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COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS
February 19, 1999
LB 279, 571, 434, 858

The Committee on Government, Military, and Veterans Affairs met at 1:30 p.m. on Friday, February 19, 1999, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 279, LB 571, LB 434, and LB 858. Senators present: Ray Janssen, Vice Chairperson; Jim Cudaback; Bob Kremer; Mark Quandahl; Jerry Schmitt; Adrian Smith; Floyd Vrtiska. Senators absent: DiAnna Schimek.

SENATOR JANSSEN: (Recorder not activated) ...to the Government, Military, and Veterans Affairs Committee. I would like to introduce the committee members that are here. On my immediate right is Senator Jerry Schmitt from Ord. And on far my left...Senator Kremer isn't here yet...Senator Smith and next to him is Senator Quandahl, next to him is Senator Vrtiska, and Sherry Shaffer, the committee clerk, Gina Dunning, legal counsel and joining us a little bit late is Senator Cudaback and Senator Kremer. And my name is Ray Janssen, I'm Vice Chair of the Government Committee. We're ready to hear four bills today and the first bill is LB 279. And Senator Stuhr is here so we will begin. Welcome, Senator Stuhr.

LB 279

SENATOR STUHR: Thank you. Thank you, Senator Janssen and members of the Government, Military, and Veterans Affairs Committee. For the record, my name is Elaine Stuhr representing District 24. This is going to be a very short bill. What LB 279 proposes is to change the date of when absentee ballots must be returned to the election office from the second day following the election to the first day following the election. The reason for this proposed change that is, in some cases, absentee ballots could be mailed after preliminary elections returns have been reported. If the absentee ballot had to be returned the first day following the election, voters would not have the opportunity to base their decision on preliminary election returns. So, I am just giving you an opportunity to look at this and examine whether you decide that you might want to change it from the second day to the first day.

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SENATOR JANSSEN: Thank you, Senator Stuhr. Are...is there any questions? Senator Quandahl.

SENATOR QUANDAH: Do you have numbers on how many of these ballots come in on the second day versus the first day?

SENATOR STUHR: Actually, I don't but there is someone from the Secretary of State's office here. However, I believe they are opposing the bill but I...I...you...you certainly would have the opportunity to ask them questions. I did want to point out also in the bill that if you pick up a ballot and physically return that ballot it must be returned physically by or prior to 5:00 the day of the election. So, if you...I don't know if you were aware of that. But if you wanted to just physically turn the ballot in you could do that. And...but it must be returned by...prior to 5:00 p.m. on the day of the election.

SENATOR JANSSEN: I don't see that under...

SENATOR STUHR: But if you mail it, it doesn't have to be in till two days, till the second day.

SENATOR JANSSEN: I was not aware of that were you physically up a ballot, where? At the courthouse.

SENATOR STUHR: If you...if you were...yes, if you were doing an absentee ballot. You could physically return it.

SENATOR JANSSEN: All right. Then if you...if you walk in the day of the election, right, and pickup an absentee ballot at the clerk's. At the County Clerk or where ever it is, the election commissioner. Do you have to have that back in by 5:00 p.m., right?

SENATOR STUHR: Yes...yes.

SENATOR JANSSEN: To...can you take it...well, you would have to take it right back to where...from "whens" it came.

SENATOR STUHR: If you'd look on page 6...on page 6, lines 11, the voter may return the ballot to the election commissioner or county clerk by mailing it or by personally delivering it to the office of the election commissioner or

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county clerk. The deadline for receipt of the ballot is 5:00 p.m. on the date set for the election if the personally delivered or...what is this 10:00 a.m...delivered or 10:00 a.m. on the first day after. And that's where we changed it to the first day after the date set for the election if the ballot is mailed.

SENATOR JANSSEN: I didn't know that.

SENATOR STUHR: Now, maybe Mr. Erickson will be able to clarify that.

SENATOR JANSSEN: Senator Kremer.

SENATOR KREMER: When...when you read the 10:00 a.m. of that.

SENATOR STUHR: yes.

SENATOR KREMER: ...the day after...

SENATOR STUHR: Yes.

SENATOR KREMER: Is that a problem? If it's mailed would the mail always be delivered by 10:00 a.m.

SENATOR STUHR: That's the possibility that as I understand after visiting with the Secretary of State that there could be a possibility that...

SENATOR KREMER: That it would not be delivered by 10:00 a.m. and then it would not be counted. Is that correct?

SENATOR STUHR: That's right. That's right. So, there are some...

SENATOR KREMER: Maybe the courthouse gets the mail before some other people but I think there's quite a few people that don't get their mail until noon or sometimes.

SENATOR STUHR: And he may be able to address at one time I believe they looked at postmarks or such and...

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SENATOR KREMER: Okay, if it would postmarked that would take care of the other people.

SENATOR STUHR: And...and but there maybe some problems with that also.

SENATOR KREMER: A lot of times they go by postmark but then that would eliminate...I mean that would...then you would need to say when it was postmarked by.

SENATOR STUHR: Right, so there...there are some other concerns.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Senator. Are you going to stick around and close?

SENATOR STUHR: Thank you.

SENATOR JANSSEN: Are there any proponents for the bill? Mr. Erickson.

NEAL ERICKSON: In the opposition, sir.

SENATOR JANSSEN: (inaudible) any opponent?

NEAL ERICKSON: That's me.

SENATOR JANSSEN: Oh, your, oh. Your not neutral?

NEAL ERICKSON: No.

SENATOR JANSSEN: Were there any proponents? I didn't see any. All right well, you are going to be in the capacity as an opponent then?

NEAL ERICKSON: Yes.

SENATOR JANSSEN: All right.

NEAL ERICKSON: Senator Janssen, member of the committee, my name is Neal Erickson. I am assistant Secretary of State for elections and we're here on behalf of...I'm here today on behalf of the Secretary of State in opposition to LB 279. After this bill was introduced we had some discusses with

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LB 279

Senator Stuhr and I think there are some things that need to be explained about the absentee process. I think it's certainly an issue that needs to be examined. We made some policy changes a few years ago and perhaps it's time to re-examine those policies. I guess we start out first by saying what we generally do when we talk about election policy is to try and attempt to accommodate those people that are trying to follow the rules and try and get their vote counted. We try not to make rules that are going to have somebody who's actually trying to abide by them not have their vote counted. When we do that occasion we have...we end up creating situations where if somebody tries hard enough, yeah they can beat the system. They can cause some problems with it. This bill in particular moves from the absentee deadline from, in most cases, Thursday at 10:00 a.m. to Wednesday at 10:00 a.m.. The reason we initially established the deadline at Thursday was because we recognized the situation particularly in rural areas. You could say for example, I don't know what time the mail pickup is in Riverdale, but theoretically you could mail that...let say it was at 2:00 in the afternoon. You could mail that ballot at 3:00 on election day and still not have it arrive in the county clerk office until Thursday. We just don't have the ability, even with some of the urban areas, and say Omaha of having next day mail service. I think it's a lot more common in Omaha then it might be some of the rural areas but sometimes we just don't make it. And that's why we put the 10 a.m. deadline on Thursday. What problems could this create? It could have some people marking their ballot after the polls have closed when they've seen the results. But keep in mind what somebody who wanted to do that would have to do. They would have to go out and request an absentee ballot and then decide, I'm not going to vote it but hang onto it and wait and see how the results are. And then cast the ballot if there is something close. The odds on that are pretty long. For somebody to intentionally do that is...kind of...you have to have somebody that's going to be a devious on this and in most cases they don't know how results are going to come out. Their little plan may not work anyway. So, we did not see that necessarily as a problem worrying about those. We to do...do to degree have problem with people, let's say an organized group. You have let's just take for example a bond election. It comes out very close. Well, I want to

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find out which absentees are sitting out there so I can go contact them, see if they haven't done it yet. Maybe I can talk them into mailing them and getting there by Thursday at 10 a.m.. There are certain rules we already have in place to, I can't say completely prevent, but make it much more difficult. We, the names of people who have requested absentee ballots are public record. However, the names of people who have returned absentee ballots are not public record until the election is completed. And we have defined that as saying when the canvas is done. So, why they might be about to find out who has absentees, they don't know who has all ready voted them. So, we think we cut down the possibility of wrong doing in this stage and we set-up a system that is designed to protect people that say may innocently get caught in the fact that the mail service in their particular location is not as convenient as say another location. So, that's the rational we have for opposing this bill and setting for this on Thursday. There have been other things discussed. We have talked about using postmark dates. One thing you can not do is use postmark dates by themselves. Let's say you have a one vote margin and it will just take filing for example. And we've had this happen in our office where the filing has been postmarked by the proper date, but it shows up a month later. We've already had the ballots completely printed. Technically, this person had it mailed by the right time but we just never got it. There is a possibility using a postmark date in combination with a deadline and that may be feasible. Once again we may run into the problem where you don't have a...you have a relatively early pickup in a rural area. The other problem is not all postmarks are legible. Now, do we toss out those votes because that postmark is not legible or it's missing. The initial policy on this was side no. Let's instead just put a black line. If it's there by this point and time it's good, if its not it's not. And we feel this helps protect those that are innocently trying to participate in the system but does provide at least some safeguards against those that may try and circumvent it. So, with that in mind I try...try and answer any questions you might have.

SENATOR JANSSEN: Senator Vrtiska.

SENATOR VRTISKA: Well, first of all I think you would agree

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that 10 a.m. on the following day would absolutely not work because actually what you're running into is some mail would never be delivered on time. And so you would actually be disenfranchising somebody from the opportunity to even vote.

NEAL ERICKSON: Actually, I've never heard of a problem with county clerks getting their mail by 10:00 a.m.

SENATOR VRTISKA: Of the following day?

NEAL ERICKSON: No, on the following day. On the following day, yes, we might have a problem.

SENATOR VRTISKA: That's what I'm talking about. That's what I'm talking about.

NEAL ERICKSON: Yes, yes. No, two days we have not had a problem that.

SENATOR VRTISKA: With this bill the way it's written, I think it is absolutely impossible.

NEAL ERICKSON: And well there maybe some...I mean, there maybe some mail on 10:00 a.m. on Wednesday morning. But it may have been mail from Monday as opposed to say, Tuesday.

SENATOR VRTISKA: That's what said.

NEAL ERICKSON: Right.

SENATOR VRTISKA: Well, and that to me is...is a real problem. The second thing I...I think that you pointed out and it's the first thing I thought of when you talked about (inaudible). All of us get postmarks from small post offices that they parked...stamped it over the stamp and you could no more read that date than anything. It's impossible.. I could show you letter after letter that there's no way you could tell. So, I think those two issues are very pertinent to this bill.

NEAL ERICKSON: And that's why we, to a degree, are trying to go away from postmarks as...as a time standard.

SENATOR VRTISKA: Thank you.

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SENATOR JANSSEN: Senator Smith.

SENATOR SMITH: Is there a cutoff for sending out for their commissioner, election commissioner sending absentee ballots and...

NEAL ERICKSON: Yes. In order to have a absentee ballot mailed out, the request must be received by 4:00 p.m. on the Friday before election.

SENATOR SMITH: And depending on where it's going there could still be no chance that would get back.

NEAL ERICKSON: Depending on where it's going, I mean, if it is a local or relatively close to local, you will generally see it by Saturday, Monday. I would certainly assume at the latest.

SENATOR SMITH: That's the request. It may not make it in Friday's mail to..to respond.

NEAL ERICKSON: No, the request has to be received by...so what they will do on Friday afternoon, all the requests they receive by 4:00 p.m., those absentees will then be mailed out that afternoon. So, by five o'clock on the Friday before election they have mailed out all the absentee requests, they are eligible to go out by mail. Now, somebody can come in on Monday and vote absentee in person that day or could even come in late as Tuesday with an...or an agent could come in and say, you know, my wife's gone to the hospital to have her baby. I need to get an absentee ballot for her. But in terms being...having an absentee ballot being mailed the last time that will occur is the Friday before the election.

SENATOR SMITH: Okay, but they can be carried out with an agent.

NEAL ERICKSON: Yeah, they can be carried. Yes, by an agent.

SENATOR SMITH: Is that in writing? A request in writing?

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NEAL ERICKSON: It has to be signed by the voter or the agent to say they are acting on behalf of the voter and there are some other. Candidates can't do it, people who are involved campaigns can not be...act as a agent for an individual.

SENATOR JANSSEN: Senator Cudaback.

SENATOR CUDABACK: Do you think that there are going to be a lot more absentee ballots now beings we've changed some things that (inaudible) in the past or do you?

NEAL ERICKSON: Well, we've seen absentee ballots increasing. I assume that's going to be a trend that continues. As our lives become more busy, there are more reasons, I guess, to request an absentee. Personally, I still don't vote absentee even though I have to work all day on Election Day. I go first thing and vote at the polling place.

SENATOR CUDABACK: Are you sure they won't be able to turn down, there's such...

NEAL ERICKSON: Right, although realistically I am not aware of anybody who has turned down an absentee request.

SENATOR CUDABACK: Is there any...do you have any idea how many absents come in after the fact?

NEAL ERICKSON: No, I don't I could try and find that out for you. My impression is that's relatively few compared to the total number of absentees. But there are a chunk that come in after, on Wednesday or Thursday?

SENATOR CUDABACK: Wednesday, Thursday. Are there some come in five days after, I wonder?

NEAL ERICKSON: Oh, I guarantee you some do stuff gets lost in the mail. I mean it's just the way it is.

SENATOR CUDABACK: It's irrelevant if it is.

SENATOR JANSSEN: Seeing no other questions, thank you.

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BETH BAZYN FERRELL: Senator Janssen and members of the committee, my name is Beth Bazyn, B-a-z-y-n; Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials and I appear today on behalf of election commissioners opposed to this bill. The election commissioners have expressed the same concerns that the Secretary of State's office has. Particularly when it comes to absentee ballots that have been sent to perhaps persons that are in the military serving overseas that extra day may be beneficial in getting those absentee ballots back. With that I would happy to answer any questions?

SENATOR JANSSEN: Any questions? And thank you very much. Next opponent.

BRIAN HENSLEY: Senator Janssen and committee members, my name is Brian Hensley and I'm the deputy election commissioner for Lancaster County. And we, too, are opposed to this bill. To answer your question about the number of ballots coming back, on Thursday we will have a dozen maybe two dozen that come back after the deadline. Wednesday, we receive a significant number, up to a hundred possibly in the last election that do come back on Wednesday and so we would like to have those votes counted as current as held by the law. So, we do oppose this bill, also. Are there any other questions?

SENATOR JANSSEN: Are there any questions?

BRIAN HENSLEY: Thank you.

SENATOR JANSSEN: Thank you. Any other opponents? Anyone in neutral capacity? Seeing none, Senator Stuhr. Senator Stuhr waives closing. That will end the hearing on LB 279. All right, LB 571 will be our next bill and Gina Dunning will present that bill for us. Get your Government Committee Bill.

LB 571

GINA DUNNING: For the record, I'm Gina Dunning, legal counsel to the Government, Military, and Veterans Affairs Committee. This bill is a Government Committee bill that

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was introduced at the request of the Secretary of State's office. Its purpose is to remove the list of reasons associated with requesting an absentee ballot and simply to issue an absentee ballot on the request of the voter. So, the bottom line is anyone who wants an absentee ballot can receive one. There are...this bill is a duplicate of some of the provisions that are in LB 802. As you will recall, the committee decided not to eliminate the three envelope requirement. When the committee did that, we still left in striking the reasons for getting an absentee ballot. This bill however...and that was necessary just to have the bill consistent. This bill also has some technical references and cross checks that have to be addressed. It is...this bill could also be handled as an amendment to LB 802 if the committee would decide to do that and include the technical references. But in order to accomplish what the committee did in LB 802, this bill would need to be addressed in order to have all the statutes mesh.

SENATOR JANSSEN: Any questions? Gina.

GINA DUNNING: Thank you.

SENATOR JANSSEN: We'll take...we will take proponents of the bill. Mr. Moore, welcome.

SCOTT MOORE: Mr. Chairman, members of the Government Committee, for the record my name is Scott Moore, Secretary of State for the state of Nebraska. And I am here to testify in support of LB 571. Committee counsel explained the issue, I mean, this committee already had the foresight to basically deal with issue in LB 802, which is moving across the floor. And so the policy of eliminating the reasons for absentee ballots is kind of encompassed in there already and to complete that you either advance this bill or amend the bill on the floor, either one. But I guess it's...it's good that there is a specific hearing on the fact that we...if you read through those existing reasons there's not, I mean, you can...you can...anybody can get an absentee ballot right now. But there are some people that are hesitant to sign that. If you eliminate the reason there's reason...there's no reason then. So, I think we're pretty well there but this just completes that and makes it very clear that anyone can get an absentee ballot for any

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reason not even a good one.

SENATOR JANSSEN: Any questions? Senator Smith.

SENATOR SMITH: I was just curious and I know kind of the rational behind this but what are the some primary reasons for your recommending this legislature?

SCOTT MOORE: Well, you know, obviously and I think hopefully I will work with this committee...the whole idea of early voting, satellite voting, those are really an extend which I think we need to discuss as a state as a policy. Quite honestly, which are really advance form of absentee voting. I mean, your voting at the supermarket or at the student union or something like that. I mean, it really is an absentee voting already. I think those are little more bigger policy changes and so we thought at the very least let's make it very clear before we take the step towards early voting in some...a bigger step making it very clear that anyone can get an absentee vote for any reason. Because quite simply and I don't know if some of (inaudible) are going to testify but there are people that don't think they can get an absentee because they could be at the poll, in their own mind that day and so they don't want to say they can't be there. And I respect them for that but if that...if they don't vote because of it, I want to take care of the problem, I guess.

SENATOR SMITH: The county clerk in Scotts Bluff County mentioned that, you know, it's considerably more work with the early voting and so forth and it's getting to be more and more, as I am sure you are aware. So, I guess that's one thing that I...and I appreciate you bringing out that it is a policy direction that we need to address.

SCOTT MOORE: Yeah, I mean the biggest problem with...I mean, I can see how early voting can work in some of our populated areas by going to a shopping center with the remote voting machine or something like that. I don't know how to equalize that across the state. I...there's some issues as Vera brought up on the amount work. I mean there is some if you go with prison (inaudible) system and really encourage that, there is a lot of work on the counting level to issue those ballots. But still if that gets people to

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vote, I think we can find a way to do that. So, we just don't want...we don't get people confused that there is reason that you can't get an absentee. I mean we had I want to say seven percent of the ballots cast absentee this year. Where as you got states; Tennessee and Texas where you are getting 40 percent that are cast through the early voting which is a form of absentee. We're no where near that. But that's the numbers we're looking at for absentees.

SENATOR SMITH: I think we're over ten percent so.

SCOTT MOORE: You were over ten percent in Scotts Bluff County.

SENATOR JANSSEN: Any other questions?

SENATOR VRTISKA: I've heard you say and legal counsel say that anyone can get a ballot to vote. Don't you have to registered?

SCOTT MOORE: Certainly, you have to be registered but...but I'm like there used to be a time where you had to you know swear that you...I mean that you were going to be out of the country or things like that. You've already loosened those very significantly for a number of years.

SENATOR VRTISKA: But in truth anyone can't get them, you have to register first.

SCOTT MOORE: Any registered voter would be the accurate way of saying it.

SENATOR VRTISKA: Okay, well...

SCOTT MOORE: Correct, Vrtiska.

SENATOR VRTISKA: I just wanted to see if I was missing something.

SCOTT MOORE: You were absolutely correct.

SENATOR VRTISKA: Thank you.

SCOTT MOORE: Anyone within the subset but you're right.

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SENATOR JANSSEN: Senator Cudaback.

SENATOR CUDABACK: Senator Moore, isn't this almost not and I tell you this because you fought your person on form but look at mail and it's almost that way?

SCOTT MOORE: I mean it is a form of voting by what...as you may remember the discussion we had about that. I mean, obviously, there are some states and I think once again this is a bigger issue than this committee, I like to work with them. I mean there are some states when you register to vote you request that you always get an absentee ballot. And a lot...and I get a lot of calls from people asking me why can't I do that in Nebraska because the state they move from they could do that.

SENATOR CUDABACK: But they could.

SCOTT MOORE: Because you got to...got under our personal you can request it for the cycle but you've got to go every year and every year and do it again. Where as there are some states where you register to vote, Mark, I want my ballot by mail. So, from that point on you always get it mailed to you. And a lot...

SENATOR CUDABACK: And that's my next question. Can you call or can...how do you do that? Can you tell them that you want both elections, primary and...

SCOTT MOORE: Yes, you can request that now.

SENATOR CUDABACK: And they automatically send it out to you.

SCOTT MOORE: But you've got to do it every two years.

SENATOR CUDABACK: It's on record there.

SCOTT MOORE: Yes, I mean you can't do it forever like you can in some jurisdictions.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Mr. Moore.

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SCOTT MOORE: Thank you.

SENATOR JANSSEN: Any other proponents?

BETH BAZYN FERRELL: Senator Janssen and members of the committee, for the record my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l; assistant counsel for the Nebraska Association of County Officials. I appear again on behalf of Election Commissioners and county clerks. They've overwhelming supported this bill despite the amount of work...additional work that there may be from the number of people that request absentee ballots. They do very strongly support this. That I would be happy to answer any questions.

SENATOR JANSSEN: Seeing none, thank you. Next proponent.

BRIAN HENSLEY: (Exhibits 1 and 2) Pass them out please. My name is Brian Hensley and I am still the Deputy Election Commissioner for Lancaster County. I would like to thank Senator Janssen and the other members of the committee for allowing me to testify today in support of LB 571. While myself and our Election Commissioner, Patty Hansen are fully in support of this bill I would like to have the committee address one additional issue which may be appropriate at this time since this is a committee bill. This fall the Lincoln Public School Board is planning on holding a special election to address a problem of overcrowding in high schools and they wish to build two additional facilities. Our office prepared two different estimates for them. The first was a typical election in which voters go the polling place and the second one was a mail-in election. We discovered a statutory requirement that all mail-in election would have to be conducted using first class mail according to Nebraska Revised State Statute 32-953. Over the past year I have attended several workshops sponsored by the United States Post office and realized that there could be substantial savings if this statute could be revised. Through working with the post office we established the best possible rate we would be able to achieve would be 23.8 cents per piece, even using our special nonprofit rate, if the first class was required. I was then informed that if we were able to mail at a Standard A rate, which previously

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was called bulk mail, we would be able to mail at 7.3 cents per piece. I have distributed a copy of the estimate as you can see...as you can see this reduction would save the school board approximately \$22,000 if they would conduct the election by mail using bulk mail. I want to stress that the Lincoln School Board has not yet decided how to conduct this election and they may not even be pushing for a mail-in election. But if they did this would create a substantial savings for them. The change that I would request can be seen below. It's 32-953, which would simply strike the words first-class still requiring that it be nonaffordable. Through discussions with the post office the major changes would create, besides the substantial savings, would be an increase in mailing time by perhaps one to two days. This would mean that we would have to have the ballots simply ready two to three days before. And with that I would answer any questions that the committee might have.

SENATOR JANSSEN: Any questions? Seeing none, thank you very much. Oh, wait, all right, Senator Smith.

SENATOR SMITH: This is related, but probably unrelated since you aren't necessarily advocating the mail-in. If there were a mail-in election, spouse, well they say both husband and wife requested...this is one time...well say they requested a mail-in ballot. One of them died in the mean time two ballots still went to house and there would be no safeguard.

BRIAN HENSLEY: Well, the safeguard on the mail-in election the way it would be conducted is similar to the absentee. We would do a signature verification when the ballot came back to make sure the signature did match. That should be able to prevent fraud. I would follow the same requirements that absentee mail is. And that situation could exist with ballots also. Where they request it and then something happens in the mean time and they are not able to vote.

SENATOR SMITH: Thanks.

SENATOR JANSSEN: Any other questions? Seeing none, thank you very much.

BRIAN HENSLEY: Thank you.

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SENATOR JANSSEN: Any other proponents? Any opponents?
Anyone in neutral capacity? Seeing none, did you want to
close on that.

GINA DUNNING: Not a chance.

SENATOR JANSSEN: Closing is waived. That ends the hearing
on LB 571. Senator Schmitt (inaudible)

BONNIE ARMSTRONG: I merely had a questions in terms of how
many...who do you verify in terms of signatures?

BRIAN HENSLEY: All absentee ballots are checked for
signatures.

SENATOR SMITH: Question.

SENATOR JANSSEN: All right.

SENATOR SMITH: Senator Janssen.

SENATOR JANSSEN: Yep.

SENATOR SMITH: Aren't any...does the Secretary of State
have a position on the...this proposed amendment?

SCOTT MOORE: That's fine with me. For the record, I...the
amendment I have no opinion on I guess but it works for me.

SENATOR SMITH: That's fine.

SENATOR JANSSEN: Okay, you take over.

SENATOR SCHMITT: Okay, ready?

SENATOR JANSSEN: Yep.

SENATOR SCHMITT: Okay, Senator Janssen on LB 434.

LB 434

SENATOR JANSSEN: Thank you, Senator Schmitt, for allowing

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me to introduce LB 434 for you today. For the record, my name is Ray Janssen representing the 15th Legislative District. Here today to present LB 434. This bill would make several clarifications in voting procedures for the state of Nebraska. First of all, it would eliminate the counting of write-in votes for candidates who have not filed an affidavit indicating their interest in becoming a write-in candidate for the office. Current statutes require that all votes contain a first and last name should be counted. The result is that for some nominations and some offices a candidate can be elected with very few votes. It is possible to go to great lengths in compiling the results of write-ins when the person written in has no interest in being nominated or elected. Current statutes, also, do not take into account changes made in the mid-1980's that allowed candidates for counties offices to reside in another county while running for office. With write-in candidates a local election official has a great difficulty in determining who the person is that is the vote was cast for or if the person is even qualified to hold that office. A third problem is the desire of some candidates, who have lost in the primary, to attempt to run again as a write-in candidate. This has happened in spite of the fact that these candidates were prohibited from filing their write-in affidavit. This bill would address all these problems by requiring a candidate to file a write-in affidavit prior to the election. This would eliminate the candidate who may not have an interest in the office and would provide information on candidates may reside outside the county. It would also eliminate any problems with sore losers that are currently ineligible to run. This bill also maintains the current write-in process for a small subdivision such as townships, villages, and small schools. Thank you for your time and the Secretary of State is here to answer any technical questions you may have. I would also be happy to answer any questions that I could, which would be very few.

SENATOR SCHMITT: Are there any questions for Senator Janssen? Seeing none, I guess that concludes. Now, we will take the proponents.

SCOTT MOORE: (Exhibits 3 & 4) Thank you, Senator Schmitt and members of the Government Committee. Once again for the record, I am Scott Moore, Secretary of State, the state of

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Nebraska testifying here in support of LB 434. This whole issue of write-in votes is something that cause...it has been...has posed a variety of problems for our office and election officials around the state. Probably, a little more so in recent years with the advent of third parties and of course the reform party for the first time in about 80 years in the ninety-eight cycle was a recognized third party in the state of Nebraska. And there is really four problems and I know Senator Crosby's bill that you're going to hear later, attempts to address this problem in a different though I think this bill does better, a more complete job of addressing. Four major problems we're trying to deal this bill. One is when you have a newer, minor party nominating candidates, they can do it with very few votes. And actually why don't I go ahead get the Page to pass out, these are the...may give you some reading humor for the day. But these are the write-in votes cast the ninety-six and ninety-eight primaries. And what happens is, for instance, in ninety-six, John DeCamp was named the Libertarian Party US Senate candidate with seven votes cast in the Libertarian party. And he had equal billing on the ballot with Chuck Hagel and Ben Nelson, with seven votes cast. We had a public service commissioner nominee in the Omaha District with three votes cast. And you have a variety of situations where they have no...I mean, we were having to track down these people after the case and they go, "huh?" You know them and their wife voted for them and I'm nominated obviously then they have to complete that and go register, pay the filing fee at some point in time. But let me see the most famous example was just this last year. You may...you may recall in the Attorney General race where Kim Robak was silent is to whether or not she was going to accept the nomination. And she waited until after she garnered the five percent vote and then declared her intentions. I guess that's the one problem is you don't have to declare your intentions and we have to go through the process of counting the votes whether or not you want to do it or not. Also, under the present law you have to get five percent of the votes cast in your...in your parties, in the race. That's all it is, five percent of the votes cast in the race. I know, Senator Crosby's bill will solve that problem by saying five percent of the votes cast total in the race. But now it's five percent of the votes cast for Attorney General or whatever office it is and that can be

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two, three votes if you have, you know, it's...if you have ten votes cast it's very simple to do it. And so, that five percent threshold, I mean, once again they may not have any interest in accepting the nomination but they can get it with free votes. They can receive the nomination. Then as a canvassing board, we're sitting there having to count, you know, spending more time with a third party issues and things like that on people that never express the interest in running for the office may not be interested in running the office. To date, a couple...most of those never end up paying the filing fee...declared the winner. And we have to go through the time and effort of counting those absentee ballots and sometimes there's some humor in that as I can see as you look, look through some those names. But you know it does take a lot of time and money to do that...Another thing that was mentioned by Senator...by Senator Janssen. Now, if a candidate loses the primary, they are...they can not run, file an affidavit, and run the writing campaign. What you do is you often times and it happens every election cycle, most often a sheriff's race...whatever reason. But you have somebody that got defeated in the primary, the launch is a write-in campaign in the General election. Those write-in votes, you know they...they can't file the affidavit and the value of filing an affidavit and this stems from the 48th District about 25 years ago in Terry Carpenter's race about filing the affidavit to give...giving more latitude in counting ballots I think is good. But, you know, a candidate defeated in the primary can't run according to the statute. They get the amount of write-in campaign and do we or don't we count those write-in votes is a question that we're always dealt with. I mean, they've never filed a affidavit but there's nothing that prohibits them from being counting. I would argue, they probably couldn't take office so that's a question. I mean, it's a problem there. Another problem we have and maybe if you just...I think in the last week there was the article of the lady that filed for...that was elected county attorney somewhere up north. I forget wherever...Cedar County, that lived in Kearney. There's a lot of county races where there are no residence requirements. We have had a number of races where writing campaigns will...you know, there's nobody in the county registered to vote that way. And now we do have a statewide database of registered voters but how do you know if it's Ann Smith that gets the most votes for

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County Attorney in Cedar County? How do you know who she is? I mean, you don't now, I mean, in that case, she's worth some interest. And she can file the affidavit and she...she know but there was not a requirement of that. I mean, somebody gets to come in, never was in the county talked...called up six people and said vote for me. And how are you supposed to count them when you don't know? So, what this bill does is simply for write-in campaign to be recognized, you have to file the affidavit. You have to declare you're a candidate. Now, the present loss is ten days before the election, move that back if...I mean, all I'm saying is you can get anybody can serve on a write-in campaign with the exception of a defeated candidate in the primary. All I'm saying for us to go and start counting the ballots, you have to declare your a candidate sometime before election day. That solves all four of our problems, I mean, Senator Crosby's bill will solve the issue of the five percent threshold. You have somebody getting, you know, equal billing with a U.S. Senator with five votes but the other problems of people expressing no interest of primary candidates that are losers can still run and people out of your District could still run. This would solve all four of the problems by simply saying anybody can run a write-in campaign with an exception of a loser in a primary. All you have to do for us to start counting those ballots is to file an affidavit. And you can do that now and many do and the value for that is, if you file the affidavit, you know, it doesn't have to be the same exact...exact match on spelling. And first and last name, there's more latitude that's why...that's what the value in filing the affidavit all ready where people often do it but there is no requirement. All we want to do is make it a requirement that you file an affidavit and pay the filing fee. Once again if you want to get into the rough and tumble of politics, just like all of you and me, we've got to be...the four election days say, yes, I want to run, and yes, I want to put my money where my mouth is. Not, you know, let's wait and see if I get elected I'll pay the filing fee then. So, I mean, that's what the bill accomplishes. And it...as, you know, right now we are already...the Libertarian Party because my opponent got over five percent of the vote in a statewide race will be a recognized party for the 2000 cycle. So, this is an issue out there. I think, I mean if someone wants to run a write-in for Libertarian Party that's

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fine. All I'm saying is that you have to indicate that's what you want to do prior to election today. And that way you can't just have you, your mom and dad, and brother write-in four votes for Libertarian candidate for the public commission in whatever district. Then if four is enough you can get the nomination. All we're saying is, you know, declare and sign-up and then we'll count the ballots. Otherwise, it does take a lot of time to go through and count these ballots particularly in Congressional races and somebody is saying after the fact and we've had this happen. We did have this happen. After the primary is over did you count those ballots because I know I may have got the five percent. And anybody can raise that issue after the election and we have to go count them. And I...that's our problem. So, this is all we're saying before the election day, file the affidavit then we'll count your write-in votes and it does not bar anybody for watching a write-in campaign that's all ready barred.

SENATOR SCHMITT: Senator Cudaback.

SENATOR CUDABACK: Secretary Moore, is this village elections also it just won't pertain...

SCOTT MOORE: No,

SENATOR CUDABACK: Or just.

SCOTT MOORE: There is another bill in front of me but it...the small...the villages it doesn't impact those.

SENATOR CUDABACK: You don't have to...you do not have to list every (inaudible)

SCOTT MOORE: No, I mean it doesn't change that. I mean because that's...

SENATOR CUDABACK: The federal language doesn't say (inaudible)village.

SCOTT MOORE: Under present law?

SENATOR CUDABACK: (inaudible).

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SCOTT MOORE: Well, under law you can run it right it through the village, but I mean, I know it doesn't. He wants to know what the present law is, let me read it to you.

SENATOR CUDABACK: The present law is everybody.

SCOTT MOORE: It's everybody but anybody can do it until now and that doesn't change it.

SENATOR CUDABACK: Every village now or town or whatever major city has to list every name on the...that's a write-in everyone, do they have to list that then.

SCOTT MOORE: They have to...

SENATOR CUDABACK: (inaudible)

SCOTT MOORE: List no, count yes. I mean they've got to count them, theoretically, yes.

SENATOR CUDABACK: But they don't have to list them like they did here?

SCOTT MOORE: No. We only went and back listed those because somebody raised the issue, I think I got five percent.

SENATOR CUDABACK: So, you don't write them down in a (inaudible)

SCOTT MOORE: No, no.

SENATOR CUDABACK: Answer my question, what does it...what it actually, you don't have to...I'm just asking. What's it actually saying? (inaudible) I want to know. How it would save you anything because you don't have to list names now?

SCOTT MOORE: But we have...in our statewide races somebody can raise the issue after election day. I got votes, I have to...in the 3rd District. I have to go to 60 counties and go count them and list them then.

SENATOR CUDABACK: This is a case if they do raise it.

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SCOTT MOORE: Yes, because now, I mean, that's scattering, I mean, you can have 98 percent of the votes and you know a two percent scattering or something like that.

SENATOR CUDABACK: Okay, so this is a hint. If they do raise it then you say, hey we don't have to.

SCOTT MOORE: Well, but we've taken the stance where you got to count them all anyway because in small...in the Libertarian Reform Party. I mean you only got...how many Libertarian votes? We had 40 casts, excuse me, Reform. I think we had 40 votes cast statewide. We counted all of those because five votes is going to five percent.

SENATOR CUDABACK: But the towns don't go through all that now presently.

SCOTT MOORE: On third parties they probably...probably should be doing it.

SENATOR CUDABACK: Okay.

SCOTT MOORE: Because, I mean, there would be the chance...

SENATOR CUDABACK: Not lately.

SCOTT MOORE: ...two or three votes could legally entitle someone to the nomination.

SENATOR CUDABACK: But there are write-ins and so you know (inaudible). Okay thank you.

SENATOR SCHMITT: Senator Smith.

SENATOR SMITH: So, this would eliminate the possibility of someone being drafted, who after the primary would say, hey, you know if they want me I'll do it.

SCOTT MOORE: Well, yes and no. I mean I would argue that if you wanted to be drafted you would still have to file. I mean, you could still be drafted. Say well, I mean, okay I'll file the affidavit and if I get enough votes I'll except the nomination. But it would eliminate you from

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actually sitting on your hands and absolute not pursuing it at all. Yes, it...it does force you to force hand before election day and that is a change.

SENATOR SMITH: Okay, thank you.

SENATOR SCHMITT: I guess I have a couple. One of them is there getting to be quite a few registered like in the Libertarian Party then now across the state, do you know?

SCOTT MOORE: More than there used to be. I mean it's a small, small percentage. I mean it's a...

SENATOR SCHMITT: Then you have the Reform Party as another one.

SCOTT MOORE: Yes.

SENATOR SCHMITT: And there could be others then pop up so actually you could get several people on the ballot on these different parties just with a small percentage of votes from each one then right?

SCOTT MOORE: And certainly in a presidential cycle is when you historically see the Natural Party. I mean in presidential cycles you have parties coming into the state and petitioning on early and so then there's more. I mean in a presidential year you have more than likelihood of a recognized party because if they do it early on we have to go count those votes if they're out there.

SENATOR SCHMITT: Any other questions for Secretary Scott Moore? Thank you.

SCOTT MOORE: Thank you.

SENATOR SMITH: This was most entertaining.

SCOTT MOORE: That's what I thought, looked like a dry day for you...so I thought I would give that. You'd enjoy that.

SENATOR SCHMITT: So is mine.

BETH BAZYN FERRELL: Senator Schmitt and members of the

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committee, again, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I am assistant counsel for the Nebraska Association of County Officials. The election commissioners are supportive of almost this bill. In fact, they're supportive of anything that would deal with the five percent issue. And not just election commissioners but all the county officials. They particularly support doing something to adjust that five percent. Also, I know the election commissioners are supportive of the language that deals with, if someone loses in the primary that they would not be able to run a write-in in the General. We've received a number of questions about that and they do support this bill.

SENATOR SCHMITT: Okay, any questions? Seeing none, thank you. Any other proponents? Any opponents? Any neutral? Seeing none, Senator Janssen waives closing and that will end the hearing on LB 434. And Senator Crosby is here and I'll turn this back over to Senator Janssen. You have it back, sir.

SENATOR JANSSEN: All right.

_____: Good to see you.

SENATOR JANSSEN: Senator Crosby, welcome to the Government, Military, and Veterans Affairs Committee.

SENATOR CROSBY: Thank you.

SENATOR JANSSEN: It's your first time here this year isn't?

SENATOR CROSBY: I think so.

SENATOR JANSSEN: I believe it is. Here to present LB 858.

SENATOR CROSBY: I'm getting through all of the committees.

SENATOR JANSSEN: Okay.

SENATOR CROSBY: Are you ready?

SENATOR JANSSEN: I think we need class.

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_____: Yes, we do.

LB 858

SENATOR CROSBY: Thank you, Senator Janssen and members of the Government Committee. My name is LaVon Crosby. I represent the 29th District in the city of Lincoln and I'm bring LB 858 to correct a problem with write-in votes. I was listening to most of what Scott Moore said on the bill prior to this one. I'm going to leave part of the technical explanation of how the bill is written to the election commissioner there's someone here to testify. But I do have an example to share with you that will clearly illustrate the issue LB 858 would try to correct. During the last primary election for County Commissioner in Lancaster County this...last year ninety-eight, an incumbent running unopposed for the primary race found herself with an opponent after the primary ballot. There were numerous names written in and a total of 109 write-in votes were cast by the 4320 Democrat's who voted in that particular race in that particular district. One person received seven write-in votes which represented over five percent of the total write-in votes, 109 and he was declared the Democrat nominee for County Commissioner. This, of course, required the incumbent to launch a campaign for county wide race where before she hadn't had to spend a lot of money. She was out and so on but wasn't up against anyone. Actually, it doesn't seem fair to me that you can win a spot on the general ballot with so few votes and also actually in a way these people bypassed the primary. This is one of my pet peeves, I don't like this idea of not running in the primary unless somebody has died something and had to leave office or not be able to run in the general but I think so. I think we really need to look at the write-in especially with this example. Five percent of the total votes of the 4320 would have been 216 so at least you would have had to come up with what I would think of as a reasonable number of people that had written in that persons name. Along with the rest of it, the seven votes, the seven write-ins weren't even spelled the same. Some had "er", some had "ir" in the end of the name. Some had first name, some had the full first name, some had a initial. So, and the election commissioner has to be very fair and, you know, do

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everything they can to be sure that...so they can't just come along and say well maybe that's not the name. They have to count them all. At any rate, I don't think that our legislation over the years regarding write-in votes that it was our intent to let this kind of thing happen. So, what we do is change the requirement of write-in votes to qualify to five percent of the total of the votes that were cast. I believe we have other examples of this in our last election, too, but I think that any of the other write-in persons were chosen were to become a candidate in the general election, they didn't go on. They weren't in the general election. I'll try to answer any questions you have. I just think this...but we do have someone from the county...the election commissioner office, who will answer your technical questions. But I think especially from the prior bill that you do understand that there is a problem on write-ins and I hope that some way or another your committee can come up with something that will try to correct them.

SENATOR JANSSEN: Are there any questions for Senator Crosby?

SENATOR CROSBY: I've talked so much today I'm...

SENATOR JANSSEN: Seeing none, thank you, Senator.

SENATOR CROSBY: Okay, thank you.

SENATOR JANSSEN: The next proponent, please. We'll take proponents first.

SENATOR CROSBY: Wonder if my little bag around here. I don't...thank you. Thank you.

BRIAN HENSLEY: (Exhibit 5) My name is Brian Hensley and I'm the Deputy Election Commissioner for Lancaster County. And I would like to take this opportunity thank Senator Janssen and other members of the committee for allowing me to testify today. I was asked by the Election Commissioner, Patty Hansen, to come and present this bill for Senator Crosby. Patty Hansen was unable to be here today. The Election Commissioner asked Senator Crosby to introduce this legislation to correct what she believes was an error made in the recodification laws when LB 76 was passed in ninety

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four. Prior to the passage of LB 76 a write-in candidate had to receive a minimum of five percent of the total number of people casting a partisan ballot to receive the party's nomination when there is no declared candidate for the office. This was changed when LB 76 was passed and now a write-in candidate only had to receive five percent of the total number of people casting a write-in vote for the office. At the May, 1998, Primary Election, as Senator Crosby explained earlier in Lancaster County there was no declared candidate for the Democratic ballot for County Commissioner in District 3. We had a write-in candidate which had 11 of his supporters write in his name for the office and he received the nomination because there were only 109 write-in votes for that office. He had not filed an affidavit to be a write-in candidate so four of the write-in votes for him were declared invalid because his name was not spelled correctly. This left him with seven valid write-in votes. Five percent of 109 is equal to five so the nomination with those...he won the nomination with those seven votes. There were a total of 4,320 Democrats voting in County Commissioner District 3 and Patty does not believe receiving seven write-in votes, which is only .16 percent of the total votes not 16 percent but .16 percent shows support for the candidate. This bill would have required the candidate to have received at least five percent of the 4,320 which is 216. Even though this number is not very large, Patty believes it better reflects some support for a candidate than the current threshold which is required by state statutes. I thank you for consideration of this bill and I would be happy to attempt to answer some of your questions. The write-in process is kind of complicated.

SENATOR JANSSEN: Any questions? Seeing none, thank you very much.

BRIAN HENSLEY: Thank you.

SENATOR JANSSEN: Next proponent.

SCOTT MOORE: Once again, I'm Secretary of State, Scott Moore here to testify in support of LB 858. As we mentioned before this does solve one of the four problems I was trying to address with the other bills. I'm certainly in support

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of that. This does not solve the problems of the losing primary candidate. It does not solve the problem of someone not having to say what they're doing and doesn't solve the problem of...the residency problem we have in out of county people running. But it does address at least major...and it doesn't address our third party issue on the state issue as well as I would like because if you still only had 40 third party votes cast, two or three votes can still get you nominated that's where my concern is but having said that this certainly at least solves...goes toward solving one of the problems. For that reason I support it. The only thing I would add, I think we need to make some grammatical changes and change the word "vote" to "ballots" because they mean different things. I think on line 4 if...if you strike "vote" and put "ballots cast" and leave "for such office" in. And do the same thing in 17, I think it gets with the intent, what the intent is. Is there going to be many votes on one ballot that's only ballot I think that's what the intent of the drafter is. So, with that I support that bill.

SENATOR JANSSEN: Senator Cudaback.

SENATOR CUDABACK: Secretary Moore, is there any way that the courts might see this as not being and they say hey you can't restrict any...one person (inaudible). Is it arbitrary? I'm just asking.

SCOTT MOORE: I mean it's already there. It's already arbitrary I guess. We're raising the arbitrariness of it. I mean the one thing that I would caution, I mean, and this doesn't impact because there's been some proposals floated to a even for a third party candidate. They have to get five percent of all the votes cast, Republican, Democrat, Third Party, which makes it very difficult to do. I mean I've always...always be careful not to raise the threshold to eliminate writing campaigns of third party people. This bill doesn't do that I just saying that...that there are some ideas flown out there that I think would harm that. Which I would be concerned about and that's why if you make them file an affidavit that doesn't impact that all.

SENATOR CUDABACK: I'm all for this but I just wondered if the courts might have said, hey you can't use that language

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there.

SCOTT MOORE: It's no more arbitrary then it is already, I guess.

SENATOR CUDABACK: I think that's true, I've never thought about that.

SENATOR JANSSEN: Any other questions? Seeing none, thank you.

SCOTT MOORE: Thank you.

SENATOR JANSSEN: Next proponent, please.

BETH BAZYN FERRELL: Senator Janssen and members of the committee, again, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I represent the Nebraska Association of County Officials. As I said on the last bill, county officials are supportive of whatever efforts that this committee would like to take to clear up the five percent problem. Then I'll answer your questions.

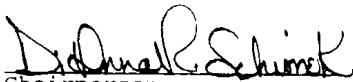
SENATOR JANSSEN: None, thank you. Any other proponents? Any opponents? Anyone in the neutral capacity? Seeing none, Senator Crosby would you like to close?

SENATOR CROSBY: No, I'll waive closing. I'm just glad that everybody's so agreeable.

SENATOR JANSSEN: Senator Crosby waives closing and that ends the hearing on LB 858. And that ends the hearings for the day.

Disposition of Bills:

LB 279 - Indefinitely postponed.
LB 571 - Advanced to General File, as amended.
LB 434 - Indefinitely postponed.
LB 858 - Indefinitely postponed.


Chairperson


Committee Clerk