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Floor Debate
January 27, 2014

[LB56 LB76 LB144 LB215 LB371 LB382 LB391 LB403 LB470 LB494 LB748 LB814
LB832 LB844 LR408 LR409 LR410 LR412]

SENATOR KRIST PRESIDING

SENATOR KRIST: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the thirteenth day of the One Hundred Third Legislature, Second Session. Our chaplain for today will be Senator Johnson from the 23rd District.

SENATOR JOHNSON: (Prayer offered.)

SENATOR KRIST: Thank you, Senator Johnson. I call to order the thirteenth day of the One Hundred Third Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There's a quorum present, Mr. President.

SENATOR KRIST: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

SENATOR KRIST: Thank you. Are there any messages, reports, or announcements?

ASSISTANT CLERK: There are, Mr. President. Your Committee on Enrollment and Review reports LB403, LB215, LB470, LB76, and LB371 to Select File. I have notice of committee hearings from the Banking Committee, the Transportation Committee, and from the Appropriations Committee. Finally, a communication from the Executive Board that they have rereferred LB1008 to the Agriculture Committee from Natural Resources. That's all that I have this morning. (Legislative Journal pages 361-368.) [LB403 LB215 LB470 LB76 LB371]

SENATOR KRIST: Thank you, Mr. Clerk. Let's proceed to the first item on the agenda.

ASSISTANT CLERK: LB144 was introduced by Senator Brasch. (Read title.) The bill was introduced for the first time on January 11 of last year; referred to the Government, Military and Veterans Affairs Committee. That committee placed the bill on General File with no committee amendments. [LB144]

SENATOR KRIST: Thank you, Mr. Clerk. Good morning, Senator Brasch. You are recognized to open on your bill. [LB144]

SENATOR BRASCH: Good morning and thank you, Mr. President. And good morning

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to members of the Legislature, to our guests, and to others watching this very cold January morning. LB144 provides for the write-in candidacy of a candidate for a county, a city, village, or school district office who is defeated in a tiebreaker in a primary election. Currently, primary elections that result in a tie are decided by chance, not choice but chance, usually by the flip of a coin, the drawing of straws, a drawing from a hat, drawing from a deck of cards. This bill does not apply to federal, statewide, legislative, Board of Regents, or State Board of Education races. Under this bill, a candidate who tied in a primary election but who was determined the loser by chance or lot would still be able to pursue election to the same office as a write-in candidate in a general election. But only in a county, city, village, or school district race. This issue came to me through a constituent in 2012, Paul Richards, who ran for the Democratic nomination for District 4, Burt County Board of Supervisors. Paul is a great guy. He's very hard working; he's a humble man. He served in Vietnam in the Air Force; he's a Post Commander for his VFW. He volunteers; he's with the American Legion as well. He's a small business owner. He is a father, a grandfather; just a great guy. And when he called on the phone initially he was hesitant. He said: I really want to make sure that you understand, I'm not calling because I'm a...I have sour grapes or I'm angry, but I think something is terribly wrong. He said he lost in the primary because of a coin flip and he thought, okay, well, I'll go file to write in. And he went to find out that he can't write in. And he lost, not because his supporters failed to make it to the polls. He lost because of a flip of a coin that landed in favor of his opponent, and others can write in. After this bad luck, Mr. Richards attempted to file for the general election as a write-in, as I mentioned, unaware that he could not and disappointed that anyone else could come in and file and be a write-in and that the winner, the end result, could be that person who came in after the fact, could run, and he could not. Mr. Richards testified at the committee hearing and he stressed that he's just confused on why the law is so archaic and the methods that we use are, perhaps, out of the Old Wild West and it still stands today. He also, timidly, mentioned during his testimony that, okay, I'll accept these games of chance and I'm just happy that it's better than dueling pistols. Dueling pistols is forever. We must really think about what these games of chance tell us. They're simply a way of making an arbitrary decision and not expressing the choice of the people in such a close, small race in our small communities, as we see in many of our rural towns across Nebraska. Subdivisions of government with small pools of voters abound all over Nebraska. And this means that local elections, in some cases, and sometimes they do result in ties. After all, the smaller the number of voters, the greater odds that it will result in a tie vote. You will see a sheet that I passed out with my initials, examples of elections from the past several decades that I've shared with you. I also shared this with the committee members during the hearing and a comprehensive list is nearly impossible to provide because the county and city records are not clearly maintained and they do not all keep an ongoing archive of election results. Occasionally in these small communities, the primary election decides the winner of the general election. Take, for example, the case of the 2010 Republican primary for sheriff in Morrill County: Milo Cardenas drew a nine of hearts to beat Travis Petersen's six of

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spades after the candidates tied with 379 votes each in the primary. In this case, Milo faced no opposition in the general election and immediately became the next Morrill County Sheriff. Our duty as caretakers of the political election processes codified in state statute is to build an election system that promotes civic involvement and fairness. In Burt County, many constituents expressed shock and dismay at the method of drawing lots or chance used to determine a winner in the case of a tie. Allowing an impasse to be decided by lot may be the most financially reasonable method to decide a winner. However, preventing the loser of a coin flip from continuing their candidacy is so discouraging to so many, as it was to Mr. Richards and others. Allowing the losing candidate to continue as a write-in candidate is reasonable and is fair and is one solution that will not have any fiscal impact in these races. It also manifests a sense of fairness as current law allows other candidates who did not compete in the primary to put their name forward in the general election. LB144 provides a way forward for candidates such as Mr. Richards whose tied race was decided by lot. Our small communities, they have a limited number of willing leaders to draw upon. It is my hope that providing another avenue forward encourages civil involvement from those who have chosen to put their name forward. Again, a coin flip is not choice, it is chance. Drawing cards does not express choice; it expresses chance. Let's give our candidates that chance to be chosen as a write-in candidate. I encourage you to support LB144. Thank you, Mr. President and colleagues. There are 481 individuals who live in Decatur. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Brasch. (Doctor of the day introduced.) Back to debate; those wishing to speak: Senator Hadley, Senator Johnson, Senator Murante, and Senator Chambers. Senator Hadley, you are recognized. [LB144]

SENATOR HADLEY: Mr. President, members of the body, it's going to be a good week. It's a good way to start. Would Senator Brasch yield for a question? [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: I will yield to a question. [LB144]

SENATOR HADLEY: Senator Brasch, I actually read this bill yesterday and I came up with a couple of questions. You used the May 10 primary in Morrill County, I believe, right, as your example just now? [LB144]

SENATOR BRASCH: Correct. [LB144]

SENATOR HADLEY: And these two people were unopposed by anyone else, right? [LB144]

SENATOR BRASCH: Correct, so only one name moved forward. There was not a

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write-in in that case. [LB144]

SENATOR HADLEY: But there was nobody else from the other party or anything like that in the election? [LB144]

SENATOR BRASCH: No, not that I'm aware of. [LB144]

SENATOR HADLEY: Why wouldn't we try to develop a bill that says in the cases where there...the only contest is between two people of the same party in a primary that if they tie, they both go forward? [LB144]

SENATOR BRASCH: This bill is designed to address the exceptions when there is a tie and they are no longer allowed to move forward, that they could also move forward as a write-in. Because someone can and frequently does come in as a write-in and they do move forward. I gave examples of what has happened in reality and what could happen. And in that situation there was not. It's to deal with ties when there are conflicting (inaudible). [LB144]

SENATOR HADLEY: Well, I guess I'm just wondering why, if there's no other opponent, and there's two people who tie, why do we have to have a coin flip or such as that? Why wouldn't we just write legislation that says they both move forward to the general election? There's no candidate on the other side; they've tied, they both move forward, and then the winner is determined at the general election instead of flipping a coin and only moving one forward. [LB144]

SENATOR BRASCH: In that particular instance, that would be correct and would apply to that. But that is not the only way this does occur. This occurs when there are more candidates, not only just the two. [LB144]

SENATOR HADLEY: Well, I could see that. I can...I'm going to only use Buffalo County as an example. And quite often it is just...the two candidates are from the same party quite often for county offices and such as that. So that was just one idea. The other idea I was thinking about is the...if I happened to win the coin flip and I am the one that moved forward and then we allow write-ins, have I lessened the chance that I will win the general, because I now have two people splitting the votes from a particular party, for example, against one person from the other party? So am I hurting the person's chance who did win the coin flip by allowing the other person into the race of the general election by a write-in ballot. So I just wonder is that a fair situation? Senator Brasch. [LB144]

SENATOR BRASCH: Are you asking me to yield still? Am I still yielding to a question? [LB144]

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SENATOR HADLEY: Yes. [LB144]

SENATOR BRASCH: This addresses for the ties for two candidates of one party or multiple parties. To bring a bill as yours is suggesting that it would not address ties when the race has two or more parties. We are addressing a frequent situation that occurs in our smaller populations. During our diligence, we had visited with... [LB144]

SENATOR KRIST: One minute. [LB144]

SENATOR BRASCH: ...NACO and we had also visited with the Secretary of State, and between our conferences we believe that this would fit most of the scenarios we are trying to address today. [LB144]

SENATOR HADLEY: Thank you, Senator Brasch. I guess I would just be interested if anybody else thinks of this idea of when there's a tie with only two people running from the same party or for the same office that they would both move forward. Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Hadley and Senator Brasch. Senator Johnson, you're recognized. [LB144]

SENATOR JOHNSON: Thank you, Mr. Chairman. I will follow up having the same thoughts that Senator Hadley raised. And I probably could have a point where I would ask for Senator Brasch to yield to a question. But I'm wondering the scenario where only two names would go to the general election and because of a tie only one gets there. To me the voters did not make a winner or a loser; the voters created the tie. Maybe...I don't know why the loser in the tiebreaker has to go to that extra effort to be a write-in. If there would be a way, possibly, and under the scenario that...there could still be two people on the ballot for the general election; that the...there would not be a tiebreaker; that both names would automatically move to the general election if there was tie. But if we still have to flip the coin or pull the card or pull the straw out or whatever, that the loser would have the option of automatically having his or her name on the general ballot. Maybe the loser would say, okay, it's fair, the winner can go on. But if the loser could come in and file a document indicating, I would like for my name to be on the general election ballot because it was determined by chance and not by the voters, I just ask Senator Brasch if she has any thoughts on that, if you would yield. [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: I will yield. And again, you made a good point that perhaps the individuals involved in the tie, maybe he does not want to move forward automatically. Perhaps after the campaign process, you know, this is where he would...or she may choose not to move forward. But simply this gives them the same privilege as a person

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who wants to be a write-in to enter into the race one more time and let the people choose and not the flip of a coin or the drawing of straws or drawing from a hat or cutting of cards. And so this way that individual, after buying their signs, their handouts, all they've invested, time and energy, talking with their supporters and their volunteers, will want to move forward or may choose not to. They at least have the option, at that point, to make that decision, is this the right choice they're making, and not chance. [LB144]

SENATOR JOHNSON: Thank you. I guess I just feel that maybe they shouldn't have to go out and seek the write-in because the voters were equal in their votes. Maybe there would be a way to automatically allow that person to go on the general election, if they choose, and not have to go the write-in ballot. Those are my thoughts. Thank you, Mr. Speaker. [LB144]

SENATOR KRIST: Thank you, Senator Johnson and Senator Brasch. Senator Chambers, you're recognized. [LB144]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I was having a high-level discussion with the Speaker about some high-level issues and I may have missed a discussion of what I'd like to ask Senator Brasch about. So if I missed it, I hope she'll forgive me and answer my questions anyway if she will yield. [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: I will yield. [LB144]

SENATOR CHAMBERS: Senator Brasch, in some of the new language, it mentions, beginning in line 20, "a county, city, village, or school district office." Is there anything in the statutes that you cross-reference which designate the size of any of these entities? For example, could Douglas County be included under the word "county" and Omaha under the word "city" and OPS under "school district"? Or is there a limiting factor that says the classification of the county, city, or village or school district, because I didn't have time to look up these other statutes that were cross-referenced? [LB144]

SENATOR BRASCH: I believe that...I believe that when it comes to being a village election and the school district elections that there is a specific number. And, Senator Chambers, you are correct that there is no limiting factor in that per statute 32-1122. [LB144]

SENATOR CHAMBERS: Okay, now...and I'm not going to go into that part with you. I just...I might just make my comments. But would this apply only to one candidate who had lost under certain circumstances in a primary? Or could any number of candidates who may have fit this description or who lost in the primary be write-ins as this bill

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allows? [LB144]

SENATOR BRASCH: There are no number...the write-ins are unlimited. And this is only for the tiebreaker. And the fact that the larger the populations, the more highly unlikely it is to happen in the Douglas County or the other counties you described. It does happen on occasion, infrequently perhaps, but very rarely in a larger population where there are more pool of candidates. And the tiebreaker is typically between two people, the final two people at the end. [LB144]

SENATOR CHAMBERS: So then to put your answer to the question the way I asked it, in line 22 where it refers to Section 32-1122, that is referring to the tiebreaker and that's what governs when this particular piece of legislation would come into play? [LB144]

SENATOR BRASCH: Yes. [LB144]

SENATOR CHAMBERS: Is that correct? [LB144]

SENATOR BRASCH: Correct, only as a tiebreaker. [LB144]

SENATOR CHAMBERS: Thank you. Members of the Legislature, I have no other questions. [LB144]

SENATOR KRIST: Thank you, Senator Chambers, Senator Brasch. Senator Murante, you are recognized. [LB144]

SENATOR MURANTE: Thank you, Mr. President, members of the Legislature. I rise in support of LB144 and I thank Senator Brasch for bringing it. In some of the discussion that we had today, it had a little bit of a parallel to the discussions that we had in the Government, Military and Veterans Affairs Committee, specifically Senator Hadley's suggestion that in the case of a partisan primary where two candidates tie, why can't both candidates just advance and we have a general election? That was actually a proposal that was brought to us by Senator Larson in the form of LB56. The bill was advanced to General File and you'll find it on your agenda right now on Select File. It was amended drastically to take out what...the provision that Senator Hadley and Senator Larson first initially suggested. And the reason for that was kind of simple. That is a wholesale departure from the public policy that we have in the state of Nebraska right now. Right now a partisan primary exists to nominate a nominee for a political party. And then we have a general election between the various political parties and their nominees. And the concept of having multiple candidates receive the nomination from a single political party would fundamentally change how we conduct elections in the state of Nebraska. And I'm not sure Senator Brasch wanted to go that far on this specific piece of legislation. What she has brought before us is a very modest bill that deals simply with when a candidate loses as a result of a tie, that they can continue to

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run as a write-in candidate in the general election; they would not be prohibited from running in the general election. And I think that's modest. And I think the discussion for whether multiple candidates can be nominated, whether we want a general election with numerous candidates from a single political party, whether we want open primaries and things like that, that is certainly a discussion that's worthwhile having. It's probably more appropriate to have it on LB56. And, quite frankly, we in the Government Committee need to have a lot more study on the subject matter going forward. And we have a number of bills this year which will deal with that issue. But I'd encourage you to support LB144. I gave you a little background on where we got...how we got to where we're at right now on the issue. I thank Senator Brasch for bringing the bill and I encourage your support. Thank you, Mr. President. [LB144 LB56]

SENATOR KRIST: Thank you, Senator Murante. Senator Brasch, you're recognized. [LB144]

SENATOR BRASCH: I want to thank Senator Murante for his support on this. And you are correct. I believe that this bill is simple in the fact that in our smaller pool of populations that we do need to encourage people to seek an office and to move forward, and that it is very confusing at this point on why someone can come in as a write-in and they cannot; that they have simply, not by choice, but ended their options with a game of chance. And perhaps they do reach an impasse between the candidates, the conflicting people where they may choose not to move forward. But in this one situation, he welcomed the opportunity to try again, because it is...it's the tiebreaker that was disappointing and the method, and in a general election he found that a feasible answer. And I do want to encourage your support on voting forward on LB144 this morning. And if there's any other questions, I'm happy to answer them. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Brasch. Senator Bloomfield, you are recognized. [LB144]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good morning, colleagues. I voted for this bill out of committee; I will continue to support it. And Senator Murante pretty well stole my thunder. But the question is, if you have, and I'm going to use the example, two Republicans and no Democrat running and you have a tie and you're going to move both names forward, where do you put the name on the ballot even? Do you make the other fellow a Democrat now? Because otherwise, you show two Republicans and you're back to a primary. So I think the bill as it currently stands is a good idea to remove that impossibility of somebody that tied moving forward. I think we need to support LB144 as it is written and the idea of moving both of them forward automatically would appear to me to cause more problems than it helps. Thank you. [LB144]

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SENATOR KRIST: Thank you, Senator Bloomfield. Senator Carlson, you are recognized. [LB144]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would like to address some questions to Senator Brasch if she would yield. [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: I will yield. [LB144]

SENATOR CARLSON: Having looked at this, this morning, Senator Brasch, I have questions and it may just be a little bit of lack of knowledge of my part. But let me give you two different circumstances, and it's a little takeoff of what Senator Hadley asked about. But if we have an election and Senator Nelson gets a hundred votes, Senator Murante gets a hundred votes, and there's a write-in for Carlson for one vote, now on your bill those two get to move forward. What about Carlson? Can he be a write-in? Can he go through the process as a write-in? And he only got one vote and he didn't even want it, but somebody put him down. Murante put him down because he didn't want Carlson to go in as a write-in. [LB144]

SENATOR BRASCH: I'm sure that Carlson would get more than one vote. (Laughter) That's not a valid question. [LB144]

SENATOR CARLSON: Well, thank you, but it could happen. [LB144]

SENATOR BRASCH: This does not apply to senators' races. This does not apply...this only applies to...and more than likely, in another hypothetical situation, the tiebreaker would happen and then if two people could move forward or another write-in. But it only helps when there is...when there are two people in a tie and the person would like another chance moving forward. [LB144]

SENATOR CARLSON: But what is the circumstance, because we know this happens in elections, where somebody writes somebody else's name in and they don't even want to be on there, but somebody did it? Now does that disqualify that person who was written in one time from going through the write-in process if after the primary they decide, I think I want to do this? [LB144]

SENATOR BRASCH: I believe if a person's name was written in and they did not want the office, they would not have to move forward with the election; that this only applies with the people who are...to be a write-in you have to pay the filing fee and they'd have to refile for the primary (sic). [LB144]

SENATOR CARLSON: Okay. Now I'm going to go back. We know this is not a...this is

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not a legislative vote; it is a local vote. But Nelson got a hundred votes; Murante got a hundred votes; Lautenbaugh wrote in "Carlson." And Carlson didn't want to be written in, but he did it. Now, after the election is over and I see the results, I think I might have a chance of beating these two as a write-in. Does this one vote that Lautenbaugh put in on me prevent me from going through the process as a write-in? [LB144]

SENATOR BRASCH: This only applies to the primaries. And to move forward, it would have to be the tiebreaker wanting back into the race. And a single write-in vote is not considered a candidate by definition. [LB144]

SENATOR CARLSON: Okay, I'm still a little fuzzy on this, but I appreciate your response, Senator Brasch. And I'll try and think about it a little further. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Carlson and Senator Brasch. Senator Karpisek, you are recognized. [LB144]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I just thought I would rise quickly to say I was the "no" vote...I think lone "no" vote coming out of committee. And I guess as I've looked at it more and heard more about it, I understand more where Senator Brasch is coming from on this. And I remember that there was this one situation. I hear some other things coming up: what about...what about. I just think that it's...it is a tough deal to go back and a coin flip or draw cards to win or lose an election. And the more I think about it, it's probably not such a bad idea. So if I could, I would probably change my vote to not voting on this, although most of you know I don't like to not vote. But I am interested in hearing more about it. And I guess...I just wanted to say my "no" vote shouldn't be taken as a hard no. And I am listening and I would yield the remainder of my time to Senator Brasch if she would like it. Thank you. [LB144]

SENATOR KRIST: Senator Brasch, you are yielded 3:52. [LB144]

SENATOR BRASCH: I do want to thank Senator Karpisek for his considerate thought on this and moving a little closer to the "yes" vote. I hope that the next round we can accomplish that. But it is something, again, in our...the communities where you try to encourage people to come forward. And especially, you know, those who are on the committee saw when this gentleman, when Mr. Richards, came in with his wife, and he was in such awe at the hearing and felt so privileged and honored to come forward and give this bill forward because he felt it was the right thing to do, not because he had a problem or an issue with what had happened and the outcome. It's just the fact that it was by a coin flip and not a choice. His words stay true today: I'm just grateful this wasn't dueling pistols. And so I would like to thank Senator Karpisek and encourage others to help the communities with the smaller pool of people where ties happen more frequently than in the larger to help this bill moving forward. Thank you very much. And

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thank you, Senator Karpisek. [LB144]

SENATOR KRIST: Thank you, Senator Karpisek and Senator Brasch. Those still wishing to speak: Senator Nelson, Senator Lautenbaugh, Senator Janssen, and Senator Johnson. Senator Nelson, you are recognized. [LB144]

SENATOR NELSON: Thank you, Mr. President and members of the body. I'm generally supportive of the bill, but I do have a question or two for Senator Brasch, if she would yield. [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: Yes, I will yield. [LB144]

SENATOR NELSON: Thank you, Senator Brasch. In the case of Paul Richards, would you tell us again what the tie vote...the number of votes that were involved? [LB144]

SENATOR BRASCH: I believe there were 57 votes. [LB144]

SENATOR NELSON: Fifty-seven to fifty-seven, is that correct? [LB144]

SENATOR BRASCH: I believe so, yes. [LB144]

SENATOR NELSON: All right. Looking on the chart that you provided here, and I think Senator Chambers perhaps raised the question of larger cities, you'll see that North Platte, that was back in 1978, the vote was 2,178 to 2,178. A couple lines down, Douglas County had a race for county commissioner, about 1,550 vote tie. And way back when Beatrice was smaller, 1,721 to 1,721. Would you entertain the possibility, since it would occur to me that the larger the city is, the larger the vote is going to be and that there's a pretty remote possibility of a tie there. What about just limiting your bill to villages and cities of the second and first class? First class, for instance, that goes from 5,000 up to 100,000; maybe that's even a bit big. But what about villages, 100 to 800; cities of the second class, 800 to 5,000? Would your bill generally apply to those smaller elections where it would make more sense for two people to move forward? [LB144]

SENATOR BRASCH: It happens more frequently in the smaller cities and villages, correct. There aren't many records that are kept on this. And this takes language from statutes 32-1122. So that's why the bill is as it is currently, is trying to simplify the process and give an opportunity to choice rather than chance. If it is something that you believe larger communities, Douglas or whoever, that perhaps chance is a better option, then we could change that. But at this point I do not understand the harm it would do to have it just...it's only for...it's not for legislative elections, you know, it's very specific to

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what it will apply to. [LB144]

SENATOR NELSON: Well, thank you. I looked at 32-1122 before we came in and there are five or six sections there. They all deal with different circumstances as to the Board of Canvassers and other people like that, specific; both for the primary and for the general election. But nothing is said there in that 32-1122 about the size of the city or whatever. It just simply provides for how a tie vote will be handled. [LB144]

SENATOR BRASCH: But it is specific for...it does not apply...not apply to federal, not statewide, not legislative, not Board of Regents, and not State Board of Education races. [LB144]

SENATOR NELSON: (Section 32-)1122 or your bill? [LB144]

SENATOR BRASCH: The bill. [LB144]

SENATOR NELSON: The bill, yes, I would agree with that. All right, thank you for the answers to the questions and I'll continue to listen if there are more people speaking on this. Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Nelson and Senator Brasch. Senator Lautenbaugh, you are recognized. [LB144]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wonder if Senator Brasch would yield to a few questions. [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: I will yield. [LB144]

SENATOR LAUTENBAUGH: Thank you, Senator Brasch. And at the outset, I may have missed this and I apologize if I did. Do you know how many elections have been decided by a coin toss? [LB144]

SENATOR BRASCH: The records have not been kept, but in NACO's testimony, he acknowledged, it does happen often, no number. It's not uncommon, but it can happen and it does happen more often in the smaller races with smaller populations. And also in our diligence, when we visited with the Secretary of State's Office, it was factual. But the recordkeeping is not there, per se. [LB144]

SENATOR LAUTENBAUGH: I guess I'm wondering if rather than have this element of chance, would you be more comfortable if we did sort of a method of historic elections where we showed videos of elections gone by and candidates had to choose one based

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upon what they knew...I'm joking about this part of course. [LB144]

SENATOR BRASCH: I think you are. [LB144]

SENATOR LAUTENBAUGH: Now, so I understand this though, this is a very simple bill you're proposing here and basically what you're talking about is that if a candidate was eliminated by a coin toss, and we're just talking about counties, cities, village, and school district primaries, then that candidate can run as a write-in in the general, where normally an unsuccessful candidate is prohibited from running again in the general. Is that correct? [LB144]

SENATOR BRASCH: That's correct, if they choose to. [LB144]

SENATOR LAUTENBAUGH: If they choose to, certainly. [LB144]

SENATOR BRASCH: If they choose to. It's their choice. [LB144]

SENATOR LAUTENBAUGH: So what you're saying here is it seems fairly unfair to tie in the primary and then be prohibited from running in the general just based upon chance, so this provides kind of a safety valve for that, admittedly, unusual circumstance, but something that does happen from time to time. [LB144]

SENATOR BRASCH: That is correct. It is a fair method, if they choose to. And more fair because a person could just decide arbitrarily, well, I think I'll write my name in, and without all of the equity of time, expenses, volunteers and others; that their race was stopped abruptly by a coin flip, draw the straw, deck of cards, a hat draw; just a reasonable way to move forward for that particular candidate as a write-in when they cannot at this point. [LB144]

SENATOR LAUTENBAUGH: And did I understand that from the prior comments you made today you've managed to change Senator Karpisek's opinion on this to some extent so far? [LB144]

SENATOR BRASCH: I believe that's true. [LB144]

SENATOR LAUTENBAUGH: Well, then, Senator Brasch, I'd have to applaud your effectiveness, because I've always found him to be very stubborn and disagreeable. And I don't think I've ever managed to move him one whit at this microphone. So this is something you should write about in your diary tonight. And I'll yield the rest of my time to you. [LB144]

SENATOR BRASCH: I do plan on journaling it. Thank you. [LB144]

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SENATOR KRIST: Thank you, Senator Lautenbaugh and Senator Brasch. Senator Janssen, you're recognized. [LB144]

SENATOR JANSSEN: Thank you, Mr. President, colleagues. Sorry for my delay. I do have some questions, just looking at this bill, for Senator Brasch, if she would yield. [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: I do. [LB144]

SENATOR JANSSEN: Thank you, Senator Brasch. This is a...this actually came up in my legislative district in the community of Scribner where there was a tie and there was a casting of lots on who won that particular election. And so I took note of this when you started talking about it this morning and I saw it on the agenda. And then a question came to mind, and maybe you addressed it and I apologize if you already have. How would this work in a situation...or maybe it doesn't include school boards, I'm not sure, but I've seen school boards where the top four advance and that fourth, fifth, if they were tied...or a tie for fourth. How would it work in that scenario? Or was that covered already? [LB144]

SENATOR BRASCH: They could become a write-in. [LB144]

SENATOR JANSSEN: So that...okay. [LB144]

SENATOR BRASCH: Yes, if they choose to. They would pay the fee, they would become a write-in if they choose to move forward with the race. Again,... [LB144]

SENATOR JANSSEN: Okay. [LB144]

SENATOR BRASCH: ...it's not an automatic, but they could choose to move forward as a write-in. And anybody could be a write-in. [LB144]

SENATOR JANSSEN: All right. Well,... [LB144]

SENATOR BRASCH: If the race allows for write-ins, then that would be the case. And this is only in the primary. In a general, you would need to take the traditional method of moving forward. [LB144]

SENATOR JANSSEN: Okay, then I'm...well, I guess that makes enough sense if there is a certain amount of people for a certain amount of sports and how that work. [LB144]

SENATOR BRASCH: Uh-huh. [LB144]

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SENATOR JANSSEN: So this is all new to me and I just looked at the bill, so I had that question and I thought I would ask you on the mike. If you'd like my time, you could certainly...I'll yield you the balance. [LB144]

SENATOR BRASCH: Thank you, Senator Janssen. And there have been excellent questions raised in dialogue and I've appreciated the opportunity to discuss this in length. I know that Mr. Richards is watching today and very interested in our process here. He hopes to come down and watch again sometime. So I do encourage your thoughtfulness on this. And if you have any other questions moving forward, I would be happy to hear them. But today I do ask for your support on LB144. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Janssen and Senator Brasch. Senator Johnson, you're recognized. This is your second time. [LB144]

SENATOR JOHNSON: Thank you. Thank you, again, Mr. Speaker. I just want to speak, maybe a clarification. Let's use the examples of candidate A, B, and C. And it could be that senator A is Adams, and Bloomfield and Campbell are the three names, but when they're through in the Legislature, they go back and live in the same community and they're running for school board. So they're no longer senators, they're running for the school board. And there's three good people. And the vote count is low. There's 50 for candidate A; 50 for candidate B; and candidate C gets 48 votes. This bill would allow the two ties to move forward if there was a write-in by candidate B because it tied. The other one is pretty close, maybe it was a write-in to start with. But I think the voters still said of the three, equally we want A and B. So I think that...I don't know if that clarifies it. It does in my mind that it could be a very close race. And only the two that tie would be able to move forward if the one in the tiebreaker lost the flip of the coin and would go to the write-in. I still think it's a lot of work for that candidate, but if they really feel they're qualified, they should have that opportunity. I do support LB144. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Johnson. Senator Scheer, you are recognized. [LB144]

SENATOR SCHEER: Thank you, Mr. President. I don't necessarily rise in opposition to LB144. I did vote to bring it out of committee. But we have not discussed what I think is probably the one flaw that I talked about in committee, and that being in a partisan race. Those that are nonpartisan races, I don't think it makes a bit of a difference. But if...and it doesn't make any difference which area it would be for. If you have two Republicans or two Democrats that are running in a primary against one of the other party, the two...and it is...we'll say it's a predominantly Democrat area, whatever that might be, and the two Democrats do actually tie in the primary. We now allow a flip of a coin; one of them is going to win. The other one now has the decision if they want to become a write-in candidate. If they choose to do so, at that point in time, we now have two

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Democrats running again and one Republican. If it is a, we'll say, a 60/40 split from a Republican and Democrat vantage point in this area, you now have, essentially, even distribution to the two Democrats, so maybe in the general election they both get 30 percent of the vote. The Republican, although in the minority, gets 40 percent of the vote and now that election is decided, not necessarily upon the (inaudible) of that person or the persons that are running, regardless if they're Republican or Democrat. So I'm not sure if I am totally supportive. I am in a nonpartisan manner. Those elections that may be partisan, I'm a little concerned about it because we do have partisan races, supposedly, for a purpose. If there is no reason for it to be partisan, then maybe we should eject the partisan part, but that's a different discussion than what we're talking about right now. And this will...this does have the potential to change the outcome of votes and representation from a party affiliation. I believe Senator Bloomfield brought up the same comment during the discussions in the Government Committee. I don't know what the answer to that is other than perhaps to make it nonexclusive in partisan races. If we're not interested in protecting partisan politics, then that's, again, another conversation for another point in time. But this really does lead to the potential of that happening. And it doesn't happen that often, but it only has to happen on a rare occasion to make a big difference in some other organizations or representation in certain areas. I guess I would ask, Senator Brasch, would you yield to a question? [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: Yes, I will yield. [LB144]

SENATOR SCHEER: Senator Brasch, has...what I brought up, we talked about in the Government Committee. Could you please give us your viewpoint and... [LB144]

SENATOR BRASCH: Would you like me to address that? [LB144]

SENATOR SCHEER: Yes, please. [LB144]

SENATOR BRASCH: A Republican could be a write-in then. I mean if it's a partisan race, then you're looking at the outcome of R and D, and R could write in. I mean that's open. But the thing is, it still boils down to a coin flip chance and not people's choice. We have to look at choice here when possible. And in our financially cash-strapped districts... [LB144]

SENATOR KRIST: One minute. [LB144]

SENATOR BRASCH: ...we can't afford to have the runoff elections. These are for the smaller races. And a Republican could write in or a Democrat could write in or an Independent could write in. But the person who lost by a draw of the straw, flip of the

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coin cannot. [LB144]

SENATOR SCHEER: Thank you, Senator. And I don't disagree with what you said other than somebody else from a political party could become a write-in vote, but they would not have already run for that office and showed that much support that it ends up being a tie. So there is a difference between an additional candidate coming forward after that point, after the primary, and one that has already ran in the primary. And, yes, unfortunately, we do have ties in the electoral process. We have a process to determine how to eliminate those ties and they're gambling. I mean, if...we're not a gambling state, but, you know, we draw a card or we flip coin and it's a gamble. It's a crapshoot. [LB144]

SENATOR KRIST: Time, Senators. [LB144]

SENATOR SCHEER: Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Scheer and Senator Brasch. Senator Davis, you are recognized. Senator Davis, you are recognized. [LB144]

SENATOR DAVIS: Thank you, Mr. President. Senator Brasch, will you yield to a question? [LB144]

SENATOR KRIST: Senator Brasch, will you yield? [LB144]

SENATOR BRASCH: Absolutely, yes. [LB144]

SENATOR DAVIS: I've missed some of this. I've been on the phone and a few things. But you talk about the entities that are involved here, and I'm wondering about NRDs and hospital districts. Can you elaborate on those at all? [LB144]

SENATOR BRASCH: It would be for...those are elected officials. And if they are...they have a tiebreaker, I'm not, you know, oh, NRDs are not included in this, Senator Davis. [LB144]

SENATOR DAVIS: And was that just an oversight or do you think we should try to do an amendment to include those? [LB144]

SENATOR BRASCH: I do not believe we should include an amendment to include those at this time. These are the ones that are most frequently reported to our communities at this point. If the NRDs want to, in the next round, e-mail, call, let us know their situations, but according to the NACO and others that those are not races that I've been drawn attention to. [LB144]

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SENATOR DAVIS: I guess from my perspective, it seems to me that if we're going to augment this statute that now would be the time to try to do that so that it's sort of uniform across the board. And I think Senator Chambers might have asked this question, does this apply to every city, metropolitan cities as well as villages, all the tiers? [LB144]

SENATOR BRASCH: It has, but because the population is larger, it happens more infrequently. You see it happening more frequently in a smaller pool. That's when the odds increase. And so, yes, it could. And if you're wanting to say someone in a larger community or city should be subject to chance instead of choice, that would be an option. For us, it's highly impacting us. I'm not sure the impact is the same when you have more potential write-ins, you have more potential candidates moving forward, but it could. I'm just stating factually it happens more often when there is a lessor amount of population. [LB144]

SENATOR DAVIS: And I recognize that, I just wanted to be clear on what we were looking at because it does say "city," but it doesn't define the first-class city, metropolitan city. So thank you, Senator Brasch. I appreciate your time. [LB144]

SENATOR KRIST: Thank you, Senator Davis and Senator Brasch. Senator Murante, you are recognized. [LB144]

SENATOR MURANTE: Thank you, Mr. President and members. I rise again in support of LB144. I thought I would take just a moment to respond to the concerns raised by Senator Scheer, as he raised them in committee, and also Senator Carlson in conversation off the microphone. And I think it's important to point out that those who are expressing concern about multiple write-in candidates of the same political party in a general election, that's the law as it exists today. Right now in any partisan office, we can have a general election where we've nominated someone in May and 15 people of the same political party can run as a write-in candidate in the general election. There's no law prohibiting that. So we're not changing anything. Senator Brasch is not proposing to change that public policy; that's where we're at right now. As a matter of fact, this Legislature a few years back dealt with the issue of nomination by petition candidates where we, as a Legislature, chose to strike the potential for a person to skip a primary and run in the general election. So the problem exists today. And the only people we are adding to that pool of hundreds of thousands of members of a political party who can run as a write-in candidate are the one candidate...the very few candidates who lose in a primary election by a tie and then a coin flip. So as Senator Lautenbaugh kind of expressed, the only downside I can see to this bill is it might increase the likelihood of coin flips and thereby expand gambling in Nebraska, but other than that I don't see a real downside to this. So I encourage your support of LB144. Thank you, Mr. President. [LB144]

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SENATOR KRIST: Thank you, Senator Murante. Mr. Clerk for a motion. [LB144]

ASSISTANT CLERK: Mr. President, Senator Scheer would move to amend with FA182. (Legislative Journal page 368.) [LB144]

SENATOR KRIST: Senator Scheer, you're recognized. [LB144]

SENATOR SCHEER: Thank you, Mr. President. This is unplanned on my part, but in listening to Senator Davis, I thought he had a very good point. If we are going to be doing this, then I see no reason to exclude those races that would be on the ballot other than picking and choosing which ones, selectively, we might be able to utilize. And so in hearing Senator Davis talk about natural resource districts not being included in this, those are statewide races. I mean, they're not elected statewide, but they're all across the state. They have tremendous impact in the areas that those people represent. And so consequently, if we are really looking at trying to improve that, we should be looking at the total picture, not exclusively at what happened in one isolated case somewhere in Nebraska. Although it's very important and it's important to that individual, if that problem exists and the potential exists in the rest of those races, certainly, I think, we should be willing to address those at the same time rather than bringing them back up again at some future point in time for another Legislature to discuss or a different group to discuss. If we're going to put it on the table to talk about, then I suggest that perhaps now might be the time as we look at the problem and let's look at it in its entirety. Having said that, it's pretty simple, it's straightforward, and I would urge your support for FA182. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Scheer. You've heard the opening on the amendment, FA182, to LB144. Those wishing to speak: Senator Bloomfield and Senator Davis. Senator Bloomfield, you are recognized. [LB144]

SENATOR BLOOMFIELD: Thank you, Mr. President. Colleagues, Senator Murante tried to steal my thunder again, but he didn't quite get it all. To Senator Scheer's question on diluting the vote of the majority party, I did discuss that during committee. And I'm a firm believer in the two-party system. And I think at that point if you have a tie, it is incumbent on the party leaders in that county to talk to the person that lost the tie and make sure he feels that it's worth it going forward to see a member of the opposite party likely elected because he is splitting the vote. When you dilute the majority party by dividing it in two, you are opening the gate wide open to electing the minority party member, which is fine but be sure of what you're doing. Talk to...let the party members in that county share with that candidate that possibility. I don't believe in the party coming in and telling the candidate, no, you shouldn't run. But I think the party should be able to go in and discuss it with the member that lost and say there is a possibility of this. Do you dislike your primary candidate badly enough that you want to run against him and more than likely elect a member of the other party? And if that's the choice he

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chooses to make, then he should have that right to go forward. So I continue to support LB144. I don't believe we should block it. But I do believe that the...if there's going to be party involvement, that's where it should take place. Let the candidates know what they are likely to do by running as a write-in. And I would like to ask Senator Lautenbaugh a question if he'd yield. [LB144]

SENATOR KRIST: Senator Lautenbaugh, will you yield to Senator Bloomfield? [LB144]

SENATOR LAUTENBAUGH: Yes. [LB144]

SENATOR BLOOMFIELD: Senator Lautenbaugh, I've heard a rumor that you may have at one time been an election commissioner. Is there any truth to that? (Laughter) [LB144]

SENATOR LAUTENBAUGH: I don't like to talk about it, but yes. [LB144]

SENATOR BLOOMFIELD: Okay. I keep hearing brought up the fact that you can go in and file your papers to run as a write-in. In my experience in our small counties, you don't have to file any paperwork. You go to your neighbors and talk to 10 or 12 of them and say write my name in that available slot and you can become a write-in candidate. Am I correct in that or...? [LB144]

SENATOR LAUTENBAUGH: If memory serves, I thought you had to file some kind of an affidavit and pay a fee to have your write-in votes counted at some point near the election. But I...I don't remember for sure. I'd have to check. [LB144]

SENATOR BLOOMFIELD: Yeah, I'd...I am pretty sure that we have had elections decided up there where a fee was never actually filed because the neighbors just simply wrote the guy in, in the blank provided on the ballot. But I could be mistaken there. I know I ran it one time as a write-in, but I decided to do that ahead and went ahead and paid the fee in an attempt to get my name on the ballot. But as just a write-in there is a place there. You can write in anyone you'd like without necessarily filing a fee, is my understanding. And I see you in consultation there. Have you come to a conclusion? [LB144]

SENATOR LAUTENBAUGH: Yeah, I believe you have to file an affidavit to have your signatures counted ten days prior to the election. [LB144]

SENATOR KRIST: One minute. [LB144]

SENATOR LAUTENBAUGH: And you have to reach a 5 percent threshold of signatures to have them counted. [LB144]

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SENATOR BLOOMFIELD: Okay. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Bloomfield and Senator Lautenbaugh. Senator Davis, you're recognized. [LB144]

SENATOR DAVIS: Thank you, Mr. President. I rise in support of Senator Scheer's amendment. Senator Lautenbaugh approached me a few minutes ago and had a question about NRD structure and the need for this. And I would say that in...certainly in the Sandhill counties, very sparse population, and there may be districts of...with 300 and 400 people in them. So the likelihood that this will happen in large parts of the state is fairly common that that could happen. But before we move on after we...if we pass this, this morning and before we move on, I would encourage Senator Brasch to sort of broaden the scope of this and look at what other districts might be affected by this type of legislation because there is really no sense in carving out certain rules for some election precincts but not for others or other election categories. So with that said, I rise in support of Senator Scheer's amendment. [LB144]

SENATOR KRIST: Thank you, Senator Davis. Senator Brasch, you're recognized. [LB144]

SENATOR BRASCH: Thank you, colleagues. And thank you to the senators who have spoken on this, Senator Bloomfield and Senator Davis and Senator Scheer. And, Senator Scheer, by wanting to add the NRDs, you had said that you didn't mind it for the nonpartisan races. Well, NRDs are nonpartisan races, I believe. Will you yield to a question, please? [LB144]

SENATOR KRIST: Senator Scheer, will you yield? [LB144]

SENATOR SCHEER: Yes, I will. [LB144]

SENATOR BRASCH: Are you aware that the NRDs are nonpartisan races? [LB144]

SENATOR SCHEER: Yes, that's the intent of the comment. My amendment dealt with nonpartisan. I do not have a problem in nonpartisan positions. And so, therefore, by adding this I think it's consistent with my views that I'd mentioned earlier. [LB144]

SENATOR BRASCH: And are you familiar with any ties in the NRD races that would bring this to your attention? [LB144]

SENATOR SCHEER: No, it came from the conversation we had on the floor this morning... [LB144]

SENATOR BRASCH: On the floor. [LB144]

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SENATOR SCHEER: ...and more relative to Senator Davis' comments than any. And it's more to the point that if we're going to do this, and I very well may support it, but if we're going to do it, I'd like to make sure that it's done in a manner that is as inclusive as possible. And if we know that the potential exists, literally, any race we have, Senator Brasch, has the technical capacity of having a tie vote. And if we have the ability to work on all of those rather than a select few of them, it seems to make sense to do a more broader legislative action than a smaller, narrow band. [LB144]

SENATOR BRASCH: Thank you, Senator Scheer. Senator Davis, will you yield to a question? [LB144]

SENATOR KRIST: Senator Davis, will you yield? [LB144]

SENATOR DAVIS: (Inaudible.) [LB144]

SENATOR BRASCH: Senator Davis, are you aware of tie races for the NRDs? [LB144]

SENATOR DAVIS: I haven't seen one, but I can certainly see the likelihood that that could happen. [LB144]

SENATOR BRASCH: I have no other questions. I am not opposed to FA182, but I have...I'm not aware of any races. And it happens, not just this one case as Mr. Richards, but according to NACO and others, it happens statewide. And the sheet that you saw here where records have been taken, these are not any NRD races. But if gaining your support by adding that to my bill, I guess it's some extra coverage. And, you know, at this point, you know, I will...I would like to take a vote on it. If other senators would like to join in with more questions they're welcome to. But I've no other comments or questions, just that we are trying to help make the system more fair and to modernize, to some extent, where we are not doing...drawing cards and hats and things like that but having a choice move forward. And Senator Bloomfield's question that, I believe, was answered, but people in a partisan race can be a write-in. I mean, they can write people in. The person who was not elected could choose to align with that person in a partisan race if you are looking down that road. But I do ask for your support on LB144. I have no other questions or comments. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Brasch. Senator Bloomfield, you're recognized. [LB144]

SENATOR BLOOMFIELD: Thank you, Mr. President. I have to rise in opposition to Senator Scheer's bill (sic). LB144 as introduced was a within the county idea. And our NRDs can span many counties making it a much larger voting area. I think I can go along with LB144 as I did coming out of committee, but I think when we expand it out to

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cover a much larger area, I'm going to have problems with it. Where we can keep it local and you're going to come around and tell me that NRDs are local races. One of our NRDs runs from just outside of Ponca down to and including a good share of Omaha. When you get into that vote, the people in Dakota County do not know what's going on down here, necessarily, in Omaha. I think when we move it into that big an area that we lose that local contact that you would have that is necessary for a write-in to be really effective. So I am going to oppose Senator Scheer's bill. And were it to pass, I may have problems with LB144. And I would yield my time to Senator Scheer, if he would like it, to change my mind. [LB144]

SENATOR KRIST: Senator Scheer, you're yielded 3 minutes and 30 seconds. [LB144]

SENATOR SCHEER: Thank you, Senator Bloomfield; thank you, Mr. President. In deference to Senator Bloomfield's remarks, NRDs do cover substantial areas of the state of Nebraska. There's no question; they do run large, large areas. However, those folks are elected via districts. And so the district would not run say, for example, from South Sioux City and take a portion of the northern Omaha area to the extent of that broad a base. At least I'm not familiar with any district that is quite that large. But having said that, I don't know that if the principle behind what we are doing in LB144 is, indeed, a noble principle that we would allow someone to run again that has tied in a race, how then can we look that individual in the face and say, yes, you tied, but because you're not in this race versus another race, you don't get the full effect of the law that was passed and you are now completely out? It just seems that...I like Senator Brasch's idea as I think about it. But then I look at its effect in just isolated areas. If it's something that is good in one race, I find it very hard to say that it can't be good or shouldn't be implemented in other races. Just because one's district that they're running for may cross a county line, and I have to tell you that, for example, in the Norfolk school board race, we're in two counties. And I would assume there are other school districts, a multitude of them that may run into two counties. And if we're allowing that to take place, then perhaps we need to, in deference to Senator Bloomfield, then we need to look at the rest of those races. Just because a area that is being elected is separated via a county line... [LB144]

SENATOR KRIST: One minute. [LB144]

SENATOR SCHEER: Thank you, Mr. President...is separated via a county line or spans multiple county lines shouldn't negate that individual's ability to have the same rights and responsibilities and challenges available to him or her that we are allowing under LB144. So I would appreciate taking a look and thinking realistically at what FA182 is trying to accomplish. It is simply just trying to accomplish the same fair mechanism that is being provided in LB144 to another specific race. And, yes, it has the capacity of crossing county lines. But I still think it's the right thing to do if we are actually going to address this problem. Thank you, Mr. President. [LB144]

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SENATOR KRIST: Thank you, Senator Bloomfield and Senator Scheer. Senator Brasch, you're recognized. [LB144]

SENATOR BRASCH: Thank you, Mr. Speaker. I would like to ask Senator Kolowski if he will yield to a question, please. [LB144]

SENATOR KRIST: Senator Kolowski, will you yield? [LB144]

SENATOR KOLOWSKI: Yes, certainly. [LB144]

SENATOR BRASCH: Senator Kolowski, you have experience with the NRDs, do you not? [LB144]

SENATOR KOLOWSKI: Yes, eight years. [LB144]

SENATOR BRASCH: During your eight years, are you aware of any ties or...what are your thoughts on this amendment? I would like your expert advice here. [LB144]

SENATOR KOLOWSKI: I am not aware of any ties in the Papio-Missouri River NRD, ever having an election in a tied sense. I don't know with the other...there's 23 NRDs in the state. I'm not sure where they might have been in the past with any of those elections. We could certainly try to find that out, perhaps, through the NRD office here in Lincoln. But I have no recollection of anything of that nature ever happening with the number of people that we have voting in the metro area, especially in the Papio NRD all the way up to Sioux City. [LB144]

SENATOR BRASCH: Thank you, Senator Kolowski. I have no other questions. [LB144]

SENATOR KOLOWSKI: Thank you. [LB144]

SENATOR BRASCH: What I am concerned about is because we do not have this apply to Board of Regents or State Board of Education races that this could be problematic with adding in an NRD where the Papio spans five counties. I would like to ask that before we take that move at this point that there be more research on frequency of this happening and to keep it simply at the point where we have it now to be with the...only in a county, city, village, or school district race. And I have no other questions. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Brasch and Senator Kolowski. Senator Scheer, you're recognized. [LB144]

SENATOR SCHEER: Thank you, Mr. President. In response to Senator Brasch's

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comment that, well, it hasn't happened in Senator Kolowski's eight years' experience on the NRD, which I can appreciate and I thank him for his service in that capacity, that was an eight-year stand. Looking at the information that Senator Brasch has provided us, we have four instances of ties in either a school board, city council, or a sheriff's race since the year 2010. We had one in 2000. There was a ten-year difference between those two entities having a tie. Previous to 2000, the next one was 1988, a 12-year span. As we look at NRDs specifically, because that's what my amendment deals with, in rural Nebraska we are losing population. Those areas, those districts are losing numbers. Those numbers will continue to dwindle and become smaller so that there is a true and meaningful thought in the extent that there will be a tie in an NRD race. It probably isn't a question of if; it is a question of when. And, regardless, if it's not for another 15 years, we are supposed to, as state senators, be looking at long-term effects of our legislative careers. How can we knowingly pass a bill that excludes others running for office when we can give those individuals that tie in a race the same opportunity and rights that we are giving others? Why are we making a county, a city, village, or school district, a selected group are above approach of any others that would be running for any type of office? Those folks that are running for those are no better or no worse, have no higher standing, no lower standing than others that are running for an elective office. When you run for an elective office, you are running obviously to get elected. And if this body feels that LB144 is the correct response to having ties in the primary and allowing those people to get on the general election ballot, why are we being only selective to those few races? That does not make sense from a policy perspective. I think we need to take a much broader view of what we're trying to accomplish with this legislation, be statesmen, be legislators, not being exclusive to what happened in this instance or in this isolated case. This is state policy. What we are doing is addressing races not just on the eastern edge of Nebraska. This statute covers all of Nebraska. It covers every municipality, every city, every village, and every school board. That's all across the state. If we're looking at a statewide problem, we should be addressing a statewide problem where we know they exist. FA182 acknowledges the fact that in an NRD at some point in time we will have the same thing happen. We should be allowing those folks, if they choose, to continue that elective process in the general election. Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Scheer. Senator Bloomfield, you're recognized, and this is your third time. [LB144]

SENATOR BLOOMFIELD: Thank you, Mr. President. If Senator Kolowski is available, I'd like to ask him a question. [LB144]

SENATOR KRIST: Senator Kolowski, are you in the Chamber and will you take a question? Sorry, Senator Bloomfield, I don't see him. [LB144]

SENATOR BLOOMFIELD: Okay. I was going to ask him about the district vote within

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the NRDs and there are some questions that need to be answered there. He isn't here. I guess I don't really know where to go from there. I was hoping he'd slip back in, but apparently he's not going to. So I still remain in opposition to FA182. Thank you. [LB144]

SENATOR KRIST: Thank you, Senator Bloomfield. Senator Chambers, you're recognized. [LB144]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, what this bill and the discussion indicate is that when we're dealing with matters of election, there are very important and sometimes complex issues hidden in what seems to be a straightforward, simple little bill. I would have thought of this as what I call a peewee when I first saw it. But as I listen to others discuss various aspects of it that never occurred to me, it's becoming in my mind something that is not so easy to say yea or nay to. If we are dealing with an election principle, it ought to be as broadly and generally applied as possible. If there are going to be exceptions, they should truly be exceptional. If the items that are to be excepted out of the general application can share traits with others that are not excepted out, the matter is not quite as clear-cut. What Senator Scheer is talking about, with all due respect, is not something I've ever had very much interest in at all. So I have to listen to the people who do have knowledge of and experience with these other entities of government. It once again underscores why I indicate that we all, if we have an opinion on an issue, should express that opinion. It would be good if we could listen when people are talking about something which ordinarily is not on our radar screen. Even when it seems that I'm not listening, I am. I have eyes with which to read. I have ears with which to listen. And I have a few brain cells that are not Teflon coated that can process both what I'm reading with my eyes and what I'm hearing with my ears. I'm going to support what Senator Scheer is presenting. His name is spelled S-c-h-e-e-r. I do not think of his proposal as being sheer, s-h-e-e-r, madness. There is a rationale for what he's presenting. I don't have any particular interest in any of the entities of government that are being considered, but I have a great interest in the principle that is discussed and its application. Whenever exceptions to a rule are propounded, there should be very careful thought given because the reasons given for numbers one, two, three, four, five may apply with equal force to six, seven, eight, nine, and ten. Those of us who are not knowledgeable need to be informed, and I appreciate the fact that this bill, which to me seemed as transparent as a windowpane, is not quite that simple and straightforward. I'm not suggesting that Senator Brasch is trying to pull a fast one. [LB144]

SENATOR KRIST: One minute. [LB144]

SENATOR CHAMBERS: It's just that I did not have as much information as I'm getting now. There is a way to decide the outcome of these elections other than by a coin toss, by drawing a straw, by pulling something out of a hat. But I'm not going to tell you what

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that is. Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Chambers. (Visitors introduced.) Still wishing to speak: Senator Murante, Senator Brasch, and Senator Davis. Senator Murante, you are recognized. [LB144]

SENATOR MURANTE: Thank you, Mr. President, members. Good morning. I am inclined to support Senator Scheer's amendment and I think I, for fear of my popularity in Gretna of falling into the gutter, I think I support what Senator Chambers has to say as well. But I have a little bit of a concern that...about how we're going about doing this. Adding political subdivisions to this bill through floor amendments on General File, I'm not sure that's the best way that we can be proceeding at this point. I would certainly be willing to volunteer, and I already have to Senator Scheer, that if we're going to take a look at the political subdivisions that out to be covered under LB144, and as Senator Chambers had stated whether it should be applied as broadly as possible, and my natural inclination right now is to say that it should be, that we should come down, sit down together, sit down with legal counsel, see if there are any potential of unintended consequences that we can avoid, do this as a thought-out amendment on Select File that we can all agree upon. I don't think there's that much difference right now between where Senator Scheer is and where Senator Brasch is. It's something that I haven't heard principled disagreements on the issue at hand. So I...that would be the course that I would strongly prefer rather than attaching amendments to Senator Brasch's bill over her objections and doing something that's contrary to what she had intended the bill to do and what she intended the bill to be. Again, I'll volunteer myself to help facilitate that conversation, but we'll see where we go from here. So thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Murante. Senator Brasch, you're recognized. [LB144]

SENATOR BRASCH: I want to thank Senator Murante for his willingness to help look closer at what impact may or may not occur with broadening the window here. When we modeled this legislation, it was off of the language from Section 32-1122. And this, the way it was written it does make them exceptional because the drafters, the policy makers, the diligence, the hearing, everything that we know encompasses legislation was following diligence, a public hearing, and that's how the original drafters put this bill together. That is why I question FA182 at this point without speaking to the NRDs to see the impact, the frequency. It is something that I believe they were not a part of the hearing at all or the NACO group to address that. And be it fair, more fair, a better solution, we are simply trying to address the tiebreaker situation for a write-in. There can be write-ins and there will be write-ins, and they'll follow the write-in process. And they will do the traditional campaigning, write-in campaigning to the general. But the primary here is what we would like to address. And you have actual situations that have

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been recorded, that have made some impact, and the difference most likely is going to take place in our communities where you have a smaller pool of voters, a smaller number of willing and available candidates. It could be broadened, I agree. But without looking into actual events, the people who do this, I did have...we had access here to Senator Kolowski. There's other NRDs that may want to voice in here, but they don't have the opportunity to do so. If we can move this bill forward, absolutely. You know, I would like some input other than on the floor here on who else can be and should be included. I do thank Senator Scheer for all of his comments. They are very, very thoughtful, and he has made some good points here. But before we write law into this and expand it at any point to go to the subdivisions and others, perhaps we should or could amend it as we move it forward. At this point, I urge you to cautiously, if you support FA182, to do so. LB144 has had research and time and others being able to input and voice their support. And there was no opposition. NACO was neutral in the fact that it has happened, but there's no record of what is happening. Senators, I do continue to ask you for your support on LB144. FA182 could be amended here. It is something that I believe spanning the counties I'm not sure. I'm not sure what all that affects. That's the reason I am hesitating on this, that it can change something and have unforeseen consequences, unintended. So thank you for your thoughtfulness, Senator Scheer, and I would love to have some discussion with you about this bill off the floor and your amendment and your other thoughts. I have no other comments. Thank you, Senators. And thank you, Senator Chambers, also for your insight that you have added to this, because I do believe that as frequently as it has happened, we are trying to help one piece, one part on the write-in and a coin flip. We're looking forward to having more discussion on this. Thank you. Thank you, colleagues. [LB144]

SENATOR KRIST: Thank you, Senator Brasch. Senator Scheer, you're recognized. [LB144]

SENATOR SCHEER: Thank you, Mr. President. I rise to talk more specifically about my amendment, FA182. It is very specific. It only handles NRDs. And based on the conversation, I do believe that we have a much broader and significant legislative approach that should be taken. One of my colleagues next to me brought up the fact that this does not have anything to do with community colleges. Those people are elected on a district basis. What happens if somebody from Southeast, a candidate in one of those districts, they have a tie? What about Northeast or Central or Western Community College? And so in deference to that, in discussing this with Senator Davis, I've looked on-line. Senator Davis has a more inclusive amendment to this bill that I think more aptly distinguishes what I've been trying to discuss on a narrow focus of NRDs that should be a wider approach. I will take this opportunity to withdraw FA182 and allow FA183 to be introduced and discussed. I believe it is a better amendment and should be considered very seriously. Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Scheer. FA182 is withdrawn. Mr. Clerk. [LB144]

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ASSISTANT CLERK: Mr. President, Senator Davis would offer FA183 to LB144. (Legislative Journal page 368.) [LB144]

SENATOR KRIST: Senator Davis, you're recognized. [LB144]

SENATOR DAVIS: Thank you, Mr. President. I introduced FA183 to broaden the scope of the election process so it would include all elections in the state, after talking about the NRDs. I brought that up. As I was thinking things through, I realized we have many other entities that are publicly elected--ESU boards, community colleges, hospital districts, and I think you can go on, some public power positions. So I think we need to put more thought into this process. I want to work with Senator Brasch on it and Senator Scheer. I think we can come up with something that will work for what she's trying to...her objective and for the goals that I have in mind with this. And I think that we probably need to do that by taking maybe a recess on the bill and talking to legal counsel, getting everything sort of set up so that we know we've got everything covered. This...I didn't really read this bill until this morning, which I apologize to Senator Brasch for that, but that's just the way it came about. And to me it's an important enough issue that we need to put the time and thought into it. So I'm...I've introduced the amendment. We can have some discussion on it this morning, but if it would be possible to move that on and then we can visit with Senator Brasch and legal counsel and talk about this tomorrow. [LB144]

SENATOR KRIST: Thank you, Senator Davis. Senator Avery, you are recognized. [LB144]

SENATOR AVERY: Thank you, Mr. President. I am really mystified by why we're spending so much time on this bill. This bill is a very simple, straightforward bill. It simply says that in certain races, and I happen to believe that these are the appropriate ones to start with, in certain races that when you have tie votes rather than have the outcome of that race to be determined by an arbitrary procedure like a flip of a coin or a drawing of a card that you simply say that the person who loses in that arbitrary procedure gets a chance, should they desire, to do a write-in candidacy in the general election. That's all it's doing. It is providing another avenue for candidates who are eliminated by an arbitrary procedure. I think that to expand that beyond what is in the original bill is unnecessary at this point. Why not advance the bill, let it become law, and find out how it works. My guess is you're not going to have a whole lot of instances where it's going to be necessary. Senator Brasch was kind enough to provide us with a printout of elections that resulted in ties that go all the way back to 1914. I'm unsure about where she got all this information, but this is...it's not something that I think we need to spend so much time on. But I would urge you to advance the bill in its present form, find out, let it become law, find out if it works and how it works. Then we'll know more about whether we want to expand it to other races. The committee thought this

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was worthy of your attention, and we advanced it with a strong majority. I don't remember if there was any opposition. I think Senator Karpisek might have been the only person to oppose it. At one point, I was considering this for consent calendar. Imagine that. I am going to vote for this bill and I am going to oppose any amendments. Thank you, Mr. President. [LB144]

SENATOR KRIST: Thank you, Senator Avery. Senator Chambers, you are recognized. [LB144]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I can understand Senator Avery's pique, p-i-q-u-e. But I'm not willing, once issues are raised...whether I ultimately agree with the way of dealing with them or disagree makes no difference in terms of what I'm going to say now. It may not be a good idea to say even with these issues just go on and pass into law and see what happens. If the issue is arbitrary determination of how some elections end, rather than try to itemize every type of election, why don't you do something about the methodology for making the determination of how the tie will be broken? Sometimes Occam's razor works. And that's where, if there are several possible remedies, you try the simplest one first. And William of Occam is the one who stated that principle in a much more elegant fashion than the way I've done it. But if you look at the way I dress, consider my overall appearance and physiognomy, you can see that very rarely am I in the presence of the elegant. I would not even know how to behave. I have had no lessons in elegance. I have read no books on elegance. I don't know anybody, as far as I'm aware of, who is or has ever been or intends to be elegant. However, when it comes to legislation, there are elegant ways to address whatever issue the legislation deals with. And despite the respect I have for Senator Avery as the Chairperson of the Government Committee, as a distinguished member of the Legislature, as an emeritus professor from UNL, and as one of the most distinctive and distinguished wearers of white hair atop his dome, I cannot agree that his suggestion is the one we ought to follow. Having people who are interested in an issue discuss it and try to reach an accord is one thing, but to say just pass it into law and see what happens is not the way it ought to be done. I'm going to tell you all how I think...how much time do I have, Mr. President? [LB144]

SENATOR KRIST: 1:40. [LB144]

SENATOR CHAMBERS: Are there any others after me on the board? [LB144]

SENATOR KRIST: Three to follow. [LB144]

SENATOR CHAMBERS: Then I'm just going to stop. And at some point, maybe on a different bill, I will tell you how I think this issue ought to be resolved. Thank you, Mr. President. [LB144]

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SENATOR KRIST: Thank you, Senator Chambers. Still wishing to speak: Senators Scheer, Conrad, and Murante. Senator Scheer, you're recognized. [LB144]

SENATOR SCHEER: Well, thank you, Mr. President. What I had to say is probably a duplicate of what I had to say. I'm interested in Senator Chambers' thoughts, so I will yield the remaining four and a half minutes, whatever I have, to get his input on the aspect of this bill. Thank you. [LB144]

SENATOR KRIST: Yield to who, sir? I'm sorry. [LB144]

SENATOR SCHEER: Senator Chambers. [LB144]

SENATOR KRIST: Senator Chambers, you've been yielded 4 minutes and 30 seconds. [LB144]

SENATOR CHAMBERS: Mr. President, members of the Legislature, thank you, Senator Scheer. But everybody may be sorry he did that. I don't come up here when the flag salute is stated every Monday. I don't come up here when the prayer is given. But the way to resolve the outcome of a tied election is to select a date on the calendar when the Legislature is in session and ask the two contenders which on this particular date how many members of the Legislature were in the Chamber on the Monday in question when the flag salute was given. There were three today. Or you could say how many are there when the prayer is given. The most I've counted is six and two of them looked like they were there through inadvertence. Often there are more people up there in the front of the room than there are out here. Yet there are senators who would fight to the metaphorical death to keep saying that flag salute and that prayer because they're afraid to jettison them and their fear is based on I don't know what. But it ought to go away. There are more ministers who don't want to come here and pray. Some have said publicly they don't want to pray to an empty Chamber. Well, they're not praying to the Chamber in the first place. Most of them say at the end of their prayer in the name of Jesus. Well, Jesus told him, if he read the book, the manual, the "Holly Bible," where two or three of you are gathered together in my name, there am I in the midst. So if there are two or three senators here, the important one, Jesus, is right here. But that preacher doesn't care about Jesus. That preacher wants to give a performance. And for some reason they think that praying over a group of legislators who don't care any more about what that preacher is saying than would the man in the moon. I can't speak for the man in the moon. Maybe the man in the moon cares a great deal, but based on my perception of the man in the moon there's no concern about what goes on down here on this earth. So that's how I would say resolve the ties. However, being completely serious and practical, look at the way the tiebreaker occurs. And if there is no rational way to do it, call another election. But that's not what I would recommend either. I'm interested in finding out what we are brought. And since I don't think anything will be done about the method for breaking the tie, those senators who are aware of other entities which are

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elected and could end in a tie, those items ought to be put on the list. And if not one of them ends in a tie, what harm is done? No harm is done. There would be no harm done if you said every election that ends in a tie will be... [LB144]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: One minute, Senator. [LB144]

SENATOR CHAMBERS: ...resolved by means of a coin flip. And then let this provision that Senator Brasch is bringing apply across the board. And if you don't have these larger entities ending in a tie or any of the others, there is a self-remedy provided in the law. And that's the Occam's razor approach that I would recommend if I were going to recommend one and expected or thought I'd be taken seriously. Thank you, Mr. President. [LB144]

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Conrad, you're next in the queue. [LB144]

SENATOR CONRAD: Thank you, Mr. President. Good morning, almost afternoon, colleagues. No surprise here, but Senator Chambers did indeed steal some of my thunder. As I'm listening to the debate this morning, I am wondering about alternative remedies and solutions and was hoping that Senator Brasch may yield to a question. [LB144]

SPEAKER ADAMS: Senator Brasch, would you yield? [LB144]

SENATOR BRASCH: I will yield. [LB144]

SENATOR CONRAD: Thank you, Senator Brasch. And can you tell me when you were researching this legislation or as part of debate at the committee level if we are all in agreement that the current method of dealing with tiebreakers, whether through cards or coin flips or otherwise, is indeed arbitrary, and then this write-in issue is presented, wouldn't it just be easier and cleaner to demand a runoff for any election ending in a tie? [LB144]

SENATOR BRASCH: In our very cash-strapped counties it would be an expense that we believe is not a necessary expense. Perhaps in the larger cities or towns they have a budget for runoff elections. And several states have implemented...they do runoff elections. That is a financial decision that needs to be considered on this. [LB144]

SENATOR CONRAD: Sure. And in that discussion, did you get any figures about what those costs may or may not be? [LB144]

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SENATOR BRASCH: We did not because, as we worked on drafting this bill, we used the same language the drafters had in the original legislation, and by having it only on the...you know, not specific to legislative, federal, statewide races, that that would be another entity, not the same, apples and oranges. [LB144]

SENATOR CONRAD: And can you tell me the year that the initial legislation was brought forward that you are...or roughly? It doesn't have to be exact. And while you're looking I'll tell you why I'm wondering is... [LB144]

SENATOR BRASCH: Okay. All right. [LB144]

SENATOR CONRAD: ...because if we're using kind of...we're building upon older public policy, we've had a lot of developments in terms of voting in recent years, whether it's through the utilization of mail-in elections or other things to help keep costs down. And I'm just wondering if maybe some of those modern advances had been taken to account that have happened since the original legislation was passed. So that's why I asked about the... [LB144]

SENATOR BRASCH: Okay. [LB144]

SENATOR CONRAD: ...timing of the original, if that was the policy underpinning for this. So I'm hopeful that whether or not this advances today in application of the other entities that Senator Scheer and Senator Davis have brought forward that maybe we just simplify matters and think about a runoff which removes arbitrariness from the process and would eliminate the need for this additional write-in component. Thank you, Mr. President. [LB144]

SPEAKER ADAMS: Thank you, Senator Conrad. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR408, LR409, LR410, and LR412. Mr. Clerk. [LB144 LR408 LR409 LR410 LR412]

ASSISTANT CLERK: Mr. President, some items for the record. I have a confirmation report from the Natural Resources Committee. Natural Resources has placed LB391, LB494, and LB844 all on General File. Notice of committee hearing from General Affairs, Urban Affairs. Amendments to be printed from Senator Chambers to LB382. Name adds: Senator Kintner to LB832; Senator Coash to LB748; Senator Smith to LB814. (Legislative Journal pages 369-370.) [LB391 LB494 LB844 LB382 LB832 LB748 LB814]

Finally, a priority motion: Senator Burke Harr would move to adjourn until Tuesday, January 28, at 9:00 a.m.

SPEAKER ADAMS: Members, you have heard the motion to adjourn. All those in favor

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indicate with aye. Opposed? We are adjourned.