And I would hope that you would actually focus on the underlying debate here of this amendment. I don't know that that's going to happen because I think a lot of you are being frightened with the talk, well, if you allow it to happen in this circumstance, it could happen to you. Well, that's a two-way street, folks. If you constantly allow something to happen to you, you can probably stand up and remind people that it could happen to others. [LB21]

SENATOR GLOOR: Time, Senator. [LB21]

SENATOR LAUTENBAUGH: Thank you. [LB21]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senator Mello, you are recognized. [LB21]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I really did not intend to speak on this bill as much as I have, but with all due respect to my colleague and friend, Senator Lautenbaugh, we have to remember where we came from. Actually, as I've mentioned now, every time I've spoken on this issue, I did bring actually a rules change to your committee, Senator Lautenbaugh, to stop exactly what you're doing with this amendment, that I felt and I brought the issue to your committee saying that senators should not be allowed to bypass the committee process, that if you introduce a bill, you should have a public hearing, and if you don't get a vote on that bill, it's your responsibility as a senator to work with the committee to find a compromise and/or go through our appropriate rules process which is to file a motion to pull your bill. That's the rules...that was the rule change I submitted to you and your committee in 2011. Ultimately, the committee and yourself felt that that was not the way you wanted to go. And I accepted that out of the same deference that I'm talking about on the floor today of trying to work with a committee to find compromise. The compromise we came

Floor Debate
February 19, 2013

up to was to not allow this kind of activity to happen within 20 days of a public hearing with the exception of getting 30 votes on the bill. That's the only way you could run an amendment that was similar to a bill within that 20-day window. Ultimately, I think there was some colleagues on the floor who for one reason or another felt that this was such an anomaly that this did not happen rarely, that we should narrow that window down to ten days. I compromised further and said, we can live with that even though ultimately I knew this issue was raised and brought up because you've done it before in other pieces of legislation that I may have disagreed on. My point being, colleagues, is that this is a problem. This does violate our rules and it violated the sense of the rules change we made two years ago, that if a senator really wants to pull a bill from committee, that they pull the bill from the committee using the appropriate rules set in place instead of trying to run an amendment to a bill where, in this particular case, this particular amendment has not had a public hearing. I'm not disagreeing with Senator Lautenbaugh in his claims that this issue has had multiple public hearings over a number of years. That's absolutely correct and I take him at his word. But were in 2013, and it is my understanding that this concept has not had a public hearing. If I was to do a similar issue to the Natural Resources Committee on a wind bill I have, simply because the Revenue Committee kicks out a bill that deals with wind tax incentives, that I just run my bill before it's even heard in Natural Resources as an amendment to this bill that kicks out of Revenue, I would fully expect other senators standing on this floor saying, it's a violation of our rules. You're violating the committee process, you're violating the rule to allow the public to weigh in on an issue, and while the public may have weighed on the issue in previous years, it's not weighed on the issue this year. Colleagues, I'm not disagreeing with what Senator Lautenbaugh ultimately policy goals may be, but the issue is process. And if process ultimately doesn't matter in this institution, then why have the rules in the first place. Why not move to suspend the rules today, open up an entire dialogue on our current rules, and strike whatever we want, add anything else we want because if we really want a bill to come out of committee, we've got to find a way to do it. Well, we have those rules already. So I disagree, ultimately, with Senator Lautenbaugh's basic logic that this is a policy debate where if it was a policy debate, it should be...have held initially in the Business and Labor Committee with the eight members who make up that committee and their chair, with the public being able to weigh in on it, in support, opposition, or neutral, and ultimately let our legislative process... [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR MELLO: ...work its way out. That's not what we're seeing here today, colleagues. If this was anyone else's committee, I would fully expect those committee Chairs, and actually Vice Chairs for that matter, to stand up and defend the prerogative of the process. It has nothing to do with policy, it has nothing to do with the substance of the amendment. At this point, not even the substance of the underlying bill. It's a matter of whether or not we feel that our decisions and our processes within our own

Floor Debate
February 19, 2013

committees are valid, that our processes are transparent, and that when a senator disagrees with how we're operating as a committee, that they can't just go to the floor and run any amendment they want to a bill prior to the bill having a hearing. That, colleagues, is a concern and that's why I keep standing up on the process issue because this is a process debate, not the underlying policies, not Senator Lautenbaugh's underlying amendments, which may be valid in all circumstances. I don't know. The question comes down to whether or not... [LB21]

SENATOR GLOOR: Time, Senator. [LB21]

SENATOR MELLO: Thank you, Mr. President. [LB21]

SENATOR GLOOR: Senator Lathrop, you're recognized. [LB21]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This...I want to go back to, or start at least where I left off before I ran out of time before. It is not about AM191 today, it's about process. And it's not about Lathrop, and it's not about Lautenbaugh. It's about the first responders who will be affected by this bill whose lives we might be able to improve in that awful circumstance where they may find themselves dealing with something from an on-the-job activity that the mind cannot comprehend that causes an injury to the psyche, and that's what we're here to do today. This was a simple bill, LB21. It had three years on the books and it resulted in a single claim which was about as predicted. It has not caused the problems that it was predicted to, or the concern that was expressed about it, and so now we find ourselves with AM191 attached, and I've already talked about why I believe from a process point of view. And this is not about me, and it's not about Senator Lautenbaugh, nor do I believe is it about AM191. I think it's about the way we're going to run our Legislature. This is a subject matter that has not yet had a hearing. And it is a dangerous road to go down if this is the way we're going to offer amendments to bills on the floor. We do not permit an opportunity for the public to weigh in on the bills that are sitting in committee, nor for the new senators who have not sat on that committee and heard these bills before to be educated on the subject matter. But Senator Lautenbaugh has indicated that this has been the subject of another bill. It was also the subject of a floor amendment and it failed. It died. This is one that's actually been on the floor before and it didn't pass. And when it was on the floor, it actually does this, so I can share with you what it does and what I offered to do the last time it was here and that is, it's a bill that ties the interest rate for a delinquent work comp judgment to the delinquent property tax rate. Why is that? What do you have to do? After you've been told by the court that you need to pay a guy that's been hurt, after you have been told by the court to pay somebody, and more than 30 days go by, that's when this interest rate applies. So it's an incentive to pay a judgment to someone who was hurt and who has benefits coming to them within 30 days. And we had this discussion a year or two ago, and it's tied to the delinquent property tax rate. And I offered to Senator Lautenbaugh, if it gets changed over in

Floor Debate
February 19, 2013

Revenue, if Revenue thinks that that interest rate is too high for delinquent property taxes, which we also want to discourage, then fine. Take this up with Revenue Committee. They're the ones that set the interest rate. This is just a reference to the delinquent property tax rate, provides an incentive for people to pay judgments they've been ordered by the Work Comp Court to pay, and to pay it within 30 days. No one who pays their judgments has to worry about the interest rate. Let me say that again. This interest rate only applies to those people who have been ordered to pay a work comp judgment and they don't pay within 30 days. [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR LATHROP: I weighed in on the policy, I gave you a little bit of a history. That's the history and that's the policy. And, in fact, it isn't even about the policy. It's about the process. And the rules may provide for some things and when you've been around here long enough, you will appreciate...you will appreciate the importance of observing some unwritten rules. This is a violation of one of them. A pull motion is a violation of another. Not being truthful with your colleagues and not standing by your agreements are two more. And if we don't have those around here, we can't function. We cannot function. This isn't about the merits of AM191 whether you agree or disagree with that, it's about whether we observe the unwritten rule here. [LB21]

SENATOR GLOOR: Time. [LB21]

SENATOR LATHROP: The unwritten rule. Thank you. [LB21]

SENATOR GLOOR: Senator Lautenbaugh, you're recognized and this is your...Senator Lathrop, for what purpose do you rise? [LB21]

SENATOR LATHROP: A point of order, if I may. Could I get a ruling from the Chair on the number of votes necessary to move AM191, please? [LB21]

SENATOR GLOOR: Senator Lautenbaugh, during the course of the debate I have been led to believe that your amendment is basically a bill that currently resides in committee and has yet to have a public hearing, is that correct? [LB21]

SENATOR LAUTENBAUGH: It is a portion of a bill. [LB21]

SENATOR GLOOR: And would you like to elaborate on what portion, specifically? [LB21]

SENATOR LAUTENBAUGH: My bill has four parts. This is one of four. I'm not sure what elaboration the Chair is asking for necessarily. [LB21]

Floor Debate
February 19, 2013

SENATOR GLOOR: Senator Lathrop and Senator Lautenbaugh, would you approach the Chair, please? Members, according to Rule 3, Section 20(c), any amendment other than a committee amendment offered which is substantially the same as a pending bill, substantially the same as a pending bill, shall require a three-fifths vote of the elected members if offered within ten calendar days of the committee hearing. It's the Chair's ruling that this amendment will require 30 votes for passage. Senator Lautenbaugh, for what purpose do you rise? [LB21]

SENATOR LAUTENBAUGH: I rise to challenge the ruling of the Chair. [LB21]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Members, the ruling of the Chair has been challenged. Each member is allowed to speak once on the issue. Members may not yield time to one another. Senator Lautenbaugh, you're recognized to speak. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. We may have gotten to a point where this is one of those unanswerable questions. Again, and I know you've heard this repeatedly, I've got a bill coming up that does four things. LB21 does one of those things. I'm seeking with this amendment to add one of the other things to it. So the question is, is a quarter of my future bill substantially similar enough to it that it may not be added? I believe the ruling of the Chair is treating this as a pull motion, basically, and requiring three-fifths to pass the amendment. I believe that's what the ruling is from the Chair. I do rise in opposition to this because I don't believe that you can say that a subpart of a bill is substantially similar to the whole bill. We're talking about 25 percent of my bill. And I don't know that there's actually a clear answer to this, but I do bring the question, and I do rise to challenge the Chair's ruling on this because I don't think we should need 30 votes to get this done. So I'll be interested to hear the discussion on this, and I do have to address some of the other things that have been said. I don't know how much time we necessarily have on one of these, but I'll go for it. This interest rate provision does not only apply if you have a judgment and don't pay it within 30 days. In the strange world of workers' compensation, a judge can rule after the fact, well, you had no reasonable basis to deny benefits in the first place, so you should pay benefits and interest way back to some prior date. Now, here's the kicker. The judge isn't always right about that. Sometimes you do believe you have a reasonable controversy based upon statements made by the employees as to when they were hurt, based upon misrepresentations, maybe, which is another amendment for you later, based upon conflicting medical. I've had cases where I have lost and been told I didn't even have a reasonable controversy when I know, in my opinion, that that was not true. And this 14 percent interest rate relates clear back to the injury. That's kind of a big deal. This is not just something for people who pay judgments late. I believe it also may apply after an appeal without any reduction. Again, 14 percent. This is a substantial cost in the workers' compensation world and it has a chilling effect on defendants/employers exercising their rights to appeal sometimes, or contesting a case sometimes. There is

Floor Debate
February 19, 2013

no reason that this 14 percent should apply only to workers' compensation judgments but not other judgments, but that's the peculiarity of our law. And this is not about the first responders at this point because as I've been clear, this underlying bill will go forward with or without my amendments and my bill, if not then, would hopefully go forward which does the same thing. So I've had some feedback where people are saying, why don't you want this to pass? And I say to them, understand, I've got a bill that does the same thing. It just adds on some other provisions that really don't hurt the first responders in any way, heaven knows. So, I don't...well, I guess that is what the underlying bill is about. [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR LAUTENBAUGH: Thank you, Mr. President. But I think we can't be clear enough that nothing we're doing here actually imperils the underlying bill despite what you're being told. In one form or another, LB21 will become law this year. That much is certain. What I'm trying to do is give voice to these other provisions. And I don't believe that the ruling of the Chair is correct. I don't believe that taking one provision out of another bill and attaching it to this one makes that provision substantially similar to the whole of the other bill requiring 30 votes. And so I would request, respectfully, despite how much I respect the Chair, that he be overruled in this instance. Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. (Visitors introduced.) Continuing on discussion on the motion to overrule the Chair, Senator Krist, you're recognized. [LB21]

SENATOR KRIST: Good morning, colleagues, and good morning, Nebraska. Thank you, Mr. President. I wonder if Senator Lathrop would yield to a question. [LB21]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB21]

SENATOR LATHROP: Yes. [LB21]

SENATOR KRIST: Thank you, Senator, and thank you, Mr. President. Critical to my decision here is just one question. I know you've said it already, but publicly is there going to be a fair public hearing within your committee having to do with the proposed bill that Senator Lautenbaugh has brought up as a reason for all these actions? [LB21]

SENATOR LATHROP: Absolutely. [LB21]

SENATOR KRIST: And you as the Chair of the committee scheduled his bill in an order commensurate with when it was put into the stack? [LB21]

Floor Debate
February 19, 2013

SENATOR LATHROP: I don't know actually when it is on the list, to be very honest. But that's...the only consideration...the only time that I do that is the very first day when I don't have enough bills for the very first hearing date. Otherwise, I sit down with the dates and we try to pencil in things so that we have days that are themes so that I'm not doing a work comp bill every single week where the same people have to travel from Omaha or leave their law practice to come testify. So we try to group them and I honestly don't know when LB324 is up, but it will be given a fair hearing. [LB21 LB324]

SENATOR KRIST: Thank you, Senator Lathrop. Would Senator Lautenbaugh yield to a question? [LB21]

SENATOR GLOOR: Senator Lautenbaugh, would you yield? [LB21]

SENATOR LAUTENBAUGH: Yes, I will. [LB21]

SENATOR KRIST: For me to give consideration to this amendment or anything else, I need to know from you that there were not a series of other amendments or stalling tactics that you were ready to put up if this amendment would not have failed. Can you tell me that that was not the case? [LB21]

SENATOR LAUTENBAUGH: I let us move on to this amendment this morning for this very reason. If we want to get to vote on the amendments, and we're allowed to vote on them, so be it. So there's no stalling here. This amendment is up before us now. [LB21]

SENATOR KRIST: Okay, but you had no other amendments ready to go in case this one failed? [LB21]

SENATOR LAUTENBAUGH: Not in case this one failed. There are other amendments, but they're not... [LB21]

SENATOR KRIST: Okay. Thank you. Thank you, Senator Lautenbaugh. Folks, I stood up on mental-mental a few years ago and talked about my experiences with PTSD and I thought it was a very important discussion to have. We have proven with the bill itself and with the statutes that are in place that we're doing the right thing. It's not cost prohibitive as people would have said it would be. We need to remove the sunset clause and go forward. Folks, we need to hear a fair and honest hearing, a public hearing on Senator Lautenbaugh's proposed piece of legislation because I think there's some things that need to be heard, but we need to move on. I think at this point the ruling of the Chair is extremely valid in my opinion and I would ask you to vote in favor of the ruling of the Chair. Thank you. [LB21]

SENATOR GLOOR: Thank you, Senator Krist. Senator Lathrop, you're recognized. [LB21]

Floor Debate
February 19, 2013

SENATOR LATHROP: Thank you, Mr. President and colleagues. Obviously, I want the ruling of the Chair to be sustained. I want you to vote against the motion to overrule the Chair. The reason for that is pretty obvious. This is substantially a bill that sits in committee and these...of all the things that we do, of all the things that we do, we rarely are bound by precedence except right here. We do something today and it becomes precedence, so you don't want to overrule the Chair just because you want to vote on the amendment, or even if you like the amendment, it is a dangerous place to go. Of all...and you've heard me talk about process. The one thing you do not want to do is change the ruling of the Chair or it becomes guidance for the Chair the next time the same thing comes up. We have rules for a reason. We have a reasonable interpretation of the rules, and I'd ask you to sustain the ruling of the Chair. Momentarily, momentarily, we will have a motion for cloture. Here's the problem with where we're at. AM191 strikes LB21. Okay. The way it is written, and you've heard people say words have meaning and what we do have consequences, AM191 would eliminate the contents or the subject of LB21 and replace it with a...with Senator Lautenbaugh's bill regarding amendments...or regarding interest rates. AM191 is a bad...it is problematic from a procedural point of view. Now you need to understand, it makes mental-mental go away. It strikes mental-mental. And that may not have been his intention, but the fact of the matter is if you support AM191, you strike from LB21 the mental-mental provisions, what we've been trying to move here, and replace it with a change in interest rate, which is a bill that's set for hearing. It's a problem. You may not have been around for a cloture vote. I want to explain that in the event we can get to it this afternoon or this morning before we leave. A cloture vote is a vote to stop debate. Okay. Whether we call this a filibuster, extended debate, or try to be more polite about it, it stops the process. If it succeeds, if a cloture vote is successful, we go on to vote for the amendments and move the bill. So what we're going to do on a cloture vote, just so that you understand it, a vote for cloture, a vote for cloture stops the debate, takes 33 votes. We will then go on to the pending amendment, AM191. You need to vote against that or it guts the bill and replaces it with the subject matter from a committee...a bill sitting in committee. Then we will then, assuming that you vote for cloture against the amendment, and then move the bill to final reading. Thank you, Mr. President. [LB21]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Murante, you're recognized. [LB21]

SENATOR MURANTE: Thank you, Mr. President. Good morning, colleagues. Would Senator Lathrop yield to a couple of questions? [LB21]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB21]

SENATOR LATHROP: Yes. [LB21]

Floor Debate
February 19, 2013

SENATOR MURANTE: Thank you, Senator Lathrop. I think I already know the answer to the first question, but has the Business and Labor Committee had a public hearing on AM191, which the Chair has interpreted to be substantially similar to a bill in your committee? Have you had a public hearing on that subject matter? [LB21]

SENATOR LATHROP: No, no. [LB21]

SENATOR MURANTE: So I assume then that you haven't had that public hearing within ten calendar days. [LB21]

SENATOR LATHROP: It has not happened. [LB21]

SENATOR MURANTE: Okay. Then I assume that the Business and Labor Committee has not indefinitely postponed the bill that is the basis for AM191. [LB21]

SENATOR LATHROP: No, we wouldn't. Every bill gets a hearing. [LB21]

SENATOR MURANTE: Thank you, Senator Lathrop. I asked those questions for a pretty specific reason. First, let me read directly from the Rule Book. Rule 3, Section 20(c), which is what the Chair used to justify the ruling of AM191 out of order: Any amendment, other than a committee amendment, offered which is substantially the same as a pending bill shall require a three-fifths vote of the elected members if it is offered within ten calendar days of the committee hearing. Senator Lathrop just said in his own words that we have not had a public hearing on this bill and that we are not within ten calendar days of that public hearing. That means that that section of the rules is not applicable to the conversation at hand. In order for that rule to be applied to this situation, we have to be within ten calendar days of the public hearing and we are not there. They have not had a public hearing. Now I'd like to refer the body to a different rule--Rule 6, Section 5. Rule 6, Section 5 deals with bills in stages of consideration. It deals specifically with bills that are on Select File. Subsection (b) of Rule 6, Section 5 states, and I'll quote directly: A motion to adopt an amendment to a bill or an amendment to an amendment shall require a majority of the elected members, except amendments which are substantially the same as any bill which has been indefinitely postponed, that shall require a three-fifths vote of the elected members. Now I asked Senator Lathrop if his committee had indefinitely postponed the bill which has been deemed substantially similar to AM191. He said they had not. Accordingly, there is absolutely nothing in our Rule book which states that three-fifths is necessary to pass this bill or to pass this amendment. And Rule 6, Section 5(b) is absolutely plain on the subject: A motion to adopt an amendment to a bill shall require a majority of the elected membership. Now whatever you think about Senator Lautenbaugh's proposals, we've had a lot of talk about the committee process, we're not really discussing that right now. Right now we're discussing whether this bill, whether AM191 is substantially similar to a bill that has been referenced in committee and whether that bill has been indefinitely

Floor Debate
February 19, 2013

postponed or not. I'd submit to you, members, that I asked Senator Lathrop every one of the criterion which is required for a three-fifths vote to be necessary to pass AM191. [LB21]

SENATOR GLOOR: One minute. [LB21]

SENATOR MURANTE: Senator Lathrop answered every one of those questions such that we do not necessitate a three-fifths vote to adopt the amendment. So if you don't like the amendment, that's fine. But the ruling of the Chair was incorrect. We should overrule the Chair. And if you don't like the amendment, then vote the amendment down. If you don't like the process by which we've gotten here, if you think there should be a public hearing, then your...the solution to your problem is to overrule the Chair and vote against the amendment because the rules are very plain on this subject. The rules are important. And I believe that the Chair was incorrect and that we should overrule him at this time. Thank you very much, Mr. Chairman. [LB21]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Thank you, Senator Murante. Senator Chambers, you're recognized. [LB21]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I said I wouldn't speak on this bill so I'm not speaking on the bill as such. But since Senator Murante, a youngster, is assaying to explicate the rules for us, I would like to ask him a question so that he might improve my education. [LB21]

SPEAKER ADAMS: Senator Murante, would you yield? [LB21]

SENATOR MURANTE: Yes, I will. [LB21]

SENATOR CHAMBERS: Senator, will you find me the rule that relates to pulling a bill from committee before it has had a public hearing. [LB21]

SENATOR MURANTE: I am unaware that that rule exists. [LB21]

SENATOR CHAMBERS: Thank you. I don't know what has happened to the rules since I've been gone and I'm unaware of it too. But when you have a situation not covered by the rules, that doesn't mean that no ruling can be made. The Chair can make its ruling. Then it's for the body to determine that under the circumstances where there is no rule, but an attempt is being made to do something that could create havoc with the process. Are you going to agree with the ruling of the Chair? And here's the way you could put it together in your mind. Ought there to be a rule covering the pulling of a bill which has not yet had a public hearing? Maybe yes, maybe no; but the fact is there is no such rule.

Floor Debate
February 19, 2013

The Chair, after giving mature deliberation--why do I say mature--the Chair is not as old as I am but close. Having given mature deliberation, has determined that in the interest of an orderly progress, an orderly system of handling bills and legislation, if a bill is in a committee and the committee has not killed it, there's been no hearing, and the Chair's ruling that this is an unusual circumstance and such being the case is going to require a supermajority in the absence of a rule to in effect establish a rule. If you allow this to happen, you are establishing a rule. I'm not going to say what ought to be done because I can operate under any rule that you all decide on. I've had every attempt to shut me up down through the years and not one of them has worked. But remember, no shoe that you put on in the form of a rule is going to pinch my foot and make me unable to walk. Will it pinch your foot? Is it the kind of process you want in the future? Any bill that has not had a hearing yet is subject to a motion to pull it from committee. And we can have this discussion on every bill which has not yet had a hearing. And if you do this, I have some bills that have not had hearings. I'm going to teach some object lessons by filing such a motion. Think about it. What is important at this juncture in the game? This bill is going to pass. Senator Lautenbaugh's amendments are going to fail. So why all the heartburn? There should be none on that score. But I'm sensing and within me, if I had a heart, what would be the equivalent of heartburn. So let me say I have a gizzard ache. I think I have a gizzard. And I don't think it would be wise, having observed the operations of the Legislature for many years, to adopt a provision. It's not in the rules. You're going to create it out of whole cloth... [LB21]

SPEAKER ADAMS: One minute. [LB21]

SENATOR CHAMBERS: ...that a bill which has not had a hearing can be pulled from committee with 25 votes. That does not define wisdom. You can take it or leave it. I'm just giving my opinion. I'm one-forty-ninth of this legislative body. And I'm going to sit...I won't sit, I'll stand in the wings or go back down to my office and watch to see how this drama unfolds. I have my fingers crossed hoping you will do the right thing, and the right thing is what I suggest--that you uphold the Chair, that you vote against overruling the Chair, for what it's worth. Thank you, Mr. President. [LB21]

SPEAKER ADAMS: Thank you, Senator Chambers. Mr. Clerk, you have a motion on the desk. [LB21]

CLERK: Mr. President, I do. Senator Lathrop would move to invoke cloture pursuant to Rule 7, Section 10. [LB21]

SPEAKER ADAMS: It is the ruling of the Chair that there has been full and fair debate afforded to LB21. Senator Lathrop, for what do you rise? [LB21]

SENATOR LATHROP: I'd like a call of the house and a roll call vote in regular order, please. [LB21]

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

Floor Debate
February 19, 2013

SPEAKER ADAMS: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB21]

CLERK: 43 ayes, 0 nays, Mr. President, to place the house under call. [LB21]

SPEAKER ADAMS: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Ashford, Senator Pirsch, the house is under call. Senator Pirsch, the house is under call. The request is for a roll call vote. Members, the first vote is the motion to invoke cloture. Mr. Clerk. [LB21]

CLERK: (Roll call vote taken, Legislative Journal page 460.) 36 ayes, 10 nays, Mr. President, on the motion to invoke cloture. [LB21]

SPEAKER ADAMS: The motion to invoke cloture is adopted. Members, the next vote is the adoption of or to recognize the...or to rule on the motion to overrule the Chair on LB21. Shall the Chair be overruled? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB21]

CLERK: (Record vote read, 9 ayes, 36 nays, Legislative Journal pages 460-461.) [LB21]

SPEAKER ADAMS: The Chair is not overruled. Members, the next vote is the adoption of AM191 to LB21. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB21]

CLERK: 13 ayes, 33 nays, Mr. President, on adoption of the amendment. [LB21]

SPEAKER ADAMS: The amendment fails. Members, we'll now vote on the advancement of LB21 to E&R for engrossing. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB21]

CLERK: 47 ayes, 1 nay, Mr. President, on the advancement of LB21. [LB21]

SPEAKER ADAMS: The bill advances. The call is raised. Mr. Clerk for announcements. [LB21]

CLERK: Thank you, Mr. President. Hearing notices from the Judiciary Committee signed by Senator Ashford as Chair. The Urban Affairs Committee chaired by Senator McGill reports LB208 to General File; LB377 to General File; and LR29CA to General

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

Floor Debate
February 19, 2013

File with amendments. Revenue Committee chaired by Senator Hadley reports LB33 to General File with amendments. Senator Adams, new A bill (Read LB211A by title for the first time). Senator Mello would like to print an amendment to LB137. (Legislative Journal pages 461-463.) [LB208 LB377 LR29CA LB33 LB211A LB137]

And, Mr. President, a priority motion. Senator Howard would move to adjourn the body until Wednesday morning, February 20, at 9:00 a.m.

SPEAKER ADAMS: Thank you, Mr. Clerk. Members, you've heard the motion. The motion is to adjourn until Wednesday morning at 9:00 a.m. All those in favor say aye. Opposed. We are adjourned. [LB21]