

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ERDMAN: [RECORDER MALFUNCTION] hearing and we'll start with self-introductions. I'm Steve Erdman. I represent District 47, which is nine, nine counties in the Panhandle.

BOSTAR: Eliot Bostar, District 29.

DeBOER: I'm Wendy DeBoer. I represent District 10, which is in Omaha, northwest Omaha.

IBACH: Teresa Ibach. I represent District 44, which is eight counties in southwest Nebraska.

HANSEN: Senator Ben Hansen. The best district in Nebraska, District 16, which is Washington, Burke, Cuming and parts of Stanton Counties.

ERDMAN: Very good. So the committee clerk today is Tamara Hunt. Tamara is the best clerk that I've ever worked with. And on my left is Joel Hunt, he's my legislative aide. So if you're planning to testify today, you need to fill out one of those green testifier sheets located in the back of the room and hand that into the committee clerk when you come up to testify. We also ask that when you come to testify and you want to be on the record and having your position on a rule being heard today and you don't want to-- excuse me, you don't want to testify, you can testify on a white sheet. Fill out the white sheet at the entrance there and leave it with your name and the pertinent information you want to share with us about the rule. The sign-in sheets will become an exhibit and be permanent part of the record after today's hearing. To better facilitate the hearing today, I ask that you abide by the following procedures. First of all, silence your cell phones. Then move to the front of the room, if you would, if you're going to testify on a rule as it comes up. If there's disorderly conduct, a red coat may ask you to be removed from the hearing. The order of the testimony today will be the introducer, proponents, opponents, neutral. And today's hearing will have no closing from the introducer. So when you come to testify, say and spell your first and last name for the record. Be concise. We request that you limit your testimony, we're going to go five minutes. We're going to go five minutes because there's not a lot of people here today and I want to give you enough time to share your ideas. Written material may be distributed to the committee members as exhibits only while you testify at the beginning of your testimony. Hand them to the page for distribut-- distribution to each one of the committee, committee people. If you have a written testimony, do not have enough copies, please raise your hand now and we'll have the pages make

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

copies for you. Today, the pages are Maggie and Ethan, and they got "voluntold" to be here. If you understand what "voluntold" means. But anyway, we appreciate them being here today. So with that, we will start the hearing. We're going to go in order. We're going to have-- what we'll do is we'll have the introducer of the rules. Senator Wayne has three. Senator Wayne is going to do his, all three of his rules at the same time and then we'll have opponents, proponents of neutral on any one or all three of his rules. And then we'll move on to Senator Cavanaugh and then Speaker Arch and then myself and then Senator Ben Hansen will be last with his rule. So that's what we're going to do. So with that, Senator Wayne, you can begin. And by the way, his, his rule that we're going to speak about is Rule number 30, that was number 30 submitted. And there is a-- there was an agenda on the, on the wall out there on how we're going to proceed. Senator Wayne, rule, Rule 30.

WAYNE: Thank you, Chairman Erdman. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is the best district in Nebraska. My rule-- Rule number 30 is very simple. There's oftentimes confusion on when we suspend the rules of whether we should have one vote or two vote. I think my first year, it was two votes. And in that couple of years since then, it's been one vote. And what typically happens is if you make a motion, let's say you want to introduce a new bill outside of 10 days, you would file a motion to suspend the rules on that particular rule and, and your bill would be attached. And it's one vote. I think there's a difference between suspending the rules and maybe voting to allow something to happen. And maybe you're against that, that underlining bill. I did this during COVID when I suspended the rules for police brutality and those kind of things. I had a bill that I introduced after the 10 days for a hearing. And there was confusion on, am I voting to suspend the rules or am I voting to allow the bill to move in, and that may show a sign of supporting that bill. Although I did successfully get that done, Senator Vargas did not actually get his done because of that confusion. So I want to separate out the idea of suspending the rules versus, versus the underlying motion or underlying issue of that suspension.

ERDMAN: Any questions? Senator Wayne, I have one. So I've read in the record there were several times in prior years, back when Senator Chambers was here, several years back, they would make one motion to suspend the rules and approve LB whatever it was, 4 or 5 bills of the vote-- it was one vote. So what you're saying is, you don't want that to happen. You want us to one motion to suspend the rules and then a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

different motion to adopt those bills that are included in why we're suspending the rules?

WAYNE: That is correct. I'm trying to take in the political consideration of I think it might be a good time to suspend the rules, but I don't agree with the underlying bill.

ERDMAN: OK. So if you-- I understand what you're say-- OK, I got it. Any questions? Yes.

DeBOER: Can I ask one? So would the votes be able to be back to back?

WAYNE: They should be back to back, yes.

DeBOER: OK. So it doesn't take any longer except that you have to vote twice?

WAYNE: Correct.

DeBOER: OK. Thank you.

ERDMAN: Thank you, Senator DeBoer. Anybody else? Sen-- Mr. Speaker.

ARCH: So just thinking about it on the floor. So could have-- could somebody else put another a motion in as well? In other words, the person who initiates the action to suspend the rules for the purpose of adopting X, it-- could, could somebody-- if you separate that, the suspending the rules would stand alone. Could you have motion 1, motion 2, motion 3?

WAYNE: No. What I would, I would still see the bill be-- I would still see the motion of being suspend the rule for LB88.

ARCH: Oh, OK.

WAYNE: So.

ARCH: So that's what-- how it would read?

WAYNE: That's how it would read, that you would be voting on suspending the bill. And then you'd be voting on the second motion of whether you want LB88 to be introduced or not. Yeah.

ARCH: It's two votes, but it's that so--

WAYNE: Correct. So I think you can still limit it to, to that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ERDMAN: Senator DeBoer.

DeBOER: Would it be a little like we do the motion to return to Select File for purposes of adding a specific amendment?

WAYNE: Correct. I think sometimes we get confused when we add it-- we vote one vote that we're actually voting to support the underlying amendment. And I also think those should be separated.

ERDMAN: OK. Is everybody OK with that one? Any other questions? OK. Next, Rule 31. Is that correct?

WAYNE: Yes.

ERDMAN: 31 pertains to Rule 7, Rule 2-- Section 2, right?

WAYNE: This is one that I am guilty of by eight years of not taking a vote sometimes on Final Reading. But actually, I was at the conference this year with Senator Halloran. The resolution-- somebody can think of where I-- where all of us--

ERDMAN: COS?

WAYNE: Yes, Convention of States. And I was sitting next to the president of the Montana Senate, and we really started talking, and then somebody else kind of joined in and there was a group of us. And I said, sometimes we don't vote. And everybody kind of looked at me like, what do you mean you don't vote? And I was like, sometimes you don't vote. And they were like, that's unheard of where we're from. And then I started digging into it. And, you know, we have one constitutional vote that we're supposed to take. And that's on Final Reading, at least we can do is if we're here, take the vote.

ERDMAN: OK. Senator Hansen.

HANSEN: Can you expand a little bit on a conflict of interest?

WAYNE: So if there's a conflict of interest, underneath our statutes, obviously you have to fill out a conflict of interest form. But on that sheet, it asks you if you're going to vote on it or not. You would check yes. Underneath our statutes, we, we technically do not have a real conflict of interest where you cannot vote. You have to disclose your, your conflict, and you can vote. That's how I read it. You have to disclose your conflict. And so long as you're disclosing your conflict, and that's what they do in Montana and other states, you-- it's fine. We are a part-time Legislature. You are, you are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

supposed to bring the ideas from your background, your, your industry and what you know, to bring bills. And so that's why we have a conflict of interest form. And that's why I'd ask you on the floor, if you, if you're planning on still voting in the Legislature.

ERDMAN: Senator DeBoer.

DeBOER: OK. How are you going to enforce this? Because I might just be churlish and be like, I'm not voting just to see somebody from the State Troopers, like, push my hand against the button thing. And I'm going to, like, be like a child and not vote. How do you, how do you force people? I mean, I'm just saying.

ARCH: The consequences?

WAYNE: I mean, you, you-- I mean, I guess eventually, I mean, I don't think you can-- I mean, I would hope everybody votes. But if you don't, then I guess it would show up in the Journal as "refused." And that, I think, says more about the person not voting when we have rules that say you should vote.

DeBOER: Is there-- do we currently have a thing that says "refused?"

WAYNE: No, but--

DeBOER: OK, so you're basically creating a new category for reporting in the Journal that would be so-and-so refused?

WAYNE: Yeah, but I would tell that member, if they were planning on not voting, just excuse themselves and they'll be excused. I mean, if they, if that member wants to make that kind of scene, then I guess that's up to the Chair at the time to, to figure that out.

DeBOER: OK.

ERDMAN: Anyone else? Senator Bostar? So Senator Wayne, as you were visiting with these other states, do they have such a thing?

WAYNE: Yes. They, they-- it's mandatory there for the vote. I mean, again, I think it's an anomaly that we don't vote. And I'm the first one to say that I've, I've not voted. I've been presently not voting. But our Constitution says that we have to have one. I mean, our constitutional duty is to have a final vote. We should vote on that final vote.

ERDMAN: Did they share with you what the penalty was, if there is one?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

WAYNE: I did not ask them because after the dumb looks, I kind of didn't want to keep talking about it.

ERDMAN: Senator Hansen.

HANSEN: Thank you. Most of the bills that Senator Wayne has been present not voting on are usually my bills. So what happens if someone is excused, not voting? Like, if they don't want to vote on it then they just, they walk out of the room and excuse themselves with the Clerk? Is there like-- what do other states do about that or is there any-- is there just--

WAYNE: No, I mean, so the thing of it is, is you can excuse yourself before the vote. Once the vote counts, you can't excuse yourself. So it isn't like nobody-- so, yeah, people can be sick. People can excuse themselves. People can have funerals. They're just absent and excused. That's typically what happens. There's nobody in the other states-- so I did ask that. There's nobody in the other states monitoring whether they went to a funeral or whether they were sick or not. But if you're there, the expectation is for you to vote.

HANSEN: Yeah. OK.

ERDMAN: Senator Bostar.

BOSTAR: Thank you, Chair Erdman. Thank you, Senator Wayne. And just this is only for Final Reading or for a resolution, the first vote? But it's all this would apply to? Or is it for all phases of debate?

WAYNE: I think it should be all phases of debate, but I, I based this off of our Constitution. And so our Constitution said-- I mean, all the other rounds are just our rules.

BOSTAR: Yeah.

WAYNE: The only vote we have to have is on Final Reading. We have to lay it over for a day and have a vote on Final Reading. Those are-- that's the only thing we're constitutionally bound. So that's why I made it constitutionally bound. And actually it goes along with the rule change of clarifying your Journal entry of why, why you didn't vote that day. Again, it goes based off the Constitution.

BOSTAR: Thanks.

ERDMAN: OK, very good. Anything else? Very good. All right, let's move to 32.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

WAYNE: This one. I'm not really asking for you all to push. I mean, I don't like necessarily how the language is written. Plus a little bit of research, I don't think we can prohibit copywriting since it's a federal law. Our rules can't supersede federal law. But here's what I'm trying to get at, if the committee and the, and the Clerk is trying to figure it out, is years from now, if somebody put something up on the internet of us taking-- of the AP or whoever else, putting a picture up of us on the internet, I don't want our great, great grandkids getting a cease and desist letter because they use it on a, a corporation saying you're in violation of a copyright law. I mean, we, we don't make a whole lot of money. The least we can-- if somebody's searching the internet and find a good picture of us on the floor and one of our family members wants to use it, I don't, I don't think they should be sued for that. But this isn't necessarily the right language. So I would ask the this committee or the Clerk's Office work with the media to figure that out. But I, I just think that-- I didn't mean to include, like, transcribing of recordings. I was thinking of video talks like when we were giving our speech and stuff like that. So it's too broad and I admit that. But the nature of a deadline, I wanted to put that out there, that that's something we're going to have to deal with as a future. We are part-time senators and some of these photos and things that will last forever. And you don't know what the future holds for your grandkids wanting to put something on the internet and saying that, you know, this was my great grandpa or my great grandma, and I don't want them getting a letter saying, take it down or you're going to be sued. So this isn't the way to do it, so don't move this one forward. But be-- it's something we should figure out.

ERDMAN: Any questions? Seeing none, thank you.

WAYNE: Thank you. I'll come back for closing.

ERDMAN: No you won't. Travel safe. OK, any proponents? Anyone in support of these rules?

ALLIE FRENCH: Hi guys. My name is Allie French, A-l-l-i-e F-r-e-n-c-h.

ERDMAN: Give her your green slip.

ALLIE FRENCH: Green sheet there.

ERDMAN: Thank you. Proceed.

ALLIE FRENCH: Absolutely. I'm actually a proponent of all three of them. I think they're, they're great. I do agree on the last one,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

maybe the wording isn't right. But I think that if a picture or video is taken on the floor, it should be public record. That just seems like common sense to me. On his rule change for 31, as a voter, as somebody who elects my representatives, I expect you guys to come and vote yes or no. I think it's been a shirking of responsibility to even have present and not voting as an option. I will say, I do know that, Senator Erdman, you have another rule very similar to this. I'd also be a proponent of that option as well, because it doesn't change anything. You still have present and not voting, but it would take away its power. So but if we went with this as well, just getting rid of present and not voting would be fantastic. I do agree it would be great if that applied to all levels of voting, especially including cloture vote. And that, I believe, was all I had for that. Let me check this one. Yep. I did really find it humorous that Senator Wayne mentioned that he's a very-- that he used present and not voting often. He was actually going to be one of my reasons for supporting that. So I appreciated his acknowledgment of that and that he went to a conference and saw that other places don't do that and said, hey, maybe we should be doing it that way too. I think that was very, really awesome of him. So thank you.

ERDMAN: Very good. Any questions? I'll just say this of those of you who are going to testify, take note of how this young lady did that. That was outstanding. Thank you for your time.

ALLIE FRENCH: Thank you very much.

ERDMAN: OK, so we'll close the hearing on those three rules. And on--

DeBOER: You got to ask for opponents.

ERDMAN: Oh, excuse me. Do you think there'll be some? Are there any opponents? Oh, any neutral? Seeing none.

DeBOER: Wait, the Clerk.

ERDMAN: Are you in neutral? Come on up, sir. Thank you.

BRANDON METZLER: Members of the Rules Committee, my name is Brandon Metzler, B-r-a-n-d-o-n M-e-t-z-l-e-r. The only comment I'd make is on the rule suspension being two votes. I think you want to be very specific in that it's only when there's a second vote to be taken, like on motions. Bill introduction and cancellation of hearings, that type of things, those are all procedural. So when you go to suspend the rules to cancel a hearing, for example, you take that vote, it hits 30 votes. And then the committee clerk hands in the piece of

paper that, that says that you're canceling that vote-- that hearing within seven days. So I think if you start to turn those into votes, you start opening yourself up into a lot of procedural paperwork that may start to turn into votes. You know, if, if every bill had to be introduced these first 10 days with a vote, you know, I think you're starting to limit yourself. So I would just clarify, and I think that rule speaks to that now, but you want to be very careful that the only time you take a second vote after you've suspended the rules is in a case where a vote is necessary for that action to, to take place. That's all.

ERDMAN: Go ahead.

DeBOER: Do you think the language now is appropriate for limiting it in that way?

BRANDON METZLER: I do. I think that when you talk about it's a separate vote from any subsequent motion for which the rules were suspended, I think the motion is the specific part. For example, introducing a bill or canceling a hearing traditionally aren't motions. It's procedural work, paperwork.

DeBOER: OK. Thank you.

ERDMAN: Thank you. Anyone else?

BRANDON METZLER: Thank you.

ERDMAN: Thank you. OK. Now we'll close the hearing on those three. The comments that we received, we had-- on Rule 30, we had 26 comments. Rule 31, we had 2. And Rule 32, we had 4 comments. OK. We'll move to Senator Cavanaugh. Welcome.

J. CAVANAUGH: Thank you. Good afternoon, Chairman Erdman, Erdman, Speaker Arch, and members of the Rules Committee. I'm Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District, the best district in the state of Nebraska. I'm here to offer two rules proposals in the spirit of compromise. Rule 33. I offer Rule 33 as a potential alternative to-- or addition to Speaker Arch's proposed Rule 18. Recognizing that E&R amendments are technical and not substantive in nature, I recognize the intent behind proposed Rule 18, but there are potential scenarios in which E&R amendments need corrections. And adopting them without debate or opportunity for amendment could create potential problems. Sometimes E&R requires a change to a bill that is not contained in the E&R amendment. Rule 33 mirrors the language in the consent calendar rule,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

allowing for 15 minutes of debate on the E&R amendments before a vote is taken. Amendments which are-- which add new material would not be in order until after the E&R amendments are adopted. After I introduced this rule, I received some helpful feedback that the rule does not address what would happen to an amendment to the E&R amendment at the expiration of 15 minutes. My proposed addition would be the following language, which I've shared with the Clerk's Office. If there's an amendment pending to the enrollment and review amendments, following vote on the amendment to the amendment, a vote shall be taken on the original amendment. So just adding that language in, if you were to move forward on that, would, I think, clarify that both those would get a vote in that 15 minute-- after the 15 minutes. Again, this would closely mirror the language in the consent calendar. So that's my-- do you want me to go onto my next rule or do you want to talk--

ERDMAN: Any questions? So you said this is similar to Senator Arch's 18?

J. CAVANAUGH: It-- I think it achieves the same intention, but allows for those scenarios in which there may be a need to amend the E&R amendment itself technically. And it limits the debate to 15 minutes, and the amendment is only to the technical form and not adding new substance.

ERDMAN: I get it. Senator Arch.

ARCH: How would you say that Senator Cavanaugh and I have had discussions about this, and, and, and I would say there's something to talk about?

ERDMAN: Very good. Appreciate it. Senator DeBoer.

DeBOER: Senator Cavanaugh, could you give an example of a situation in which we do need to address an E&R amendment? Because you said in those situations, can you give me an example?

J. CAVANAUGH: Well, I think that there are some where there's-- at the "as to form" may change the content or I'd say intent-- intention of the bill and which ones I can think of are sometimes where you, I mean, put a comma in a certain place and it might actually change the intention. Might be grammatically correct, but might actually change with the intention of the bill is. And so just fixing those sorts of things and sometimes, you know, gen-- the gender used in a bill might actually change the intention of a bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ERDMAN: OK. Anything else? OK, very good. All right. Rule 34.

J. CAVANAUGH: Rule 34. So I offer Rule 34 as a proposed alternative to Speaker Arch's rule, proposed Rule 23. Last year, the Legislature changed this rule regarding the use of priority motions. And Rule 23 proposes to make that change permanent. While I opposed the rule change last year, I understand that the body made that change, and that will likely consider this rule in some effect. So I offered Rule 34 as a way to prevent an abuse that-- of that rule that we saw on both sides in the last legislative session, and one that will certainly continue if we don't adopt this change. Namely, the rule implemented last session and as proposed in Rule 23, incentivizes a race to file the first motion on a bill. A supporter or introducer of a bill may feel it's in their best interest to file protective motions, so as to prevent an opponent from filing a motion on their bill. The supporter would then immediately withdraw the motion, using up the motion for that day's debate and preventing any subsequent motion from being offered. Similarly, opponents of a bill may file a motion on, on many bills in order to be the first in line. In essence, the rule as written virtually guarantees that priority motions will be filed by either supporters or opponents of a single bill that reach-- every single bill that reaches the floor. I believe this is the opposite of the Speaker Arch's intent, and so Rule 34 proposes a simple change that will prevent the proliferation of motions. It requires that a motion cannot be withdrawn except by unanimous consent or a majority vote of those elected. This mirrors the language for the rule-- in the rule for the motions to reconsider. And it's my view that this language alone is enough to effectuate the intent of Rule 23 to only allow one motion of each type per day, per round of debate. But if Rule 23 is adopted, I would urge the committee to also include the language from rule-- proposed Rule 34.

ERDMAN: OK. Senator DeBoer.

DeBOER: So my understanding is that because we already can only have one motion per day of each kind, and that's been the case historically, the practice has been to withdraw the motion. And that is how you allow subsequent introductions of these kinds of motions. Is that right?

J. CAVANAUGH: Yes. So the way the rule is written, if the, if the motion is disposed with, then it can-- it is not in order to introduce a new in motion. So having a vote on it. So what my proposed rule would do is require that you can't withdraw it without a vote or without unanimous consent. So essentially would then, once that would

happen, then nobody could offer another motion at that point anyway. So it would have the same effect, but it would still allow for limited circumstances that I can't necessarily contemplate at the moment, but that we can all look into the future and say there are unforeseen situations where somebody we may need to offer one another amendment or another motion. But it also would disincentivize people from taking that action where they offer motions only to be withdrawn immediately.

DeBOER: Yeah. So then this would allow for the circumstances where, let's say protectively I file a motion to dismiss-- or a motion to return to committee, and I withdraw it. This says that someone else could-- or it's voted on or whatever. This says that in certain circumstances when you actually need to return it to committee because there's new information that came up or something like that, you can do so. So it provides the opportunity for one of those motions, no?

J. CAVANAUGH: It would not-- if you had disposed of your motion. So if you have-- if you file--

DeBOER: Then it's-- no, you're right.

J. CAVANAUGH: Yeah. If you file a protective motion and it's disposed of, then no one could file another motion.

DeBOER: But if I withdraw my protective motion?

J. CAVANAUGH: If you withdraw it by unanimous consent, or if nobody objects when you withdraw it, then, yes, you could withdraw and somebody could file a subsequent motion at that point in time.

DeBOER: So it basically takes away from the introducer of the bill the ability to prevent their bill from being returned to committee. Because if I wanted to prevent my bill from being returned to committee, I file a return to committee on it, and then I don't withdraw it so it gets disposed of. Now no one else can file a return to committee.

J. CAVANAUGH: Correct. Under, under the current rules as written.

DeBOER: True.

J. CAVANAUGH: But my proposal would not allow you to withdraw it without unanimous consent.

DeBOER: Correct. So I can't-- as the introducer of the bill, I basically can't block a return to committee being filed.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

J. CAVANAUGH: Right. You would-- ultimately, you'd have to have a vote. No motion that's been filed would be disposed of without unanimous consent or a vote.

DeBOER: Yeah.

J. CAVANAUGH: So you would ultimately get to a vote on every motion. Good.

ERDMAN: Senator Bostar.

BOSTAR: Thank you, Chair Erdman. Thank you, Senator Cavanaugh. Would a vote to withdraw the motion by a majority of the body constitute disposing of the motion?

J. CAVANAUGH: I wouldn't interpret it that way but--

BOSTAR: OK, we have disagreement.

ERDMAN: Senator Arch.

ARCH: I was going-- that was going to be my question because, you know, no motion to postponed have being decided. So what you're saying is that the motion to withdraw, once you have unanimous consent or majority vote, it has been decided. No? OK, I'm getting no on that too. So I'm confused.

J. CAVANAUGH: So--

BOSTAR: Clerk, Clerk seems to be saying no. OK, so let's say no. Let's say--

J. CAVANAUGH: Maybe the Clerk will testify in the neutral capacity.

BOSTAR: It sounds like he's getting ready. Or looks, rather. If, if that doesn't dispose of it, meaning it can be refiled, can't you get a situation where 25 members could just repeatedly, I mean, do the thing that we're trying to avoid. File and refile and refile and refile because they have the votes to withdraw it on any bill and then hold up any other amendments or any other debate. Right? But if you have, if you have 25, then you get to enact what we're trying to avoid.

J. CAVANAUGH: I, I would say technically that would, I guess, be possible. However, I think unlikely because if you had 25 votes to stymie a bill in such fashion, you have 25 votes to dispose of a bill and to defeat it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

BOSTAR: If your, if your attempt is to avoid getting to something on the bill, some amendment, some action, you would have control over preventing the body from some sort of consideration that might be pending.

J. CAVANAUGH: And I guess my response to that would be, if you have 25 people who are in lockstep on that and you have the control of the motion, 25 people can take one motion for more than 8 hours, if we're still operating under an 8 hour filibuster, and there'd be no need to do successive motions in such fashion.

BOSTAR: I think some 25 people could. Anyway, thank you very much.

ERDMAN: Anyone else. Any other questions?

HANSEN: I, can I ask one question?

ERDMAN: OK. Senator Hansen.

HANSEN: With unanimous consent, would that, would people be allowed to speak then?

J. CAVANAUGH: No, I think my understanding, and again, maybe the Clerk would be speak to this, but my understanding of how something like this would work, you'd have it just like it is now. You offer a motion and say-- somebody stands up and says, your motion is up. You say, Mr. Clerk, I would move to withdraw. And if then somebody would have the opportunity to say, I object. And so say the room is empty and it's just you in there and you want to withdraw, there's no one there to object, the Clerk would say something like with no-- seeing no objection, it is stands withdrawn.

HANSEN: So if somebody objects then, like, do you know how long they can take then doing that? Do they get 10 minutes. Do they get 5 minutes. Or is it can they--

J. CAVANAUGH: I think if you object it would go to that next--

HANSEN: --speak multiple times?

J. CAVANAUGH: It would just go to the majority vote

HANSEN: OK.

J. CAVANAUGH: So it would be an object to the withdraw. Go to the vote. If they object then it would, I guess you could probably-- I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

guess this is a question for the Clerk and maybe some clarification required.

HANSEN: OK.

J. CAVANAUGH: bBut my interpretation would be it would go to a just say, OK, there's-- it's seeking consent, go to a vote of 20-- the threshold is 25. If you don't get 25 votes then it's continues debate essentially.

HANSEN: OK.

J. CAVANAUGH: Unless then there's no one else in the queue, then you'd go to a vote on the underlying motion.

HANSEN: OK.

J. CAVANAUGH: But he's going to come up and correct everything I just said.

HANSEN: I'll ask. Thanks.

ERDMAN: Any other questions? OK hearing none, thank you.

J. CAVANAUGH: Thank you. And I will not stick around to close.

ERDMAN: I know that. Have a safe trip home. Any proponents, anyone in support of those two rule changes? Anyone in opposition? How about neutral?

DeBOER: Oh, surprise.

BRANDON METZLER: Mr. Chairman, members of the Rules Committee, my name is Brandon Metzler, B-r-a-n-d-o-n M-e-t-z-l-e-r. And I do apologize, Senator Cavanaugh, you and I had had talk-- talks about this rule change. And as you were speaking, Senator Bostar's point became clear to me as well. I think what you're doing with this rule change, if you don't change that "decided" to "offered," is you're actually empowering the majority to a large extent. So if you had 25 individuals that perhaps didn't want the minority voice to be heard, or to your point, wanted to keep something off of the bill farther down, 25 individuals could continually offer and withdraw a series of motions from a majority vote and perpetually keep this recommit, bracket, etcetera going. In terms of process, it traditionally the way we've taken those is a, if you look at the reconsideration motion, this is essentially I think how this would, this would operate. So

reconsideration you can withdraw with unanimous consent. If at that time there is an objection, so oftentimes when you're going to withdraw a motion, we don't ask for, you know, without objection, because it's your prerogative if you brought the amendment or the motion to-- that you, that you're allowed to withdraw it. That is not the case with a reconsideration motion. A reconsideration motion is explicit in that you can't withdraw it if there's not unanimous consent, or at least it has to be a majority vote to do so. So what happens is you end up with the reconsideration motion. I move to withdraw that motion, that's when you hear the presiding officer say, "without objection, so ordered." Well, if somebody stands up and objects, what happens is now that member is moving to withdraw that reconsideration motion. Traditionally, we have recognized that mem-- that member to speak on their withdrawal. So it is a motion itself to actually move to withdraw and take that vote. We have traditionally recognized that, that as a standalone motion to withdraw that reconsideration.

ERDMAN: Senator DeBoer.

DeBOER: Can you clarify? There were pronouns there that I wasn't quite clear with. So if you said that the-- who, who owns the motion, the objector or the, the withdrawer?

BRANDON METZLER: The withdrawer is the one that's able to, I mean, they own the motion. So what happens is I move to withdraw my reconsideration. I object, and then at that point, we have to take a vote on, on the withdrawal of the motion.

DeBOER: So the withdrawer is therefore holding a motion out and would be able to open, and it would proceed as though it were any other motion?

BRANDON METZLER: I have to-- I believe that's the case. I think it's one of those things we've done it both ways, as you would expect. But there's a chance that we've allowed people to open on, on the withdraw to reconsideration. At the very least, it certainly at that point, as Senator Cavanaugh pointed out, it would be immediately to a-- or it would be a vote at that point. I don't-- I need to check if we've-- how many times we've allowed somebody to actually open on that. But it is a standalone motion to withdraw at that point.

DeBOER: So the objector doesn't get a chance to speak on their objection except in the normal course?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

BRANDON METZLER: Cor-- sorry. Could you one more time?

DeBOER: The objection doesn't get to speak--

BRANDON METZLER: Right.

DeBOER: --on their objection.

BRANDON METZLER: Correct. It's just a standalone objection.

DeBOER: They just, "I object," and then we move on to the--

BRANDON METZLER: Then we have to take a vote on the, on the withdrawal instead of just allowing the unanimous consent.

DeBOER: Got it. Thank you.

ERDMAN: So Mr. Clerk, you had a comment on 33?

BRANDON METZLER: I don't have-- is this the 15 minutes E&R? I, I don't, Senator, I think that mirroring consent calendar is, is fine. When you start to get into-- I think there's-- when you start to E&R, amend E&R and you're making a distinction on what is adding, what is, you know, strikethrough, underline, insert and what is just corrections, I think at times that's going to be a judgment call for some people. So as long as we have some neutral arbiter making the, the judgment calls, you know, whether that's an E&R call, they tell us what is considered, you know, what amendments are considered. You know, nonsub-- substantive or, or whatnot. But I think it could get a little subjective. But overall processwise, no issues.

ERDMAN: OK. All right, any other questions? Thank you. OK, so that concludes those two-- oh.

DeBOER: No, she would like to--

ERDMAN: Oh, you're in neutral? I'm sorry, my fault. I should have said other neutral.

ALLIE FRENCH: It's OK. All right. Hi again. Allie French, A-l-I-i-e F-r-e-n-c-h. I did forget to mention earlier, but for this one specifically, I'll mention I am representing our grassroots group, Nebraskans Against Government Overreach. We're taking the neutral position on these. 33, it sounds interesting. I'm not-- we're not necessarily opposed to additional debate, but I'd like to hear you guys talk more about it. Especially when you get to 34, it just seems

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

outright confusing. The explanations help, but I think some actual debate on those might be beneficial. 34, I will say our only concern is that it will to some point aid filibuster and allow people to carry on with very much of the same methods that were used last session. And we do want to avoid that. But we'd certainly be willing to hear you guys talk about it more, so we take a neutral position on both of those.

ERDMAN: Well, thank you. Any questions? Thank you.

ALLIE FRENCH: Thank you.

ERDMAN: Any other neutral testimony? OK, seeing none. We had two comments on Rule 33. Excuse me, one comment on 33 and two on 34. So that closes the hearing on those. We will move to Speaker Arch and his rules that he has submitted. We're going to start with Rule 13.

DeBOER: Are we doing [INAUDIBLE] , 13 through--

ERDMAN: Whenever you're ready.

ARCH: Thank you, Chairman Erdman. My name is John Arch, J-o-h-n A-r-c-h, I represent District 14. I have several here, and I think the first few I can click through pretty quickly. I first of all, I want to thank the Clerk for his work with me on these. I-- shortly after the session, the same week, as a matter of fact, I, I was keeping a list of those things that I think might improve our process. And sat down with the Clerk shortly after that and, and began began the work. So over the summer, we've developed these, and the Clerk was absolutely essential in the development of this. So first of all, the first four here, I would, when I distributed these-- by the way, I distributed 21, I believe, as proposed rule changes. I'm not introducing 21. And so you'll see the ones here in front of you. But the first four are technical. And, and let me just go through those. So Rule change number 13 is regarding engrossed resolutions. Rule 4, Section 7. Right now, this, I mean, this truly is a technical. Right now, the Revisors Office does not engross interim studies, which is what Section 3 deals with. It does engross resolutions in Section 2, and amended resolutions in Section 4. So it removes the reference to Section 3, replaces it with a reference to Section 4. The inclusion of Section 3 is a technical error in our current rules. So that's all that that does.

ERDMAN: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ARCH: All right. Rule number 14, eliminating the tax rate bill. Rule 8, Section 6. This rule is a holdover from the 1990s when the Legislature took over from the Governor and other executive branch officials the responsibility for setting tax rates. Apparently, there was a tax committee that would sit down and take a look at the forecast and, and adjust the tax accordingly. And now, of course, it's done very differently, multiple bills. And so there's no longer a singular tax rate bill given the complexity of taxes. And it strikes all the language of Rule 8, Section 6, and removes all reference to a, quote, tax rate bill. And that's, that is number 14.

ERDMAN: Any questions on it? Senator Bostar.

ARCH: I'm sorry, I'm not the Chair.

BOSTAR: Thank you, Chair Erdman and Speaker Arch. Did you, you know, we obviously as being on the committee, we've had opportunity to speak about some of these before. Did you have any thoughts referencing our previous conversation about that rule change on actually establishing some in-between point of the appropriation deadline and the end of session for revenue-altering legislation so that we could have some amount of days where our fiscal picture is locked and we're doing policy adjustment at that point?

ARCH: You know, I mean, I think that's something we can discuss. I probably took the simpler route of just eliminating the reference to a tax rate bill, which, which doesn't exist. Whether we, whether we do this, whether we do this and eliminate that language and then develop a, a different rule that, that would replace that, we could do that too. But I'm, I'm open to more discussion on that.

BOSTAR: OK, thanks.

ERDMAN: Anyone else? All right, thank you.

ARCH: Number 15, fiscal notes. This changes the physical distribution of fiscal notes into digital distributions. Currently, we reference attached-- like when we ran pieces of paper around the building and attached them to the bill. It matches our current practice, which is digital distribution. The nice thing about that is nobody has to wait for the print distribution to occur and ensures the availability of the fiscal note as quickly it is-- as it is completed. So it is a, a minor, minor cleanup from my perspective.

ERDMAN: Any questions? All right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ARCH: Number 16, cash reserve fund transfer deadline. This was actually brought on behalf of the Legislative Fiscal Office. And it ensures that bills relating to the transfer of cash reserve funds are held for Final Reading to inform the Legislature of the full fiscal impact. Similar to what we do with A bills right now. We hold those that have a negative General Fund impact. It doesn't change the referencing of any cash reserve fund transfer bills, but it does treat them like an A bill. It just, it holds them. Because the transfer of any cash reserve funds do have an impact on the budget, so we feel as though they should be held until the budget bills are passed.

ERDMAN: Any questions? Pretty straightforward. OK.

ARCH: All right. Number 17. Now I'm, now I'm moving into what I, what I have termed "codifying precedent." We spent a lot of time last session talking about interpretation of our rules. And as those that were often discussed, we made a note and said, maybe we could say it a little, a little clearer in our language, then we don't have to be talking about interpretation. And the interpretation is based upon precedent. So this is how we've been doing it and so we try to get the language to be a little clearer for that. So number 17, the explanation of the vote. This is similar to what we heard earlier about that final vote being the constitutional requirement. And so, and so what we're clarifying here is that the explanation of the vote is allowed for Final Reading only. So I, I wasn't there for the-- I wasn't there for, well, Select could be voice vote, but I wasn't there for General. And so I didn't get a chance to vote on General File. I'd like to, I'd like to put that into the Journal that I, had I been there, I would have voted yes. Right? And so what this is saying is that it is, it is, it is only on Final that, that votes can be clarified. That is where the constitutional requirement is that we-- that a vote is taken. And, and honestly, most questions rise on that Final vote, not on the, not on the previous votes. That has been the historical practice. Last year, the Clerk did receive several inquiries about using the explanation of vote for votes other than Final Reading. Restricting the explanation of votes to Final Reading has been the practice, and this will simply clarify that historical practice. It will also help to retain, retain a condensed legislative Journal, making it easier to find pertinent information. So it would be on Final that you could clarify, you could explain your vote so.

ERDMAN: OK, thank you, Senator. Any questions?

ARCH: Number 18. Now this is where Senator Cavanaugh's previous presentation here, this is, this is the, the one that he referenced

here. I would consider 18 very important. This the-- this has been, this has been new. This, this, this trying to jump the line and using E&R amendments to get ahead of actually the debate on the bill has been problematic and so and but, but relatively new. So in this case the E&R amendments would be voted on without debate on Select File. The E&R amendments would not be debatable, divisible or amendable. With the vote on the E&R amendments, they're, they're immediately adopted. The amendments to the language of the E&R amendment would be allowed during debate of the bill once the E&R amendment is passed. So it's not that you can't. It's not that you can't debate the E&R amendments, it's just done at a later stage. It's not done ahead of the bill. So you adopt the E&R amendments, you move to the bill, and then you can, you can put in amendments at that point to specifically challenge the language that was adopted in the E&R amendment. I think this would move the debate to the bill itself more efficiently. And as I say, this was a historical practice. I guess, 2021 that started to be used a little bit differently. So again, you can still change the E&R language, it's just done during the debate of the bill. It will prevent jumping the line to start the debate on the bill and avoid confusion. Because E&R amendments technically-- or should-- technically should be technical. They are technical cleanups, and that's what they should be.

ERDMAN: Senator Bostar.

BOSTAR: Thank you, Chair Erdman. Thank you, Speaker Arch. So I understand adopting the E&R, but you could still amend them. So if, if I saw an issue with an ERR-- an E&R amendment and I wanted to amend it, would I introduce an amendment on the E&R amendments? And then it would just be taken up after E&R had passed? Is that correct?

ARCH: I'm sure the Clerk is going to come up here in a neutral capacity and clar-- clarify the clarifications.

BOSTAR: Because here's one of my-- it really was my question is, if we are, if we're-- if we have two tracks, right? So we've adopted E&R. But you can amend the E&R and you can amend the bill. Which of those do we do first?

ARCH: Well, so my understanding is you're not going to amend the E&R. You're going to amend language. So when the E&R is adopted, the, the bill is changed.

BOSTAR: Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ARCH: And so now you're going back in. You, you would have an amendment but it would be an amendment, and it happens to be the E&R language versus any other language that would be in the bill.

BOSTAR: Is there any, I mean, considering the technical nature of E&R, if there was something that needed to be amended within it-- it's rare, but I actually have seen it happen-- is there concern that on a highly contested bill with a lot of policy amendments sitting on there, that we might not be able to actually correct the, the technical issues that might potentially exist with an E&R?

ARCH: I would assume that is possible. I could see that scenario.

BOSTAR: Thank you. I'm just trying to evaluate with Senator Cavanaugh's--

ARCH: Correct.

BOSTAR: --piece in there. Thank you.

ARCH: Correct.

ERDMAN: Senator DeBoer.

DeBOER: So the other concern I have, I share Senator Bostar's concern about would we ever even be able to get to an E&R amendment on the bill itself, the underlying bill, if there's a lot of policy amendments? The other concern I would have is that you're going from a-- you need to have 25 to make it happen to you need to have 25 to undo it situation, which can be harder. And if, if, if I introduce a bill, and E&R has done this to me, where they have changed my bill with their E&R amendments-- well, it was Drafters, I guess. And then everyone is coming up to me, why did you do this? I didn't do it. So it does happen that things get changed inadvertently. Where maybe E&R doesn't even think that they changed it, but to us or someone on the floor, they think that it is. Now I have to go and get that out of my bill. So to me, it seems like if we are voting on E&R-- I don't mean to be contentious, I'm just saying-- if we're voting on E&R, then there must be some purpose for that vote. And the purpose must be to approve or disapprove of the changes. So we probably need to have some mechanism to change the changes. Otherwise, we might find ourselves in a situation where we just don't approve the E&R amendments.

ARCH: Yeah. And I, and I would say that's why I made the comment when Senator Cavanaugh was in the chair, that, that there's something to talk about here, you know. So I, I'm, I'm open to that discussion.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

And, and I just, you know, I mean, I, I think that, I think we need to do something with the E&R amendments and we need to, we need to clarify, like, this isn't the time to start the debate on the bill.

DeBOER: I agree, agree wholeheartedly.

ARCH: You know, so how we do that, we can, we can have more discussion with that.

DeBOER: So maybe we do it for 15 minutes. And then if there is an actual E&R problem, we can take care of it there. OK.

ERDMAN: Senator Hansen.

HANSEN: Thank you. This was a question I would actually pose to the Clerk as well, if he happens to come up here in a neutral capacity. Excluding last year, do you ever remember a time, has anyone ever legitimately wanted to change an E&R amendment that wasn't the introducer?

ARCH: That would have to be a question to the Historian.

HANSEN: OK.

ARCH: I just know that, I know that apparently something has happened since 2021, but from '86 to '21, that did not happen.

HANSEN: OK. Because I see the scenarios they're trying to play, but that's only if somebody is not acting legitimately, wants to actually-- has good intent of actually trying to correct something. And they're just trying to--

ARCH: Yeah.

HANSEN: --you know, wreck the bill for some reason. Which I, I don't want to say is unfair, but it's really not appropriate, I guess. And so that's why maybe the Clerk can answer that.

ARCH: Yeah. I, I, I would assume that he'll, he'll, he'll address that. I, I would say that, that the-- that 15-minute time block, of course-- in a 4-hour, you know, 4-hour block Select, you, you know, you're going to take away-- if you allow 15 minutes, you're going to wait-- you're going to take away 15 of those 4 hours, 15 minutes out of the 4 hours. So it's not inconsequential. People could still use it to, to delay, to obstruct. But it's 15, not 4 hours. You know, it's 15

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

minutes, not 4 hours. So it's, it's going to be that tradeoff that we'll have to decide.

ERDMAN: OK. Ready to move on? All right.

ARCH: OK. Number 19. Number 19 defines appropriations bills. And it codifies by listing in the rules the different bills that have traditionally been part of the budget process. I say traditionally. So any appropriation-- any appropriation bill would be reference to the Appropriations Committee. But there's two outliers of what we would, what we would tend to wrap into the budget process. One is judges salaries bill and, and then claims bills. And those have that impact on the budget. And so but they don't go to Appropriations. The judges' salaries bills have gone to Judiciary, and I would assume that it would continue to go to Judiciary. And claims bills has gone to Business and Labor, and would continue to go to Business and Labor. Last year, there was some confusion on judges salaries in Judiciary. How do we tie this into the budget and make sure that it's-- because it has, it has an impact, obviously. And so I originally said that, that that ought to go to Appropriations in my proposed rule. I took that out now. And, and so now it's like I'm assuming that will go to Judiciary as, as originally. And so but, but, but, that-- but that's, that's, that's what we're trying to do here, is we're trying to define what comes out to the floor in this budget package. So it would trail the main budget, the appropriations bills. These two would trail as, as they did it. This just clarifies that this is, this is how it's going to work in the future.

ERDMAN: Senator DeBoer.

DeBOER: So the state claims bill has always done that. So this would just make the judicial salaries bill like the state claims bill?

ARCH: Yeah, I'd say it clarifies that. Yes.

DeBOER: OK.

ARCH: Yeah. It trails. It trails, but it comes at the same at the same time.

DeBOER: Yeah. Because we used to call it the "trailing state claims bill," if you recall our first year. So this would just make it--

ARCH: Now we have the "trailing judges salaries"

DeBOER: "Traling judges salaries bill." Got it

ERDMAN: They're all trailing. Any other questions? OK, number 20.

ARCH: Number 20. Motion to return to Select File, Rule 6, Section 6. So a motion to return to Select File for a specific amendment is not divisible nor amendable, nor is the amendment once returned to Select File. This has been the past practice because the motion to return to Select File process is limited to a single specific amendment at one time. So this happens of course, on Final, where you want to return it to Select for a specific amendment. Historically, the Final Reading was not a stage, was not a major stage of debate that had occurred in the first two stages of, of debate, and was instead an opportunity for senators to reflect on the finished proposition and read it over before final approval. And when the bill was returned to Select File, it was for the purpose of correcting a flaw, not for reopening debate all over again on the bill. Germaneness can be raised only on a motion to return to Select File for that specific amendment. So this is, this is the return to Select File for a specific amendment and that amendment is what is considered. Up, down, and then and then you can come back to Final.

ERDMAN: Any questions? Senator Arch, so what you're doing here is clarifying what we've always done.

ARCH: Yeah. Right. This is, this is how, this is how Final has been viewed historically.

ERDMAN: Correct.

ARCH: Like the bill is, is ready to go and, and we now, we now consider it. Unless in that process between Select and Final some, some flaw has been noted, but it's not to reopen debate.

ERDMAN: OK. Very good. Any other questions? All right, 21

ARCH: 21. This again is another one of those that I would consider very important. I think we were all talking about 6, 3(b) last year and what exactly, what is the interpretation of this rule? Though I don't think the language is plain. So the priority motions would be in order following the introduction of the bill and any committee amendment, with the exception of adjournment or recess, which can be filed at any time. That was really one of the big problems with 6, 3(b) this last year. Had we, had we done this without clarifying the language, it's like we can't adjourn. No priority motions can be introduced. So, so you can, you can, you can adjourn or recess and that can be filed and those can be heard. But anything else, priority

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

motions would follow the introduction of the bill and any committee amendment and then the priority motions would come. Prior to 2023, previous filibusters would allow the introduction of the committee amendment as a courtesy before debating any priority motion. So it wasn't really an issue. The practice was let the committee amendment come up. this would require that committee amendments be introduced, but not fully debated before priority motions are considered. In 2023, some members wanted to interpret this section to mean that a full consideration of the committee amendment occurred before priority motions would be considered. All that this rule, as written here would do, is require that the committee amendment be introduced, not fully debated, not, not come to conclusion. This will make it clear that only the bill and the committee amendment will be on the board before priority motions are in order. Now, since we drafted this-- if this is advanced out of committee, I'll-- I'm going to offer an amendment to this proposed rule change to clarify my intention to maintain the current practice of allowing the principal introducer of a bill-- a principal introducer of a bill to offer the first amendment to the bill on General File once the committee amendment has been voted upon. So that really doesn't address the priority motions, but it just allows that principal introducer. And principal introducer on General File has that privilege now to do that. And so this would clarify that. And in line 8, I also intend to strike the new word "introduction" and go back to "consideration." I think that that's, I think that that's clearer as well. And so with that, I'll, I'll stop.

ERDMAN: Senator DeBoer.

DeBOER: Sorry to have a lot of questions. So are you saying that previously what would go up on the board would be the bill and then the priority motion. Now you're saying it would be the bill, the committee amendment, and then the priority motion?

ARCH: Correct. Correct. And as I said previously, it-- that's kind of the way it was done. I, I think, I think that that was the discussion when filibusters were occurring, they would go to the, they would go to the, to the person leading the filibuster and say, hey, let's let the committee amendment come up. And, yeah, the committee amendment come up. We had a problem last year where, where that committee amendment was not allowed to come up on General File. And, and when you have a committee amendment that it perhaps it's, it's as large as rewriting the, the bill itself. And when that's not allowed to come up, you're not even, you're not even debating the right-- you're not even debating the right language without that committee amendment coming up. And so, so that's why I think that it's appropriate to let

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

the bill come up, let the committee amendment be introduced, and then, and then the priority motions begin.

DeBOER: And what about with an IPP before the bill is read across? Would the committee amendment still come up there?

ARCH: I'd like, I'd like the Clerk to answer that specifically.

ERDMAN: Any other questions? Senator Arch, this very thing happened to Senator Halloran last year.

ARCH: It was, it was the Ag bill.

ERDMAN: He couldn't get his-- he couldn't get his priority up.

ARCH: Right. And it was a very important committee amendment.

ERDMAN: Yeah, yeah. Very good. OK. If no other questions, proceed to 22.

ARCH: OK. Number 22, so the authorization to open, which is Rule 2, Section 10. This was also, this was debated last year. Like the language isn't real clear as to who gets, who gets the right to open. So what it does is it restricts the opening on a matter to the introducer only, except it allows the committee chair to designate another committee member to open on a committee bill or a committee amendment. It does not require the Vice Chair, nor prohibit another committee member from opening. It is at the discretion of the committee Chair. And so this, this happens, and not infrequently, when because of scheduling the, the, the bill from committee is up, the priority bill perhaps and, and the Chair is absent. And, and, and so the Chair says to the senator on the committee, whether it's the Vice Chair or another member, please introduce the bill. And it, it allows for that.

ERDMAN: Good. Questions? OK, 23.

ARCH: Number 23. This is another one that I would say is very important. It's the, it's the Rule 7, Section 6, offering of priority motions. No motion to postpone to time certain, IPP, postpone indefinitely or recommit can be offered more than once on the same stage of debate for each motion. The exception is that the introducer may offer one additional motion to recommit or postpone indefinitely if the Legislature hasn't already decided on either of those motions. And, and the, the word "offering" is when the motion is pending. So this is not the same as filing. So offering is, it is, it's on the

board. It's pending. And, and so this is similar to the temporary rule change adopted in the 2023 session. But we have added "per stage of debate" not "per day." So in some cases the bill may layover. You, you adjourn at 5:00, but it's still got another two hours to run on the bill and it lays over to the next day. This rule then would say it's on the, it's on the stage of debate, it's not on the per day. So you don't start all over at 9:00 the next morning and file more priority motions and have to go through all that again. It, it rolls over. It also, it also as I mentioned, added the ability of the introducer to offer a recommit or postpone or IPP motion if the Legislature hasn't previously decided. But if they vote down a recommit, you know, it's not just a matter of withdrawing, but if they vote down a recommit, then, then the introducer would not be able to, would not be able to introduce another recommit. So it leaves it open. I mean, there are times perhaps when an introducer may feel like they need to rework the bill. I mean, there's like-- there's some things that have come up here that I'd like it-- I know the introducer says, I'd like it to go back to committee. It would allow that if, if the body hadn't already voted down a recommit. But I would assume that the introducer in that recommit debate would also put their own, would also put their own, you know, messaging to the body like, I-- please vote for this so.

ERDMAN: Senator DeBoer.

DeBOER: Sorry, just one thing. Without the sort of corollary piece from Senator Cavanaugh, I wonder if this would allow-- if I have a bill, I somehow sneak it out of committee, right? Maybe the committee has changed since appointments and things since then, whatever has happened. If I file my recommit and then, you know, I whatever, now the possibility is that no one else can do a recommit, although the whole body may want to recommit. So I prevent a recommit on my bill.

ARCH: Oh, [INAUDIBLE].

DeBOER: Yeah. And I'm a little afraid that then it takes away the ability for the body. Like if everybody else except me wants to recommit it. But it's my bill, so I'm the only one who can commit it and I used up the first recommit myself, do you see how that's a concern? Yeah, I, I think there's a way to marry the two. Particularly if we get rid of the 25 and it just has to be unanimous consent to withdraw. Then we might be able to fix that problem.

ARCH: OK. We'll talk some more.

ERDMAN: Any other questions? OK, 24.

ARCH: Number 24, consent calendar threshold. This-- right now, you can withdraw a-- you can withdraw a consent calendar item, a bill with, with three senators signing on. And what this does is it increases the threshold for the removal of a consent bill to 7 members from 3 members. It also requires the request to be filed prior to the reading of the bill to the Legislature on each stage of debate. So what this would prevent, it means you can't, you can't drop that letter at minute 14 on a consent calendar. And that's important because, you know, if you're serious about pulling this, then you have to submit this letter before the bill is read across and, and, and the debate has started versus running the clock and then dropping it at 14 minutes, running the next clock, dropping it at 14 minutes. So you have to do it-- you have to do it in advance. It increases the likelihood that a consent calendar could be utilized and not simply obstruct debate.

ERDMAN: Any questions? OK, 25.

ARCH: All right. This is the last one that I would say is, is very important. It does expand the cloture rule to other resolutions or main motions, not just bills. That's, you know, so as, as has been explained to me, it was, it was routine at one time in the history of the Legislature that you suspended the rules to stop debate. And somebody said, you know, rather than suspending the rules, maybe we ought to have a rule of cloture. And so they created a rule of cloture. And that has been running now. And so, and so what-- but what that cloture rule does, it, it applies only to bills. So this would expand it to other resolutions or main motions and not just bills. It does carve out an exception that cloture will not apply to rules, either motion to adopt permanent rules, or a motion to amend permanent rules. So it would not apply to that. Other items could include committee reports, rules suspensions, bill withdrawals, Governor appointments-- which is actually a committee report-- canceling hearings, which is a rule suspension right now. So, so withdrawing unnecessary regulation-- I mean, legislation. So, so it, it, it expands it with the exception of rules to other items. Currently, the only way to stop debate is to suspend the rules on these, on all those matters. And, and that became very problematic last session. We had, we had committee reports, we had gubernatorial appointments, we had a number of things that we couldn't get to because we were going to run a-- we were going to run it until we hit a rule, a rule suspension on every single one of those. And this would, this would give it those guardrails on filibuster. Full and fair debate would still act on this for all matters covered by the cloture rule. So it's sim-- I'd say it's similar to A bills. So what, what I, what I said in the memo last

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

year, February 10, was, you know, 8-4-2 on regular, but A bills are 30 minutes and, and can be expanded to an hour if there's substantive debate. So A bills had a separate cloture guideline. I would see a separate cloture guideline for some of these others, committee reports. And so everything isn't eight hours. You know, some of these, some of these committee reports should be, I mean, allowed to have a debate, have a discussion, but not run the full eight hours to impede the progress.

ERDMAN: Any questions? All right, 26.

ARCH: 26, overruling the Chair. Rule 1, Section 12. The challenging member is specifically allowed to open on his or her challenge. So when someone wants to overrule the Chair, they would be allowed to open, 10 minutes on, on opening. Plus then that person, it doesn't say it here specifically, but since we've had those discussions, that person would also be allowed one other time, like other senators are given one time. So that person would be allowed one other time. Typically it would probably be the last one to speak. The one who, the one who objected and wanted to overrule the Chair would probably do it the last in line, but could do it at any time. But they get one more after their opening of ten minutes. It does allow questions of other members during debate. It's clear that the clock stops as it applies to the cloture motion when the challenge motion is taken up. It doesn't allow the calling of the question because there's already a limiting factor on debate with senators only being able to speak once. So you don't have to stop debate, it runs out automatically. So that's, that's the language for overruling the Chair.

ERDMAN: Any questions? So, Senator Arch.

ARCH: Yes.

ERDMAN: Will this also include and shouldn't we have a rule that says we're going to record the queue so we can carry on when we go back to debating the bill?

ARCH: So my understanding is that I, you know, we don't have a rule that says that. My understanding, that's going to be the practice of the Clerk. He's made that clear to us. And, and so maybe when he comes up here, maybe that's a question for him.

ERDMAN: OK. There have been several times when I've been waiting an hour and a half, two hours, and I'm third on the list, and then they overrule the Chair. And I'm sure not going to waste my opportunity to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

speak to drop back down for another hour and a half. And so that's an issue. I may want to speak to the overrule the Chair, but I'm not going to forfeit my chance to speak. So that, that's a good idea. Thank you. Any other, any other questions? 27.

ARCH: 27, changing the due date for statements of intent. So Rule 5, Section 4. This is, this was not circulated with the proposed rule changes. This came out of LR179, which was a, an interim study that I did on public participation in the Legislature and the process. And one of the things that-- one of the things that was communicated was 24 hours before a public hearing is really late to put out that statement of intent. So and this isn't just for necessarily the public, but even for senators, for staff or anybody that wants to know what does this bill say? And, and if I, if I have to read 40 pages to understand what it says, a statement of intent would be very helpful. And so we said let's, let's, let's require that to be published five calendar days prior to the public hearing rather than 24 hours.

ERDMAN: Seeing no questions, we'll move to 28.

ARCH: And 28 is my last one, and 28 is the dilatory designation. Rule 7, Section 11. So this completely replaces our current dilatory rule with new language. I, I, you know, that was another one of those discussions just last year. It-- the dilatory language, quite frankly, in our current rules is not workable. And so it, it, it doesn't, it doesn't really get you out of an endless cycle. And so it was not used. But, I would say this in, in strong distinction. I, I went to, I went to, several speaker conferences this summer and I would ask them, you know, how do you-- how are you handling this? And, and often that what they would describe to me is more of an out of order. You would call a speaker out of order. And that is not what this is. This is, this is the designation of, of a bill. So it's not the same as declaring a senator's speech out of order. A pending bill, resolution or main motion would receive a, quote, dilatory designation with a 4/5 vote, which would then trigger a number of actions at that point. So it adds, it adds "to approve dilatory designation" to a list of priority motions. And here's-- here would be the process. The primary introducer would-- may offer a motion to approve dilatory designation of a pending bill, resolution or main motion. The motion to approve dilatory designation is not debatable, amendable, nor divisible. A 4/5 vote of elected members is required to approve dilatory designation. That's 40 votes. And the reason that I set the threshold this high is that this is kind of the last step after, after other-- after other efforts have been taken to move the bill and move on, this is, this is the last step. And so this will, this will stop debate. If, if 40

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

members vote for a dilatory designation, it will stop debate. And so I, I say that that's a very serious action on the part of the Legislature. And I felt as though 40 votes would be appropriate for that. If approved, all pending amendments and motions, which includes all current and future, out-- are out of order unless designated to be in order by the Speaker. So the body votes, and let's say it votes positively, that a dilatory designation be applied to that bill at that stage of debate. And then, so then the Speaker then would look and say like, OK, that's like add the "a" instead of "the" and you know, bing, bing, bing, bing, boom amendment. Here comes an amendment and that amendment is substituted. And that amendment then could be heard, the others could be declared dilatory, but you could bring that amendment up then to be heard. No motion to overrule the Chair is in order, similar to the cloture rule, because it's, it's really not a-- it's really not a ruling of the Chair the body is voting here. The dilatory designation only applies to the current stage of debate, as I mentioned. And if the motion fails, it can't be reintroduced until an additional two hours of debate has occurred. And if no other amendment or motion is determined to be in order, the advancement of the bill is in order. So if all of these are, are nonconsequential amendments that are, that are being put up to, to try to in a dilatory manner to not to-- not, not substantive, not to add quality to the bill, but rather simply to obstruct, then, then the, the vote could come on the bill. So that's my proposal on, on, on a dilatory. And I think, Senator Erdman, you have a, you have a different approach to that. And, and but this is the one that I put before you.

ERDMAN: Any questions? Are you sure? OK. I appreciate that. I appreciate you breezing through those. That was good. I think that, you know, those first 4 or 5 are very, very substantive. We'll get those-- I think those are vital that we get those cleaned up. And these others bring good discussion. I think it's time for us to have a discussion about how we handle things, and I appreciate your efforts. All summer we worked on these several times.

ARCH: We did.

ERDMAN: I appreciate the time you spent doing that. So thank you so much. OK. Proponents for any of these rules that the Speaker has introduced.

ALLIE FRENCH: Hello again. Allie French, A-l-l-i-e F-r-e-n-c-h. I actually only had number 27 listed down as proponent for us on this one. We wholeheartedly support having at least five calendar days of notice on, on the intent of a bill. I'd like to see that across the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

board for anything and everything. I know it's been talked about, but it wasn't mentioned in here, having more notice for public hearings. And I don't know if that's part of the rules, but I think that would be a very important aspect to discuss. I know so many more Nebraskans would love to be here for these, but with only-- sometimes only 4 or 5 days notice, it's just not a feasible amount of time to create, you know, get things situated so they can be here. And to close out, the last thing I'd like to mention, it was very difficult to find the rules, even for this public hearing. It was under a completely different section when you went to public hearings, as you normally do from a week-to-week basis, to see what's being heard. You could not just click on the bill and pull up what was being introduced. I actually could not find it until this morning where the bills were listed and where the public comments were going to be. So I'm glad to hear that you guys got some, but I know for many they could not even find them. And that's very frustrating because I know more people would like to submit their comments to things like this, and that is really all I had. We just would like more notice, more ability and availability to be involved in the process.

ERDMAN: We will note your, your request on making it more public. Any questions? Thank you.

ALLIE FRENCH: Thank you.

ERDMAN: Any other proponents? Are there any opponents? Are there any neutral testimony?

NATHAN LEACH: Hello, Chairman Erdman, members of the Rules Committee. My name is Nathan Leach, that's N-a-t-h-a-n L-e-a-c-h. I'm speaking in a neutral capacity on proposed change 20, 24 and 26, all in a personal capacity. I'm from Legislative District 37 in Kearney. And starting out with the change number 20, I just wanted to point it out-- point out that divisibility does not equal amendability in principle. So although division is tied-- division is tied to the Legislature's right to vote on a single question, whereas an amendment is a proposed change to a question. So I would be wary of any proposals to limit divisibility. In Mason's Manual of Legislative Procedure in Section 3-10 through 3-18, it goes into more detail about the visibility of proposals. And I would just quote 3-11.1, When a proposal contains two or more separate and distinct subjects or parts, the right of any member to, to demand that the proposal be divided into separate proposals exists only if specifically granted by the rules, which it is in our case. And then number 2, When a proposal contains two or more separate and distinct subjects or parts, a member may demand that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

the separate parts be taken upon each separate question or part. That's important to ensure that when we're voting on questions, it's not quite the same thing as the subject-- single subject rule for bills, but in terms of questions, it allows for the body to vote on one distinct, distinct question at a time. And proposed change 24. Again, this is a personal note in the neutral capacity. I just wanted to go on the record to encourage additional thought on the number of-- the change from 3 to 7 members. Personally, a jump from 3 to 5 or 3 to 6 might seem more conservative. And then a jump higher could be made in future if the challenges persist. I know it's kind of hard, a little bit of an arbitrary number when you're looking at that issue. And then lastly, proposed Rules change 26. Also in a personal capacity in neutral, I wanted to note that because of the long-term implications that can come along with the rulings and overrulings the-- and overrulings of the Chair, I would encourage the committee and the Clerk's Office to consider the possibility of allowing rulings to be referred to the Rules Committee so that further study can occur before the Legislature makes a final decision and thereby setting precedent that can last for decades to come. And with that, I would be very happy to answer any questions.

ERDMAN: Thank you, Mr. Leach. Glad you could make it in. Can you give me the reference on Rule 20 that you took out of Mason's? I didn't get a chance to jot that down.

NATHAN LEACH: Yes. So Rule 20, divisibility is-- it's in Chapter 31, so Section 3-10. And you'll find a number of provisions in there that are relevant. The ones that I quoted was 3-11.1 and 3-11.2.

ERDMAN: Thank you. Appreciate that. Any questions? I appreciate you coming. Thank you so much.

NATHAN LEACH: Thank you for the opportunity.

ERDMAN: Any other proponents-- or excuse me, neutral. Any other neutral? You've been here a long time.

HEIDI UHING: I have. Almost as long as you. Thanks, Chairman Erdman and members of the Rules Committee. My name is Heidi Ewing, H-e-i-d-i U-h-i-n-g. I'm public policy director for Civic Nebraska. I'm here to make a couple neutral comments, but I did want to first thank the committee, the Speaker and the Clerk's Office for providing that means for public input on the Legislature's website so that the public could weigh in on their opinion about all of these rules that are being considered today. It's a much-appreciated feature and an important

indicator of the respect this institution has for its second house. With the weather as it is today, it probably kept some people off the unsafe roads, so we thank you for that. We'd also like to thank the Speaker for Rule 27, which provides a statement of five-- statement of intent five days prior to the legislative hearing. We're grateful for this LR179 process and efforts to gather public input and create a way for the process to be more accommodating for public input and more transparent to the public. So technically, I guess I'm in support of 27. But I do have neutral comments on two other proposals from Speaker Arch's collection, the first being proposal 24 related to the consent calendar. There is no precedent in the legislative rule book for indicating the need for 7 senators to take action. The number 7 appears in the rule book 10 times, but always referring to the number of days required for something. By contrast, the number 5 appears in the legislative rules 22 times, mostly referring to days or minutes. But in 4 instances it refers to the number of senators required for a particular purpose. The first is Rule 1, Section 10. If there is no quorum on the floor, as few as 5 senators may compel the presence of all members. Rule 3, Section 6. The Redistricting Committee may comprise no more than 5 members affiliated with the same political party. Rule 7, Section 4. When a senator calls for debate to cease, we, we need a show of 5 hands. And in Rule number 10, Section 1, committees may comprise no fewer than 5 members. So for uniformity, please consider adjusting your increase of the number of senators needed to remove a bill from consent calendar to a number more consistently used throughout the rule book. And our second comments are on proposal 25 related to the expansion of cloture. Again, neutral testimony with a suggestion. If cloture is to be allowed on other resolutions and main motions, providing the exception for rules is important to protect the voice of the minority in our Unicameral. To this end, it would be more uniform to also extend this exception to cover motions to adopt temporary rules or amendments to the temporary rules, which would make all rules-related debate not subject to cloture. Those are our comments today. I'm happy to take questions.

ERDMAN: OK. Any questions? Thank you very much.

HEIDI UHING: Thanks, Senator.

ERDMAN: Appreciate it. Any other neutral? Perhaps one.

BRANDON METZLER: Mr. chairman, members of the committee, my name is Brendan Metzler, B-r-a-n-d-o-n M-e-t-z-l-e-r. I'll try and make it through as many of these references that you had for the Clerk as possible. Number 2, eliminating the tax rate bill, Senator Bostar. In

terms of changing that to where you would still have the deadline, the only thing I would say is it would be good to give direction to whether that's Fiscal or Bill Drafters or-- when you start to have a lot of bills that, that deal with the tax rates, keeping track of those would be the only issue. So make sure that we don't accidentally break the rule by missing one. It would be good to just make sure we're tracking them if there's a deadline. Continuing through to the amendability and debatability of E&R amendments. Previous speaker is absolutely right. The divisibility is a right of the members. I will point out in the next rule change, Rule 7, Section 3, we do not allow the divisibility on the main-- on the main budget bill. So your rules actually do limit whether or not something can be divisible. So it's not unprecedented to say that this shall not be, shall not be divisible. In terms of some of the questions that were asked, what if you can't get to E&R amendments? What if, you know, the debate prevents it? You always do have in between Select Final and Final Reading, you've got what are called STs, they're statements essentially. That's when E&R goes in and Revisors actually corrects the bill. Anything that didn't get done between General and Select, they clean up. So traditionally you don't vote on those, those are just presumed adopted. So you do have STs out there, if you ever look on the, on the bill history, there is always ST. Not always, but occasionally bills will have amendments, which are those cleanups. So had you not been able to get to E&R amendments that were technical in nature, assuming that they are technical in nature, you could still in between Select and Final get an ST, which would make those technical corrections possibly. Senator Bostar, you asked about all amendments being filed to the bill or how that would work in terms of filing. Traditionally, what had happened before is even if something was filed to E&R, it would be taken up as an amendment to the bill. So you could still have it drafted to E&R, especially if it was a white copy bill-- or a white copy amendment. But what would happen is it would just be presumed to fall in line with the rest of the anything that was filed to Select File so. Sorry, and if there's questions or back and forth, absolutely, at any point. So motion--

ERDMAN: Senator DeBoer has a question.

BRANDON METZLER: Yeah.

DeBOER: Can I, before we move on from this rule, can we-- can I ask you-- so these STs, which are not a thing I really was that aware of, that happened between Select and Final. OK. So we-- the thing that's kind of sticking me here is we take a vote on the E&R. So if we're taking a vote, it seems like that's because there's some potential to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

change them. What would happen first of all, if we did not accept the-- if the vote failed on E&R?

BRANDON METZLER: Presumably either you would, you would not make those changes or-- and they would have to be made at the ST stage-- or the in between Select and Final, or it would be a conversation with Revisors as to why those changes should not be made.

DeBOER: So because there is an actual vote on E&R amendments, it seems to me that someone, somewhere thought that the body ought to weigh in and not just have that be between--

BRANDON METZLER: I will tell you, Senator, some of this stems-- a lot of this stems from when the E&R Chair was an actual-- well, it is still a member, but it had an actual function. So in the very early years of the Unicameral, the E&R Chair was-- had to be a lawyer. It was required that that individual had a, had a law degree and they would actually do the function of Revisors. Bill Drafters did some, but it was primarily a bill drafting function. And this E&R Chair would go in and actually make all the corrections on the bill. They had a Chair in the Vice Chair. That essentially became, as Bill Drafters morphed into more of a Revisors, that function went away. It became, you know, the way we have it now, which is just a figurehead essentially for the E&R amendment and changes to be made. But I believe a lot of those changes are probably still holdover from when another member of the body was recommending those changes be made so that you had a check on the individual making those changes.

DeBOER: OK. Well, it's-- if there is a way to have a check on the Revisors who are doing that, it almost seems like almost more egregious if it's an unelected person who's making the changes. That the body has some ability to make a check on that, which I guess the body could just choose to vote down those changes. But then it's a little scary that then they could just go back in again through ST without any vote.

BRANDON METZLER: And, and presumably, Senator, I think at that point, if they were to, I mean, if there was some back and forth, first of all, we're all hired at, you know, the behest of the, the Legislative Council. So there's question-- if there's questions about a division's performance, that's something to be taken up with the Legislature. Not saying anything with the current Revisors.

DeBOER: No.

BRANDON METZLER: I mean, they're, they're wonderful. But the other thing is you could always kick it back to Select and take them back out, I would susp-- I would suppose. Return to Select File and then take out whatever changes that you were adamant that they didn't put in. But I, I think a conversation with Revisors, just like the Clerk's Office, Research, et cetera, would be enough to-- if there was some discussion they needed.

DeBOER: OK.

ERDMAN: Senator Bostar.

BOSTAR: Thank you, Chair Erdman. Thank you, Mr. Clerk. We have a Chair of E&R now. Is the expectation that that individual is looking at these things, is checking this stuff over?

ERDMAN: The--

BOSTAR: Why have-- why have a Chair of E&R?

BRANDON METZLER: Essentially, Senator, we need somebody to make the motion on the floor when we have E&R amendments. And that has, just as a ritual, fallen to the youngest member in the news class, because somebody, one member has to stand up and make that motion to adopt E&R or advance the bill.

BOSTAR: I mean, I know we're always looking for things that, you know, the Exec Vice Chair that we elect should do. I, I mean, my follow-up to that is, you know, it also feels a little, you know, we're making this person a chair, but they don't get chairs' accommodations. And, you know, I'm just not sure that's fair.

BRANDON METZLER: I think that's a broader discussion for the Legislative Council, Senator.

BOSTAR: Thank you.

ERDMAN: Very good. Any other questions? Go ahead.

BRANDON METZLER: Just finishing up quickly. Overrule the Chair. Senator, you talked about the, the queue and being in the different queues. We had talked at Leg Council meeting, but just for the record, this year, as you've seen, there's now monitors within the Chamber. We have reached out to the company that did all of our queue system. There will be two different queues. So as soon as we switch over into a procedural motion overruling the Chair, that type of thing, it will

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

switch over. It will freeze and recognize the first queue, and it will switch over to a totally different new queue in which you can debate there. When that's done, it will remember the original queue and repopulate the queue with those names. And again, that's a technology upgrade. Doesn't need a rule change. It's just something we'll recognize. I believe that's all I have for the, for the Arch proposals.

DeBOER: I have a question.

ERDMAN: Go ahead.

DeBOER: You skipped over 21. That was the priority motions discussion. And my question was, the rule as it's written here before us on 21, is that going to prevent something like a return to Select from actually being used in its intended manner? So can a introducer inoculate their own bill against a return to Select against the wishes of the body?

BRANDON METZLER: So, Senator, I think my-- if you've got the votes to where, you know, it's 1 versus 48, for example, and I, and I recommit my own bill and then--

DeBOER: You don't want to recommit. You want to keep your bill from being recommitted.

BRANDON METZLER: Right. I offer the recommit and then I withdraw it, and I block essentially everyone. I think your options there, because you presumably would have such a majority, would be to either, first of all, IPP the bill. Kill the bill. But you could also amend the bill on the floor, especially if what you needed to recommit to committee was substantial that would change the bill. You could amend it on the floor and then you've got the Rule 6, Section 3(f) somewhere in there that talks about if the bill by way of amendment is substantially different than what was introduced, the Speaker can kick it back to, to committee. So I think that's one option for you, that if you did need to get it back to committee, instead of kicking it back to committee, amending it there and then kicking it back to the floor, you could presumably, if you had the votes-- you couldn't recommit because they blocked you. What you could do is amend it on the floor, say this is the change that we would have made in committee, but for you blocking us. Now it has to go back to committee for, for a discussion. I mean, I think there's options if you've got the votes. I think you're right and to-- Senator, in that it certainly is-- there's some, there's a tactical play there about being able who gets the recommit, the race up there. So I think some combination of, of what

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

Senator Erdman, Speaker Arch and Senator John Cavanaugh are proposing, I'm sure through discussions, executive sessions, there is some solution here to this that makes it workable for everyone, I hope. But I think if the numbers are there, presumably the body, the majority, you know, will be able to work it out.

DeBOER: Because that works for recommit, but there might be some other things that-- you could inoculate your bill against being IPPed or something, which presumably means it would just fail. But I just want to think through that there's a reason to have these motions and we're basically rendering them moot. That's a problem.

BRANDON METZLER: Fair.

ERDMAN: OK. Anyone else? Nice job.

BRANDON METZLER: Thank you, Senator.

ERDMAN: Thank you. Any other neutral testimony? Hearing none. I will give you the results of the online comments. Rule 13 had no comments. 14 had 2. 15, 16, 17 had 1. 18 had 2 and 19 had 2. 21 and 22 had 1. 26 was popular-- excuse me, 25 had, had 6. 23 had 6. 24 had 2. Seven on 25, none on 26. Three on 27. And 6 on the last one, 28. So that completes Senator Arch's rules, and we will take a short break because the next presenter needs to step up. So in about five minutes we'll be back.

[BREAK]

DeBOER: I think we're going to come back together. I don't know where he is. Senator Erdman, whenever you would like to continue.

ERDMAN: Thank you. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent District 47, the only legislative district in the state that borders three other states. So I would submit to you today a Rule change number 1, and I, I don't know what it is on your agenda there, but it's for the 2/3 vote for a cloture motion. Let me start with this. The, the majority of these rule changes were, selected by last year's Rules hearing. A lot of these rules were submitted then, and we worked on those this summer. When we adjourned in May, I asked my staff, I asked Joel, Joel Hunt to go through and start looking at the changes that I had noted in my rule book, and that's what he did. And so some of these came from last year's rules hearing. We had 57, if you remember, and then some of these others were just added during the summer when we did the revision of the rules. So the first one I think is very important. And this rule is, as been reported sometimes in the

media that this is changing the 2/3 required for cloture. It is not changing the 2/3 requirement. It does change on how you count the votes. And so basically what it is, a motion for cloture shall be deemed successful whatever passed by 2/3 of the members voting yea or nay and present not voting will not be counted. So here's a case in point. Here's how it works. If there are 49 people voting, it takes 33 votes. If there's 48 people voting, it takes 32. And so it just continues to decrease the number needed to-- for cloture. But it's always 2/3 of those voting. And so present and not voting will not be counted. The least number of votes you could have for closure would be 25, because 25 is 2/3 of 37. So if 37 people voted, you'd have 25 for cloture. Now people say, and I've heard them say they may use this to their advantage. And I ask the question, do you not think they use the current system to their advantage? And so I think it's an opportunity for us, very similar to what Justin Wayne, Senator Wayne was trying to do with his requirement to vote on Final Reading. So either vote or either be excused. But if you're going to be excused and you're trying to game the system by not being there because it's required to be 33 votes for cloture, it's just 2/3 of those present and voting yea or nay. So if the motion-- it goes on to say the mot-- the rule change goes on to say a motion for cloture which fails for lack of sufficient, sufficient votes-- because if you didn't get the 25-- shall result in the debate on the rule or resolution ending for that day. And when the Speaker chooses to resume the debate on the bill or a resolution, successive motions for cloture shall not be in order until an additional hour of debate has occurred. And then also a vote on the cloture motion shall be recorded by machine vote. So when the Speaker chooses to bring it back, it'll take another hour of debate before you can do a cloture motion again. So that is my attempt to help streamline and get people to vote instead of standing on the sideline and saying present, not voting. And it's 2/3 of those who vote. And as I described earlier, 37 would be the least amount of votes that you could have because 2/3 of 37 is 25. So I'd be happy to answer any questions you may have or try to.

DeBOER: Are there any questions for Senator Erdman on this rule proposal? I don't see any. Senator Erdman, you can continue on with your next rule, rules proposal.

ERDMAN: OK. So the next proposal is a rule that has been subtracted or taken out of the complete rewrite. As I said earlier, we began this process immediately upon adjournment back in May. My staff, Joel, and 5 or 6 other LAs spent a significant amount of time this summer rewriting the whole rule book. And we have always been curious as to why there wasn't a rule on how to adopt the rules. And so this would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

be Rule number 11, it would be in addition to the rule book, Rule number 11. And this is probably more of a discussion to have at a special session or at another time. And I'm not interested in moving on with this, this rule change, but I think it's an opportunity for us to review what we've written there, that if you're going to go forward in the future, you're to have a rule on how to debate the rules, this is a starting place to do that. So we will just move on to the next one, if it's OK with you, Madam Chair.

ARCH: Could I--

DeBOER: Oh, let me see if there are questions. Senator Arch.

ARCH: Senator Erdman, why, why do you feel there's a need for a separate rule change or a set-- a procedure for debating rules?

ERDMAN: Well, you know, as we found in '17, we didn't have a provision on how to cease debate. And we debated rules for nearly 40 days. So I think, I think as we discussed that, the group that got together last summer, we discussed that we have a rule for everything else. We have a procedure for debating everything else but rules. And so we came up with this conclusion that we needed to do that. So that was the, that was the premise behind why we did that.

ARCH: Thank you.

DeBOER: Any other questions? All right, Senator Erdman. Rule proposal number 3.

ERDMAN: OK. Number 3 is an opportunity for the body to be-- have open and transparent votes for chairmanship and vice chairmanship of committees, especially the Executive Committee. So what the rule says is that the chairperson of each standing committee shall be selected by a roll call majority vote of the elected members, of the elected members of the Legislature, whereby each senator shall state the name of the candidate of his or her choice. And how we got to this one is, and some of you may have experienced this very thing. You have sought the support of other senators, and when the vote is taken, you fall 3, 4, whatever the number is, short of those who said they were going to vote for you. And then for a period of time, you are the one that is trying to search out and remember who might have not told you the truth. So this is transparency and the opportunity to hold people to the word. And I think it's important that all the votes that we take should be reviewable. And currently the way the current system is, that is not the case. And so we've talked about this for a very long

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

time. We've never had this rule submitted in this way before. And I think it's important that we have a discussion about this, and I think this is a vital thing that we do to hold people accountable. So people understand when someone gives you their word, to stick to it.

DeBOER: Are there any questions for Senator Erdman on Rule proposal number 3? I don't see any, Senator Erdman.

ERDMAN: OK.

DeBOER: Let's go to number 4.

ERDMAN: All right, number 4. All right. This one, as those who come up to testify against this one will tell you, this is my seventh attempt at this rule. I have introduced this rule every year I've been here. I served on several elected boards before this one and I served on private boards as well. And there's not been a committee or a position I've held where the executive committee-- executive meeting was attended by anybody but those involved in the discussion. And so this one, this meeting-- this rule change here would say that at the executive meetings of committees are closed to the media. Originally when I started this, I said, closed to everyone or open to everyone. It is peculiar to me that those people who are not elected, that are part of the news media, have the opportunity to sit in on the discussion in executive session. Those who are elected, who have skin in the game, it may be their bill or it may be their committee bill, but they're not afforded the opportunity to do that. So a journalist had called me last week and said, it's important that we're there to be able to share what the discussion was, and we don't share things that we shouldn't. Well, I gave them this example. If you're standing on the street corner waiting for the light to change so you can walk across the street and there are two other people standing beside you, and there's an accident in the intersection. When the police come to interview-- reinterview you about what happened, they don't do it as a group. They do it individually. And every one of us seen the same accident, but we all have three different impressions of what happened. And so when the news media sits in an executive session, they write it from their perspective. It may not be exactly what happened, it may not be how the discussion was, but it's their slant on what they seen and what they heard. And so I think it's vital that we have a conversation and say the things that we need to say, the discussion we need to have without them being present. And then it would also be an opportunity for us, we, when we have to make sure that we vote-- it'll be vote in public when we vote, when we make the votes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

DeBOER: OK. Are there questions for Senator Erdman on Rule number 4, rules proposal? Senator Hansen.

HANSEN: Do you know how other states or state legislatures allow media in executive sessions?

ERDMAN: I don't, Senator Hansen.

HANSEN: Just curious.

ERDMAN: But I would, I would assume they do not. I would, I would assume that not to be the case. I've never seen-- I mean, maybe you guys have served on boards where you allow media in your executive session, but I've never seen that.

DeBOER: Other questions from the committee? Thank you, Senator Erdman. Let's go to Senator-- or to your Rules proposal change number 5.

ERDMAN: This is the motion for dilatory purposes. And Senator Arch described to you earlier that we have, we have, we have several, 3 or 4, maybe 5 that deal with the same issue. This is one of them. Senator Arch's dilatory motion has a 40 vote a requirement to declare dilatory. Ours is-- mine isn't quite that stringent. And so what we're trying to do here is to make sure that the discussion is about the bill and, and not, and not about secondary items that have no value at all to the discussion. And so what this amendment says is, which so we're going to start by striking all of what was in 7-11. 7-11 was very difficult to understand and use, and I think the Speaker would agree that it was very difficult to apply that rule. And so we've stricken what was in there before. So we're gonna talk about amendment, amendments or motions for dilatory purposes, which are-- these amendments that which I believe to be used for dil-- dilatory purposes on debate, the principal introducer of the bill or resolution, or the chairman of the Committee if the bill is a committee bill, may file a motion to suspend for dilatory purposes. Stating that he or she believes the motions are being used for dilatory purpose. The motion to suspend for dila-- dilatory purposes shall be filed in writing with the Clerk and shall be recognized by the Presiding Officer when verified by a show of 10 hands or more. Each motion and or amendment char-- charged being dilatory shall be named and or identified in the motion, along with the names of the senators filing such motions or amendments. The Presiding Officer shall recognize the speaker and the principal introducer of the bill, a resolution of the committee chair, if the bill is a committee bill, for five minutes each to explain why the motions and the amendments

are dilatory in nature. The Presiding Officer shall then recognize, excuse me, the senator or senators filing the motions and amendments for five minutes each, and explain each of the motions and the amendments for a dilatory nature. The motions to suspend for dilatory purposes is a nondebatable motion and no senator shall yield time to another senator. And it goes on to talk about it shall be a machine vote. And then it's, it's, it's 3/5 of the majority instead of 40. It's instead of 40, it's 30. So our goal here is to make sure that we have support introducing the dilatory motion and the cases. That's why we had a show of ten hands. And that means there's 9 other people besides the one making the motion that agree that this is dilatory. And so I think it's important we understand that we're not putting the total burden on the Presiding Officer or the Speaker to make a decision about what is dilatory or what isn't, but the body is making that decision. So I will stop there. There's other parts of that, but you can read what it was.

DeBOER: Are there questions? Senator Arch.

ARCH: So as I understand your proposal-- my, my proposal was that you declare the bill dilatory or the motion or the, you know, that whole piece. And then the Speaker can, can order. You're saying that each, each amendment would be voted on by the body, dilatory or not?

ERDMAN: If that-- if they, if they believe that is a dilatory motion or amendment, yes.

ARCH: And who can file the motion to declare an amendment dilatory?

ERDMAN: It can be filed by the person who introduced the bill or it can be filed by another member who thinks it's dilatory. But they have to have agreement from 9 other people. It's not just one single individual.

DeBOER: Thank you, Senator Arch. Do you have more questions, Senator Arch? Nope. Other questions? I have a question for you.

ERDMAN: Yes.

DeBOER: Senator Erdman, when it says that the introducer-- so does the person who has introduced the purported dilatory amendment motion, whatever, have the opportunity to defend themselves?

ERDMAN: Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

DeBOER: OK, so where is-- so that the-- the Presiding Officer shall recognize the Speaker and principal introducer of the bill or resolution or the committee chair of the [INAUDIBLE]--

ERDMAN: And they will--

DeBOER: --displaying are dilatory.

ERDMAN: Yeah. And the, the person who's being challenged to be dilatory or not gets an opportunity to explain why it's not.

DeBOER: File the motions and or amendments for 4 minutes. OK. Thank you. I see it now.

ERDMAN: Give them both the same opportunity.

DeBOER: Yeah, I just had to find it. Other questions? All right.

ERDMAN: And we settled on the 3/5. 3/5 is what's required to override the Governor on a veto, and so we thought that was a pretty significant threshold. It's very difficult to get 40 votes. There are a lot of bills passed in the Legislature don't get 40 votes. So that's why we do the 3/5, 30 votes.

DeBOER: OK, let's move on to your proposal number 6.

ERDMAN: OK. Number 6. OK, this, this motion is to call the question. All right. So the rule says that to call the question shall be in the normal, normal in the normal process of speaking. So you can't just stand up and call the question, you have to be recognized. But a motion to call the question to ask the Presiding Officer to end debate on the bill, resolution or amendment or a motion by calling the previous question-- concluding question, a senator making the motion to call the question shall ask the Presiding Officer to call the previous question. The Presiding Officer shall then ask the body, shall debate cease? At any time, at any time during debate or, or bill or a resolution, any member wishing to end debate on a bill, resolution or amendment or a motion who has been recognized by the Presiding Officer to speak, may call the debate to cease by calling the question. Calling the question shall be made on the normal course of speaking or-- the speaking order and be ordered-- and be in order when demanded by 10 or more members. So they got to show 10 hands for people who wish to cease debate. On the motion of the call of the question, there should be no debate. When the previous question shall be ordered on a proposition under debate, the mover, proponent, introducer of such, such proposition shall be given the right to close

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

on the debate thereof-- thereon. The motion to call the question shall be deemed successful by way of via voca-- voice vote [RECORDER MALFUNCTION] present. The motion to call a question shall hold priority for all the motions except the motion to recess, motion to adjourn, or motion for cloture. And we dealt with that same issue that Senator Arch was talking about. We needed to have that in there so that we can actually end debate. So that's what that is, calling, calling the question.

DeBOER: Questions for Senator Erdman? All right, Senator Erdman, let's move on to number 7.

ERDMAN: Number 7. All right. Number 7. All votes shall be taken viva voce. Questions shall be distinctly put in the form, to wit, it says. That's what it currently says. To whom are in favor of the question yea or nay to those opposed by the same question. The presiding officer shall not recognize a motion to call the question or to reconsider, postpone to time certain, to recommit to committee, or to postpone indefinitely unless 5 more senators agree to the motion, and the motion is sustained by a show of hands of 5 or more senators, except that a motion to call the question shall require the approval of 10 senators by way of show of hands. So what this is saying is, if you're going to introduce 1 of those priority motions, it has to be agreed to by 4 other people besides yourself, because currently it just takes 1 person to just write up the-- write up the amendment and submit it to the Clerk. So this is a show of 5 hands to do a priority motion.

DeBOER: Are there questions? All right, let's move on to number 8.

ERDMAN: Number 8. OK. Motion number 8, Section 7. Excuse me. Rule 7, Section 3. The presiding officer shall not recognize any of the following motions more than once per the stage of debate of the resolution: The motion to reconsider, motion to postpone for a time certain, a motion to recommit-- to recommit, and a motion to postpone indefinitely. This is exactly the continuation of the temporary rule that we passed last year. So what our goal here is to put it back in the rules that we had only approved for the '23 session. And the other significant part of this is we changed-- down under "e" we changed the priority motions. Number 1 is to recess, the most prestigious motion is to recess, to adjourn, for cloture. And then we moved call the previous question. And then after that comes reconsider. So we reorganized and added call the question in above to reconsider. So that's basically what that is a continuation of what we did in '23.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

DeBOER: Are there questions? I would sort of echo my previous comments on making sure that we're not having somebody use those protectively in such a way as to completely--

ERDMAN: And I-- and I understood what you were saying. I think-- I think it, it requires more discussion.

DeBOER: OK. Did that yield any questions? No. All right. Let's move on to number 9.

ERDMAN: OK, number 9-- what number 9 is, in the rules it talks about forming a committee during redistricting, which happens once every 10 years. We pride ourselves, and we state many times that we're nonpartisan. But in many instances, we state in our rules that we are. And that's what this is. So what we're doing is we're striking the verbiage that says: No more than 5 members appointed to the committee for redistricting shall be affiliated with the same political party. And then in under, under section-- Rule 3, Section 6(c), we strike the language where it says: The Vice Chair shall not be a member-- The Vice Chair and the Chair shall not be a member of the same political party. So it's just stating in the rules that we're nonpartisan.

DeBOER: Questions over proposed rule change number 9? I don't see any. So let's move on to proposed rule change number 10.

ERDMAN: Rule number 10 is overruling the Chair. So the President or the presiding officer-- we're adding the word "presiding officer"-- may speak to the point of order of preference of members. So it goes on to say: and shall-- and, and to overrule the Chair shall be in order when such challenge shall be demanded by 5 members. So we're-- so we're asking again, we're going to have at least 5 people agree that overruling the Chair is appropriate. So the President or presiding officer shall ask for the 5 hands and seeing-- and if seeing shall, shall also allow the challenging member 5 minutes to speak, or designee if-- a designee to speak on the behalf-- on his behalf and her, her behalf. Afterwards, the Speaker or the Chair of the Rules Committee may request 5 minutes each to speak to the challenges with no further debate. And then it goes on what we add at the bottom: A motion to overrule the Chair shall not be subject to reconsider motion, nor shall the President or presiding officer be required to recognize another motion to overrule the Chair that address the same question or order. So it's our way of, of placing the overrule of the Chair basically into the hands of the Legislature instead of having a decision made by the-- by the presiding officer, show of 5 hands to overrule the Chair. Because what happens now is one person says

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

overrule the Chair and we spend, who knows how long, hour and a half or whatever it is, overruling the Chair, when maybe that was the only person in the room that thought overruling the Chair was a good idea. So it gives us a chance to have a little bit of-- a little bit of support before we do that.

DeBOER: Are there questions? I will ask that question-- this question. So let's say that I'm 1 of the 5 that raises my hand that I want to overrule the Chair, do I get an opportunity to speak? So I'm not the original person who says overrule the Chair.

ERDMAN: It says: the presiding officer shall ask for 5 hands. What does it say there?

DeBOER: And if seeing such shall allow the challenging member--

ERDMAN: Correct.

DeBOER: --so that would not be me-- 5 minutes to speak--

ERDMAN: Yep.

DeBOER: --or a designee. But say they want to speak and I want to speak too? I guess my question would be if this is allowing enough debate about the overruling the Chair, because let's say Senator Hansen wants to overrule the Chair and the Chair-- the President says, are there five hands? I raised my hand, but I have a very different reason. And I sit kind of far from Senator Hansen so we didn't have a chance to talk about it in the moment. Senator Hansen says what he wants, what his reasoning is, mine is quite different.

ERDMAN: Yeah.

DeBOER: I wonder if we're maybe limiting debate too much on that.

ERDMAN: Well, the, the point well taken there. And, you know, Senator Arch has overruling the Chair as well. And so I, I would-- I would suggest that when we get together, whether it's tomorrow or whenever it is, I believe it will be, that we talk about how do we make changes to this or to Senator Arch's rule so we can bring those together because I don't think there's any reason why we should bring out two different rules for overruling the Chair.

DeBOER: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ERDMAN: We need to be able to put these together to come out with something that the body can consider, rather than bringing it to the floor and say, which one do you want?

DeBOER: So you're open to a discussion of maybe allowing a few more people a chance to speak on that.

ERDMAN: Yeah.

DeBOER: OK. Other questions on number 10? Number 11. I understand you have one change that you'd like to make on number 11, there was--

ERDMAN: Yes. There's a-- there's a typo there. It's at the top. You'll see it says Rule 1, Section 7, it should say Rule 2. And the same in the middle of the page where it says Rule 1, Section 8, it should say Section 2 there.

DeBOER: OK.

ERDMAN: OK?

DeBOER: Please begin on that one then.

ERDMAN: We just caught that this morning and so we'll have to make that change there. So this is-- this is about germane speech. And so the goal here is to make sure that we have an opportunity to say the things that need to be said. But by the same token, they need to be germane to the item we're talking about. And so what we have-- what we have placed in the underlined part of the rule is: When speaking, senators shall maintain germane speech by confirming-- confirm-- confining their speech to address the question under consideration in an orderly manner. The presiding officer shall, or a member may, call a member to order for nongermane speech. So as you go on to read through that, the first notice is that the presiding officer will ask the person speaking to keep their comments germane. And then if that doesn't happen, then we go on and we have an opportunity for the person who introduced the bill or others to challenge that person, whether it's germane or not, then they get an opportunity to speak about that. The person who has challenged them then will have an opportunity to speak why they think it's not germane, and the other person will then have the opportunity to explain why it is. And so without reading through all of that for the sake of time, basically, what we're trying to accomplish here is to make sure that we stick on subject and that we have discussion about exactly what's on the board and not maybe about our favorite whatever. And so that's our goal with this germane speech.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

DeBOER: OK. Questions? I don't see any. I think that brings us to number 12.

ERDMAN: Now, my favorite rule change is the last one and it's only 100 pages. So the goal was not to have a discussion about this. But what I want to say about this one is over the summer, over the interim, we spent a significant amount of time, 6 or 7 LAs and myself, and we started at page 1, and we began to write the rules in such a way that a new person coming in, in '25, if this were adopted, that would pick up the rule book, and they would be able to understand what exactly you can do under General File, because it's all in one rule. They'd be able to stand-- understand what Select File is, Final Reading, and how to debate the rules. Because currently we have cross-references, and for about probably 50 years or more, we would do a vote on rule changes and we add them here and we cross-reference to that rule. And the first year I was here, it was the second, first or second day, Senator Chambers turned around and said to me, learn the rules. Learn the rules. So I began reading them and I began to be kind of confused. I thought I could do this on General File, but I found out it was cross-referenced over to Select File. I actually can't do that. And so what we did is we brought everything together in one specific rule, dealing with each stage of debate. And so we tried to streamline it, make it so that they could understand. And anybody could pick up the rule book and read it and say, oh, that's what it means. So this amendment, this rule change here would need to be adopted, I believe, with a special session. I don't think we have enough time, even in the 90-day session, to spend the time to talk about what needs to be changed. But this is a framework to start with, that if we want to have a special session, we want to talk about how we fix our rules and really make them so people can understand them, this is what needs to happen. But I'm not intending to bring this forward. It's because we spent that much time on this, I wanted people to see what does it look like when you bring all that together. And that's what that is.

DeBOER: Are there questions? I don't see any. I don't see any, Senator Erdman, and I think that's the last of your rule change proposals.

ERDMAN: It is. It is. Correct.

DeBOER: OK. So then we are going to now switch to proponent testimony. What I would ask for folks who are coming up to testify in favor, is that you be very clear about which rule you're talking about so that we can find it and sort of turn our books to that page so we're able to follow along with you. So please list which rule proposal change you're going to be speaking to. So proponents of any Rule 1 through 12

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

changes? Anybody wishing to testify in favor of rule change 1 through 12? OK. Opponents? Anyone who wants to testify in opposition to-- OK. And please just list for us the, the numbers. And if you are going to testify in opposition, maybe start a little queue there behind Mr. Leach. OK. Thank you very much. Welcome to your Rules Committee.

NANCY FINKEN: Thank you. Good afternoon. My name is Nancy Finken, N-a-n-c-y F-i-n-k-e-n, and I am the chief content officer at Nebraska Public Media. And I serve on the board of Media of Nebraska, which includes broadcast and print news organizations across the state. Media of Nebraska objects to the proposed change to Rule 3, Section 16, barring news media from attending and reporting on action taken in Executive Sessions. In the name of transparency, I urge you not to make this rule change. Access to Executive Sessions gives journalists background and context as we cover the work that you do, the decisions that you make, and the thought process that leads you to act. We believe Executive Sessions are a place for frank discussions, and responsible journalists will not take advantage of their access to embarrass anyone by quoting some off-the-cuff remark out of context. But balancing the risk of that happening against the rewards of having a more informed citizenry, we think Nebraska's exemplary tradition of openness is best served by keeping the current rule in place. As professional journalists, we know the value of context. We are journalists trained in ethics, public policy and news reporting, and we take seriously the duty to provide meaningful, contextual, and accurate reporting on state government with the shared goal of contributing to a more informed society. The value of this rule, in our view, is to facilitate quality reporting on policy in the tradition of openness that distinguishes the Nebraska Legislature. So, again, Nebraska news media understands that attending Executive Sessions is a privilege and one that we don't take lightly. So please don't make a move towards doing your business behind closed doors. Secrecy helps no one. It doesn't help this body and it doesn't help the people that you serve. Thank you.

DeBOER: Thank you for testifying. For clarity for the hearing as well as everyone else, this would be proposed rule change number 4. Any questions for this testifier? Senator Arch.

ARCH: Thank you. Thank you for your testimony. My sixth year now, and, and there have been moments with, with media in Exec Session where there is a-- there is a sense by senators of: I better not say that. Well, how do you-- how do you respond to that? Is that-- is that-- is-- should we not be sensing that? Should we not be feeling that? How-- what would you advice-- what, what would you advise senators?

NANCY FINKEN: I would advise senators to do your work and trust the media. Trust the journalists who are there to tell the stories in context. I think we have a body of work that speaks to that. And I don't want to say there probably has never been a mistake, that someone has not been as responsive as they should have and careful. But the majority of the time, I think that the journalists of Nebraska, the ones who report especially session in and session out and who have a long body of work, are here to report what goes on, not with a point of view, not inserting opinion into straight ahead reporting, but to use the context that they-- and we hear in Executive Sessions on a body of work over a long haul that, that gives you that comfort, that it is professional journalists doing their work. And I think as the-- as the Unicameral is here and the public is really the second house, the only connection from the first house to the second house is through that media coverage. And that's why I think it's a very serious privilege and one that we take serious. So my, my advice is do your business and let the media do their business, just as we've been doing for decades.

ARCH: All right. Thank you.

NANCY FINKEN: Thank you.

DeBOER: Thank you, Senator Arch. Senator Hansen.

HANSEN: Thank you. You, you said in your testimony in one of your last sentences in your second to the last paragraph "in the tradition of openness that distinguishes the Nebraska Legislature." I think this is a question I'd have for Senator Erdman. Do you know how many other states allow media in their Executive Sessions or in, like, D.C. or other kind of political avenues?

NANCY FINKEN: I don't know and we can get that data for you, but I think the uniqueness is what I just spoke to, the uniqueness of the Unicameral, the uniqueness of the people being that second house and the media being that link. That's part of that uniqueness that I'm speaking to.

HANSEN: OK. I might disagree with you on one thing you said about--

NANCY FINKEN: Sure.

HANSEN: --communication. I think-- I think constituents have many means of communication with their senator or their staff or through TV to see what's going on in the Legislature. So I think there's lots of ways they can ascertain or openly, honestly, hey, what do you think

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

about this one bill? Tell-- you know, I mean, I think that informs us-- in, in my opinion, is a much more honest approach too, as opposed to what happens in Executive Session. Because I, I would have to agree with Senator Arch, I feel like sometimes, especially with controversial issues, which might require more robust discussion or open, honest discussion, it seems like it might stifle, in my opinion, from the feeling that I get seems like it stifles sometimes conversation about what we can say and maybe what we feel like we shouldn't say because of maybe how it's portrayed through other people's eyes or the recording, so. In my opinion, I can see kind of both sides about what you're saying as well.

NANCY FINKEN: Not to be argumentative, but I think it's important for journalists to report on the work that goes on behind closed doors. I do think that the, the secrecy part of it makes people assume that something is not aboveboard, when in fact it is. You're doing the really hard work of the people, and it is difficult to have some conversations, I'm sure. But having them, having the media be able to experience what Senator Hansen says, Senator Ibach says in context, and maybe coming from different points of view, is not something you would get if we weren't able to observe that.

HANSEN: Can I ask one more question?

DeBOER: Yeah.

HANSEN: In the-- in, in the theme of transparency then, in, in your opinion, and you would agree with Senator Erdman when it comes to committee Chairs not having secret ballots?

NANCY FINKEN: I'm not here to testify on that, but I don't think anything should be secret. I think it would be--

HANSEN: Just-- I was curious about your opinion, so.

NANCY FINKEN: OK. That's my opinion.

DeBOER: Thank you, Senator Hansen. We'll ask you about the fear that I've heard expressed in this room in the past about whether or not having the news media in the room drives the conversations from the Executive Session outside of the Executive Session, so that the whole committee is not having a conversation all at once. Is that-- do you think that that's sort of outweighed by having the news in the room, or how would you address that fear that what this does is simply drives those kind of careful conversations outside of the Executive Session to sort of some other place?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

NANCY FINKEN: I think those conversations will happen regardless. And that's not necessarily what you want. You want it to be informed. And I think the decisions that the committee makes have to be reported on. So I, I don't think that should be the reason not to allow transparency inside the committee hearings.

DeBOER: OK. Any other questions? All right. Thank you so much for being--

NANCY FINKEN: Thank you very much.

DeBOER: --here. Let's take our next testifier on Rules 1 through 12. Rules proposals 1 through 12. Welcome back, Mr. Leach.

NATHAN LEACH: This is opposition, right?

DeBOER: This is opposition. Did I say proponent?

NATHAN LEACH: Um, no.

DeBOER: Opposition testimony. Rules change proposals 1 through 12.

NATHAN LEACH: Excellent. Thank you, Madam Chair, members of the Rules Committee. My name is Nathan Leach. That's N-a-t-h-a-n L-e-a-c-h. I am speaking on behalf of Nonpartisan Nebraska in opposition on rules change 3 and 9, and then in a personal capacity on 7 and 10, and in a neutral capacity, also personal, on number 2. So beginning with rules change number 2 briefly, I just wanted to mention that I think the Legislature should simply adopt the rules until amended, having them carry over session to session, Legislature to the Legislature automatically. This process would solve many of the problems meant to be addressed by proposed change 2, and it would allow for rules amendments to be addressed in the same way that LRCAs are addressed, allowing the body to use the same three-stage-debate format, as well as cloture, for, for bills that are in a form of-- or LRs that are in a form of a rules amendment. On proposed rules change number 3, this is on behalf of Nonpartisan Nebraska as well. We have long been in opposition to changing from a ballot vote to a roll call vote. And this would be in the record. You can reference previous testimony from January 11, 2017, Rules Committee hearing transcript pages 38 and pages 161 to 162; January 12, 2021, Rules Committee transcript pages 4 through 6 and pages 7 through 10; January 12, 2023, Rules Committee transcript pages 86 through 89-- or excuse me, 92. I would just reflect that outside of the context of the Nebraska Legislature, the use of a-- of a ballot vote, whether it be in Congress with the caucuses voting for who they want to be chair or the city council or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

the school board or the local FBLA, no where outside of this context have I ever heard anyone have a problem with the use of a ballot vote for an election. So the, the ballot votes we use in our elections, they're not votes on any questions, which are quite a bit different and sometimes, I think, confused. The next proposed rules change number 7, this is in a personal capacity. I would refer you to the Rules Committee hearing transcript from January 16, 2019, pages 5 through 6. This was a rules change brought by Senator Briese that would require a show of 5 hand-- a show of hands. This show of hands is essentially a, a second, but rather than that, it's a third, fourth, and fifth. Seconds in legislative bodies are not in accordance with present day-- the present day view on the rights and dignities of individuals. And I would caution against this approach, particularly considering the small nature of our Legislature. The smallest in the body. And we should ensure that every senator has the ability to represent their constituents to the-- to the maximum allowable. And proposed rules change 9, this is in opposition and, and representation of Nonpartisan Nebraska. I would refer you to pages 121 and 122 of the Rules Committee hearing transcript from January 12, 2023. Adopting this rules change will open the door for future legislatures appointing only members of one political party to the Legislature's Redistricting Committee. This could be a serious disservice to the people of Nebraska. It is no secret that partisan politicians from across the country and from both parties have taken advantage of their ability to draw political districts in such a way as to unfairly advantage themselves, and in some cases, cement their majority in legislatures, congressional delegations, and other political institutions. But when politicians draw districts in favor of themselves, they disrespect the very institutions they aim to serve, subverting the principles of representative democracy. And, finally, proposed rules change 10. This is in a personal capacity in opposition. A member's right to raise a point of order is tied to their fundamental right to demand that the rules be observed. Raising the required number from a single member to 5 is a serious, fundamental departure from parliamentary law. I have more resources available on this subject and would be happy to provide more detail should this advance from committee. With that, I'd be happy to answer any questions.

DeBOER: All right. Are there questions for this testifier? I don't see any. Thank you so much for being here.

NATHAN LEACH: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

DeBOER: Let's take our next opposition testifier for rule change proposal number 1 through 12.

TIMOTHY C. MELCHER: Hello, Rules Committee. How's it going? My name is Timothy C. Melcher, T-i-m-o-t-h-y C. M-e-l-c-h-e-r. I'm here to testify in opposition to what I chose as Rule number 12 today. I actually have some general opposition that I'm going to go ahead and voice. So rules are in place to provide a predictable outcome in the event of a disagreement. And that said, it doesn't make sense to me that rules can be suspended during a legislative process, and the legislative process dictates the rules for which our society has to operate. So it seems contradictory to me that that's even possible. I've been doing my research and I've learned that, you know, of course, the Mason's Manual is what dictates the rules or procedure or the legislative processes in Nebraska. But I'm more partial to Robert's Rules because those are not allowed to be suspended. Now, the question then comes from-- comes why did we ever allow for suspension of the rules in the first place? Well, there are events where the Legislature could become deadlocked, and there's no way to come out of it except by suspending the rules. With Robert's Rules of Order, you don't run into that issue. And so I would maybe make the radical suggestion that we adopt those rules rather than the Mason's Manual. And the reason why I'm opposed to suspending the rules is because of some personal experience that I can get into in a-- in a moment here, but I want to make sure I'm covering all the bases I wanted to present today. So that's my take on the suspension of the rules. And my other objection is changing the rules mid-biennium. When we watch a game, we know what the rules are. We know how the game is going to play out based on those rules. And we don't suspend those rules. We don't change the rules at halftime. And with this technically being Legislature's halftime, we're here changing the rules. Although, you know, we do have to have some amount of flexibility and allow a rule change depending on circumstances in our society. And I think the most appropriate time for that is at the beginning of the biennium, which also explains why the rules are set up in a way where you can adopt the temporary rules from last session being the end of the last biennium and incorporate them into this session. Now, the reason why I'm opposed to suspension of the rules is because of some personal experience. So I'll go into that now. In 2011, I was charged with sexual assault and went into the investigator's office who thought that I needed to be arrested for the crime. So I was originally charged with third-degree sexual assault because I had hooked up with a coworker and consent was questionable. And so after talking to the investigator, he felt that I needed to be arrested for sexual assault.

When the prosecutor got the case, he decided to charge me with first-degree sexual assault because pregnancy is considered serious bodily injury. My victim, after hearing that I was facing up to 50 years in prison, went to the police station and asked to drop the charges. And so the prosecutor was going to agree to drop it to second-degree sexual assault. And after taking the deposition, he offered me a plea agreement to third-degree sexual assault, which is a misdemeanor. I decided to take that plea agreement because at the time, the law stated that a person convicted of sexual assault who conceives a child out of that sexual assault can be allowed to have visitation with that child as long as they were proven to not be a threat. And I thought, well, that would be simple enough. And so I went ahead and took that plea agreement and settled the sexual assault charge, and then proceeded with a visitation suit. At that point, my daughter's mother had started advocating at the Legislature to terminate my rights. And in 2017, she was successful. Well, I've heard today even that 2017 was a pretty wild year for the rules and whatnot. And in that case, there are two bills that were introduced that would terminate my rights, one was withdrawn and one was IPPed. But then the text from that bill was incorporated into LB289 that was already on the Governor's desk and passed into law. So that did not allow me the opportunity to follow these bills and provide my, you know, side of the story in that-- in the Legislature. And so I've become involved in the Legislature ever sense, trying to watch the rules and procedures.

DeBOER: All right. Thank you very much for your testimony. Do we have any questions for this testifier? I don't see any. Thank you very much for being here. Next testifier in opposition to proposed rule changes 1 through 12.

RYAN NICKELL: Hello, my name is Ryan Nickell. That is R-y-a-n N-i-c-k-e-l-l, here in opposition to-- speaking in opposition to Rule 12. So I was reading through this really big book and I noticed in Rule 2, Section 2 allows for-- as something that I thought was really alarming when I read it. The rules may only be suspended by a 3/5 majority of the elected members by a machine vote. And such a motion shall not be amendable or divisible. The permanent rules may be amended and inserted at any time when the Legislature is in session, which by a 3/5 majority answer a machine vote of the members elected provided any proposed amendment must first be referred to the Committee on Rules for consideration and report, and then inserted: While a public hearing on a proposed rule change is recommended, such a hearing shall not be deemed mandatory to amend the rules. I read this and I'm like, this is "Calvinball," and so this would, basically,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

codify amending the rules mid-session and suspend the public hearing process. And I'm against it, I read it and I was insulted. Thank you.

DeBOER: OK. Are there questions for this testifier? Is-- can, can you tell me where this piece of paper came from? Did you hand--

RYAN NICKELL: I printed it myself.

DeBOER: What is it? Is it from--

RYAN NICKELL: Oh, this is from Rule 12. Rule 2--

DeBOER: Proposed change 12.

RYAN NICKELL: Yes, yes, rule proposal 12.

DeBOER: All right.

RYAN NICKELL: Yeah. So Rule 2, Section 2.

DeBOER: OK. Thank you, that's very--

RYAN NICKELL: That's what this is.

DeBOER: --that's very helpful. Thank you.

RYAN NICKELL: Yeah, sorry about that.

DeBOER: No, that's OK.

RYAN NICKELL: Yeah, this is just 1 page out of 136.

DeBOER: All right. Thank you very much.

RYAN NICKELL: Thank you.

DeBOER: Next opponent. Rule change proposals 1 through 12.

BENJAMIN BURAS: Thank you, Senator DeBoer?

DeBOER: DeBoer.

BENJAMIN BURAS: OK. It's not French, right? OK. Yeah, I believe this is rule change 10. I'm reading this here. Overruling the Chair, Rule 1, Section 12. Senator DeBoer, I am sitting in a chair so does that make me a Chair?

DeBOER: I'm sorry, we don't answer questions here. You can continue--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

BENJAMIN BURAS: Oh, OK.

DeBOER: --with your testimony.

BENJAMIN BURAS: OK. OK. Yeah, this is-- this is disturbing here. Section 2, rules suspension amendment: The rules may only be suspended by a 3/5 majority of the elected members by a machine vote, and such a motion shall not be amendable or divisible. The permanent rules may be amended at any time when the Legislature is in session. So if these rules are permanent, how, how can they be amended? That's what I'm wondering. Yeah, I mean-- I mean, a chair is just something a person sits in so it doesn't-- I mean, I believe everybody in here is sitting in a chair. Yeah. So this is just complete garbage. I don't know-- I don't know where this originated from. Oh, I forgot to state my name. Did I state my name?

DeBOER: Oh, yeah, please state your name and spell it.

BENJAMIN BURAS: Benjamin, common spelling, Buras, B-u-r-a-s. Yeah, I mean-- yeah, permanent rules may be amended at any time when the Legislature is in session. I think that-- I mean, I would have to strike the word "permanent" from here if I were to agree to, to what this is. Yeah, I mean-- I guess-- I guess that's it--

DeBOER: OK.

BENJAMIN BURAS: --of my testimony today at least.

DeBOER: Thank you for your testimony. So are there questions for this testifier? I don't see any.

BENJAMIN BURAS: Oh.

DeBOER: Thank you for being here. Let's have our next opponent for proposed rules changes 1 through 12.

MIKEL LAUBER: Members of the-- members of the Rules Committee, my name is Mikel Lauber, M-i-k-e-l L-a-u-b-e-r. I'm the director of news at 10/11 in Lincoln, and also speaking on behalf of Media of Nebraska in regards to rule-- proposed rule change number 4. Our primary role is to advocate for access to public information and transparency, not just for the news media, but for the public. These are the principles upon which Nebraska's Legislature was founded. On the north side of the building, the words are etched: The salvation of the state is watchfulness in the citizen. Watchfulness requires openness. Secret should not be a word that's associated with the work of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

Legislature. But this rule change would make Executive Session mean secret session. Nebraska's Constitution protects the openness of the Legislature unless a meeting reaches a high bar that demands secrecy. Article III, Section 11 of the Nebraska Constitution says: The doors of the Legislature and of the committees of the Legislature shall be open, except when the business shall be such as ought to be kept secret. So to adopt a rule that presumes Executive Sessions can be closed to the public and to the media, according to our constitution, the Legislature would have to argue that what is being discussed in every Executive Session is so extraordinary that it needs to be secret and hidden from the view of the citizens. I don't think the Legislature would say that that's true about all the work that's done in these Executive Sessions, and I don't think more secrecy is in the interest of this body or of the people of Nebraska. Important work is often done in Exec-- in Executive Session. Legislation can change, gain support or fall apart based on what happens in these meetings. It's in the interest of your constituents to know how and why these changes happen. Greater transparency, not secrecy, builds trust and creates understanding. And happy to take any questions if you have any.

DeBOER: All right. Are there any questions for this testifier? I don't see any. Thank you so much for being here.

MIKEL LAUBER: Thank you.

DeBOER: We'll take our next opponent.

GAVIN GEIS: Senator DeBoer, members of the committee, good evening now. My name is Gavin Geis, spelled G-a-v-i-n G-e-i-s, and I'm the executive director for Common Cause Nebraska. I'm here today to express Common Cause Nebraska's opposition to rule change number 9. This revision would remove political party as a consideration for the makeup of the Nebraska Legislature's Redistricting Committee. While the intention, intention may be to acknowledge the nonpartisan goals of the Unicameral, we believe this measure neglects the lessons learned from other states and could open the door to the creation of biased voting districts. Across the nation, we've seen how partisan tactics are used to game the redistricting process, undermining the very essence of our representative democracy. In states like Georgia, Illinois, Wisconsin, and New York, redistricting has been used to cement the electoral control of those in power to the detriment of voters. Consideration of party affiliation when forming the Redistricting Committee is a safeguard against the undue influence of any single group. It ensures a balance of perspectives that can

prevent the concentration of power in the hands of a few. Our goal should be to foster a system that promote-- promotes fairness, transparency, and equitable representation for all Nebraskans. The removal of party registration as a factor in selecting committee members may lead to a lack of diversity in thought and perspective, resulting in skewed representation that does not accurately mirror the political landscape of our state. I've spoken with many people about the way we redraw voting districts, and a complaint I've heard time and again is that the system is used to advance personal and political agendas, rather than to fairly represent people and their communities. Allowing any one group to fully control the process will only serve to exacerbate those concerns, and drive many to reject the validity of the final maps. If we want to ensure that Nebraskans feel at ease in our redistricting process, they should be able to see themselves reflected in the makeup of the committee, which must include both, both geographic and political diversity. In conclusion, I urge the members of this committee to consider the potential consequences of rule change number 9. Let us learn from the experiences of other states and acknowledge the importance of considering party registration when selecting members for the Redistricting Committee. By doing so, we can preserve-- preserve a redistricting process that includes the diverse perspectives of the people of Nebraska. Thank you for your time and consideration. I'm happy to take any questions.

DeBOER: All right. Thank you. Are there any questions for this testifier? I don't see anything. Thank you so--

GAVIN GEIS: Thank you.

DeBOER: --much for being here. We'll have our next opponent.

HEIDI UHING: Hello, Rules Committee. My name is Heidi Uhing, H-e-i-d-i U-h-i-n-g. I'm here representing Civic Nebraska as their public policy director. And I'm speaking in opposition to Senator Erdman's Rules 1, 3, and 9. Regarding cloture, it just must be said that senators representing rural areas often are a minority in our legislative body as philosophical divides can fall between urban and rural senators. The number of rural senators is likely to further decrease as population shifts ease in our state. So lowering the threshold for the filibuster will put rural interests at a greater disadvantage today, and even more so in the future. So aside from this rule change requiring entirely too much math, it also is counter to the nature of this institution, which has functioned with this threshold in place for decades. We're all human and by nature impatient, but senators must allow for deliberation without taking these efforts personally.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

This is the process, and it must unfold as it should. Regarding the secret ballot, there's a-- there's been a notion about keeping the, the ballots secret protects the feelings of senators who might have expected the support of their colleagues, but then not received it when the vote is taken. This issue isn't just about protecting senators' feelings. It's about ensuring a process that best serves our state. These chairmanships are decided by an internal vote because you have-- you have perspective that the public doesn't. You know your colleagues best, and you can best determine which of them has the skills and background to best serve in these roles. If senators are presumed to support the less qualified candidate for chairmanships, it could compromise the work product of the committee and, ultimately, the public policy that we all will follow. This is a part-time citizen Legislature intended to be comprised of people with all different experiences. If we are not able to leverage all of that experience in the most beneficial way in this Legislature, we are selling Nebraskans short. And, finally, on proposal 9 regarding redistricting, we're at a time when the redistricting process is increasingly scrutinized for more gerrymander districts across the country, making this the wrong approach to suggest that nonpartisan-- the nonpartisan Nebraska Legislature should find a way to make the redistricting process even more partisan. In fact, we have just received the latest polling from the, the latest Nebraska Annual Social Indicators Survey, or NASIS, conducted by UNL's Bureau of Sociological Research. Despite last session's challenges, Nebraskans report that they continue to believe that the Unicameral's nonpartisan structure and organization make it more effective at problem-solving than a partisan Legislature. Twice as many Nebraskans report believing this, in fact, than those who don't. So partisan redistricting is not what Nebraskans want, and it's antithetical to George Norris' vision for this institution. Those are my comments.

DeBOER: Thank you for your testimony. Are there questions? I don't see any. Thank you for being here. Let's take our next opponent for rules change proposals 1 through 12. Opponents? Now we'll move to neutral testimony. Neutral testimony for rules change 1 through 12. Welcome, Mr. Clerk.

BRANDON METZLER: Thank you, Madam Vice Chair. For the record, members, my name is Brandon Metzler, B-r-a-n-d-o-n M-e-t-z-l-e-r. I just wanted to jump in here quick. I know we're wrapping up the Rules hearing, but one thing I wanted to say, from a neutral capacity, without saying anything on the merits of Senator Erdman's rule change 12, I think his intentions are well placed. And I think he's, actually, spot on in, in some of his assertions about the rules. As you saw from Speaker Arch's

proposals early on, there was at least 4 necessary cleanups. I think the Legislature, in a lot of ways-- I mean, I, I will be the first to admit parliamentary procedure is difficult. The rules are based on layers and layers of history. There's a lot to unpack there, unfold. But I think, well, maybe not a special session, I think certainly an interim hearing or an interim study or, or something where there's some-- there's really a group that is dedicated to the rules that sits down, that weeds out what we no longer do, and starts to feed in some of that, that common practice. I think you saw that a lot last year of, you know, we've done this before. There's precedent. But we didn't-- we never wrote it down. We've just always relied on this. You know, maybe starting to get some of those written down, getting an understanding between the, the members, I think that's really well founded in, in terms of getting a rulebook that is modern for the modern day, members can pick up-- I mean, you're always going to have problems with parliamentary procedure and understanding it right off the jump. But I think in terms of digestibility and really getting something that works for you all as members, while still respecting the history and understanding of why the rules are there, I think is very important. So I just wanted to jump in and add that.

DeBOER: OK. Speaker Arch has a question for you.

ARCH: I do. So one of the things that I, I, I certainly resonate to what Senator Erdman is saying is as a freshman senator, you come in here and it is you might as well be reading Greek. I mean, it is very difficult to, to really get your head into rules until you've experienced it. Is there-- is there a better way of indexing? Is there a better-- I mean, maybe we can't get to a total rewrite, but is there-- is there a better way of indexing? Is there a better search function? Is there a better something else that we could do to help the senators-- I mean, as, as Senator Erdman was saying, like, take a look at the Select File. These are the things that apply to Select File, General, so forth.

BRANDON METZLER: I would say, Mr. Speaker, one of the things is we've got an index clerk who specializes in bill indexes and other indexes. She has not been giving-- Carol Koranda works for my office. She would-- don't want to speak for her, but certainly an interim project. But she has told me time and time again that it's a project worth tackling, that indexing the rules in a more-- you know, giving her a shot at that would, would-- she's very interested in that. I think even a, you know, appendix or, or something to walk members through, you know, kind of a layman's version of how we-- what each rule means. I think we can certainly have a compendium or something in which, you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

know, you can kind of walk through some of those rules. I think you're absolutely right, and that there is a learning curve. And some of that's intentional, certainly, you know, to understand how to-- how to be a senator and, and what it takes. But, no, I think there's certainly-- there should be an easier process to getting up to speed. I mean, you're expected to hit floor debate, you know, right off the jump. And, and if you don't know the rules, it's very difficult to participate.

ARCH: Yeah. I would just add one other comment. What, what you're doing-- what you're doing with putting a bill tracker, you know, on, on the-- on our website, that-- that's the kind of thinking I think we should be applying to our rulebook. You know, it's that simplifying. You can-- you don't have to know the jargon. You don't have to have the special language. You, you can-- you can see at least the basics of bill movement and so forth. And the same thing with, with rules. What, what applies, what, what doesn't apply. I mean, it's a big job. It would be-- it would be a big job. It'd be a big job to rewrite the rulebook as well. But, but it-- but I, I, I would encourage you to consider that in your staff.

BRANDON METZLER: Yeah.

DeBOER: Other questions? I don't see any. Thank you, Mr. Clerk.

BRANDON METZLER: Thank you.

DeBOER: Are there other folks who would like to testify in the neutral capacity? If not, I will report that rule change number 1 had 26 comments; rule change number 2 had 27 comments; rule change number 3 had 33 comments; rule change number 4 had 27 comments; rule change number 5 had 9 comments; rule change number 6 had 5 comments; rule change number 7 had 7 comments; rule change number 8 had 5 comments; rule change number 9 had 26 comments; rule change number 10 had 6 comments; rule change number 11 had 14 comments; rule change number 12 had 15 comments. And that will end our hearing on rule change proposals 1 through 12.

ERDMAN: Well done, Senator DeBoer, appreciate that. OK. Senator Hansen, you're up. And I did look outside, it's not snowing much.

HANSEN: Oh, I'll take my time then.

ERDMAN: I told people we'd be out by 5:00 so you got some time.

HANSEN: Got a half an hour? Good. I'll talk slow. Good afternoon, Chairman Erdman, and members of the Rules Committee. My name is Ben Hansen, that's B-e-n H-a-n-s-e-n, and I represent Legislative District 16. The rule change I proposed is the same concept I brought 3 years ago. And again last year. This would change Rule 5, Section 4, to limit the amount of bills members of the Legislature can introduce to 14 bills. It's a simple change, but necessary. This year, I added another aspect that would incentivize even more of an efficient approach. If a senator limits the number of bills they introduce to 5 bills or less, they will be allowed to designate 2 bills as their priority bills. If we pass this, we would not be the only state with the limit on bill introduction. Around a quarter of the country's legislatures have set a maximum number of bills elected officials can introduce from the latest info provided: Arizona has 7; Colorado, 5; Florida, 6; Indiana, 10; Louisiana, 5; Montana, 7; North Carolina, 15; North Dakota, 15; Oklahoma, 8; Tennessee, 15; Virginia, 15; and Wyoming, 5. Something I have learned as a state senator is that it takes time and effort to craft, contemplate, discuss, and finalize a bill. Unfortunately, we have a high number of bills that are indefinitely postponed each year because many essential bills don't get a chance to make it to the floor. Senators introducing 20, 30, 40 or last year 50 or 60 bills attribute to this overload of legislation in our already limited time during the 90- and 60- day session. The question I ask is, are we sacri-- are we sacrificing quality for quantity? The intent of this rule change is to motivate more specificity and thoughtfulness by both the lobby and senators. It would narrow our conversation to focus less on statement bills and more onto substantial bills. With that, I appreciate your consideration for this rule change. And just for some historical context, because I know some people are probably going to ask these questions about, well, this will limit the amount of bills that we can introduce, and we have a bunch of bills that sometimes are just rewrites or, what we call, legislative cleanup bills that might just change a word or two. And in my opinion, this is why we have committee bills, bills that are hardly ever used, except for a priority bill that we intend to make omnibus bills. For instance, I have an HHS bill that we're using a committee bill for since we have 8 of them we can use that changes just some, some language, some cleanup language that we just have a majority of people on HHS sign on to, introduce it. And those typically will be considered for Speaker priority bills. But bills we can kind of get moving through the Legislature pretty quick. If we establish this rule change with the amount of bills we could introduce, if taken to its full extent, senators can introduce up to 684 bills, committees can introduce 104, and special committees can

introduce 64, which comes to a total 854 bills. That's still quite a lot of bills, considering, I think last year we introduced somewhere around 830, I believe, so, which is still the most I've ever seen in the last 10, 12 years. And those are not actually including Governor, Appropriations or Revisor bills. And just for some more historical context, actually, in 1978, we were actually limited to the amount of bills a senator can choose to 10 and they were unlimited for committees. And since then some changes have been made. Some people are trying to actually limit it to 5 bills each. And I think it was in 1982 or 1981, is when we actually changed it to unlimited for senators and 8 committee bills. So this isn't, you know, unprecedented. We've actually done this before, actually limited it to less bills. So I thought 14 was a good round number we can go with. That would seem like a good average between the senators who introduce little and some who introduce many. So with that, I'll take any questions.

DeBOER: Any questions? Senator Arch.

ARCH: So could you go back to your comment about, about committee bills-- committee priority bills and putting those simple changes in. Could you-- could you say that again please?

HANSEN: So typically what we see in legislatures, committees will introduce, typically, maybe one bill unless somebody brings-- asks them to bring a committee bill. And then, then a lot of times we, we designate that as a committee priority, right, or a senator priority bill might shape the committee bills. But we have 8 of them that we can actually introduce. And so I feel a lot of these do-nothing bills that we say, these legislative cleanup bills can actually be used as committee bills. And so then the committee can just go ahead and take it in front of their committee, get a majority of people to sign on to it, and then they can introduce it as a committee bill.

ARCH: As a committee priority bill?

HANSEN: No.

ARCH: No, is it--

HANSEN: Just a committee bill. Yeah.

ARCH: OK. But it would contain a number of these cleanup [INAUDIBLE]--

HANSEN: Yeah, or you can just have-- you can have 7 individual ones. I'm not saying you make all of them omnibus bills. Like the one we just introduced in HHS was just one bill that, like, I could have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

introduced myself, but since it was a noncontroversial cleanup bill that HHS is just going to introduce as a committee bill.

ARCH: OK. All right. Thank you.

HANSEN: Um-hum.

ERDMAN: So, Senator Hansen, if, if you do 5 or less you get 2 priorities?

HANSEN: Um-hum.

ERDMAN: In a-- especially in a short session, that would be a tremendous opportunity if you had 5 bills and you get 2 priorities.

HANSEN: It could, could be. Yeah. I know there's been some questions about, well, then why don't certain senators just take 8 Judiciary bills and compact them into 1. And they try to keep everything below 5. I think that would also be up to the Speaker discretion to say, no, we're not going to do that, just like we do with omnibus bills. Like last year was, again, an unprecedented year where we typically don't do that kind of stuff. And then a lot of times the Speaker will come out and say, no, we're not going to do with certain bills either. You can't just stuff, like, 8 bills into 1. And if you do, I'm not gonna-- it's not gonna be on the floor.

ERDMAN: OK. OK. Senator Arch.

ARCH: To Senator Erdman's point, the other-- the other thing it could do is we already have 108 priority bills. And this could be extremely motivating to some people to get 2 priority bills. And you could end up with 125 priority bills in a short session. So, again, you may be able to get the priority, but the practical matter is you may not be able to get it scheduled.

HANSEN: Yeah. Very well possibly.

ERDMAN: Have you looked to see how many bills we actually pass in an-- on an average 90- to 60-day session?

HANSEN: The Speaker would know better than I would or the Clerk, but I think last year we passed 200 and so many bills.

ARCH: Last year-- last year we were right around 275. And, and I say that was about, about what a long session is. I'm not sure what a short session is.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

ERDMAN: So maybe about 30% of the bills introduced actually make it to the finish line?

HANSEN: Yeah. I think I had some numbers here if I can get it. Well, my phone isn't working. Now, come on. I had some numbers of bills, I think, in 2009 session, we had about 1,100 bills and, and last session we had almost 1,300. And it looks like, incrementally, kind of keeps going up almost every year. Where last year, and I'm looking at the last since 2009, last year in a-- in a short session we introduced 593 bills. And that's the most I've see since 2009. And in the 2023 session, we introduced 821 bills. And that's the most by far I've ever seen in the last, it looks like 14 years. The closest to that was 739, which was in 2019. So I, I think maybe because of partisanship or, you know, like I said, statement bills where people just introduce bills, maybe because they are trying to represent the lobby or themselves or get something on Facebook. Statement bills, we're seeing more and more every year, and I only have a feeling it's going to go up.

ERDMAN: Well, today is Day 4, so we have 6 more days to introduce bills. And I think I heard Brandon read across LB1079 today. I think that's what it was. So we'll exceed 1,200 because we got-- we got 6 more days.

HANSEN: I think, I like-- I like to assume I have a lot of good-time management skills. I own multiple businesses. I'm a state senator. I have a 7-year-old at home, which is a lot more difficult. And I find introducing more than 14 is difficult to keep track of all those. Like I said, if you're really trying to establish quality over quantity and really try to get something that, you know, has gone through the, the muster and the rigor of being able to get on the floor, even through a hearing, that takes a lot of time.

ERDMAN: It does.

HANSEN: It takes a lot of research, it takes a lot of discussion with your constituents and your colleagues. And I think introducing more than 14 is very difficult, I think, in my opinion.

ERDMAN: Senator DeBoer.

DeBOER: I'm just going to be chippy with you for a second since we have a few minutes.

HANSEN: Oh, yeah. We've got-- we have another 20 minutes yet probably, so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

DeBOER: I passed 12 last year. So there were quite a few more that I would have liked to, I think probably Senator Bostar did the same.

BOSTAR: I passed more than 14.

HANSEN: Yeah.

DeBOER: In the-- in the session. So there might be some exceptions in particularly technical areas. Maybe that's different than committees you've served on. But in Judiciary, I for some reason I end up with all the really technical, like, probate law or stuff like that, you know, that has been vetted by 12 committees before it gets to me. And then I bring them and we pass them and they're good and they help some people and, you know. So, you know, I just-- I would posit that perhaps there are times when a number of bills might be numbered more than 14, certainly more than 5, because those little things like probate law. If, if I'm trying to, to deal with that in a committee-- I mean, if we have multiple areas of jurisdiction like HHS does, for example, and you want to deal with all of the little areas of law that need to-- I mean, you're going to exceed 8 very quickly for the numbers of, of sections of law that you would be opening up and making some of those technical corrections. What would probably happen is we wouldn't have consent calendar because we would have fewer of those types of bills. And some of those are just really good government. So I understand what you're doing. I, I also am trying to rein in my own bill introducing this year. And I get that point. But I also would argue that maybe a hard and fast rule might run up against some problems. Throw it out there to the universe.

HANSEN: Yeah. I'm unfamiliar with how many committee bills Judiciary Committee introduced last year.

DeBOER: I don't think we introduced them as committee bills, but also T&T has a huge-- I mean, T&T, Transportation and Telecommunications, we have transportation and telecommunications so we have a huge area of-- and I almost-- sorry, knocked Senator Erdman there-- but it's a large number of, of different sections of law. And in order to keep things to that single subject, which we haven't really done so well of late. I mean, I think there's a balancing act with single subject versus the number of bills, because I may introduce 20 little bills that don't radically change the law and Senator Bostar might introduce just one. And his much more radically changes the law and takes more legislative time. My 20 bills could take much less time than his one bill. If mine are all consent. So I don't know that the number of bills introduced is indicative of the amount of legislative time.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

HANSEN: It's a good point, and I might contest. I think you kind of made sort of my point is that a lot of those bills that you talk about that don't take a lot of time and, like I said, are kind of technical cleanup bills that should be easy to pass or uncontested are what we can reserve now for committee bills. I mean, that is something-- take something for the committee to come forward or you come forward and say, I think this would be a great committee bill so now I can save one of my bills for something that's more substantial and take more time. The committee then should be, like, that makes sense. Let's go ahead and do that. We just never do that anymore. So there's a lot of unused slots, I guess, for bills to be used that we just never do anymore. I think this would just kind of open that up and maybe people might use them more often. Like I said, we're going to have 854 bills if we still go with all the bills here. That's still quite a bit.

DeBOER: What is the value of having it be introduced by the committee? I'm missing it.

HANSEN: So a senator doesn't have to use a slot.

DeBOER: So I'm saying to you for purposes of our discussion today using those committee bills more, what is the value of having a committee versus an individual? And I'm, I'm asking that as a real question.

HANSEN: It should be the same, I would think.

DeBOER: So--

HANSEN: It just depends on who's introducing it. Like, instead of the Chair of the committee introducing it, that it be an individual, but it still has the likelihood of getting on the floor either way.

DeBOER: So then if there's no difference in terms of amount of legislative time used, then what's the purpose of shifting back to those bills as opposed to having individual senators introduce all those bills they would have introduced anyway? Right? Like, if-- I, I understand the purpose of your-- I guess I should ask, is the purpose of your proposed rule change to save legislative time?

HANSEN: That's one of the purposes.

DeBOER: OK.

HANSEN: Like I mentioned-- like I mentioned in my opening testimony, now we'll have-- we should have more time then to debate more

Transcript Prepared by Clerk of the Legislature Transcribers Office
Rules Committee January 8, 2024

substantial bills or even the bills themselves more substantially on the floor. Whereas, a lot of times we're always pressed for time, it seems on the floor for actually true, true debate. You know what I mean, and so I think this would open up that time a lot more, I think, because we'll be spending less time in hearings. And anybody who's been here for-- Senator Erdman can attest, how much more time we're spending in hearings than we ever have before.

ERDMAN: Correct.

DeBOER: So I guess my question would be if we're just shifting those bills over to committee bills as opposed to individual bills and the same number of bills gets introduced, then I'm not sure we're saving any time, but we can have this discussion later.

HANSEN: Sure. Yep.

ERDMAN: OK. Very good. Any other questions? No. Thank you.

HANSEN: All right.

ERDMAN: OK. Do we have proponents, those in support of Senator Hansen's rule change-- rule change 29? Any proponents? Anybody in favor? Don't all rush up here at once. Any opponents?

BENJAMIN BURAS: I turned into a chair again. OK. Benjamin, common spelling, Buras, B-u-r-a-s. I'm against change 29. I don't think there should be any limit on number of bills. And after studying this body, it's clear to me that a certain political party is trying to silence the voices of the minority, and I think that is unethical. And that is why I'm against change 29.

ERDMAN: OK. Any questions? Seeing none, thank you for your testimony.

BENJAMIN BURAS: Thank you.

ERDMAN: Any other opponents? Anyone in the neutral capacity? Last call. Anybody in the neutral capacity? OK. That ends our discussion and hearing on Senator Hansen's rule change. Senator Hansen, you had 9 comments recorded on the rule change 29. That ends our hearing for today. We appreciate you sticking around. Drive safe. The roads could be slick. Thank you.