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Rules Committee  
January 04, 2018

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The Committee on Rules met at 1:00 p.m. on Thursday, January 4, 2018, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on proposed rules changes. Senators present: Mike Hilgers, Chairperson; Paul Schumacher, Vice Chairperson; Burke Harr; Bob Krist; John Kuehn; Jim Scheer. Senators absent: None.

SENATOR HILGERS: All right, everyone, thank you. We'll get this committee hearing started. Thank you for your attendance today. This is...as you know, this is a hearing of the Rules Committee. I'd like to welcome every one here who's in person. I also believe that this is being televised, at least internally at the Capitol on closed-circuit television. I'd like to introduce our members. Senator Harr is not here at the moment, from District 8. I think he'll be...he's on his way. Senator Krist, from District 10, to the far left. The Speaker, Senator Scheer, from District 19. I'm Mike Hilgers, the Chairman of the committee, from District 21. To my right--the only one on my right--is Senator Kuehn from District 38. And the Vice Chairman of the committee, Senator Schumacher--who I believe is on his way--is from District 22, will be here when he arrives. I wanted to...the purpose of today's hearing is to consider rules changes that have been submitted by members for the Second Session of...changes to our permanent rules for the Second Session of this legislative session. We have received eight in the process that we used this time; it was very similar to what we did in the first session, albeit we had a little bit more time. If you...if the members were to recall last year, we only had about 48 hours or 72 hours in order to...from getting sworn in...a number of new members getting sworn in to submitting proposals to having the opportunity to be heard on those proposals. This year we provided the members, oh, about a month's notice to provide any requests or proposals to the Rules Committee. That we had a cutoff at five o'clock yesterday, at which time we made those rules...proposals publicly available and we are having the hearing today with the intent of having the permanent rules for consideration of the full Legislature on Monday. We have received eight proposals. My intent is to go through those proposals in the order in which they have been received, assuming that the senators are here to introduce those proposals. We will take public testimony. We have...do have green sheets here available; if you are intending to testify, please fill out a green sheet and give it to Kyle Upp, who is on the corner who is the staff...committee clerk for this committee. I forgot...I'm actually remiss to introduce; we have two pages today, Sam and Joseph, who will be

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helping us throughout this hearing. And also my LA, Beau Ballard, is also here. With that, Senator Schumacher, you're up, first up. Would you like to start?

SENATOR SCHUMACHER: Okay. (Laughter)

SENATOR HILGERS: Afternoon, Senator Schumacher.

SENATOR SCHUMACHER: Thank you. Sorry for being a couple minutes late. Members of the committee. I guess we do this just like everything else. I'm Paul Schumacher, I represent the 22nd District of the Legislature and I'm here to talk about proposed rule change number 1. Proposed rule change number 1 was approved last year by the Legislature and subsequently did not go into effect because...as a result of our lengthy discussion on rules. The way to resolve the issue was just not to make any changes in the rules, and we went on to just let it pend. It originates from a motion that was passed by the Planning Committee, now two years ago, Senator Campbell and Senator Gloor pointed out that the statute requires the Planning Committee to propose legislation. In its ten years, it has never proposed legislation but has gotten a lot of good information. And in proposing the legislation, you have the issue of, well, how does it get prioritized. And the suggestion was that it have the Planning Committee--just like the Performance Audit Committee, which is similarly created under statute--have two priorities. In the discussion we had last year, it was reduced to one priority. This year's Planning Committee renewed the request for one priority to be assigned to it. And that is the request before you. Now having said that, this is one of those things that does not have to be done immediately. Should the committee choose to defer this suggestion along with the others into the future and address it next year in a comprehensive rules review, I don't think that it would violate the motion that was passed by the Planning Committee to request a priority. There are several bills that could evolve once the Planning Committee does its duty, its statutory obligation, of proposing some comprehensive legislation--or some legislation of some kind--that it would be really handy to have the priority. And that way no individual member would have to donate their priority and also this...it would not impose on the Speaker's priority bills. So that's the request; basically do what we did last year. The world will not end if it doesn't...isn't done this year. And if it isn't done this year, I would suggest that it be...bring it back again next year...that somebody could. Be happy to take any questions.

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SENATOR HILGERS: Thank you, Senator Schumacher. Any questions for Senator Schumacher? Seeing none, thank you, very much.

SENATOR SCHUMACHER: Thank you.

SENATOR HILGERS: Are there any proponents wishing to testify in favor of Senator Schumacher's proposed rule change? Anyone? Seeing none, any opponents wishing to testify? Seeing none, anyone wishing to testify in a neutral capacity? As the testifier is approaching, we were not using the light system today. We're asking folks to generally try to keep their comments refrained to four or five minutes or so, but we're not under a formal clock, so. Please proceed.

NATHAN LEACH: Mr. Chairman, members of the Rules Committee, my name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I reside in Legislative District 21 and am here testifying in a neutral capacity on proposed amendment 1, brought by Senator Schumacher. I'm speaking on behalf of myself this afternoon. First, I would like to thank you for allowing citizens like me the opportunity to come before the Rules Committee and engage in this process. I'd also like to thank you, Mr. Chairman, and your staff for your patience and willingness to work with me over the past couple of days in answering questions about this process. And especially in sending me copies of the proposed amendments which are before this committee today. During the 2017 legislative session, the Legislature spent a record 49-some legislative days, nearly one-third of the entire legislative session, filibustering the adoption of its permanent rules. This time--all spent on the taxpayers dime--could have been used discussing and solving real issues that impact Nebraskans. The fact that this flagrant waste of time occurred is a serious issue. On December 12, I emailed members of this committee as well as the Legislative Clerk and requested that, unlike years prior, the time and place of the Rules Committee hearing be published on the Nebraska Legislature's Web site. Furthermore, I requested that the content of proposed amendments be published with more notice so that the press and public could review and engage, if they desired, in this hearing. I am grateful that the time and place of this hearing was published online, but disappointed and frustrated that so little notice was given as to what the actual amendments would be. Not only does this lack of notice dramatically disadvantage rural Nebraskans who might have a concern with a specific amendment but were given little time to plan to testify, but it also makes it extremely challenging for even a citizen in Lincoln and

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Omaha to participate in this process. One might argue that public participation in the rules process is unnecessary because the rules impact how lawmakers organize, not the public. This argument ignores, however, the fact that the rules provide much...most, if not all, provisions of how citizens can engage in the public lawmaking process. If a senator would have proposed a rule that changed the ability of Nebraskans to speak in a public hearing on every bill, for example, many citizens would likely wish to voice their opposition. Or if an amendment was proposed that eliminated the Agriculture Committee, as has been proposed in the past, it seems likely that citizens would wish to voice their opposition. However, with less than 24-hours notice--as was given to for today's amendments--being able to come before this committee to provide public feedback is a very real challenge for most, if not all, Nebraskans. It appears that lawmakers are hoping to avoid another major clash on rules this session, but it is also apparent that members have failed to produce much-needed reforms in how the Legislature adopts its rules; reforms that could fix the systemic and procedural issues that led to the unprecedented filibuster in the first place. This is irresponsible, because by avoiding these reforms the Legislature has opened itself up to the possibility of this happening again, if not this session, but sometime in the future. It may be politically convenient for politicians to pretend like wasting one-third of the session debating rules is okay, but I am appalled that this issue has not been treated with a the degree of seriousness and openness that it deserves. I hope, Mr. Chairman, that moving forward the Rules Committee and legislative leadership will consider these concerns and put a higher priority on public engagement in this rules process. Thank you for your time, and I would be happy to answer any questions.

SENATOR HILGERS: Thank you, Mr. Leach. Any questions for Mr. Leach? Seeing none, thank you for your testimony. Anyone else wishing to testify in a neutral capacity on Senator Schumacher's proposed rule change to Rule 5, Section 5? Seeing none, we have not received any written testimony on this particular rule, so that will close the hearing on the 1st rules proposal and move to the second, which is Speaker Scheer's proposed rule change to Rule 2, Section 1.

SENATOR SCHEER: Thank you, Mr. Chairman, colleagues. My name is Jim Scheer, S-c-h-e-e-r, representing District 19 in northeast Nebraska. The rule change I'm bringing before you is Rule 2, Section 1. And as a bit of historical data, the Clerk, Patrick, worked very diligently in looking some information up. Historically, before the very early 1980s, when we adopted our

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rules, the rules were always adopted for the biennium, not for a per-year basis. Not knowing exactly what happened in the early '80s that precipitated the change to go to a rule on a per-annual basis, it just seemed to me much more prudent and workable to adopt our rules on a biennium basis. We are elected on a biennium basis, the same people are working for the two-period year (sic--two-year period), it seems to me to be redundant to have to adopt the same rules or work with changes mid-term in a biennium. And so what this really is doing is taking the rules back to its original context of adopting them on a biennium basis. I'd be happy to answer any questions. And I also thank the Clerk for his work in developing this as well.

SENATOR HILGERS: Thank you, Speaker Scheer. Any questions for Speaker Scheer? Senator Krist.

SENATOR KRIST: Kind of following on with Mr. Leach's comments; would you envision just a dialog now, I don't know if you've thought this through, but can we...if we're working on a two-year basis, can we operate...I mean, you're the Speaker and you know the scheduling process better than any of us. Can we operate and do something for a minimum of three or four days in order to have time to advertise these rule changes and adopt a set of rules at the beginning of week 2, so that we'd have a weekend in between? Is that possible?

SENATOR SCHEER: You know, sure, anything is possible. And I think it would be more advantageous in the longer session, Senator, than the short session. Where we find ourselves in a 60-day session, I would find that problematic because it does take additional time up. That's really unnecessary because we've already adopted rules as a group the year before. Doing that on a...the first...if this were adopted and doing it on the first part, certainly I don't see that as necessarily a problem. And I think historically, the first time Rules meets on a biennium we have always had a weekend interim before having hearings, so I don't think that would be necessarily a change in practice or procedure.

SENATOR KRIST: And then my other question; would you envision that if we...we could stop this hearing right now and just say we're going to do this and we're done with all the rest of it. I mean, would you think that that was going into place this year, or would it be adopted by this body for the next biennium?

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SENATOR SCHEER: You would adopt it as part of the rules change and we don't adopt the rules change, so it technically would go into effect next year because you can't retroactive something. And we're already in this second year of the biennium, it clearly states we have to adopt rules so...

SENATOR KRIST: Okay.

SENATOR SCHEER: ...consequently this would go into effect. The problem would be is if we don't do it this year, if we wait until next year, my concern is once we adopt the rules then it really is perhaps somebody could question it would be for the next biennium because the original rules stated that it was on an annual basis.

SENATOR KRIST: That in essence is my question, because you're always...

SENATOR SCHEER: Yes.

SENATOR KRIST: Thank you.

SENATOR HILGERS: Thank you, Senator Krist. Any other questions for Speaker Scheer? Seeing none, thank you, Mr. Speaker. Anyone wishing to testify as a proponent in favor of Speaker Scheer's proposal?

NATHAN LEACH: Mr. Chairman, members of the Rules Committee, my name is N-a-t-h-a-n L-e-a-c-h. I reside in Legislative District 21, and am here testifying in support of proposed amendment number 2, brought by Speaker Scheer. I am speaking on behalf of myself this afternoon. First I'd like to thank the Speaker for proposing this amendment. Until Monday of this week, I had always mistakenly thought that the Legislature adopted the permanent rules during the 90-day session, and then those rules would carry over for the duration of the 60-day session as well. So when I saw the legislative agenda for yesterday, I realized that I was mistaken. And so, I immediately began drafting an amendment almost identical to the one before us now that would implement that practice. After sending it on to you, Mr. Chairman, I was pleased to hear it was already being proposed. This amendment is a good step in ensuring the Legislature does not

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get bogged down in controversial rules amendments every single session, especially during the shorter 60-day session. Additionally, if the body elects its officers, sets its committee membership, and even has carry-over legislation that goes from the First Session to the Second Session, it makes perfect sense that the permanent rules would be treated the same. As you consider this change to Rule 2, Section 1(a), I would like to encourage you to also consider one of these two procedural changes to this subsection as well. These changes would make it much less likely for the body to find itself in the kind of debacle that it did last year. First, by removing the requirement that the temporary rules be adopted, and instead inserting language that provides that, quote, the rules of the preceding session shall be in effect as temporary rules until such time as the permanent rules are adopted, unquote, the Legislature could avoid a situation in which the temporary rules are held hostage by a member filibustering or proposing amendments to the temporary rules. Furthermore, this would ensure that some system of rules is always in place, removing the need to continually extend temporary rules and resolving the question of what the body would do if members failed to reach a compromise and adopt...and fail to adopt the temporary rules...the permanent rules, excuse me. Second, the Legislature could remove the requirement that the rules must be adopted every session--or if this amendment were to be adopted, every 90-day session--and instead provide that the permanent rules be just that: permanent. An example of how that amendment could read is, quote, the motion to adopt permanent rules and amendments to that motion shall require a majority vote of the elected members--added language--the permanent rules shall be in effect until such time as they are amended, pursuant to Rule 2, Section 2. In all matters not covered herein, the Legislature shall decide as to the procedure to be followed, the same as required of the concurrence of the majority of the elected members, unquote. Of course if this amendment were to be considered, one would also need to consider lowering the 33-vote threshold to adopt amendments to the permanent rules down to 25 votes. The benefit of this change, however, would be that members would no longer be able to propose rules amendments directly onto the floor when considering changes to the rules. All amendments would be required to be referred to the Rules Committee, and then the Speaker would be given the discretion to schedule the proposed rule change. This would also make it procedurally impossible to relive the 49-day rules standoff that this body experienced last year. This system is also a system used by the U.S. Senate and many legislatures across the United States. Again, I encourage you to support proposed amendment 2, and I also

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encourage you to consider one of these two additional changes. Thank you, Mr. Chairman, and I would be happy to answer any questions.

SENATOR HILGERS: Thank you, Mr. Leach. Any questions for Mr. Leach? Seeing none, thanks for your testimony. Any other proponents wishing to testify in regard to Speaker Scheer's proposed rules change? Good afternoon.

JUSTIN OTASKI: Good afternoon, Mr. Chairman, members of the committee. My name is Justin Otoski, and that is O-t-o-s-k-i. I reside in District 21 and I am speaking in support of proposed rule 2. We in Nebraska have a way of doing things, an efficient way; a manner that makes sense. That is what makes our Unicameral unique and better serves the people. We simply conduct ourselves differently and this is what makes us proud. This amendment would make the short amount of time that our lawmakers have to serve the people more efficient. Last session, you spent more than one-third of the peoples' time debating rules. That was time that could, that should, have been spent on fixing things like our broken corrections system, or improving our education system, or many other things that matter to everyday Nebraskans. We, in Nebraska, expect our lawmakers and public servants to be effective and efficient in making laws and serving the fine people of Nebraska, not wasting the peoples' time on procedure. This amendment would ensure that our lawmakers would spend their time making the laws, serving the public. I thank you for your time and I am open to any questions.

SENATOR HILGERS: Thank you, Mr...Otaski?

JUSTIN OTASKI: Otaski, yes, sir.

SENATOR HILGERS: Otaski. Thank you for coming down this afternoon. Are there any questions for Mr. Otaski? Seeing none, thank you, very much.

JUSTIN OTASKI: Thank you.

SENATOR HILGERS: Anyone else wishing to testify as a proponent for Speaker Scheer's proposed rules change? Seeing none, anyone wishing to testify as an opponent? Seeing none,



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anyone wishing to testify in a neutral capacity? Seeing none, we have no letters regarding that second rules proposed change. That closes the hearing on the second change, which brings us to the third which is a proposed rules change by Senator Wishart, related to Rule 5, Section 4. Afternoon, Senator.

SENATOR WISHART: Good afternoon, Chairman Hilgers, members of the Rules Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the great 27th District in west Lincoln. I'm here today to propose a change to the Legislature's permanent rules. Specifically, the change I am proposing is to Rule 5, Section 4(e) to read: the introducers of all bills must submit a statement of intent for each bill to the appropriate committee chairperson within 24 hours of the bills official reference to committee. The statement of intent should discuss clearly and completely the purpose and effects of the bill. I'm proposing this change to the rules for several reasons. First and foremost, accessibility to the public. Bills vary in length from one page to several hundred pages. Providing a statement of intent following the bill's introduction inside of 24-hours before the hearing will give the public more time to understand the bill and the introducer's intent and will give the public a chance to reach out to the introducer if there is a need for clarification. Secondly, this change will give state agencies and the Legislative Fiscal Office more time to assemble the fiscal note if applicable. Frankly, I'm surprised that this isn't already a rule. And I'd be happy to take any questions.

SENATOR HILGERS: Thank you, Senator Wishart. Any questions? Senator Krist.

SENATOR KRIST: Why not just require the letter of intent to accompany the bill when it's introduced to the Clerk?

SENATOR WISHART: You know, we'd considered that. We think it's more appropriate to wait until the bill is referenced to committee. But, I'm...I'm happy to look at something else if this doesn't work for you.

SENATOR HILGERS: Thank you, Senator Krist. Any other questions? Seeing none, thank you, Senator Wishart. Anyone wishing to testify as a proponent for Senator Wishart's proposal? Seeing none, anyone wishing to testify as an opponent? Seeing none, anyone wishing to testify

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to neutral capacity? Seeing none, we have no letters regarding the third proposal. So that closes the hearing on proposal number 3. Which brings us to proposal 4, which is a proposal from Senator Watermeier relating to Rule 10. Good afternoon, Senator Watermeier.

SENATOR WATERMEIER: Good afternoon. Chairman Hilgers and Rules Committee, for the record, my name is Dan Watermeier, W-a-t-e-r-m-e-i-e-r. I am here today to introduce a change to Rule 10 which deals with the legislative election contests and challenge...and qualifications challenges. I've introduced a companion bill, LB744, which addresses statutory changes to these challenges...changes and challenges. Last year, the Executive Board created a special committee to consider an election challenge to the qualifications of Senator Chambers. As a special committee who worked through the process, we identified instances where it would have been helpful to have greater clarification regarding both procedural issues and substantial legal issues. Once the final report was adopted, I asked staff to work on the rule and statutory changes so that if there was a future elections or qualifications challenge we would have made the process clearer for the challenger, the respondent, and the special committee. As proposed, the rule change covers the process and the procedures that the Legislature would follow in an election or the qualifications challenge; for example, the committee selection, the discovery, the committee proceedings are all in the rules. The major legal issues are removed from the rules and would be placed in statute pursuant to LB744. Specifically, LB744 creates the Legislation (sic: Legislative) Qualifications and Elections Act with nonlegislative elections challenge provisions for meaning in the general election statutes. I'd be happy to answer any questions but I did ask Patrick O'Donnell, the Clerk, to come up and share with him what we had researched this summer. It was quite an extensive process and I really want to thank the Clerk because he put a lot of work into this. It's kind of a split process that we have to follow. And there will be questions about how it's all going to work out. And honestly, we're changing something that we haven't talked about in a long, long time, so I think it needs to be addressed.

SENATOR HILGERS: Okay. Thank you, Senator Watermeier. Any questions for Senator Watermeier? Seeing none, thank you, Senator Watermeier. You said the Clerk...

SENATOR WATERMEIER: Yep, the Clerk will be behind me here.

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SENATOR HILGERS: All right.

SENATOR WATERMEIER: I'd allow him to come up first.

SENATOR HILGERS: Yeah, that's fine. Afternoon, sir.

PATRICK O'DONNELL: Mr. Chairman, members of the committee, just a little background. I don't want to belabor this because we can talk about it in a different setting. But those of you who were close to the election contest last year, Senator Kuehn, Speaker...

SENATOR SCHEER: Excuse me. If you could introduce yourself.

PATRICK O'DONNELL: Mr. Speaker, thank you. I'm Patrick O'Donnell, O-'-D-o-n-n-e-l-l, Clerk of the Legislature. My transcribers are very grateful for that (laughter). I think it would be fair to say that there were a number of times once the qualifications challenge came to the Legislature that there were issues that we had not dealt with before. Prior to last year, there had been election contest proceedings before the Legislature. I will tell you, if you were to look at laws that exist today, proceedings as it relates to a legislative seat are intertwined with election contest proceedings for any other office, including local elections. That's a bit problematic and it became a little difficult to try and sort through what was applicable to a legislative proceeding versus something else. Also note that Rule 10, that Senator Watermeier addressed and is part of this rules consideration, was something that was adopted back in the...I want to say the early '90s, long after the election contest proceedings that are statutorily set out were created, so there was never any rhythm or any symmetry between those two actions. In fact, there today exists...there is no statutory sections that deal with the issue of qualifications challenges before the Legislature. The constitution says that you make the decisions as to the qualifications of your membership. The only guidance that we have in terms of how we determine that is found in Rule 10. In going through the process of dealing with the election, the qualifications challenge last year, it became clear that some harmony was needed, some clarity was needed. To that end, and I want to thank Senator Watermeier who was very kind in thanking me, but Mr. Brown, the Assistant Clerk, Janice Satra, legal counsel to the Executive Board, and Amara Meyer, who was then a law clerk in my office, is now the legal counsel to the Business and Labor Committee,

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were--especially Amara--were instrumental in putting this work together. Let me say this to you. The...our intent was not to substantively change law, so a lot of what is contained in LB744, the piece of legislation that Senator Watermeier talked about and was introduced yesterday, is reflective of current law but I think it provides...well, the first thing it does, it sets aside and places in Chapter 50, which is a legislative article, sections applicable to election contests and qualifications challenges before the Legislature. So we're creating a whole separate section of law that is applicable only to the Legislature. It gets rid of that trying to read what's applicable to other statewide elections. The other thing I'd say to you is that we tried, and Amara spent a lot of time looking at what other states have done, and we ultimately made the decision that provisions that are substantive in nature that we thought required the authority of a state statute were better placed in the statute. So there are provisions that were in existing Rule 10 that we actually incorporated into the proposed legislation. We then took things that are both in state statute today, as well as Rule 10, that are what I'd characterize to you as process-related questions and incorporated them into Rule 10. And that's what you have before you, okay? Let me stop there and say one last thing and that is that obviously doing LB744 and not doing Rule 10 doesn't make a lot of sense, but I'm not sure that we should do Rule 10 before LB744 is considered by the body. You can discuss that in your Executive Session. I might mention to you, though, that unless we do make changes as contemplated by LB744 and Rule 10, we would still be bound by existing law as we have it today, as well as Rule 10 as currently configured, so there may be discussions and reasons as to why you want to proceed with one or the other. I'll finish my remarks there, Mr. Chairman. I don't need to belabor this. Both the rule and the proposed legislation were shared with the members of the Executive Board. The board actually introduced the bill. So there's been some review by some members, and that's not an endorsement of the legislation, but at least it's been under some scrutiny by some of the membership. I'll stop there, Mr. Chairman. Be happy to answer any questions.

SENATOR HILGERS: All right. Thank you very much. Are there any questions? Senator Krist.

SENATOR KRIST: So let's talk logistics and chronology. As I understand the rules that exist today, there's nothing that would prohibit the Chairman from convening a Rules Committee after this bill is read and is approved on the floor of the Legislature. Is that (inaudible) correct?

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PATRICK O'DONNELL: The Chairman of the Rules Committee convening a meeting of the Rules Committee?

SENATOR KRIST: After LB...

PATRICK O'DONNELL: LB744.

SENATOR KRIST: ...is signed or is brought (inaudible).

PATRICK O'DONNELL: No, there would be nothing that would prevent the Chairman from doing that.

SENATOR KRIST: So we could essentially allow the LB to be heard on the floor and then come back and look at that change...

PATRICK O'DONNELL: Sure.

SENATOR KRIST: ...as a companion...

PATRICK O'DONNELL: Sure.

SENATOR KRIST: ...and still get it, with the Speaker's scheduling power, get it back on.

PATRICK O'DONNELL: Absolutely. And I...and, Senator, in further response to your question, it's not unprecedented for this committee to put a delayed effective date on a proposed rules change. As I remember, we did some of that with the Redistricting Committee when we were talking about that stuff. So with your direction and the body's concurrence, we could make this proposed change effective with the convening of the 2019 Legislative Session.

SENATOR KRIST: But in essence this, by itself, if we pass the rule, is a companion with the law. So to say that this goes into effect, we'd have to put a contingency clause on this to say this rule does not go into effect unless LB750 (sic)...what did you...

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PATRICK O'DONNELL: Yeah. Or alternatively, if LB744 is not dealt with this year, body doesn't endorse it, I'd suggest the Rules Committee can come back next year and we simply strike the work that you did this year, even with a delayed effective date. I mean that's a possibility, too, it seems to me, so.

SENATOR KRIST: Okay. Thank you.

PATRICK O'DONNELL: Uh-huh.

SENATOR HILGERS: Thank you, Senator Krist. Any other questions? I have one question. Can you speak a little bit on the procedure of proposed Rule 10, which I take is sort of more of the...as you described, it's sort of the...how the process should work once it's an issue.

PATRICK O'DONNELL: Process piece, yes, sir.

SENATOR HILGERS: Right. Is that...how much is that...can you just speak a little bit about the history of what informed this procedure? Was it specific to the experience with the challenge with Senator Chambers or is it pulled from best practices from other jurisdictions or other experiences in Nebraska or a combination of all of the above or...?

PATRICK O'DONNELL: I think it's fair to say it's a combination of the above. But bear in mind, Senator Chambers' was the first qualifications challenge, at least during my tenure here at the Legislature. It's come up from time to time but we never actually had an individual file a qualifications challenge, so this was a case of first impression. So what you have before you are elements of existing Rule 10 that was adopted in the '90s. You certainly have what is considered our best thinking as it relates to our research around the country. And, you know, we wanted to be fair to individuals, but we also thought reaching a resolution relatively quickly is important. You know, it's...I don't think it's fair to either the challenger or the incumbent member to have a cloud hanging over the head of the individual who is actually casting votes. And so with that in mind, we've actually, and I'd have to defer to her more on this, but the time frames that we have suggested that are mostly laid out in the rule contemplate action no later than mid-February, as I recall, even with a late session starting date. Okay? We have a calendar that I got to share with

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you at some time. It kind of lays all that out but...so there, you know, expediency was also part of our discussion and thought that was a good idea.

SENATOR HILGERS: Thank you very much.

PATRICK O'DONNELL: Yes, sir.

SENATOR HILGERS: Any other questions? Seeing none, thank you for your testimony.

PATRICK O'DONNELL: Yes, sir.

SENATOR HILGERS: Anyone else wishing to testify as a proponent? Senator McCollister.

SENATOR McCOLLISTER: Thank you, Mr. Chairman, members of the committee. My name is John McCollister, M-c-C-o-l-l-i-s-t-e-r. And I was a member of the Challenge Committee last year, the residency (sic--Qualifications) Challenge Committee last year. So I have some understanding of how the process worked last year. The only issue that I would come up with on this suggested draft from Senator Watermeier is Section 1, which is the committee selection. The concern I have with this particular item is that it indicate seven members to participate in this process. And why it's seven, I don't know. There are, of course, nine members of that committee. And so, in the selection of those seven members, might be problematic in my view. Of course, last year, when we had the challenge, Senator Larson chose not to participate and the other member of the committee was Senator Chambers. So, obviously, he wasn't a suitable member. So, I would simply suggest that we put a number of nine on that unless some member chooses not to participate.

SENATOR HILGERS: Thank you, Senator McCollister. Any questions for Senator McCollister? Speaker Scheer.

SENATOR SCHEER: Thanks for your comment. Would it be maybe more appropriate just to say that the membership could be up to nine so that way it's...because if you say nine, you got to have nine so you have got to go out the general...

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SENATOR McCOLLISTER: I'd...that would be great.

SENATOR HILGERS: Thank you, Speaker Scheer. Any other questions for Senator McCollister? Seeing none, thank you, very much.

SENATOR McCOLLISTER: Thank you.

SENATOR HILGERS: Anyone else wishing to testify as a proponent for this proposed rule change? Seeing none, anyone wishing to testify as an opponent? Seeing none, anyone wishing to testify in a neutral capacity? Good afternoon, Mr. Leach.

NATHAN LEACH: Mr. Chairman, members of the Rules Committee. My name is N-a-t-h-a-n L-e-a-c-h. I reside in Legislative District 21 and am speaking in a neutral capacity on proposed rule amendment number 4 introduced by Senator Watermeier. My chief concern about this rules amendment is the possibility that once it leaves this committee that the members could filibuster this proposed rules amendment. And so I wanted to note that when former Speaker Galen Hadley of Kearney was term-limited out of the Nebraska Unicameral in 2016, he voiced sincere concern about the level of obstruction within the Legislature. He pointed out that the body had had 24 cloture votes that year. The year before the Legislature had 13, in 2014 we had 9, in 2013 they had 6, and in both 2012 and 2011 we had 3. He was quoted as saying: we are changing, we're going to have to decide if we want to continue this. He warned that Nebraska's unique Unicameral experiment was looking less like Nebraska and more like Washington D.C. This past legislative session, a majority of lawmakers voiced legitimate concerns about over-obstruction in our Legislature. Unfortunately, rather than come up with workable solutions, partisans in the majority proposed amendments that endangered the very fabric of what makes our Legislature nonpartisan, such as the nonpartisan floor ballot vote for leadership. And as a result, the minority forced the body to debate these proposals, again, on the taxpayers dime, for an unprecedented one-third of the legislative session claiming that these proposals warranted extensive debate. That debate went nowhere, and finally after adopting the permanent rules, we are now in a position where we must decide how to move forward with our legislative issues. I believe that nonpartisan compromises exist that respect the rights of all members while making obstruction more difficult. If this committee and lawmakers allow this debate to go unresolved, these



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concerns will only fester and could reignite fiercer before...fiercer than ever before in 2019, 2020, or sometime in the future. I believe that the best way forward is a healthy and engaging conversation and I believe that Nebraskans expect our lawmakers to work together and not kill important conversations for political convenience. I don't want to take too much time, so, I just wanted to read an excerpt I found. In his introduction on his topic of parliamentary law, General Henry M. Robert, who is the original author of the well-known manual on Robert's Rules of Order, wrote in his 1975 commentary entitled "Parliamentary Law," quote, where there is a radical difference of opinion in an organization, one side must yield. The great lesson for democracy is to learn is for the majority to give the minority a full, free opportunity to present their side of the case. And then for the minority, having failed to win a majority to their view, gracefully to submit and to recognize the action as that of the entire organization and cheerfully to assist in carrying it out until they can secure its repeal. It is extremely important in our Legislature that we respect the rights of the minority, but also respect the rights of the majority to have the ability to adopt its will without the minority obstructing that too far. It's a fine line. And I believe that with the onset of term limits, with more money in our politics, and also some other factors, we've come to a place where that line has shifted. And so, I just wanted to say I think it's important that cloture is still at 33 votes, but I would encourage this committee, not necessarily to adopt these rules, but to consider rules to make it harder for members to obstruct business. And some of those ideas might be prohibiting debate that is not germane to the question before the body, that's a rule that many legislative bodies use to make it more difficult for people to obstruct. Clarifying when the rule against motions made for dilatory purposes is enforced, that also would make it much more difficult for someone to effectively filibuster things in the Legislature. And another example would be an amendment to the rule on the motion to reconsider, so that it can't be used the way it is used now without its intended purpose; for example, abstaining to vote and then moving to reconsider is not the parliamentary purpose of that motion. But my purpose in what I'm trying to get across here is I think there are sincere nonpartisan solutions for some of the concerns that were brought up last session on the floor. And unfortunately, I don't think we had a conversation on the floor about actual workable solutions and instead got bogged down in whether or not it should be 33 votes for something like that. I think keeping cloture at 33 votes is acceptable, but there are ways that we can make filibustering more difficult. And I hope that we can, moving forward, at some point have a

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conversation about ways to do that. Thank you, Mr. Chairman. And I would be happy to answer any questions about that.

SENATOR HILGERS: Thank you, Mr. Leach. Are there any questions? Seeing none, thank you for your testimony. Anyone else wishing to testify in a neutral capacity as to Senator Watermeier's proposal? Seeing none, we have received no letters regarding that proposal, so that closes the hearing on proposal 4. Let's turn to proposal 5, which is a proposal from Senator Kuehn relating to Rule 5, Section 4. Afternoon, Senator Kuehn.

SENATOR KUEHN: Thank you, Chairman Hilgers, colleagues, members of the committee. I am John Kuehn, J-o-h-n K-u-e-h-n, and I represent the 38th Legislative District in south central Nebraska. I am here today in my capacity as Chairman of the Performance Audit Committee, suggesting a rule change to Rule 5, Section 4 that pertains to much of the information that we have found over the last two years as the Performance Audit Committee has followed its statutory obligation for performance audits of the tax incentive programs that have been passed in previous years by the Nebraska Legislature. Anthony Circo with the Performance Audit Office--who is the Legislative Auditor who has the responsibility of conducting the performance audits of the tax incentive programs--will be following me. The language is language that is his and is language that he has worked with in consultation with the Performance Audit staff and myself with regard to how we actually are able to accomplish our statutory responsibility to conduct performance audits of the tax incentive programs. So, what the proposed rule does is creates a new section to Rule 5, Section 4(f). And it would apply only to proposed economic development tax incentives or bills that would seek to amend the existing economic development tax incentives. And essentially creates a logic chain--as it's referred to--or a secondary intent that must be filed 24 hours prior to the bill's hearing--a number which I think is to conform with the existing requirement for the filing of the statement of intent--that would require the introducer of the Legislation to specifically identify their ultimate policy goal as well as metrics and benchmarks for that goal. The purpose being that there is a clear legislative intent by the introducer of the legislation and a legislative record that would facilitate the later audit of that performance...that incentive to ensure whether or not the incentive is meeting the intentions of the original introducer. One of the challenges--and we discussed this at length at the Legislative Council meeting this fall--is that as the performance audit staff goes through to meet the

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obligations of the legislative performance audits, identifying what the actual objectives and measurable metrics were has proven to be a challenge. And so when we answer many of these fundamental questions--which we all know have a significant price tag associated with them, to the hundreds of millions of dollars--of the baseline question: are they working as intended or not? We're forced to look at a wide variety of different areas outside of the statute to even define terms to answer that fundamental question. So this would create clarity going forward for any proposed changes and any new economic development tax incentives that would allow the statutory obligation of the Performance Audit Office to actually answer that question and complete our audits in an objective fashion. So, with that, I'm happy to answer any questions. Anthony will be behind me to discuss specifics about the bill, how it would work, and as well as from the Performance Audit staff perspective about how this would facilitate better information for the Legislature, so.

SENATOR HILGERS: Thank you, Senator Kuehn. Are there any questions? Seeing none, thank you, very much. Good afternoon.

ANTHONY CIRCO: Good afternoon, Chairman Hilgers, members of the committee. My name is Anthony Circo, C-i-r-c-o. And as Senator Kuehn said, I am a legislative performance auditor and I share responsibility for doing tax incentive performance audits. This comes from, obviously, recommendations from our previous two tax incentive audits. Hopefully everyone had a chance to read those and see what that is all about. This will improve evaluations through setting clear legislative expectations for us to evaluate, as Senator Kuehn had said, but it also allows the office to organize data acquisition or creation beforehand. One of the big problems that we had in the Advantage Act was we didn't know where all of the data was going to come from to try to answer all these questions. And some of that data acquisition took a lot longer than we had expected. So if we know beforehand what the goals and metrics are, we can figure out what data we may need to answer those questions and begin that process of acquisition and creation. In practice, we would like for this to be on the books now, however we do not intend to enforce this this year. There are bills that have already been introduced that would possibly qualify for this. We don't want to burden anybody this early in the session. And also we would like to give time to educate members on how the process will work, what the expectations are, and that sort of thing. We will also be creating a guidance document to help with that as well. We

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would be willing to present at any Legislative Council meetings as well, to go along with that education, and work with individual senators as bills are introduced. So, in practice, Senator X would introduce a bill. The LAO would work with Senator X to develop the logic chain that was mentioned, which details the overall policy goal or goals of the bill, the specific chain of events the bill is intended to have, how those effects will be measured, and how much of an effect is considered to be a success. The results of the logic chain process after working through with the senator would then be put together in the performance statement, which would be introduced alongside with the legislative intent. And again, we wouldn't be doing it for this year but have it in place so we can educate for next year. Let's see...the overall goal is to improve and clarify legislative expectations for tax incentives. The current goals and expectations, as were mentioned, are vague and limited and in very many cases not useful. Performance statements can be as detailed as the introducing senator would like, but can be as simple as this following example which is only three sentences long. The bill is intended to increase, for example, competitiveness in high-tech industries. Competitiveness would be measured by total employment and the number of new firms. We intend to increase high-tech employment by X percent--10 percent--in five years and increase the number of high-tech firms by 5 percent. So, it could be that simple or it could be as complicated as you would like for as many goals as you would like to address, so. The overall point here is that any amount of increased specificity of expectations will be helpful to us as we continue our process of evaluating these tax incentives. So, if you have any other questions, I'd be happy to answer them.

SENATOR HILGERS: Thank you, Mr. Circo. Any questions? Senator Krist.

SENATOR KRIST: We have discussed in here, over my time, many ways of changing the fiscal note process. The realization that we have a very static fiscal note process that tells us what things costs, not necessarily what it saves or what the investment will bring back to us. What I'm hearing in very similar to, in part and parcel, what GSA does on a federal level where the measurement is inflicted at the beginning of the process so that measurable outcomes and metrics are established during the process of the bill passage. Not that anybody reads it at the federal level, but that's what's supposed to happen. I would think that this would be a great step in terms of making the fiscal note process and the evaluation--particularly when there's this amount of money involved--a dynamic fiscal note process and a measurement that can be used.

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And I would hope that both the fiscal staff and performance audit in the next few years could marry their efforts and look at that dynamic process that's used in other states as well as the federal government. I think it's great to set that goal and that standard up, I think you're asking for a lot of work, but I think it's going to require that kind of work to put it forward. So, I just want to make sure I put on the record that I think that this is probably part of what those that will come after me, in my time here, will find is a necessary dynamic fiscal note kind of process...assessment process where we're not grabbing at straws and hoping something will happen. And I think we would find, if we looked at those measurements, if you use Hadley's notes from years past and the things that we've seen that some of these have cost us a heck of a lot more money than we ever thought they would have cost us. And we probably would have seen that if we would have gone through some of this. So, it's really not a question, I wanted to get on the record. Thank you, very much.

ANTHONY CIRCO: Of course.

SENATOR HILGERS: Thank you, Senator Krist. Senator Harr.

SENATOR HARR: Thank you, Mr. Chairman. And thanks for bringing this. I don't see this going this year, for a number of reasons. But I think it's a good idea that we need to start introducing metrics so that we can study success or failure of programs. But, you know, I guess my first question is what's your enforcement mechanism on this?

ANTHONY CIRCO: Well, it would be, in my estimation, similar to legislative intent. And so it's...we're not going to say that if it doesn't meet whatever these expectation are that the incentive would go away or anything. We're just talking about setting some sort of standards for us to evaluate against so we're not fishing through old testimony and that sort of thing for what people expected this stuff to do. And so it's sort of creating a little bit...bringing a little bit of the scientific method into the legislative process. What is your claim, see what happens, evaluate the results against that claim. And from there, using those results, giving them to the body and whatever they do with that is fine.

SENATOR HARR: So if I submit nothing, nothing happens.

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ANTHONY CIRCO: Well, you can do as much or as little as you would like. I would hope...

SENATOR HARR: Or not, right?

ANTHONY CIRCO: Well...

SENATOR HARR: What would happen if I do none?

ANTHONY CIRCO: I don't know, what happens when you don't do nothing with legislative intent? I don't know.

SENATOR HARR: Okay. My next question is why did you choose Appropriations Chair over Revenue, who has oversight of tax incentives? The committee that has oversight.

ANTHONY CIRCO: I...where is that?

SENATOR HARR: What's that?

ANTHONY CIRCO: Where is it choosing somebody over somebody else?

SENATOR HARR: Why is...it says appropriation...oh yeah, I'm sorry. I have a head cold. It's my bad. My next question, though, is...

\_\_\_\_\_ : Let's get some Mucinex.

SENATOR HARR: I'm foggy. My next question, though, is why are we limiting it to just tax incentive bills?

ANTHONY CIRCO: That's because we have our statutory authority to evaluate those. We didn't want to...we wanted to keep this tied to what we do. If the Rules Committee would like to expand this to everything else, I think, again, bringing these scientific process to...a little bit

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closer to governing process probably wouldn't be a bad thing. That would be up to you. But we only wanted to go as far as what our legislative responsibilities are.

SENATOR HARR: And what would happen if I say you should be measuring X, and someone else thinks you should be measuring Y; how do you handle that then?

ANTHONY CIRCO: We would do more...we would likely do more measurement than what is in the performance statement. Right now we have 20-some different metrics that we pick and choose based on what fits incentives best. If we had something like this, we would know exactly what the Legislature intended. We would be able to measure that, and we would also do those other metrics as they apply. But this would be able to give us the clear knowledge of what the Legislature wanted at the very least.

SENATOR HARR: All right, thanks.

SENATOR HILGERS: Thank you, Senator Harr. Any other questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Hilgers. Thank you for your testimony. Just briefly, this is restricted to new economic development tax incentives. Is there some definition of that? If, for example, I decided I wanted to have a bill that was...I thought would really be a great incentive to make agricultural activity more prosperous and my bill is to repeal the property tax; would that be an economic development tax incentive? Is there a definition for that?

ANTHONY CIRCO: There is a definition in Section 50-1209 of our Legislative Audit Act...Performance Audit Act; tax incentive performance audits, scheduling contents. It lists the specific acts that we're supposed to evaluate, and it also has "any other tax incentive program created by the Legislature for the purpose of recruitment or retention of business in Nebraska." If there's anything new, we're allowed to evaluate that. In determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider intent, including legislative statements and purpose goals, and they also consider whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agencies. Now, we realize that there may be

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somebody that might be needed to decide this bill is an economic development incentive, this bill is not. There are a little bit of standards here that have been used before that could be used as well. But we think that somebody, maybe Revisors or the Performance Audit Committee would be able to say, hey, this fits under our purview and so we're going to say that this bill needs a performance statement. And one other thing; this doesn't...would not be applied just to future tax incentives, but any bill that has a substantive effect on current tax incentives as well. So if it changes credits or participation or something along those lines.

SENATOR HARR: Where...

SENATOR SCHUMACHER: Thank you.

SENATOR HARR: Sorry.

SENATOR HILGERS: Senator Harr.

SENATOR HARR: Where is that in the language?

ANTHONY CIRCO: That is: the introducers of all bills that create a new economic development tax incentive or amend credits, benefits, caps, sunsets, exemptions...

SENATOR HARR: Okay.

ANTHONY CIRCO: ...or participation qualifications of an existing economic development tax incentive.

SENATOR HARR: So if I want to create an incentive program, but use it through an appropriation instead of a tax, do I have to do this?

ANTHONY CIRCO: I would think not since the appropriations process would be a little bit different. But, again, that could be up to you. If you guys want to amend this rule to allow that, then that's fine.



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SENATOR HARR: Okay, thank you.

SENATOR HILGERS: Thank you, Senator Harr. Any other questions? Seeing none, thank you, Mr. Circo.

ANTHONY CIRCO: Thank you.

SENATOR HILGERS: Anyone else wishing to testify as a proponent? We ask testifiers to limit their testimony to the rules that are currently under consideration. Afternoon.

ELLE HANSEN: Good afternoon, my name is Elle Hansen, E-l-l-e, last name H-a-n-s-e-n. I would encourage the committee to support this, but I would also like to give some cautions. As I looked into the information provided by this proposed rule change today, I was informed by staff that there is no template for the performance statement. So, granted, I'm probably not going to doodle on a piece of paper and submit it to the Legislature, but I would say that the Performance Audit professionals would need to take a look at things and really establish, perhaps, even a uniform procedure under which these performance statements can be submitted. I think it's a great idea to hold people accountable that are receiving the tax dollars, not only a great idea, but really necessary as we have a responsibility to the people of the state. Additionally, I would hope that members of the Legislature would look even a little bit further and consider the possibility of requiring people who say they're going to take these tax incentive dollars and then do X, Y, and Z and really require that they do X, Y and Z. I understand that consequences for not meeting those benchmarks really can't be placed into the rules, that's certainly something that I've taken into consideration. But I think that's certainly something that should be evaluated and implemented by the Legislature, obviously, at a different point in time and a different place in time. And that is all I have in the way of thoughts to offer you this afternoon.

SENATOR HILGERS: Thank you, very much, Ms. Hansen. Any questions? Seeing none, thank you, so much, for your testimony.

ELLE HANSEN: Thank you. Have a good session, you guys.

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SENATOR HILGERS: Thank you. Anyone else wishing to testify as a proponent for proposed rule 5? Anyone wishing to testify in opposition? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, we have no letters for proposed rule 5, so that closes the hearing on proposed rule 5. We will now turn to proposed rule 6, which is a rule proposed by Senator Lowe regarding Rule 5, Section 15. Afternoon, Senator Lowe.

SENATOR LOWE: Good afternoon, Chairman Hilgers and members of the Rules Committee. My name is John Lowe, that's J-o-h-n L-o-w-e. I represent District 37. Today I want to talk about making a rule change. To be more specific, I would like to eliminate Rule 5, Section 15(a). The rule states "Commencing with the 1997 Legislative Session, any bill proposing a structural change which impacts the benefits or funding status provided under a public retirement plan, or any bill proposing the creation of a new public retirement plan, shall be introduced only during the first 10 days of a 90-day session." My reason for wanting to change this rule is pretty straightforward: in a Legislature that has term limits, it does not make sense to limit what items the body can discuss. Especially since we have two terms, and your first term is a 90-day session and you're getting going right off the bat. You're probably not going to tackle anything too big or too strenuous that first year, you want to learn. And if you're only in it for one term, that only gives you just one 90-day session to propose a bill. If you're here for two terms, it gives you three chances, but you have to go through an election to get there. It is true our public retirement plans are a huge budgetary item for Nebraska, and it is important that senators have the option to discuss potential changes more often than one time or four times during their term. It is true that our public retirement accounts are currently doing better than many around the country, but we can be sure that that will always be...or will we be sure that is always the case? And if we cannot make that guarantee, then does it make sense that these conversations be held now before there's a problem? Granting hearings on bills allow people to get together and hear the thoughts and concerns of all interested parties. This is the foundation for learning and compromise. Weighting down these discussions prevents critical back-and-forth which can inform and help make for better bills in the future. For these reasons I have brought forth this rule change. With that, I ask for your support and would be happy to answer any questions.

SENATOR HILGERS: Thank you, Senator Lowe. Are there any questions? Seeing none, thank you, very much. Is there anyone wishing to testify as a proponent for proposed rule 6? Seeing

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none, is anyone wishing to testify as an opponent? Senator Kolterman. Afternoon, Senator Kolterman.

SENATOR KOLTERMAN: Good afternoon, Senator Hilgers. My name is Mark Kolterman. I represent District 24. I'm Chairman of the Nebraska Retirement Committee Systems. I'm here today to oppose Senator Lowe's proposal to strike the language in Rule 5, Section 15(a), which currently requires any bill to be introduced in the 90-day session if it proposes a "structural change which impacts the benefits or funding status provided under a public retirement plan, or any bill proposing the creation of a new public retirement plan." This legislative rule was introduced in 1994. It was enacted in 1995 and it went into effect for bills introduced in 1997, which was the first 90-day session following the rule change. Rule 5, Section 15 was a recommendation of Buck Consultants, the actuarial firm hired by the state. Buck Consultants had worked with the Retirement Committee to perform a three-phase study of the Nebraska Retirement System. The rule was introduced by Senator Wickersham who was Chairman of the Nebraska Retirement Systems Committee at that time. During floor debate on this rule, Senator Wickersham noted that it was unusual for the Chair of a committee to propose a rule that would potentially reduce the freedom of that committee to do certain things with retirement legislation, including taking actions on bills. However, he noted that retirement bills have long-term effects, and could create unintended funding consequences. He stressed the need to act with a considerable amount of precision, review and analysis of the costs that must be determined by an actuary. Senator Wickersham further testified that he believed it is appropriate to limit the introduction of bills to the 90-day session if a bill proposes a new plan or proposes structural change that impacts the benefits or funding. Introduction in the long session provides the opportunity to review the bill, carry it over if necessary and work with the actuary over the summer if necessary to conduct actuarial analysis of proposed changes or proposed subsequent amendments. Rule 5, Section 15 has been in place for 20 years and has served the body well. A senator always has the option to propose a suspension of the rule in order to allow introduction of a retirement benefit...retirement bill in a 60-day session, that the motion requires 30 votes. The restriction is based on caution. It encourages planning and thorough review and when necessary, actuarial analysis. Which, depending on the complexity of the analysis, can take up to three weeks to conduct and issue a report. During a short session, a three-week delay can create challenges to the timing of debate and advancement through the levels of debate. The rules work

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well. Nebraska has some of the best funded state-administered plans in the country. Recent actuarial valuations determined that the funding status for the Judges Plan is 94 percent, the School Plan is 87 percent, and the Patrol Plan is 85 percent. Since 1997, there have been two motions filed to suspend the rule...to suspend a portion of Rule 5, Section 15. In 1998, a motion was filed to suspend Section 15(b) regarding the need for an actuarial analysis. And in 2008 a motion was filed to allow a retirement bill to be introduced in a 60-day session in order to address a bill NPERS requested. In fact, this year I will be filing a motion to suspend Section 15(a) to allow the introduction of a bill brought to me by NPERS, in consultation with the actuary. It addresses an urgent situation requiring changes in order to ensure that there are no financial risks to the state or the plans because of business decisions by plan employers. As you know, language in retirement bills regarding retirement benefits can have long-term effects and in fact, have been the source of several lawsuits against the state when the Legislature has amended the language in the plans. In addition, changes to retirement plans or certain plans...creation of a new retirement plan may create unintentional funding consequences. I support Rule 5, Section 15 as it is currently written and I urge you to oppose this proposed rule change. Couple things that I want you to understand; just because we would suspend the rules and try and make a change, our unfunded liability does not go away. We have \$1.6 billion of unfunded liability in our state teacher retirement plan...our state education retirement plan, because it also deals with administrators and bus drivers and everyone else. The plan was created...that plan was created in 1945 and it has only dipped below the 80 percent funded level twice, in 2012 and 2013 following a nearly 25 percent investment loss due to the great recession. We've done remarkably well in managing that plan. And over the last three years that I've been in the committee, we've made significant changes to keep that plan solid. The bill that I will be requesting changes on is...requesting a suspension of the rules on is being introduced at the request of NPERS and addresses calculation costs for employers, who, for business reasons, want to withdraw from...discontinue participation in our plan. What prompted this bill is a fact that Saunders County medical facility, a county-owned plan, which is an employer in the county plan, contracted NPERS to let them know that they want to withdraw from the county plan. The state...the statute allows withdrawal from the plan, but when it was drafted the county plan was only defined contribution. Since then, a cash-balance plan has been added, which guarantees minimum interest credits of 5 percent on employee's accounts. There's no current language in statute that allows NPERS to determine the liability that will be created or that allows NPERS to

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assess the liability to the withdrawing employer. A second change in that bill that I'm going to ask for adds the same language to the school plan for different purposes. NPERs over the past several years observed a trend in School Plan employers privatizing certain departments, divisions, or sections, such as food service, maintenance workers, paraprofessionals, and bus drivers. Since these decisions terminate those employers from the plan, the actuary says that there will be a cost to the plan and recommended changes to the School Plan. This bill that we're going to be bringing--that we're going to ask for suspension--ensures that the entity is financially liable for all the costs to the plan for the entity's business decisions. And the retirement system is not financially liable for any of the cost of the entity's business decisions. It minimizes the risk that the state, other entities covered by the plan, or other members of the plan will bear the cost of any one entity's business decision. In closing, I'd just like to say we take a lot of pride in working with these plans. We have six different plans that we manage, and we're looking at managing a seventh plan. And it takes a lot of time and energy in dealing with all the people involved. My door is always open. If we want to discuss these items, I've made it very clear to every member of this body that my door is always open. I'm somewhat incensed about the idea that someone would bring a bill to me the morning of the first day of the session and say I'm going to drop this. It would impact the state dramatically. I would hope that you would not advance this to the floor, and if you bring it to the floor as an attempt to override the rules, I will fight that vehemently. I would answer any questions you might have.

SENATOR HILGERS: Thank you, Senator Kolterman. Are there any questions? Seeing none, thank you, very much...

SENATOR KOLTERMAN: Thank you.

SENATOR HILGERS: Anyone else wishing to testify in opposition to proposed rule 6? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, we have no letters regarding rule 6; that closes the hearing on proposed rule 6. We will move to proposed rule 7, which is a proposed rule from Senator Krist relating to Rule 3, Section 19.

SENATOR KRIST: Mr. Chairman, fellow members of the committee, I was brought this change by someone sitting behind me...and he will come up and talk immediately after, Spike will

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address some issues. As the Chairman of the Executive Board...Executive Committee, I employed this within my purview as Exec...as a Chair. This is pretty simple. This allows for written testimony to be put into the record. Probably the biggest part of this is that I realize that now, even more than before, it's an eight-hour drive, six-hour drive from some parts of our state and the accessibility to our process is somewhat impeded. And one would have to look back at the actual transcript to see if one's letter was actually being read and included in part of our decision process. So, I do support this. I do, however, at the request of the Speaker, do understand the committee process, although committee Chairs can act as they did. Again, as the Chair of the Exec Board, we allowed for a pilot program to go on without changing the rules for a particular committee Chair to digitize electronically whatever...everything that his committee doing, which was contrary to our normal way of doing our business without making a rule change. So there is prerogative to do this without actually changing the rules...the rule. I think it's something that we should consider. I think the Speaker has taken it in to the Chairs, and I think it's a committee...as a committee I think we should reinforce the idea and maybe give it a year of working with the Chairs, or maybe even a couple of years, to move it forward. So, with that, I would say, as Senator Schumacher said, this is not going to be the end of the world if we don't deal with this this year, But I do think it's something that you should consider for the future because there's a lot of people out there that feel disenfranchised or that their concerns have not been noted. With that, I'll take any questions. Oh, by the way, I'm Bob Krist, B-o-b K-r-i-s-t (laughter). I represent the 10th Legislative District in northwest Omaha.

SENATOR HILGERS: Thank you, Senator Krist. Any questions? Senator Kuehn.

SENATOR KUEHN: Senator Krist, I do have one quick question for you...

SENATOR KRIST: Certainly.

SENATOR KUEHN: I agree with you wholeheartedly, and I appreciate you bringing this forward, not only jut for those who can't make it, but we've all been parts of hearings that went late into the night and individuals who maybe did travel decided to just submit their written testimony in lieu of taking committee's time. Which is why I have one question in terms of wording, and maybe it's better for Spike, but I'd just kind of like to hear your opinion; if they are

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received at least 24 hours in advance of the hearing, so I guess I'm curious as to why that limitation as opposed to why not accept letters for individuals who come to the hearing that decide my testimony is redundant and therefore I'm simply going to submit a letter as opposed to testifying. Is there a reason for the time restriction?

SENATOR KRIST: No...

SENATOR KUEHN: Okay.

SENATOR KRIST: ...and I think that's an excellent point. And I think that's something that could be worked out with the Chairs. I know that Senator Larson had some tweaks in terms of what he was doing electronically that he started with a premise and he worked with it and molded it. And that was one of the issues, how much, in the future, do you have to have it in order to conclude...to include...

SENATOR KUEHN: Um-hum.

SENATOR KRIST: ...that process. But I think that's something that could be addressed pretty easily.

SENATOR KUEHN: Okay. Thank you.

SENATOR HILGERS: Thank you, Senator Kuehn. Any other questions?

SENATOR KRIST: And again, I'd ask for indulgence to have Spike Eickholt to come up and testify. Thank you.

SENATOR HILGERS: Absolutely. Thank you, Senator Krist. Mr. Eickholt, please come forward. Thank you.

SPIKE EICKHOLT: Thank you, Chairman Hilgers and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska.

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I want to thank Senator Krist for introducing this rule change. I think the rule is pretty straightforward, so I'm not going to restate it. The reason that we had an interest in this, it doesn't immediately effect us either way. I mean, the ACLU can afford to hire a lobbyist, and for now they have me (laughter). And so we're...you know, when you testify live in a committee hearing--for or against or neutral, in some capacity--it's reflected there. This really impacts those that have approached us and those who we support, we support their access to government. People who can't afford to hire a lobbyist or people who live far away from Lincoln, or who just can't dedicate six hours to sit in a hearing room. And they're sort of told or invited to provide written testimony, but when they look online later, the committee statement doesn't reflect it at all. And yes, it's in the transcript and there's a reference to the exhibit in the transcript, but many times when a bill is advanced from committee and it's on the floor, that transcript is not yet prepared. And I think that...and I don't mean to presume what members think about one, if you look at a bill that you're not on the committee on and you look at a bill that's coming up for debate and you see three proponents, no opponents, you may just sort of say, well, this is not controversial, no one seemed to care about it. And it's got to be very frustrating. We've heard from people who say I wrote a letter for an hour in opposition detailing it all, but I had to go. So, we just propose to have some portion on the committee statement to have a reflection for written testimony for or against. As far as the 24 hours...I drafted it so I take responsibility for that. What I was trying to do was to have some sort of control over...you don't want to have an opportunity to have written testimony replace live testimony. You don't want to have an opportunity for groups like the ACLU, for instance, that could get 400, 500 letters to come in and sort of overstate or try to influence it that way. In other words, you want to have, maybe, some demarcation for who testifies live versus who testifies in written. And I just wanted to have some kind of control...after the hearing, perhaps, what happens if you get some sort of letter then? So just some sort of cutoff to make it somewhat uniform. Talking to Senator Krist about this, he indicated that perhaps some of the Chairs did this before, I'm not sure. In my time working as a lobbyist here, I think almost all the committee statements only reflect live testimony. So, that's the concept, that's our proposal.

SENATOR HILGERS: Thank you, Mr. Eickholt. Any questions? Seeing none, thanks for your testimony.



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SPIKE EICKHOLT: Thank you.

SENATOR HILGERS: Anyone else wishing to testify as a proponent to proposed rule 7?  
Welcome back, Mr. Leach.

NATHAN LEACH: Mr. Chairman, members of the Rules Committee, my name is Nathan Leach, that's N-a-t-h-a-n L-e-a-c-h. I reside in Legislative District 21. I'm here representing myself, speaking in favor of proposed rule 7 offered by Senator Krist. I don't anything necessarily more to add than what was already spoken to, I just wanted to go on the record and support this amendment. I've always really enjoyed engaging in...obviously enjoyed engaging in the committee process here in the Legislature. And growing up in Kearney, there were a lot of different bills that would come up, even in high school, that I put forward some time and wrote an email and sent it out. And, to me, I think this is a great step to ensure that people who take that time who can't travel, that they can have their statements put down a little bit in the committee statement. And has already been mentioned, that, of course, gives the senators a chance to see those who wrote in favor and in opposition of specific legislation. So, I don't really have anything more to add than what was already said, again, but I really appreciate Senator Krist for offering this amendment. And I would be willing to answer any questions.

SENATOR HILGERS: Thank you, Mr. Leach. Are there any questions for Mr. Leach? Seeing none, thank you for your testimony.

NATHAN LEACH: Thank you.

SENATOR HILGERS: Anyone else wishing to testify as a proponent to rules change 7? Good afternoon.

ELLE HANSEN: Good afternoon, Mr. Chairman, members of the committee. I...

SENATOR HILGERS: Ms. Hansen, would you mind if I have you state your name...

ELLE HANSEN: Thank you...

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SENATOR HILGERS: ...and spell it for the record, please? Thank you.

ELLE HANSEN: Not enough coffee this morning. E-l-l-e H-a-n-s-e-n. I represent myself. I am in favor of this proposed change to the rules because I think it's important that the rest of the Legislature know what the second house is saying in regard to proposed policies. Obviously, we all know that with committees the...the way the information is conveyed through the committee system is very concentrated. It's a concentrated group of lawmakers. This gives the opportunity for more people to have their voice heard, and also for senators to reference information in regard...in the process of becoming educated on an issue and what the people say and what they think. And oftentimes that provides a great deal of perspective on how bills may affect individuals in our state. I think that this is a great measure, I think it's a great idea. My only other suggestion would be that it would include, not necessarily letters that are en masse as far as like form that are sent via physical mail, but any correspondence that is sent through postal mail into the committees' custody and care...that they would also be included. That's all I have at this time, thank you.

SENATOR HILGERS: Thank you, very much, Ms. Hansen. Any questions? Thank you for your testimony. Anyone else wishing to testify as a proponent for proposed rule change 7? Seeing none, anyone wishing to testify in opposition? Seeing no one, anyone wishing to testify in a neutral capacity? Seeing none, we have no letters for proposed rule change number 7, that closes the hearing on that...number 7. Which will turn to our final proposed rules change, rules change number 8, from Senator Groene, relating to Rule 5, Section 7. Senator Groene, good afternoon.

SENATOR GROENE: Thank you, Chairman. In this building, is it afternoon? (Laughter)

SENATOR HILGERS: (Laughing) Yeah.

SENATOR GROENE: I'm Senator Mike Groene, District 42. I looked at the rules...and I've been here two years now, going on three...but under no condition am I criticizing the Fiscal Office. They are short-handed, and we expect a lot of things quickly. But some of the bills I've seen--- I've got three examples here--where the fiscal notes seem to disregard and do not pay a lot of attention to how what we do here affects local government entities. And if you read existing Rule

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5, Section 7, in the second sentence and the third sentence, it says legislative...no, excuse me, the second sentence, "The Legislative Fiscal Analyst shall review each bill and make an estimate of the anticipated change in state, county, municipal expenditures or revenues under the provisions of the bill." That rule treats the state, county, and municipals equally, there's no difference. The Fiscal Office should review all bills with equality of the effect on those entities. We seem, in the Legislature, to just worry about our income and our budget. Both fiscal analysis concentrate basically on how it affects the state. Present rule does not say that. What...to clarify that we should pay attention to how it affects the local property taxes or expected expenditures that we dictate or mandate...we should have a better sense of that. So, what I've added is: the fiscal notes relating to...relating to effects on local governments, subdivisions, or property tax fees or required expenditures may be limited to examples of those affected local government entities of each of Nebraska's congressional districts. And the reason we...I did that, because I fully understand why the Fiscal Office looks at this and says I can't do this; because the sentence above it says, "The fiscal note shall set forth the fiscal impact of the bill and the governmental subdivision affected by the fiscal impact as determined by the Legislative Fiscal Analyst." The way I read that, right now they should do every 93 counties. If it's affected, it should have a fiscal note tied to it, on every county in the state. It should have a fiscal note tied to every community in the state, every NRD, because in that sentence it says government subdivisions. It does not tie it back to the county or municipal expenditures above. So if I worked in that office, and I've already worked a 14-hour day, I'd throw my hands up in the air and say I cannot come up with how it affects 93 counties. So to make it feasible, I believe we ought to allow them to work with the League of Municipalities, the NACO, and say give me some examples; one from District 3...Congressional District 3, 2, 1, how it will affect these government entities. And we can judge as elected officials, statewide, how it will affect it. But, I mean, it's a necessary change. But it...if you read Rule 5, it treats local governments and state as just as important in the fiscal note. It is not just the state. On the...and then in the back section, of course, in (h) it says it should be..."The fiscal note shall be factual in nature, as brief and concise as may be, and shall, if possible, provide a reliable estimate in dollars and, in addition, it shall include both the immediate effect and, if determinable or reasonably foreseeable, the long range effect of the measure. If, after investigation, it is determined that no dollar estimate is possible, the fiscal note shall contain a statement to that effect." I have three examples here of bills recently, that I would assume affected...let me sort my...the first one is LB640 which I presented, and Senator Friesen was on,

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changing the TEEOSA formula. If you looked at the fiscal note; it effects equalization aid. They came up with a number school district property tax relief aid, total aid change, property tax credit, current less remainder property tax credit. There's no mention, there's no note, as to how it would have affected property taxes, positively or negatively. There was no note involved there, and the rule states that it should have a note, that at least that we can't guess. There's no note. LB98, which was the extension of the 3-cent levy on NRDs over appropriating. The fiscal note says LB98 would have no fiscal impact on state agencies. This had nothing to do with state agencies, it was a local property tax measure. Three cents...figuring it out, 3 cents on every...on a couple of NRDs, total valuation and say this was the maximum effect it could have would have been a nice little note. But who has time to do 23 NRDs, or 13? There's nothing in here, no note, implying an impact. It just says it would not impact the Natural Resource Districts, but that's not true. It would. If it sunset, it sunset. There could have been a note that said this sums how much the foreseeable revenues max that they could gain if it is...its sunset is extended: no note. LB...what's the other one I had...LB496, on TIF. A number could have been figured. You can go to Revenue Department and you can get a how much new construction and residential was done and residential Nebraska really easy in any community. Quite simply...or you can take the existing TIFs in a community and say if this was in effect and it went 15 years full-effect because of construction costs, it would have added this much to these existing TIF..Tax Increment Financing. There's...the notes says there's no fiscal impact to the state as a result of provisions of LB496. The Department of Revenue indicates there will be no cost to implement LB496. We agree with the Department of Revenue's estimate of cost. This is a property tax bill. We have gained a habit that our focus is how it affects the state, and we forgot about the rule intent that property tax effects of bills is just as important as how it affects the state. So, I wanted to bring that to the attention of the Rules Committee. I think it would give guidance and give some practical measures by the Fiscal Office could look and say, hey, look, all we got to do is find...call League of Municipalities, give us a couple examples of towns, get it back to us how it would affect them, call the NRD Association and say, can you get me an NRD and if so, what would this do. Find out the valuations on an NRD, what's this 3-cents going to do. We need guidance because what I hear is mandates, mandates. And all I hear in this building is how does it affect the state. Well, we elected officials represent all entities, not just the state. So anyway, I think it would be a nice little bit of guidance to the Fiscal Office that we don't expect the world, we don't expect a fiscal note on all 93 counties. When it affects counties we know it'll affect the

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fiscal note on every...I don't know how many communities there are, but there's a lot. But just give us an example. So, thank you.

SENATOR HILGERS: Thank you, Senator Groene. Any questions for Senator Groene? Mr. Speaker.

SENATOR SCHEER: Thank you. Senator Groene, I don't disagree with it, but would it make more sense, maybe...because you're sort of putting the onus on either the League of Municipalities or the NRD Association to come up with examples. If...and there probably should be examples from local entities. But maybe as part of the bill introduction that the request by a senator, the introducing senator, has to list. And you can list up to three or six or whatever locations so that if it's having to do with schools that you can ask for, you know, up to six or seven schools districts because my concern is, you know...

SENATOR GROENE: Yeah.

SENATOR SCHEER: ...you and I could get more educational, well, we could talk about school funding. But if all the come from the 80 or 60 school districts that get TEEOSA and we would never know how it affects two-thirds of the other districts. So that's not fair to put the onus on somebody else when we're really looking for something more specific. So, I mean, it's not written that way. I don't know if it moves this year or not, but that might be something to look at.

SENATOR GROENE: I was...

SENATOR SCHEER: ...but that might be something to look at.

SENATOR GROENE: I was betting on the integrity of Tom Bergquist (laughter), that he wouldn't...that he wouldn't go to just the equalized school districts. He would (inaudible)...

SENATOR SCHEER: Fair enough, but you're putting more time on him where if you just simply part of the bill introductions requested 1, 2, 3, 4, then they don't have to guess which ones. It's based on you and they can't be charged with...

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SENATOR GROENE: But the other thing is I'm biased too and I would...I might put four districts that favor my bill.

SENATOR SCHEER: But then that's the onus on you. (Laughter)

SENATOR GROENE: Yes. But we need an estimate, we need a number, I think. Yeah, whatever you want to do; I just think we need...I just wanted to draw the light on the existing rule and I don't...I think we've gone away from it. We focus everything on what it's going to do to the state budget, not the local budget.

SENATOR HILGERS: Thank you, Speaker Scheer. Any other questions for Senator Groene? Seeing none, thank you, Senator Groene.

SENATOR GROENE: Yeah.

SENATOR HILGERS: Anyone wishing to testify as a proponent in favor of proposed rule number 8? Seeing none, anyone wishing to testify in opposition to proposed rule 8? Anyone wishing to testify in a neutral capacity? Mr. Calvert.

MIKE CALVERT: For the record: Michael Calvert, Legislative Fiscal Analyst. I'm looking at the copy of Rule 8 as proposed, in the red it reads: fiscal notes relating to local government subdivisions on property taxes, fees or expenditures requirements may be limited to representative examples of local government entities affected in each of Nebraska's Congressional districts. This simply, in my mind, codifies what we normally do anyway. I have a list of the counties that we survey, a list of the cities. We're in compliance with the requirement in the rule here that says the three Congressional districts. So, we sample from counties and communities within those respective districts. We survey...we have different county assessors, county attorneys, sheriffs--and this is all dependent upon the subject matter in the bill, of course--correctional units, Educational Service Units, Learning Community, League of Nebraska Municipalities is on our list. So the analysts make a judgment to survey the League, if need be, where there's a fairly broad brushstroke that it affects a wide variety of communities. We have...1, 2, 3, 4, 5 Natural Resource Districts, police departments, public utilities operations,

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NACO is on our list. So, first of all, I just simply wanted to assure you that I don't have a problem with this particular language; it is consistent with our practice. The issue of the adequacy of the fiscal notes with respect to how we respond with respect to local impacts is an entirely different issue we can talk about at another time. Part of the situation we're also in, with respect to where we are reliant upon surveying other organizations, is whether they respond or not. And they don't always respond. And some of the responses have been in pencil, and the rules also allow me to not submit those fiscal notes because it probably wouldn't be a good idea to have them in circulation. In my experience, I've withdrawn about six of them over the last 30-some years, because sometimes they were kind of like a...flame note (laughter) if you want to characterize it that way. So, I saved a few people with some problems. So, with that, I have no problem with the language with what it intends to do, specific to the words that are being suggested here.

SENATOR HILGERS: Thank you, Mr. Calvert.

MIKE CALVERT: Thank you.

SENATOR HILGERS: Any questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Hilgers. So basically what you're saying that whether we do this now or don't do it or do it at a later date won't make any material difference in the way that you're handling it?

MIKE CALVERT: Process-wise, it really doesn't. I mean, it is...this process that I mentioned in terms of surveying, I hit the front door in this place in 1983 and that's been the process we've had ever since I've been here.

SENATOR SCHUMACHER: Thank you.

MIKE CALVERT: By the way, I think we have the same barber (laughter).

SENATOR SCHUMACHER: The same what?

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MIKE CALVERT: Same barber.

SENATOR SCHUMACHER: This is conserving money; we start shorter, we'll end longer.  
(Laughter)

SENATOR HILGERS: Thank you, Senator Schumacher. Senator Krist.

SENATOR KRIST: Is that a 60-day haircut, is that what you're saying? (Laughter) So, real simple; what do you do with...I mean, if I submitted a bill that was...I knew was going to be and your analysts know was going to be severely impacting county X, and you ask them for their input and you don't get anything back. How do you deal with that?

MIKE CALVERT: Well, the analysts will have to exercise some judgment. I mean, if it's clear on it's face what it does, I suspect that they'll probably write a note that it would seem that this would be a consequence of the bill, you know...

SENATOR KRIST: Both negative and positive, either or?

MIKE CALVERT: Exactly...

SENATOR KRIST: Okay.

MIKE CALVERT: ...oh yeah. Exactly.

SENATOR KRIST: So they're going to put a note on it, that's what's supposed to happen.

MIKE CALVERT: Yeah, and it's their judgment. And, you know, in some cases it might not be abundantly clear and you punt on it, sorry.

SENATOR KRIST: Okay, thanks.



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SENATOR HILGERS: Thank you, Senator Krist. Any other questions? Seeing none, thank you, very much, Mr. Calvert.

MIKE CALVERT: Thank you.

SENATOR HILGERS: Anyone else wishing to testify in a neutral capacity? Seeing none, we have not received any letters for proposed rule 8, and that closes the hearing on number 8. And that will end our public hearing for today. And thank you, all, for attending.