

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the ninth day of the One Hundred Eighth Legislature, Second Session. Our chaplain for today is Senator Bosn. Please rise.

BOSN: Please join me in prayer. Dear Lord, thank you for the gift of a new day. We offer this day to you. May everything we do today be done with love and for your glory. Guide our thoughts, words, and actions and help us to be a source of kindness and encouragement to others. In your son's most precious name, we pray. Amen.

KELLY: I recognize Senator Dorn for the Pledge of Allegiance.

DORN: Colleagues, please join me for the Pledge of Allegiance. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

KELLY: Thank you. I call to order the ninth day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Senator Bosn would like to announce some guests with her this morning. Under the south balcony, her children Heide, Johnny, Betsy, and Zoe Bosn. Please stand and be recognized by your Nebraska Legislature. Senator Bosn would like to recognize the physician of the day, Dr. Rachel Blake of Lincoln. Please stand and be recognized by your Nebraska Legislature. Mr. Clerk, please record.

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

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

CLERK: I have no corrections at this time.

KELLY: Are there any messages, reports, or announcements?

CLERK: I have one, Mr. President. Notice of committee hearing from the Natural Resources Committee. That's all I have at this time.

KELLY: Thank you. Speaker Arch, you are recognized for a message.

ARCH: Thank you, Mr. President. Colleagues, I-- good morning, by the way. I would like to share with you my intentions for scheduling our rules debate over the next 4 days. As I've stated previously, I intend to end rules debate at adjournment on Friday the 19th and begin

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

morning floor debate on bills on Monday, January 22, our first day of committee hearings in the afternoon. As I considered the limited time before us for rules debate, I reflected that the Rules Committee advanced 12 proposed rule changes on a 5-0 vote, and 5 proposed rule changes on a 3-2 vote. That calculates to approximately 2/3 and 1/3. In an effort to be fair in my scheduling, I intend to divide the hours available in the same manner. So counting our debate last Thursday, we have a total of approximately 27 hours available for rules debate. With the total hours available, it will divide approximately into 18 hours for the 5-0 proposed rule changes and 9 hours for the 3-2 rule changes. That means that I intend to end debate on the 5-0 rule changes no later than adjournment on Wednesday tomorrow. That will equate to approximately 18 hours. On today's agenda, all of the 5-0 rule changes to be considered are listed, so you can take a look at those. Wherever we are on this list, we will end debate on these items and move to the 3-2 proposed rule changes at approximately 11 a.m. on Thursday, immediately following the State of the State address in the morning. This will provide us with approximately 9 hours to debate these items before adjournment on Friday, assuming we work through lunch to approximately 2:00 on Friday afternoon. I have not yet decided on the order of the 5 3-2 proposed rule changes that I will schedule on the agenda. Thank you, Mr. President.

KELLY: Thank you, Mr. Speaker. Mr. Clerk, for the first item on the agenda.

CLERK: Excuse me, Mr. President. Notice of committee hearing from the Banking, Commerce and Insurance Committee. First item on the agenda, proposed rule change 18 from Speaker John Arch concerning Rule 6, Section 5.

KELLY: Speaker Arch, you're recognized to open.

ARCH: Thank you, Mr. President. So proposed rule change number 18, one that I have-- one that I have-- am proposing addresses E&R amendments. So what this rule-- what this proposed rule change does is E&R amendments would be voted on without debate on Select File. E&R amendments would not be debatable, divisible, nor amendable. With the vote on the E&R amendments, they are immediately adopted. So it is a-- it's simply an up/down vote on E&R amendments. 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 there is still an opportunity to change the language of the E&R amendment now part of the bill. However, as amended by the Rules Committee, the principal introducer of the bill will be allowed to speak for 5 minutes before

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

the vote on the E&R amendment. This provision, at the recommendation of Senator John Cavanaugh, was put into address the very rare occasion when a principal introducer has a concern with a portion of the E&R amendment. This will allow the principal introducer to voice that concern to the body prior to the vote and either ask for the E&R amendment to not be adopted or to set the foundation for introducing an amendment to remove the portion of the E&R amendment objected to as an amendment to the bill. So I want to pause there for a second and talk a little bit about the discussion that was held regarding this-- regarding this change. One of the concerns that was expressed was on that rare occasion where perhaps that primary introducer feels as though the E&R amendment went beyond simply technical changes and now actually made some changes, whether it be through punctuation or some additional language, whatever it may be, actually made some changes that are substantive to the meaning and the intent of the bill. And so if you simply have an up/down and that primary introducer has no opportunity to speak, then, then the, the, the question is, well, how can that get expressed? And so the Rules Committee did amend my proposed rule by inserting this language. And I believe that it has been-- when it-- when it was sent around, the language that was inserted has been-- has been highlighted to make it easy for you to follow. And so that was the intent there that that-- that the principal introducer can stand up and say I've got a-- I've got a problem with this. And so then during the debate on the bill an amendment can be introduced and specific to the language that has been adopted then to the E&R. So amendments to the language would be allowed during the debate of the bill. And it wouldn't be specific to the E&R amendment, but would be-- the language would already be adopted into the bill. I think this will move the debate to the bill itself more efficiently. And this was the historical practice. E&R amendments were routinely passed because they're a tech-- they should be and, and in most-- and by far the majority of cases they are technical amendments. And then it can-- it can move to the bill. So it was a historical practice from 1986 to 2021. I think that-- I think that should be codified so that we don't have-- this, this can be used as a way to jump the line and start debating the bill, and we should just deal with the E&R amendments and move to the debate of the bill. So with that, I-- thank you, Mr. President.

KELLY: Thank you, Speaker Arch. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Good morning, colleagues. I do rise today, I guess, in, in tentative support of this proposed rule change. I do have some questions about it, I guess, that I'm, I'm curious to

kind of work through here together. And I think it's something we should have a conversation about. I see a few other people in the queue, including Senator John Cavanaugh, who's punched in now to talk about maybe some of his additions that I do want to hear more about. But I want to take a step back and kind of just acknowledge to those listening at home that a lot of this is very in the weeds. I understand that a lot of times these rules conversations are a little bit more 30,000-foot view or maybe even 60,000-foot view in terms of what we're doing here. But it gets a little bit confusing when you start talking about what Enrollment and Review amendments are. I'll acknowledge that when I first came into the Legislature, it was difficult for me to understand all the jargon. I think that more so than a lot of other entities, we sort of live in our world of, of talking in our acronyms and our abbreviations. And I heard a lot E&R, E&R amendments, or this is going to be an E&R fix or something like that. And as the Speaker just laid out, what that essentially means is Enrollment and Review. So after a bill comes from General File, it gets passed off of General File, and it goes on to Select File. The second round of debate, it essentially goes up to the Bill Drafters for E&R, Enrollment and Review amendments. And as the Speaker indicated, these are, most of the time, technical changes. Right? They, they look through the language and there's, there's been a debate that's happened or a conversation that's happened. And they realize that, you know, this, this line has to be modified by adding a, a comma here or we need to add a little bit of language in this section to make it harmonious with other provisions of the law. But as Senator Wayne indicated last week, and I think this was a very, very good point, is that a comma can oftentimes change the entire structure of a sentence. And so I absolutely agree that E&R or Enrollment and Review amendments are by nature meant to be technical. But I think it's really important that we ensure that we acknowledge these E&R amendments could, from time to time, modify bills. I've only been here for one session so I've not seen a circumstance like that myself. But in looking at these rules and talking with other colleagues of mine who have been around for much longer than me, they have seen times that E&R amendments have come back and, and have substantively changed the bill's language in such a way that it's actually altered the outcome of what the bill does. So I think that's important to note. I understand the desire here is to not let people jump the queue. I understand the desire here is to just get to substantive debate on the rule, which I think is, frankly, laudable. And I think it's something that we should often, you know, focus on is keeping the debate that we have here on what's on the board and what we're actually talking about. But I do want to just make sure that we acknowledge that the

modification of E&R amendments is important and can, from time to time, I think, be substantive in nature. I think the fact that the Speaker and Senator John Cavanaugh and others have worked together to find a potential fix to that problem is significant. Continuing a lot with our theme that we talked about last week, this, I think, demonstrates the desire amongst a lot of folks here to get together and try to work on some of these problems as opposed to being entrenched. So I'm excited to hear more from John Cavanaugh about his sort of a suggestion there, but I don't know if it necessarily fixes the problem. And the reason I say that is if the only modifications that can be done to an E&R amendment have to be a substantive amendment to the bill on Select File, it is entirely possible that we will never get there if there are other amendments and other things on the board that ultimately push that amendment to modify the E&R amendment down, down the queue. So that's a complicated way of saying if you're not able to make amendments to the E&R amendment itself first, it is possible--

KELLY: One minute.

DUNGAN: --thank you, Mr. President-- it's possible that you may never actually get to your amendment down the road that is trying to change those, those things that you think are substantive and that's problematic because what you could end up with then is a bill that ultimately gets voted on Select File and it makes its way to Final Reading. And then you have to then have a motion to bring back to Select File for the purposes of a specific amendment modifying the E&R amendments. It becomes a quagmire. And I know that I'm saying a lot of words that probably don't make a lot of sense to folks who don't follow this super clearly. But at the end of the day, what I'm getting at is we need to be very careful when modifying these rules, that we don't overlook the possibility that an E&R amendment could and, and might need to be changed in the desire to sort of streamline debate. I think that this body functions it's best when we're all focused on the issues at hand. I think this body functions best when we're all working together to come with-- to come up with solutions. And I trust that the rule, as it always has been, is probably--

KELLY: That's your time, Senator.

DUNGAN: Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Mr. Clerk, for a motion.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

CLERK: Mr. President, priority motion. Speaker Arch would move to recommit the proposed rule change 18 to the Rules Committee.

KELLY: Speaker Arch, you're recognized to open on the motion to recommit.

ARCH: Thank you, Mr. President. As we did with my first 2 rules-- proposed rules, I have filed a, a motion to recommit priority motion, and 2 placeholder amendments as well. And so, as in my first 2 rules, I would ask that when we are finished in the debate of the recommit, I would ask that you vote no and then we can move on to amendments. And I know some of you have submitted amendments. I'm discussing those with you now and I'm, I'm willing to substitute. If you have an amendment that you think is substantive, that you would like to substitute for-- to 1 of the 2 of the placeholder amendments that I have, please come and talk with me. So again, this is a-- this is just a structure of the debate and we can continue our debate on this rule with-- in the recommit motion. But when it comes time for a vote, I would ask that you vote no. Thank you, Mr. President.

KELLY: Thank you, Mr. Speaker. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President, and good morning, colleagues. In deference to how the Speaker is structuring this aspect of the debate, I rise in opposition to this motion to recommit, which has essentially been filed as a protective measure in regards to the Speaker's rules that he has put forward on the agenda today and that have been advanced by the Rules Committee with some amendment. That's a, a really good place to start, I think, for a few global notes in addition. So the first thing that I'm hoping that maybe members of the Rules Committee may commit to, maybe thinking about as we work through the debate this morning and I see my friend Senator Erdman is on the phone so I'm not going to ask him to yield, but will make sure to triple check off the mic as well, is that we have received a significant amount of feedback from those voices in our second house who are trying to understand how this process works. And as an institution that prides itself rightly on committing to transparency and engagement, as we do with all business before the Legislature, every bill having a public hearing, Executive Sessions being open to the press-- well, at least for the meantime-- well, we'll debate that later-- having no secret conference committee, taking votes on the record, all of these critical pieces of open government and transparency, which are hallmarks of this proud institution and align with our proud political culture in Nebraska, are a bit-- a bit out of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

alignment when it comes to structuring this rules debate. As we noted last week, these rules do not go through the Bill Drafting process as per other matters coming before the Legislature, but instead are coordinated with the Clerk's Office. And it is confusing as people are trying to work through these to see the various proposals that have been put forward, to go back and kind of juxtapose those in the Journal to try and figure out what the original proposal is, what the underlying substantive rule subject to amendment is, and then what potential committee amendments from the Rules Committee have come forward, in addition to the priority motions on the board and any placeholder or protective or substantive and serious amendments that other senators have also filed. So I do hope and I believe I've heard through the grapevine, and maybe Senator Erdman has even committed to search on the record, but there-- once we get past this component of our debate this session, I understand that the Rules Committee is serious about continuing its work into the interim period, and I am hopeful that perhaps we can figure out a better way to present proposed rules changes so that each member has full and fair opportunity to assess where we're at. And it's a little bit more accessible and a little bit more understandable for Nebraska citizens and members of our second house as well. So when I was thinking about how to approach the rules debate last week and carrying those lenses forward to this week after some time to digest and contemplate what we were able to accomplish together last week and what we have on our agenda before us this week, I'm trying to figure out how each word and each vote and each act can indeed help to support the appropriate vision that the Speaker has set forward for us as an overarching issue this session to protect and strengthen the institution, which includes its independence,--

KELLY: One minute.

CONRAD: --thank you, Mr. President-- which includes its modernization, which includes its operation. I'm also looking forward, and I think we were able to accomplish this to a significant degree last week, and it sounds like we're on the same track today, utilizing the opportunity of the rules debate to reestablish relationships and to reestablish tone that are in line with our proud political culture in this nonpartisan institution and in this state. And then finally, to use these opportunities to embrace a learning opportunity for all members, particularly new members in the term limits era, to think deeply and with discernment about what our rules are in, in, in letter and in spirit and then what that means for execution. So I do think that there are a lot of benefits in addition to what the Speaker has put

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

forward. Some related to technical corrections, some related to codifying precedent,--

KELLY: That's your time, Senator.

CONRAD: --and some related to process improvement. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator John Cavanaugh, you are recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I hope everybody had a good weekend. I had a great adventure on my weekend I'd love to tell everybody about, but I'll tell you about it off the mic. So we're here again debating rules. And I hope, again, everybody has come with the spirit of collaboration and open-mindedness about both what's a good idea, what's a bad idea? And to listen to people who have some experience that-- and a perspective that might be different than yours as to how these rules might affect folks. This rule, as Senator-- Speaker Arch said, incorporates some of my suggestions. And we were just-- as I was running over to the mic, if you saw me coming over, was because I was having-- attempting to continue to have a constructive conversation to address what was my initial concern and continues to be my concern. And this is why we should have a robust conversation about this. This is-- this seems like a really small rule. I think people want to just sort of go past it or glance over it because it applies to Enrollment and Review. And I know Senator Dungan touched on what Enrollment and Review is, the kind of technical changes that get made. And if you're an avid watcher of the Legislature on television, you might not even really notice them. We have an Enrollment and Review Chair, who is Senator Ballard, is the youngest person in the, the newest class is usually who it is. And a lot of times they just stand up and say-- offer the, the amendment. And then we all vote on it and it gets accepted and, and we move on and there's very little conversation. And there have been in recent instances, substantive amendments that have kind of jumped the line of other amendments to get in and use that E&R spot as a spot to make some amendments. And then, of course, there have been folks who have-- we've taken up a lot of time and not gotten to the substantive debate necessarily as a result of kind of gumming up the E&R, Enrollment and Review adoption. And so there's been some of that, and that's what this rule is seeking to change, is to say we have to do this. This is kind of the, you know, almost a ministerial function where we-- we're-- if we're gonna pass this law, it needs to be grammatically correct. It needs to be consistent. So-- and sometimes

things-- we write these amendments on the floor. Everybody on the floor here-- I-- probably still has one from Senator Conrad from last week with her handwriting on it. I've done many handwritten amendments on the floor, and they-- then those get integrated into the bills and they need to be cleaned up. So that's-- E&R is meant to just sort of clean things up, not make policy changes. But we've all talked about, you know, there are those sorts of commas. We had a long conversation about commas last week and how that can change the meaning and intention of the rules and more so in the law. A comma in the wrong place, a semicolon in particular, or ordering of the words, or a choice of shall and may, of course, makes a big difference. And so there's some really small changes that can have a very disproportionate impact on the intention of a bill. And anybody here who has drafted any number of bills might have gone through the same process I have with Drafting, where it's an iterative process and you give them what you want, they send it back to you and you say, this actually does the opposite of what I want. And then you have that conversation with them and they fix it. So it's not an ill intention, necessarily. It's just perspective and interpretation. So what I'm trying to get to, I guess, is how I think it's still important to make sure we maintain an ability to amend the E&R outside of the normal course of debate. Because my concern about this proposed rule is that if we do have that instance where the E&R amendment--

KELLY: One minute.

J. CAVANAUGH: --thank you, Mr. President-- needs to be amended, and we have a true filibuster on that bill, a subsequently developed amendment that then gets filed after the E&R is filed, will go to the back of the line behind all the other obstruction or filibuster amendments and then never actually get a hearing and will never then get adopted. And so we'll be stuck with what the-- so our options would be don't adopt the E&R which makes the technical changes, or do adopt the E&R which changes some nature and intention of the bill. So that's the conversation we've been-- I was having off of the mic on trying to craft maybe some kind of small tweak that allows for that situation. But this is why I think it's important that we engage in this conversation, because this seems very small. The E&R changes seem small, but they can have a disproportionate impact. The change of this rule seem small, but it could have lasting impacts that we need to make sure we have thought through and figured out a solution to that still allows us--

KELLY: That's your time.

J. CAVANAUGH: Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Raybould, you're recognized to speak.

RAYBOULD: Thank you very much. Good morning, colleagues. Good morning, fellow Nebraskans watching this debate on TV. I really thank Senator Dungan for bringing up a lot of questions. And I can tell you as a first time senator, this-- the E&R process is a little bit confusing. And I know we're diving into the weeds, but I, I do have a number of questions that I'm hoping Speaker Arch will be able to answer. I'm, I'm going to fire off all the questions, Speaker Arch, so you can hear them. And then I'll let you answer them if you're willing to take them on. So here-- here's question number one: Who makes the determination that the changes in the E&R are substantive? Who makes the determination that they're purely technical? And then it sounds like we cannot introduce an amendment at the time of E&R. If so, is that correct? Can we introduce an amendment in this process? If not, I think Senator Cavanaugh just spoke about the fact that if we introduce the amendment, it's put at the end of the line of the amendments, even though they correct some of the substantive changes in the E&R process that members of the body feel are beyond the technical. And then what are some of the unintended consequences of changing this rule? And then, Speaker Arch, can you give me an example of how we processed and handled this last year? Because the concept of E&R approval is-- was, you know, it took a while to get it-- my, my hands around what it means. And I'm-- I know that there's some avid watchers out there that probably understand it better than I do, but if, if you wouldn't mind answering some of these questions.

KELLY: Speaker Arch, will you yield to those-- to those questions?

ARCH: Yes, yes I will.

KELLY: You have 2 minutes, 52 seconds.

ARCH: OK. So, Senator Raybould, the way that-- the way that this proposed rule is drafted, I don't believe that it requires a determination whether they are technical or substantive. I, I know we had discussions about that at one time, and I think it was-- and I think the end result was that's just unwieldy. Who, who-- I mean, your, your question is appropriate. Who does-- who could possibly make that to-- could be technical to somebody, could be substantive to someone else. And so I, I don't believe that it requires that. Can we introduce an amendment? Now, I will-- I will tell you that that's a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

question that is, is currently being discussed amongst some members is, is, OK, so the, the primary introducer may be able to stand up and speak during the E&R amendment debate, but-- or I should say it's not a debate, but, but they are given that privilege to speak once and they can introduce an amendment. But if there are already 10 amendments introduced on the bill, that amendment will fall to the bottom and may not get discussed. So we're having some discussions about is there a way to-- well, is there a way to allow for that? With regards to your other question regarding the, the problem, I guess, I'll, I'll phrase it this way. What problem are we trying to address with, with this? And, and that is that the last couple years this E&R amendment has, has in quasi introduced a new stage of debate. And so you, you may-- you may be waiting for the bill to come up, but with the E&R amendments, as they are right now, they have been-- things have been filed on E&R amendments that really are not technical in nature. They are substantive to the bill. And so--

KELLY: One minute.

ARCH: --it was-- it was jumping the line and making it more confusing to-- the bill wasn't even up. And we were talking about the bill. And so we're just trying to streamline that process, get the E&R adopted, which really is-- should be-- is a technical amendment and get that E&R adopted so we can get to the bill. And there you can have your amendments. There you can debate the bill and not create another stage of debate with the E&R. Now, I would say this as well, that if members of the body have issues where, where Revisors are doing more than just technical amendments, and you have-- and you have an issue with that, I would-- I would strongly encourage senators to go and sit down with the Revisors and express their concern about that and bring specific examples that, that they could understand where, where they may see some issues with that. So I hope that answered most of your questions.

RAYBOULD: Yes. Thank you, Speaker. I do have one--

KELLY: That's your-- that's your time, Senator.

RAYBOULD: --follow-up. Thank you.

KELLY: Thank you, Senator Arch. Thank you, Senator Raybould. Senator Erdman, you are recognized to speak.

ERDMAN: Thank you, Mr. President. Good morning. So as I listen today and I hear the comment continue to be about Bill Drafting, I'm going to give a shout out to the Bill Drafters. These people work tirelessly

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

to draft our bills, the 600, 700 that we introduce and send up there. They are not intending to do anything to anyone's bill that that senator doesn't want them to do. That's not their goal. And they intend to deliver to us correct information and the correct verbiage with the commas in the correct place. And they do an outstanding job. So I just want to say I appreciate what Bill Drafters do and I thank them for their service. The other thing that comes to mind as I listen to this morning's debate is a lot of this is not about changing this rule, but it's more or less stalling and wasting time so we don't get to other rule changes. There has to be a better way to debate rule changes than the current method we are now using. Therefore, that is why when we wrote Rule number 12, which is a total rewrite of the rules, we included Rule number 12, which was a rule change on how to debate the rules. Because for those of you that aren't here and don't understand how you find the rule changes that we're discussing, they're in the Journal, that is a difficult place to find rule changes. So with Rule number 12 being changed and adopted, we would be able to look at those just like we do other bills, which would be very simple. But we don't like to make things simple here. We like to make them difficult. So I see the queue is full of people to talk about this amendment to the rules. And just so you know, for clarification for viewers back home trying to figure out what all these people are talking about, is absolutely a little bit of nothing. OK? So let's vote. Let's move on. Let's make decisions that make this place better, function correctly, and more easily to understand. So don't be sidetracked if you're listening from home about what we're trying to do, it's plain and simple, we're wasting time. We've wasted enough time, it's time to move on, change the rules so that it makes it more convenient for all those who want to have real discussion and we can vote. Thank you.

KELLY: Thank you, Senator Erdman. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in support of the recommit to committee, and I am against the rule change because I personally do not believe we should be changing rules in the middle of the session or in the middle of the biennium. The effort to try to make things happen a lot easier in this body is what I'm just really against. If you have a controversial bill, go through the process, get the votes. That's what it's about. It shouldn't-- we shouldn't be changing the rules to make our lives easier because we want to pass things that affect the people of Nebraska. We should go through the normal process and get the votes to pass these things. We should not be trying to change the rules to not have long nights in the Legislature. We should

not be trying to change the rules to not go to sleep with a headache. We should not try to change the rules just to say we did something. It shouldn't happen. Yeah, nobody likes sitting here to 10 at night or late in the evening. But that's what we all signed up for to be senators, to represent our districts, to fight for good legislation and to fight against bad legislation. But that doesn't mean we need to try to change the rules to make it easier for the majority to get things that they want to get across. I would be against, against this if I was in your position, honestly, because we are enacting things that affect people directly and that is something you should think about. This doesn't just affect your life as a senator or your election or how you're perceived in the media or to your voters. It affects everyone in here, and it should take some time for you to hash out these ideas in these bills before they're passed, but to try to change the rules so somebody can't slow the process down is just wrong. And I know there's arguments for it because, well, we need to speed this up. We only have limited time, but we have limited time for a reason. Maybe some of these bills shouldn't come to the floor. That's something we should really think about. Maybe some of these bills should not come to the floor if we don't have enough time to pass them, because they are that controversial. Let's have that conversation. But we should not be changing the rules at any time during this session. I know we already did some things and I was against those as well, and I'm against the rest of the rule changes, basically on principle that we should not change the rules during the middle of a session. You all can disagree with me, but that's my opinion. I'm cool with staying here late at night if we are here late at night to fight against or fight for different legislation on behalf of our constituents and the rest of Nebraska, but I do not believe that our jobs should be made easier because people want to push through things that they probably don't have the votes for. Or maybe not the votes, but we don't have time because it's got to be lengthy conversations about why the bill is good or bad. So that's just my opinion. I don't think we should be changing rules right now. I tried to change the rules last year to, you know, do some things against the prison that I think we should have did because why did we vote as a-- well, I didn't vote, but a lot of you did, to vote to build a prison. And they don't even want to demolish the current one that we have, the one that they ran around for 3-plus years saying it was in such disarray that nobody could--

KELLY: One minute.

McKINNEY: --live there. But they don't want to demolish it. They want to decommission it, lower the custody level, and put people in there

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

and still take taxpayer dollars and not change things in the criminal justice system. But, again, we should not be changing rules in the middle of the biennium. So I'm for the recommit to committee and I am against the rule change. Thank you.

KELLY: Thank you, Senator McKinney. Senator Wayne, you are recognized to speak.

WAYNE: Thank you. Thank you, Mr. President. Sorry. Thank you, Mr. President. Colleagues, I'm, I'm against all the rule changes. I'm not spending a whole lot of time. It appears that we're actually using the rules, which I find ironic because we have a rule change that will stop exactly what's going on here today. It'll stop the recommit from being done on every stage, it will only be used like it is today, and then ask everybody to not vote for it. And then that won't happen any more time during debate, which I find interesting because then you can't use it again if it-- if, if the introducer wants to withdraw it or, or whatever thing else. Here's my problem with the E&R debates. We are eliminating emotion. And I know that doesn't sound like a whole lot of things, but we are basically saying people who are unelected are going to be able to write and make, maybe, substantive changes, and we have to first vote it in and then second vote to take it out. I find that interesting considering my first 2 years, I did a lot of cleanup bills in Urban Affairs. They were not substantive, but by this year they would be considered substantive by this body because we changed the word from "he" to "she" or "he" or "they." That is now a controversial issue. Changing those words. There's also what we would consider modernizing or harmonizing the statute. So if you guys send a bill up for Bill Drafting, and then you get a whole bunch of other changes that you didn't have in your original bill, that's because Bill Drafting has taken upon themselves over the years, and I don't knock them for it, to update the statutes where it seems to make grammatical changes or maybe make it flow better as you're reading it. The problem with those grammatical changes is you don't know if there's a court history based off of those grammatical changes. We pointed out last time the importance of a comma. We also in technical cleanups changed a word from "and" to "or." That is a huge difference. And so what I'm telling you is you are going to vote on an E&R amendment that you have not read, that's going to have something in there that you do not agree with, and you're going to have to figure out how to vote to take it out. But, more importantly, on your record, you will have voted for that bill. Unless you ask for a machine vote, it's considered passing unanimous. They don't score on Select File the ayes and the nays unless you ask for a machine vote. So what you're essentially saying is you cannot change or, or modify an E&R amendment

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

before that vote. You are taking away your ability to read something and vote no on it. You can still vote no on it, technically, I guess, but we're saying there's no way to amend it to correct the language. I find that interesting. So I would be-- I'm personally opposed to this because I think before I vote on anything, I should be able to read it. And if I want to amend anything on the board, I should be able to amend it. The reason these rule debates are moving along, even if 1 or 2 try to filibuster, is because there's somebody in the queue to call the question. They're going to show 5 hands, they're going to keep things moving. There is already a motion filed on this motion to suspend the rules. And I would submit to you that if we don't put that on the agenda, that is not a motion technically on the floor that doesn't require public notice. It is filed. It should require some type of agenda setting if it's already filed. If you're knowing you're going to suspend the rules, the public body should know if you're going to do that or not, it should--

KELLY: One minute.

WAYNE: --be on the agenda. So I would argue against any suspension of the rules that is filed prior to the date of that suspending the rules. It's another thing when you're in debate and you're going down and you feel like it's been 6 hours and you file a motion to suspend the rules on the floor, we're talking about a motion to suspend the rules that's already filed. That should be on the agenda and we should have a debate. The problem that we're doing and what we're-- what we, we are doing as a body is we are giving more power to the Speaker. That was never the intent of this Unicameral. It was to allow 1 or 2 to disrupt, because that disruption oftentimes brought compromise, or you just kind of roll them if you have the votes. That is the nature of our body. And believe me, I have gotten rolled plenty of times on this floor. But to start modifying these rules halfway through session, because you can-- or halfway through the biennium because you can, I just personally have a problem with that when there's going to be a whole set of new people in. I mean, at least--

KELLY: That's your time, Senator.

WAYNE: Thank you, Mr. President.

KELLY: Thank you, Senator Wayne. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. Good morning, colleagues. I first want to say that while we're talking about any potential need to

possibly at some point amend the E&R amendments, I want to make it very clear to everyone in this room and to everyone that is watching, perhaps at home, that Bill Drafters does a very nice job. They do a very nice job. They don't make substantive changes just willy-nilly. They're not doing any of those kinds of things. I don't have a lot of problems that I've ever seen come up. Other senators have seen, they've seen an occasional one, but we're all human. Occasionally that might happen. I wanted to be very, very clear with everyone that Bill Drafters, when they do the E&R amendments, they aren't making a whole flurry of substantive changes. What you have heard from myself in the hearing and at other times, and perhaps from some of the others on the floor today, is that because we are all human, the possibility exists for needing to change E&R amendments. That is not a negative reflection on the people who are doing the E&R amendments. That is simply saying, because we are taking a vote there needs to be a remedy to if there is the occasional problem once every blue moon and a half for E&R amendments. So that is why they're trying to create a remedy in those rare occasions when something happens with E&R. But I want to talk to my colleagues who are newer here. One of the things that I learned in the hearing that I thought was sort of interesting is that E&R, it's not been that long since E&R was actually a pretty big deal committee. What we're seeing here with these E&R amendments on the floor is a kind of living archaeology in which our process over time, perhaps because of technology, perhaps, I don't know why, has modified over time. The E&R Chair used to be required to be a lawyer, and it was not that long ago that there was a Vice Chair of E&R, and that the Vice Chair of E&R was in fact the Chair of the Judiciary Committee. So there was for a long time a process by which E&R amendments were overseen by members of this body. That was more than kind of the honorary position that it is today, where the youngest member of the newest class is automatically become E&R Chair. You may have noticed that we don't vote for E&R Chair at the beginning of the biennium because it is given to the youngest member of the newest class. It's almost like a hazing ritual in which Senator Ballard, before him, Senator McKinney, becomes the Chair. Before that, it was Senator Slama. And then I think it was maybe Senator Wishart was before that. The idea now is that they will stand up during Select File and ask-- and motion for the E&R amendments to be accepted. This is part of our process that over time has slightly less meat to it than it originally did when we're talking about a committee and at least the Chair and Vice Chair of the E&R Committee working on those as well. So I voted for this change coming out of committee, the Rules Committee this year, in part because I think it recognizes that we're not in the same place that we used to be--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: One minute.

DeBOER: --when-- oh, OK-- we're not in the same place that we used to be when we had the entire committee working, that sort of thing. So now I think we ought to get to a place where we can kind of smooth through this E&R change. But like everyone else has pointed out, we do want to make sure that elected officials are making the changes to our laws. So when that happens, we need to have some mechanism. So I am against the recommit to committee, but I'm open to a stronger mechanism for allowing an amendment, if necessary, in those rare circumstances when our rock star Bill Drafters happened to make a human mistake and there's something that needs to be changed. I'll come back on the mic and talk about the kinds of changes these are, because I think we're misunderstanding exactly the kinds of changes that E&R is making. These are not giant things, these are much smaller than that.

KELLY: That's your time, Senator.

DeBOER: Oh, thank you, Mr. President.

KELLY: Thank you, Senator DeBoer. Senator Machaela Cavanaugh announces a guest under the north balcony. Tessa Brooks, a senior at Marian High School in Omaha. Please stand and be recognized by your Nebraska Legislature. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I do rise today opposed to the recommit to committee motion. I always appreciate listening to Senator DeBoer talk. Living archaeology is a "DeBoerism" that I like a lot. I'll probably incorporate that into my vocabulary as well. But I think it's a-- it's a good way of talking about sort of the evolution of the rules and what we've seen here. And I think-- what, what I want to start by pointing out is I would very respectfully disagree with my colleague, Senator Erdman. I do think for those watching at home and for those who are having any interest in the debate we're having, this is substantive. I do not believe that what we're talking about here is simply wasting time. And this is certainly not just an effort to elongate time. I think that it's been pointed out by a number of people here today that the proposed rule change 18 that modifies the debate ability, the amendability of E&R or Enrollment and Review amendments is, in fact, very substantive. As I mentioned in my prior comments, you may want to change the E&R amendments and not get to it. Others have pointed out the need for debate about those things. And so I just-- I want to gently push back on the notion that what we're talking about here is not substantive. And I think that what this gets

to is a broader debate that Senator McKinney and, I believe, Senator Wayne were also talking about, about what is the purpose of our debate in this body. I don't believe that things should be easy. Certainly, I'd like them to be easier sometimes. It'd be a lot easier to get some bills passed from time to time. But at the end of the day, what we do in this body should be difficult. We were sent here to answer the hard questions and to have the difficult debates. And I think that the notion that we should adopt rules simply to make it more convenient is very problematic. I absolutely agree with the Speaker when he got up and said at the beginning of this session that rules are guardrails that are intended to keep debate on a certain path. But the notion that those rules should make it easy for individuals to get something done, I think, is slightly flawed. We should be having conversations about the, the rule changes to make sure we're not missing anything, because there have been rules that have been adopted in the past by this body that have had unintended consequences. And certainly I think it is because some rules have been passed previously without thinking about what's going to happen in the future, that we've seen some problems arise because there wasn't actual debate. And so that's why I, I rise again today to talk more about rule change 18, and specifically to push back on that idea that this is just a waste of time. Senator John Cavanaugh has been working with the Speaker, along with many others, tirelessly, I think, to make sure that these rules achieve the intended goal without necessarily getting us off of, of, of what the actual hope of these rules are. And so I, I do appreciate the efforts that are going into that. And part of the reason that I think some people are talking right now is to allow there to be time for those amendments to be drafted, amendments that are substantive in nature and amendments that I would probably urge my colleagues to vote for once we actually see that the language in those assuming they achieve the intended goal. And so I, I do again rise today in tentative support of proposed rule change 18. I do understand that what we're talking about is the hypothetical amendments to E&R, which are technical in nature, but any modification that's made that could be perceived as substantive or could potentially have an overarching change in the execution of the law or the interpretation of the law, I think should be amendable. And so I'm hopeful that we're going to get some amendment here in the near future that allows the amendment of E&R prior to its adoption. I think that would answer a number of the questions we've had. And it would also achieve the goal of keeping debate on track. Because if an amendment is mod-- if you can amend an E&R amendment prior to its adoption, but it's not, maybe necessarily, debatable, that would achieve, I think, both goals. And so--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: One minute.

DUNGAN: --thank you, Mr. President-- there's plenty of room here for a change. I think that part of the reason we're having this conversation is because, frankly, I hadn't thought of a number of these issues with this proposed rule change prior to the last couple of days as I was reviewing these. I, I know our Rules Committee talked about them ad nauseam, but it's not until these rules make their way to the, the greater body that I think we can really finally work through all of the issues that may arise if they're implemented. So, colleagues, please, please, please pay attention. Please listen to this debate. I think this is us trying to get to the heart of a number of the issues that are-- that are being debated here. These are, in fact, real conversations. We're not just stalling for time. So please listen to the amendments that come up, consider how they affect the actual rules. And please pay attention to the conversation we're having, because I think it really matters. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Mr. Clerk, for items and new bills.

CLERK: Thank you, Mr. President. Letter from Senator Hardin informing the body that he has chosen legislative--LB1120 as his personal priority. Senator Hardin, LB1120, personal priority bill for the session. Notice of committee hearings from the Health and Human Services Committee, as well as the Urban Affairs Committee. And a motion from Senator Brewer to be printed in the Journal to withdraw LB973. New bills: LB1196, introduced by Senator Ballard, is a bill for an act relating to public health and welfare; amends Section 71-6726; changes provisions relating to the registration of medical aides; and repeals the original section. LB1197, introduced by Senator von Gillern, is a bill for an act relating to the Sports Arena Facility Financing Assistance Act; amends Sections 13-3102, 13-3103, 13-3104, and 13-3108; defines and redefines terms; changes provisions relating to the use of state assistance, applications, and certain limitations on state assistance; harmonize provisions; repeals the original section. LB1198, introduced by Senator Moser, is a bill for an act relating to county records; amends Section 23-3211; provides for withholding the residential address of a county attorney or deputy county attorney from the public; and repeals the original section. LB1199, introduced by Senator Moser, is a bill for an act relating to the Department of Natural Resources; amends Section 46-296; repeals certain administrative fees relating to the Department of Natural Resources; harmonizes provisions; repeals the original section; outright repeals Section 33-105. LB1200, introduced by Senator Moser, is a bill for an act relating to motor, motor vehicles; amend Sections

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

18-1737, 43-3314, 43-3318, 60-164.01, 60-172, 60-3,162, 60-3,202, 60-3,205, 60-480, 60-479.01 [SIC--60-497.01], 60-4,131, 60-4,131.01, 60-4,139, 60-4,134 [SIC--60-4,143], 60-4,144.03, 60-4,146.01, 60-4,148, 60-4,148.01, 60-4,149, 60-4,150, 60-4,151, 60-6,253, 60-6,254, and Sections 60-144, 60-146, 60-149, 60-3,198, 60-490, and Sections 30-24,127 [SIC--30-24,125], 60-107, 60-119.01, 60-169, 60-302.01, 60-33.01-- 60-336.01, 60-386, 60-3,113.04, 60-3,193.01, 60-462, 60-462.01, 60-479.01, 60-4,111.01, 60-4,115, 60-4,132, 60-4,134, 60-4,142, 60-4,144, 60-4,147.02, 60-4,168, 60-501, 60-628.01, 60-6,265, 60-2705, 60-2909.01, 75-363, 75-364, 75-366, 75-369.03, 75-392, and 75-393; adopts and updates federal law and certain-- updates certain federal references; changes provisions relating to certificates of title under the Nebraska Probate Code, delivery of certain notifications relating to operator's licenses, the Motor Vehicle Certificate Act-- of Title Act, Motor Vehicle Registration Act, the Motor Vehicle Operator's License Act, the Nebraska Rules of the Road; changes certain penalties; eliminates obsolete provisions; harmonize provisions; repeals the original section; and declares an emergency. LB1201, introduced by Senator Hardin, is a bill for an act relating to education; amends Sections 79-1101 and 79-1103, Section 79-1003; redefines terms under the Tax Equity and Educational Opportunities Support Act; changes provisions relating to Early Childhood Education Grant Program; changes legislative intent relating to early childhood education programs; harmonize provisions; repeals the original section. LB1202, introduced by Senator Halloran, is a bill for an act relating to child support enforcement; amends Section 43-3342.04; changes the requirement relating to customer service unit; and repeals the original section. LB1203, introduced by Senator John Cavanaugh, is a bill for an act relating to Nebraska Political Accountability and Disclosure Act; amends Section 49-1403 and Section 49-1401; defines terms; regulates the use of qualified political advertisements and distribution of material deceptive media relating to artificial intelligence; provides exemptions; provides for injunctive relief; harmonize provisions; repeals the original section. LB1204, introduced by Senator John Cavanaugh, is a bill for an act relating to Nebraska Liquor Control Act; amends Section 53-123.01 and Sections 53-101, 53,103, 53-123.16; defines rickhouse; authorizes a holder of a microdistillery license and a holder of a manufacturer's license to operate a rickhouse as prescribed; provides powers and duties to the Nebraska Liquor Control Commission; harmonize provisions; repeals the original section. LB1205, introduced by Senator Hughes, is a bill for an act relating to appropriations; appropriates federal funds to the Department of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

Natural Resources; and declares an emergency. That's all I have this time, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Fredrickson, you are recognized to speak.

FREDRICKSON: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. I continue to be interested in the discussion we're having this morning regarding the rules, specifically the proposed rule change number 18 by Speaker Arch. I am-- I supported the, the rule-- the 2 rule changes that we voted on last week. I'm going to continue to listen to the arguments on both sides for this. I actually disagree that this conversation is happening just for take up time or to waste time. I think that, you know, this is actually a very substantive conversation. I certainly, as a new member of this body, am learning quite a bit on the rules and the different mechanisms of the rules and why we have the rules and how to utilize the rules. So I, I think it's prudent for, especially new members of the body to listen and learn the rules as, as best as we possibly can. As I said, the current debate we're having is on proposed rule change 18, which is going to impact specifically Enrollment and Review. It's a-- this is not a debatable, amendable motion. Senator Wayne made some really, I think, intriguing points earlier about this, particularly if there is, in fact, a genuine need to amend E&R motions. So that's something that I do have a little bit of concern on. I mean, essentially what would happen in that case is that we would go to a vote without any amendments, and then we'd have to perhaps vote no on the E&R amendments only to actually then change them and amend them. And if anyone in here who knows if you're trying to whip votes to get something to happen, it can be like herding cats at times. So I think trying to corral everyone to vote no on an E&R amendment, which is typically just a no-brainer. It's a yes. Because as Senator DeBoer said earlier, the Bill Drafters, you know, typically do an incredible job on those. But there is always room for human error. So I think the fact that we had to vote no on that, only to come back could be a little bit of a hiccup as opposed to just simply amending before we get to a vote. So that's kind of my stick with this one so far. Speaking of-- you know, this is-- actually, Senator DeBoer is speaking with the Speaker right now. I see she's busy, but I actually had a question for her, she was talking a little bit earlier on the mic regarding different changes that have come to E&R. I don't know if she's available for a question. I think probably not. So I will actually ask Senator Conrad this question, if she's so willing to yield as a senior member of the body.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Senator Conrad, are you willing to yield to a question?

CONRAD: Yes, absolutely.

FREDRICKSON: Thank you, Senator Conrad. I'm wondering if you might be willing to maybe kind of shed some global points on E&R amendments, historical context thereof, and what concerns you might have about this proposed rule change?

CONRAD: Yes. Thank you so much, Senator. And I think that there has been some good foundation laid in regards to how this component of our process has worked historically and in the present sense. But I, I think one thing that you can hear some tension amongst or some differences, opinions-- differences of opinion arising from different members is that, yeah, while, yes, E&R is meant to be more technical in nature, sometimes it's a blurry line between what's a technical amendment and what is a substantive amendment recognizing even grammatical changes or punctuation can have substantive impact. So it's a little bit of art, a little bit of science, perhaps, in the eye of the beholder. But that being said, while E&R is meant to provide technical corrections as a measure moves its way through the legislative process, it has been utilized by different people at different times to raise important issues. And I do--

KELLY: One minute.

CONRAD: --have a great deal of concern about overcorrecting in terms of changing the E&R process, because I do think that it could have negative impacts when it comes to substantive changes. And I do think that the technical aspects sometimes do provide an opportunity or a speed bump when things are going too quickly or too fast to jump in. That has happened historically in our body, not just over the last few years. And so it's something that I think we need to think very carefully about, even though it sounds very archaic, like debating the, the nuances of an Enrollment and Review measure, but it is an important and integral part of our process that goes to both substance and tech-- and technical issues.

FREDRICKSON: Thank you, Senator Conrad. Appreciate it. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad and Senator Fredrickson. Senator Conrad, you're next in the queue.

CONRAD: Thank you, Mr. President. Good-- still good morning, colleagues. I want to, before turning to the specific issues on the

board, want to just respond and provide another perspective in terms of where we are, how we got here, and where we're going to be moving forward together today, this week, and through the remainder of this session. And I would like to provide a different perspective than the one provided by my friend Senator Erdman earlier in the debate this morning. It has been very clear from Senator Arch and Senator Erdman that they were both seeking significant rules changes, some to strengthen the institution and some in direct reaction to the contentious session that we had last year. And some of the components put forward are not even related to the contentious session that we had last year, but rather perennial issues for those that seek to undermine the unique attributes of the nonpartisan, Unicameral system. So I, I do want to note a couple of things so that it is clear for the record. If you go back and you look at who brought forward a significant amount of rule changes, it was not myself. It was not other members on who hold more progressive viewpoints in regards to how they approach their work in the body. There was a significant amount of rules put forward by Senator Erdman and Senator Arch, a few put forward by Senator Cavanaugh, and a few put forward by Senator Wayne. But to stand up and say we're frustrated that we're taking time on rules, that, that, that lies very squarely at those who introduced the amendments and initiated the process. Additionally, we have not filed copious motions. We have not filed copious amendments on the rules that have been put forward from the committee. Those of us in the minority or progressive or moderate kind of political ideological camps do not have the power to set the agenda. So the reason that we're here, the reason that we're taking time, is because Senator Erdman has asked the body to take time by introducing a copious amount of rules changes, by putting out a copious amount of rules changes, by putting forward contentious rules changes that we have only as those of us in the minority perspective the ability to stand witness to, the ability to vote on, the ability to engage in dialogue on. That's it. So if Senator Erdman does not want to take additional time on rules or is bothered by a deliberative process, he has only his choice at about whether or not to introduce them or to pull them, so that we can move on to full and fair debate on key issues impacting Nebraskans like childcare, like workforce, like targeted tax relief, like keeping our public schools strong. Any one of us would happily join with that effort and would respectfully ask that he remove those from consideration so that we can move forward with robust debate on issues that matter to Nebraskans. Another piece that I would like to put forward, that I do have a different perspective with my friend, Speaker Arch, in when he was opening on this specific amendment, he indicated that perhaps this had recently become a problem. And, again,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

I, I disagree. I think that the utilization of technical changes, of course, and substantive changes has always been part and parcel--

KELLY: One minute.

CONRAD: --with our process-- thank you, Mr. President-- in the Nebraska Legislature. So I don't think this is a brand new problem that must be solved. It is also equally available to all senators that feel strongly about matters that are moving forward. I will go back and triple check the record, but it's my understanding there's 2 high profile examples of how E&R amendments were utilized that would be subject to change in the rule that is pending. I believe Senator Slama utilized amendments on E&R motions when she was waging a filibuster against the voter ID measure. And I think other members utilized E&R amendments to lift substantive debate on matters like LB626, an abortion ban that came before the body. So those processes have been utilized throughout our-- throughout our history, including last year by members with very, very different points on the political spectrum. So it's important that--

KELLY: That's your time, Senator.

CONRAD: Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator Machaela Cavanaugh, you are recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I would echo a lot of the sentiments just shared by Senator Conrad about this rules debate and the idea that we're just taking time to take time. Many of us have expressed our disagreement over these sweeping rules changes mid-biennium. It is a 60-day session. We could be debating carryover bills. We could be debating bills that have already been placed on General File and given a priority. There's a lot of things we could be doing and none of that was my choice, the scheduling, the introduction of rules. If you didn't want to waste time, you shouldn't have introduced rules that waste time. And I think it was pretty clear from the onset that I opposed these rules changes. So if you're-- I don't know, dismayed that I am standing up and speaking in opposition to these rules changes and taking precious time in a 60-day session, you should look in the mirror and blame yourself because you decided to do this. I did not. I've been very clear about where I stand on rules changes mid-biennium. This particular rules change, however interestingly, is not about me. I believe it's about Senator Riepe, actually, because he tried to amend on E&R the abortion

ban and we couldn't have that. We could not have that go to 12 weeks instead of the 6 weeks, until we could, to force him to vote for LB574. So this is in reaction to restricting women's rights to reproductive health, not to the filibuster of last session. Just to be clear. And when we do something in a reactionary way, there are consequences. And these consequences might not seem significant or severe at this moment in time, but we are eroding our own voice. We are eroding free speech. We are eroding democracy when we make these changes. So let's play this out. We make this change to E&R, you can't debate E&R anymore. Or even better, 1 person, the introducer of the bill, can speak on E&R. Now the next time we have rules changes, what is to stop the next Legislature or the next or the next from changing other debate rules to limit who is allowed to speak on that change? What is to stop other legislatures from saying in the future, this Legislature thought it was OK to restrict the debate at this moment in debate to 1 person? Why don't we do that on other rounds of debate? Why don't we restrict debate on committee amendments to 1 person? What is to stop this continued erosion from happening? And what is the reason for this erosion? This is in reaction to Senator Riepe trying to get his amendment heard when people were stopping him from getting his substantive amendment to have its time of floor debate. Now, I wasn't going to vote for his amendment. I did not support his amendment. I did not support the underlying bill. But I understood that he was working in good faith to try to get to his amendment, and this body was blocking his amendment. So he used--

KELLY: One minute.

M. CAVANAUGH: --the tools available to him, as one should. But now we're going to take that tool away. Now let's talk about when we take tools away, how that's going to impact the rest of you. There will be a time where some of you will need the tools that are in the Rule Book, whatever those tools are. And I guarantee with these sweeping changes that we are enacting this year, there will be some of you this year that sure will regret that. There will be a moment in time where you have a bill that you are either fighting or you are fighting for, and these changes are going to hinder your ability to achieve your own goals. But you're not thinking about that. You're only thinking about last session. You're not thinking about the future and how to protect the institution, and how to protect the voice of your voters.

KELLY: That's your time, Senator.

M. CAVANAUGH: Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Thank you, Senator Cavanaugh. Senator John Cavanaugh, you are recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. So, again, those who are paying attention, there's a lot of activity going on, and it's because folks are talking about this particular bill or this particular rule proposal and proposed changes to this rule proposal. And as I said earlier, I, you know, when Speaker Arch proposed his, you know, group of rules, I saw this one and I said, oh, well, I think there's a problem with this. So I made a proposal, which was one of the 2 rules that I proposed to the Rules Committee. And then ultimately what they kicked out is this Rule 18, as you see it in front of you, and it contemplates some of my suggestions and some of what Senator-- Speaker Arch proposed, and then some of the things that came out in committee or in their conversations. And so that's, again, another kind of iterative process about these amendments. And now we have, you know, everybody here, I kind of came in today and I started talking to the, the Speaker about other ways that I think-- I didn't think that this particular version fully integrates my suggestions, which are that I've talked about ensuring that there is an actual opportunity in those rare instances to make changes to the E&R amendment when necessary. And what we're finding is any sort of minor tweak and change to that has a different impact. So, you know, what is the physics? All actions have an equal and opposite reaction. It's kind of like what we're talking about here is if we make a small tweak to try to allow for this outlet to actually make a, a, a necessary amendment that could kick the door open to have the same sort of issues that the other Senator Cavanaugh was just talking about and that some folks are trying to curtail. However, if you don't have that outlet, you run into a potentially problematic situation where, you know, a bill could change the intention of the bill as Senator Wayne talked about. And so that's where we're-- we're having a real substantive, though, minutia laden conversation off the microphone about rules, but it is a, a substantive conversation that needs to be had. And, again, this has been my-- my original opposition to changing the rules at this point is that I don't think that we should be changing them at this point. But if we're going to do it, we should make sure we do it right, and we should certainly not do it out of a place of retaliation and, and anger about what happened last year, because then we run the risk of creating a situation, hemming ourselves in or putting ourselves in a situation that is hard to fix. And these are some problems that you might say, well, how often does it happen? Well, you know, a lot of things don't happen that often, but you want to be ready for when they do. You know, a lot of folks-- I don't know if anybody else traveled

this weekend, had our flights canceled. I was traveling and my flight got canceled. Doesn't happen that much. I've flown lots of times, a number of times that my flight's been canceled. And I think, you know, I can count on one hand. But, you know, I needed to get home to my kids and needed to get back here so I could be here to share this wonderful conversation with you all. But you want to have contingencies for that, right? When the airlines aren't ready to-- for that eventuality that happens-- well, happens to them more often because they're flying every day. But you want to be ready for the always possible, however unlikely, rare problem. And that's what we're talking about with this rule is to make sure that we have an opportunity to make-- take corrective action when necessary so that we don't either create chaos or create--

KELLY: One minute.

J. CAVANAUGH: --bills that have problems stuck in them, either inserted into them or problems not fixed because of we've hamstrung ourselves. And to echo Senator Erdman's comments from earlier. I'm not intending to attack or malign Drafting in any way. I think they do a fantastic job. They-- it's a Herculean effort, especially at this point in time. And what we just need to understand is they're doing a great job and they have the best of intentions. But, again, they are operating from a perspective where they, you know, they may look at a bill and say, oh, this needs a comma here, we're going to put it there because that would be grammatically correct. But in some instances putting a comma somewhere does change the actual intention. And the intention of the introducer might be so affected by having that comma there. And they wouldn't want the bill if, if it makes that change. I have a bill that I'm working on right now where I'm wrestling with where to put a semicolon and how much it will change how that bill will--

KELLY: That's your time, Senator.

J. CAVANAUGH: --actually go into effect. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator DeBoer, you are recognized to speak.

DeBOER: Thank you, Mr. President. OK, as promised, I was going to come back and talk about the kinds of changes that these E&R amendments are. So one of the things that we kind of all gloss over in our brains is that we have a bill before us, and it comes out with what we call the green copy because it's originally printed on green paper. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

maybe there's a committee amendment, which we call a white copy amendment because it's printed on white paper. And what that does is it completely replaces whatever's in the green. But you can only do that by amending that with the committee amendment. Great. So what happens here is that when we go and, and vote on General File to put in the committee amendment and then a random amendment that comes from the floor and then maybe there's an introducer's amendment, there is no document that exists anywhere that takes that green copy and puts in those amendments in such a way that they're all part of one big thing, which is what we vote on to move forward in General File. We're basically voting on an idea, not an actual piece of paper or words that exist anywhere. What E&R does is they take the committee amendment plus the introducer's amendment plus the floor amendment, and they smash them together in a way that gets at what everyone's trying to do. And sometimes that means it's seamless. There's no problem. You just put the one in, they've written it. It's all seamless. It all goes together. There's no imperfections where you're actually a subpart B instead of a subpart A now, or you move things around. Sometimes it's seamless and sometimes it's not seamless. Sometimes there's a subpart 1 and subpart 2 and subpart 3 that now with some new language gets moved down. E&R amendments then changes it from 1 to 2 to 3 to 4 so that they move it down in the order of the list, which is what's supposed to happen, because that's what the body voted to have happen. But we don't have the language anywhere that does that. Maybe we just have the amendment that says subpart 1 shall now be this, but now we haven't taken old subpart 1 and made it part 2. These are E&R amendments. If it sounds technical, that's because it is. If it sounds like a job, you would like, hey, I think they're hiring if you're a lawyer. Otherwise, for the rest of us, this is a situation where because they've made all these little tiny changes, they do what's called a white copy amendment. So the idea of what we pass on General File doesn't exist anywhere except in all of our 49 heads, plus whatever everyone else is keeping track of. The actual fruition of it, where we have to change subpart number 2, 3, 4, and 5 to reflect that we're moving them down one isn't on paper, E&R makes it happen. E&R makes everything work out so it looks right. So to try to say we're only going to undo the E&R changes, you might end up with two subpart 2s. These are the kinds of things that we should not be doing. So I'm going to, notwithstanding the fact that we're taking away a remedy for if there's ever a mistake, balance the probability that we're going to screw something up if we don't take the white copy E&R amendments against the possibility that on some occasion that could cause some problem.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: One minute.

DeBOER: And I'm going to say, if we're changing this rule and I'm OK with it, because I don't think these are the things that we should be spending our time debating, I think we should debate the actual bill. So if I'm OK with it, I think we have to do this without trying to muck around. We try-- I tried several ways to make it work. And the problem is, because of the very nature of what we're talking about, it doesn't-- we can't amend this to do what Senator Cavanaugh, although a good concern is worried about, the balance says to vote for this. So I'm going to vote against the recommit to committee, and I'm going to vote for the rule change as sent out of the Rules Committee. Because on balance, although there is the danger of not being able to amend the E&R amendments, it is better to have the E&R amendments go out with all their technical changes than to try to mess around with them in some sort of haphazard or partial way. So.

KELLY: That's your time, Senator.

DeBOER: Thank you, Mr. President.

KELLY: Thank you, Senator DeBoer. Senator Dungan, you are recognized to speak.

DUNGAN: Thank you, Mr. President. I still rise opposed to the motion to recommit to committee. Still having a conversation with many of my colleagues around the room as we-- you talk about what modifications could be made to this, what modifications should be made to this? And I know there's still some conversations happening amongst my colleagues regarding possible amendments. And so just wanted to give them a little bit more time to have those conversations and, and discuss a little bit more some of the concerns and, and larger perspectives that people have brought up with regard to the rule change. I would once again reiterate that I think the fact that in the course of the few hours we've been debating this morning, it's only been about an hour and a half, there have already been so many substantive conversations with my, my colleagues over here and the Speaker about potential issues with this rule or issues that could crop up with certain amendments to this rule, lends itself to the general idea notion that these debates are substantive in nature. And so I just want to highlight, again, that I think the conversation we're having is one that is interesting to me. I, I do like getting into the minutia of, of the rules. And I think it's, it's important that we, as a body, continue to have these conversations to make sure that we all understand how these work. I also think, and I think one

of the other senators who spoke earlier mentioned this briefly. It's actually helpful to have these discussions about the rules for newer senators, like myself. One of the things they say when you first come into the body is they want you to read the Rule Book, or you should read the Rule Book time and time and time again. But even when you do that, it's not until you actually get into the Legislature that you actually functionally understand how these things operate. And so I, I think having these debates and having these conversations around the modification of the rules allows freshman senators like myself and also other senators who aren't as familiar with some of the procedures on the floor to have the chance to really dive in and get how these work and how they're intended to operate. I probably am in support of, of proposed rule change 18. I think, again, the Speaker and others who have worked on this and the Rules Committee have tried to address a real problem, which is ensuring that debate remains substantive and that we don't have issues with E&R being modified in a way that causes further confusion. That being said, I do, again, still have concern with the current phrasing of this rule. If we don't change it, it could ultimately prohibit modifications to E&R amendments that are necessary or are important. And so my hope would be that we would have an opportunity to see an amendment to this rule that would potentially allow for limited debate on E&R that could potentially allow for a, a limited debate followed by a rule-- a vote, I'm sorry, on the E&R amendments themselves and then move on to other substantive amendments. I think that would address a lot of the problems. I think it could also present its own slew of problems, as I think Senator DeBoer and others have pointed out. But these are the reasons we have these conversations. We want to make sure we actually understand what the problems could be as they crop up. And I was talking with a, a former senator last week about some rule changes that had happened back in the 1970s. And I received some commentary, without going into detail about what it was, regarding some changes that had been made in the late '70s and what the unintended consequences were of that change. And I think it's really important to have that historical perspective when we're talking about the rule changes. Sometimes we make a change that's well-intentioned, but rather than actually have a conversation about what the possible outcomes can be, it just happens, again, maybe to make things more convenient. And then, ultimately, you see this real problem crop up in the next biennium. And so I, I think that although I do probably, again, tentatively support rule change 18, the points being made by Senator McKinney and others of my colleagues about the possibility of consequences to these rule changes should be listened to by my colleagues and we should not be making these changes lightly.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: One minute.

DUNGAN: Thank you, Mr. President. So when it comes to E&R amendments, I, I would agree and echo the sentiment from a number of my colleagues that the Bill Drafters do a fantastic job. We've been working very closely with them for the last few months, trying to get everything sort of lined up to drop our bills. None of this is intended in any way, shape, or form to speak poorly on Bill Drafters. But I do think it's important for us to maintain oversight as a legislative body when we are talking about amendments, and I think it's important for us as a legislative body to ensure the quality of our work product when it comes to amendments on bills. As such, I think having some possibility to modify E&R in a limited fashion would maybe be beneficial. And I look forward to possibly seeing amendments to that effect. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator McKinney, you are recognized to speak.

McKINNEY: Thank you, Mr. President. I rise for the motion to recommit to committee and against the rule change. And I was sitting here thinking, and a lot of times people get on the mic and start speaking words about preserving the institution, and the institution is sacred, and we can't do things to erode the institution for whatever reason. Well, no, not the last 2 years. The institution has been further, further eroded. And it's going to happen again when all these rules changes are implemented. And, you know, I was thinking to myself, you know, as somebody from a community that hasn't got the best hand at a stick or anything like that, maybe the institution needs to be eroded because the institution has never cared about my community, historically. But, you know, I'm in this body right now, and I'm sticking to principle as well that I don't think we should be changing rules in the middle of a session or a middle of a biennium. Like Senator Dungan was just speaking, we're not even thinking about the unintended consequences. We're just rolling these through and not thinking about the future of what could happen. How could this negatively affect us moving forward? Because once we implement new rules, changing those new rules are going to be hard and they probably will never be changed. Maybe adjusted a little bit, but once you change things in this place, it's hard to change them back. It's just like somebody trying to, you know, create a new felony or a new offense. Once you do that, the county attorneys will never let you take it back. That's why we fight against those, which is also why we should fight against rules changes. Because once you change them and you realize that they're bad, the possibility of getting them change--

getting those changed is kind of slim to none. We don't know what the makeup of this body is going to be in the future, so why should we be doing things that could have negative impact, especially on the minority. Limiting the minority's voice and limiting the way the minority could stand up against things that are not good, or limiting the minority from standing up for things that are good. This is why we don't change the rules in the middle of a session. Our lives shouldn't be made easier because we had a session that nobody liked. Maybe we should keep things inside of committees that should stay in committees. Maybe we should just be willing to do the hard work to pass our bills. There are no shortcuts in life. There shouldn't be shortcuts in-- shortcuts in the Legislature. I was just coaching at a tournament yesterday and just talking to the kids like you all have to put in the work. You can't just show up on Saturday, step on the mat and expect to win. You have to do the work. There are no shortcuts, and there shouldn't be any shortcuts in the Legislature because we had a hard session last year, because nobody wants to stay to 10 or midnight. That I don't-- I really don't understand it. But I do understand it because if you have the power, I guess you will do it and run over people and kick and stomp them. Had a conversation with kids about that last year.

KELLY: One minute.

McKINNEY: Had the conversation on the mic. But, you know, hopefully you, you guys are listening. I'm not sure if people are, but we shouldn't be changing the rules in the middle of a session in the middle of a biennium because we had a hard session. We deal with people's lives that directly affect them, whether good or bad, and you should have to work for it. You shouldn't be able to just slide by because we-- because you have the power to change the rules. Thank you.

KELLY: Thank you, Senator McKinney. Senator Conrad, you're recognized to speak, and this is your third opportunity on the motion to recommit.

CONRAD: Thank you, Mr. President. Good day, friends. I wanted to continue my discussion of kind of where we are, how we got here, where we're headed, and then talk a little bit more specifically about this proposed rule change in regards to the Enrollment and Review process and how that interfaces with the legislative process more generally. But I also wanted to note, again, that senators, including myself, did not bring forward copious amounts of rules changes. We literally worked in good faith with external stakeholders to keep the noise

down, to reset the tone, to not pack the hearings, to be thoughtful and deliberative in terms of our approach, and expended great political capital to do so because it was the right thing to do. We didn't put in a bunch of rules changes. We didn't pack the hearings. We haven't filed copious motions and amendments. But there are a host, a significant amount of rules changes that have been brought forward by Senator Erdman and by Speaker Arch and then a few put forward by Senator John Cavanaugh and Senator Wayne, as I understand things. So that's why we're here. And to my friend, Senator McKinney's point of view, and I think Senator Machaela Cavanaugh has made a, a similar statement in regards to where we find ourselves in the rules debate this year, I completely respect and understand their principled and appropriate approach that the best course of action, the ideal outcome, is not to change the rules in the middle of a biennium because I don't think the rules necessarily were the issue or the problem in terms of the contentious nature of last year's session. That being said, while I respect and understand their perspective wholeheartedly and they're right to advocate for such, looking at the challenging landscape that we find ourselves within, I don't think that there's enough support within the body to effectuate that goal. So I'm trying to think about this from a pragmatic perspective, even if I share their principled approach that we should not change the rules in the middle of the biennium, I, I don't think that there's enough support there in the body. So looking at the alternatives, I'm looking at radical changes to the unique nature of the Unicameral system put forward by Senator Erdman. And I'm looking at more modest, measured approaches put forward to codify precedents, make technical updates, and modernize and strengthen the institution put forward by Speaker Arch. And then I'm weighing those alternatives from a pragmatic perspective. And so that's why, on the whole, while I agree with Senator Machaela Cavanaugh and Senator McKinney, I am more inclined to support the measures that Speaker Arch has brought forward in good faith that have enjoyed broad support at the Rules Committee hearing from the second house and from a very diverse set of members of the Rules Committee. Most of these came out 5-0. I don't love them, including this E&R change and the, the order of amendments that we'll talk more about later today, hopefully. But I'm inclined to either support them or at least not, not fight them with every tool in the tool bag, recognizing there's more significant threats to the process and the institution later to come this week that again were brought forward by Senator Erdman to--

KELLY: One minute.

CONRAD: --evoke this lengthy discussion. So-- thank you, Mr. President-- the last piece that I want to just lift in terms of E&R amendment is, is I disagree with my friend, Speaker Arch, when he said that filing substantive amendments to the E&R prevented thoughtful debate. I, I completely disagree with that. That's not how our process works at all. Whether amendments are filed to E&R or committee amendments or stand-alone amendments or white copy, there-- you look at the board and we work up the board and we talk about whatever we seek to talk about that's germane in regards to the measure. So nothing prevents a member from talking about the underlying bill if something is filed to E&R, it has never worked that way. It won't work that way. It shouldn't work that way as the only deliberative body in the state. There is no restriction on speech or substance of debate or dialogue regardless of where--

KELLY: That's your time, Senator.

CONRAD: --the motion or the amendment is filed. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. A lot of activity this morning, which is always kind of fun. So normally I like to sit and listen as much as possible to the floor debate. I've been a little distracted this morning because I have a guest here, and just also talking off the mic with individuals about what we're trying to accomplish. And so I apologize that I'm not as keyed into what everyone else has been saying. So bear with me if I repeat anybody else's points is essentially what I'm trying to say. I do want to note for home-- those watching at home, and I heard-- I was a little bit late coming in this morning. My kids had late start, but I was listening as I was driving in, and I heard Senator Conrad talk about the difficulty of people who are watching at home. So I did take a picture of the proposed rules change 18 and I, I posted it on X, Twitter, whatever you want to call it, so that people can take that and they can share it on their own social media. And I will, to the best of my ability, try to share any amendments or proposed rules changes that come across my desk today on social media. Pretty much sharing them without comment. Just public information out there for you. So, so if you are trying to look at what we're looking at, that's where it is. Or I suppose I also, I don't know if the media is getting a copy of these or not. Are you getting a copy of these as they come in? No. So maybe I should give you a copy so you can tweet them as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

well or X them. I don't know what the term is with X. Are you X-ing them? X-ing. I don't know. Anyways. For the historical record of transcribers, I'm talking about social media platforms. Who knows if any of them will exist whenever somebody reads this in the future. But X is what used to be Twitter and we used to tweet. And now I don't know what we do on X, but if you type in Twitter currently, you still get to Twitter/X. I wonder when that's going to change. But anyhow. Sorry, I digress as I am-- want to do. So what this amendment is doing is striking a motion to approve or reject any or all of the changes recommended by the Chairperson of Enrollment and Review. Seems OK, because then it-- we, we actually are still going to approve or reject the motion. But we go further to say that it is not debatable, amendable, nor divisible prior to its initial adoption, except that the primary introducer may be recognized to speak for 5 minutes prior to the vote on Enrollment and Review amendments. And I will say, while I oppose all rules changes, and I appreciate because, again, I did listen to Speaker Arch talk about why he put in that 5 minutes prior, but here's the reason that I oppose that. And I forgot, I need to grab it. So last week when we were debating proposed rule change 25, Senator Wayne and myself found substantive grammatical changes that needed to be made and were ultimately made and adopted by this body. Now, this rules change on Select File assumes that only the introducer of the bill will find these things. And I think it is fair to say that I am a bit hawkish about bills and process and legislation in this body and I, oftentimes, come across things that might have not been noticed by the introducer of a bill. And so as was the case with Senator Wayne and myself on rule change 25, it went through the committee--

KELLY: One minute.

M. CAVANAUGH: --process. It came to the floor, it was debated. And it's still singular, senators found the changes. So only putting the power into one person's hands to identify and debate what change needs to be made, I find problematic. And I, again, I don't think I have enough time, and we're probably going to be wrapping up on this motion shortly. So I will continue this conversation about, about this next time around because I feel truncated at this moment. So thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Speaker Arch, you're recognized to speak.

ARCH: Thank you, Mr. President. I, I, I also wanted to just let people know we've been having some very substantive discussions on a possible

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

amendment to this-- to this and, and it-- and it-- the, the amendment discussion surrounded the issue of, of while in our present-- in our present proposed rule change, we have the primary introducer having the ability to speak 5 minutes, it, it, it could be at some point difficult to bring up an amendment to adjust that. But that being said, we weren't able to-- we weren't able to land on language without creating other issues. And so we're not-- we're not introducing that. I, I would ask this that we're coming up on the noon hour here, I would-- I would like a vote on recommit to committee before, before noon, at which time we can break and, and resume our debate after lunch. Thank you, Mr. President.

KELLY: Thank you, Speaker Arch. Seeing no one else in the queue, Speaker Arch, you're recognized to close.

ARCH: Just a reminder, colleagues, I would like a no vote on recommit to committee. Thank you.

KELLY: Thank you, Speaker Arch. Members, the question is the motion to recommit the rule change on Rule 6, Section 5. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 1 aye, 35 nays on the motion to recommit, Mr. President.

KELLY: The motion to recommit fails. Mr. Clerk, next item.

CLERK: Mr. President, some items quickly. New bills: LB1206, introduced by Senator Arch, is a bill for an act relating to revenue and taxation; amends Section 77-2716; eliminates provisions relating to the Long-Term Care Savings Plan Act to terminate; to harmonize provisions; repeals the original section; outright repeals Sections 77-6101, 77-6102, 77-6103, 77-6104, 77-6105, and 77-6106. LB1207, introduced by Senator Albrecht, is a bill for an act relating to Nebraska Agricultural Products Marketing Act; amends Section 2-3804; redefines a term; and repeals the original section. LB1208, introduced by Senator Bosn, is a bill for an act relating to Nebraska Juvenile Code; amends Section 43-251.01; provides for detention of a juvenile for protection of such juvenile; eliminates obsolete provisions; and repeals the original section. LB1209, introduced by Senator Bosn, is a bill for an act relating to appropriations; to appropriate funds to the Department of Health and Human Services; declare an emergency. LB1210, introduced by Senator Clements, is a bill for an act relating to appropriations; amends Section 84-612; states legislative intent to appropriate funds to the Department of Administrative Services for the Office of the Nebraska Capitol Commission; provides for a transfer

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

from the Cash Reserve Fund; repeals the original section; declares an emergency. LB1211, introduced by Senator Hansen, is a bill for an act relating to elections; amends Section 32-808 and Section 32-942; changes deadline for delivery of ballots for early voting; changes how early a registered voter may vote in person; repeals the original section; declares an emergency. LB1212, introduced by Senator Walz, is a bill for an act relating to railroads; amends Section 75-109.01; adopts the Railroad Safety Act; eliminates obsolete provisions relating to blocked crossings; harmonize provisions; provides an operative date; repeals the original section; outright repeals Section 17-225. LB213 [SIC--LB1213], introduced by Senator Walz, is a bill for an act relating to labor; requires employee-- employers to provide 20 hours of paid leave for attendance at school-related activities of employees' family members; and defines terms. LB1214, introduced by the Health and Human Services Committees, is a bill for an act relating to the Uniform Credentialing Act; amends Section 38-131; change requirements relating to a criminal background check as prescribed; and repeals the original section. LB1215, introduced by Senator Hansen, is a bill for an act relating to Department of Health and Human Services; amends Sections 38-142, 71-434, 71-3608, 71-3610, 71-3613, 71-3614, 71-5803, 71-5829.03, and 71-5836; changes provisions relating to fees, communicable diseases, rehabilitation beds, and acute care beds; harmonize provisions; repeals the original section; outright repeals Sections 71-5803.01, 71-5803.13, and 71-5829.06. LB1216, introduced by Senator Bostar, is a bill for an act relating to revenue and taxation; amends Section 77-3446; changes provisions relating to the base limitation; repeals the original section. LB1217, introduced by Senator Bostar, is a bill for an act relating to revenue and taxation; amends Section 77-1333, Section 77-202, 77-202.01, 77-202.03; provides certain property tax exemptions; change provisions relating to exemption application procedures and rent-restricted housing projects; provides a valuation project [SIC] for sales-restricted houses; harmonize provisions; repeals the original section. LB1218, introduced by Senator Bostar, is a bill for an act relating to motor fuels; amends Sections 60-301, 60-302, 66-4,105, and 70-1002.02, as well as Section 66-482, Section 70-1001.01 (77-2701 and 77-2701.04); defines and redefines term; changes and provides excise fees as prescribed; eliminates obsolete provisions; provides rights and requirements relating to commercial electric vehicle charging stations, direct current, fast-charging stations; provides powers for electric suppliers; provides a sales and use tax exemption; harmonize provisions; repeals-- provides operative dates; repeals the original section; declares an emergency. LB1219, introduced by Senator John Cavanaugh, is a bill for an act relating to buildings; amends Sections

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

71-6403, 71-6406, 72-804, 72-805, 72-806, 81-1608, 81-1611, 81-1614; adopts, adopts updates to building and energy codes; and repeals the original section. LB1220, introduced by Senator Bosn, is a bill for act relating to property; amends Sections 30-2446, 30-2603, 30-2637, 30-3816, 30-3828, 30-4002, as well as 43-2707, Sections 30-24,129 and 30-3402; changes requirements relating to bonds for personal representatives and small state affidavits; change provisions relating to certain payments and transfers to minors; provides a protected person to retain an attorney as prescribed; change a requirement relating to cotrustees; change provisions relating to healthcare powers of attorney, the Uniform Trust Code, and the Uniform Code-- and the Nebraska Uniform Power of Nebraska-- of Attorney Act; repeals the original section. LB1221, introduced by Senator Day, is a bill for an act relating to public health and welfare; amends Section 71-516.04; provides requirements for staff training for purposes-- persons with Alzheimer's disease, dementia, or related disorders as prescribed; and repeals the original section. LB1222, introduced by Senator Day, is a bill for an act relating to Nebraska Juvenile Code; amends Section 43-292 and Sections 43-283.01, 43-292.02, (43-1411.01); changes provisions relating to termination of parental rights and parental support; harmonize provisions; repeals the original section. LB1223, introduced by Senator Day, is a bill for an act relating to appropriations; appropriates funds to the Department of Health and Human Services. LB1224, introduced by Senator Day, is a bill for an act relating to tracking devices; amends Section 86-2,103, Section 28-101; prohibits certain conduct relating to mobile tracking devices; changes provisions relating to intercepted communications; defines and redefines terms; and repeals the original section. LB1225, introduced by Senator McKinney, is a bill for an act relating to appropriations; appropriates funds to the Nebraska Commission on Law Enforcement and Criminal Justice. LB1226, introduced by Senator Clements, is a bill for an act relating to appropriations; appropriates funds to, to the Legislative Council; and declares an emergency. LB1227, introduced by Senator Ballard, is a bill for an act relating to Professional Employer Organization Registration Act; amends Section 48-2706; changes provisions relating to health benefit plans offered by professional employer organizations as prescribed; and repeals the original section. LR279CA, introduced by Senator Holdcroft. A constitutional amendment requiring the Legislature to enact laws providing for a minimum sentence of 25 years' imprisonment for certain assaults on first responders and a minimum sentence of life imprisonment for certain offenses involving murder of a first responder. Additionally, the Reference Committee will meet in Room

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

2102 upon noon recess. Finally, Mr. President, a priority motion. Senator Bostelman would move to recess the body until 1:30 p.m.

KELLY: Senators, the question is, shall the Legislature adjourn until 1-- recess until 1:30 p.m.? Senator Aguilar, do you have a message?

AGUILAR: Thank you, Mr. President. The Revisors of Statutes Office had advised my office that a large number of bill requests have not yet been three-parted for introduction prior to tomorrow's bill introduction deadline. Members are advised that if you have a Bill Drafting request that has not yet been three-parted and you wish to introduce it, you should request a three-part from the Bill Drafters by 5 p.m. today in order to allow sufficient time for printing of your request. Thank you, Mr. President.

KELLY: Thank you, Senator Aguilar. The question is, shall the Legislature recess until 1:30 p.m.? All those in favor say aye. All those opposed, nay. We're in recess until 1:30 p.m.

[RECESS]

KELLY: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

KELLY: Thank you. Do you have any items for the record?

CLERK: I do, Mr. President. Reference report referencing LB1134 through LB1174, as well as LR278CA, that from January 12, and including rereferences of LB844 and LB1046. Additionally, reference report from the Referencing Committee from January 16, referencing LB1175 through LB1195, and rereferencing LB1191 to the Executive Board. That's all I have at this time, Mr. President.

KELLY: Thank you, Mr. Clerk. Please proceed to the first item on the afternoon's agenda.

CLERK: Mr. President, first item on the afternoon agenda. Senator Machaela Cavanaugh would move to reconsider the vote taken on the recommit motion to rule change 18, taken prior to afternoon recess.

KELLY: Machaela Cavanaugh, you're recognized to open on the motion.

M. CAVANAUGH: Thank you, Mr. President. Every time people say, like my full name, I want to say President Joe Kelly. Thank you very much. But thank you, Mr. Lieutenant Governor. And OK. So motion to reconsider the vote that we took right before lunch, which was the motion to recommit to committee, and the motion to recommit failed, which means it doesn't go back to committee. If the motion to recommit had passed, then it would go back to committee. And to be perfectly honest, if the motion to recommit had passed, I would not be doing a motion to reconsider because I'm happy to have it go back to committee. But here we are. So the motion to recommit to committee, and I am reconsidering that vote and that means that I get to open on said motion. It did strike me earlier when we were debating this and the motion to recommit to committee was put up there, and there was some conversation about the submitting motions and withdrawing motions. And if you submitted a motion like this particular one and it goes to a vote, no one else can submit this motion under the current rules or the previous rules. No one else can submit this motion if it goes to a vote on this stage of debate. But if you withdraw it, then somebody else can. And a practice that I had seen used in the past when there was a long queue in a debate, whether it was a filibuster or just a hot topic that people all wanted to talk about, if somebody wanted to jump the queue because they were 2 hours down, they would put in a motion like this to jump the queue and talk for 10 minutes, and then they would immediately withdraw it and it would go back to the queue. So that's just a little history on the motion to recommit. But what I wanted to talk about was the Rule 6, Section 5, Select File change in proposed Rule 18. So one of my concerns about this was the fact that we can only have the introducer of the bill-- and this is what I started talking about before lunch, but I stopped because I didn't have enough time. And I'm just going to pause for a second. It's a little loud in here. Sometimes when you pause, it gets a little bit quieter because people are like, what is going on? So there we go. OK. It's a little bit quieter now. So my issue with this is that only the introducer gets to speak. And not only that, they only get to speak about the Enrollment & Review amendment. They don't get to actually change it. Now we can change it after it's been adopted. That can be introduced-- an amendment to change it can be introduced. But if that amendment to change it is introduced and it's down the line of things that have been-- amendments that have been introduced to the underlying bill, then it falls in that queue of order and we might not get to it if somebody is filibustering the bill itself. And I think Senator John Cavanaugh was making this point-- that point this morning, about then it would go-- if it were filibustered, it goes to cloture, passes cloture, moves on to Final; it still has those

problems from Enrollment & Review that have not been addressed. So now, we are sitting on Final Reading with a bill that we should have addressed at the very first stage of debate on Select File. And we have to do a motion to move it from Final back to Select for that specific change. However, this bill is probably being filibustered still. And so we run into the same problem of a filibustered bill. And if you're smart, here's a little trick. File your motion to move it back to Select-- from Final to Select before the E&R motion can be filed, and we still don't get to it. Quite the kerfuffle, all over this rules change here. And why? Why are we making this rules change? Because Senator Merv Riepe tried to negotiate a deal on LB626 last year, which was the abortion ban. So because of the actions of one senator who is not me, I'd like to note for the record, was not me for once, because of the actions of one senator in one year, in one singular session, we are going to change how we do debate on Select File, which could have repercussions that we are not taking into consideration. And that is problematic. So let me just reiterate it. If this were to pass and there were actual E&R changes that needed to be addressed, we could not do it at this stage of debate. It would have to be done in the regular course of debate on Select File. And if that bill is being filibustered and there are 10 amendments ahead of it, we never get to the E&R amendment. And those critical changes never happen. So it goes to Final. And then you have to do a motion to take it back to Select, but if somebody does a motion ahead of you then it still never happens. And the bill could potentially pass with critical errors in statute that we could have easily avoided at the Select File round of debate and addressed it when we got to E&R. This is why we should take these changes so seriously, because it's used a lot. But that's a significant unintended consequence that we would be putting forward for this body and potentially future bodies. And I don't think that that's what we wanted to do. I think what we wanted to do was to block amendments that have nothing to do with E&R from being attached on E&R. And I get that and I respect that, but that's not what's going to happen here. That will be one of the things that happens here, but that's not the only thing that's going to happen here. And that is problematic. And we shouldn't rush to change things based on one singular situation that's going to cause different situations in the future, so. How much time do I have left Mr.-- Lieutenant Governor?

KELLY: 3 minutes, 10 seconds.

M. CAVANAUGH: Thank you. OK, so there's that. I have that issue with this proposed rule change, but I also have the issue of only allowing the primary introducer to be recognized to speak for 5 minutes prior

to the vote. And my question then becomes, what happens if the Speaker gets on-- the introducer gets on and speaks out against the E&R amendments? And mind you, I recognize that this is a very far-flung thing that's probably never going to happen, or it will happen eventually, but it's very unlikely to happen that there's going to be this critical problem with E&R. But there could be a critical problem with E&R and that if there weren't, if the potentiality for that, we wouldn't vote on it at all. It wouldn't be a thing. But it is a thing because it matters, because it might need to be addressed. And that is why we have it. And so if we are going to allow legislators to speak on any stage of debate, we should not limit who gets to speak. Because what if, what if the introducer of the bill doesn't see the errors or doesn't understand what the errors could mean for the bill or doesn't agree with making the changes to the errors, but the majority of the body would agree with making the changes to the E&R. These are all things that we are not taking into account in this debate. We are doing ourselves and the people of Nebraska a disservice when we put forward rules that are going to change how these things happen and how they are addressed. We are limiting our ability to effectively legislate because we are concerned about people protesting legislation on the floor. We are concerned about people using their voice for their constituents to stand up against legislation and, therefore, we are utilizing the tools--

KELLY: One minute.

M. CAVANAUGH: --available to us to restrict our own ability to affect good public policy, and that should be concerning to this body. I'm not saying this hasn't been thoughtful from the Rules Committee and from those who introduced the rules, but even the most thoughtful ideas can have flaws, and I think that this is flawed. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. I, I agree that-- with the other Senator Cavanaugh about even the best ideas have flaws. I myself have proposed a few rule changes that needed more work. And that is kind of why I rose-- took this opportunity to rise to speak. I'd-- I offered an amendment earlier on this that I have asked the Clerk to withdraw after conversations with Speaker Arch and staff and others. And the only thing I really wanted to say further about this is we spent a lot of time, a lot of us, talking about this proposed rules change, what the objective of it is, and what the problems that we can

identify with it are, and we can't figure out a way to make it better. So I've said all along that I'm looking at these critically, trying to be constructive in that process of making it better. But I don't think ultimately that my proposal made it better and couldn't come up with a, a proposal that will make it better. So I'm not offering a proposal at this point in time. But in that vein, I'm going to be a no vote on this rule proposal, because I think that it's not ready yet to be a new rule. I understand where folks are coming from, why they want to do this, and I really do appreciate the Speaker's willingness to work on this in collaboration. And when we can-- when I can agree with him or get to where he's at, I'm going to-- I'm voting with him. When I can't, like this one, I think I have to vote against it. And then I'll take another look at the other bill-- amendments as they come up and look at those critically and see if there's, you know, a way I can-- if they're as strong as they can be or if they're the right proposal, then I'll vote for them. And if I disagree with them or disagree with their objectives or outcomes, I'll be against them. But, again, if I like the first two rules, work to make them better, I'll do the best I can on that. And I would kind of hope everybody would take part in that same spirit. But that's-- I just wanted to make sure I was clear about where I was on this after I've been talking about it for so long, and we're not going to see any kind of proposal on it. So I'll be-- I guess I would be a vote-- a yes on the, the reconsider, because I think we could put it back to committee and work on it further. So I'll be a yes on that. I was a yes on the recommit initially, but maybe other folks could reconsider, so. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Seeing no one else in the queue, Senator Machaela Cavanaugh, you're recognized to close on the motion to reconsider.

M. CAVANAUGH: Thank you, Mr. President. I am going to vote for this, and I echo the sentiments of Senator John Cavanaugh. I would also vote for the motion to recommit to committee. I won't belabor that point. I think I already made it in my opening. But this is an opportunity for 25 people, 25 members of this body to say, you know what? Actually, I think, I think this should go back to committee. So you get to reconsider your vote. And if 25 people vote green, then we vote a second time on the motion to recommit. So that's what the reconsider is, is like, I want to reconsider how I voted, and then so on and so forth. I will say, just as a note, colleagues, that it has been very loud in the Chamber this afternoon, and it's a little hard to have substantive debate when it is quite so loud. Which is why I keep pausing and talking quietly to try and get people to quiet down. How

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

much time do I have left? Mr. President, how much time do I have left?
How much time do I have left?

KELLY: 3 minutes and 35 seconds.

M. CAVANAUGH: Thank you, Mr. President. It did quiet down a little bit. With that, I am going to actually let us get to a vote on this. I think it'll only take a minute because we'll do a machine vote. Thank you very much.

KELLY: Thank you, Senator Cavanaugh. The question is the motion to reconsider the previous recommit to committee motion. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 4 ayes, 38 nays on the reconsideration motion, Mr. President.

KELLY: The motion for reconsideration fails. Mr. Clerk, for the next item.

CLERK: Mr. President, series of amendments from Speaker Arch, as well as a motion, all with notes that he wishes to withdraw. Additionally, series of amendments from Senator Machaela Cavanaugh, with notes that she wishes to withdraw. In that case, Mr. President, I have nothing further on the proposed rule change amendment.

KELLY: Speaker Arch, you're recognized to close on the rules amendment.

ARCH: Thank you, Mr. President. Just a reminder, we are voting on proposed rule change 18, which will affect the Select File E&R amendments. And, and the language has been discussed at length, and so I, I won't spend any more time, I would-- I would ask that you vote yes on this proposed rule change 18. Thank you, Mr. President.

KELLY: Thank you, Speaker Arch. Members, the question is the adoption of proposed rule change 18 on Rule 6, Section 5. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 34 ayes, 6 nays on the amendment to the permanent rules, Mr. President.

KELLY: The amendment is adopted. New bills, Mr. Clerk.

CLERK: Singular item first, Mr. President. Notice of committee hearing from the Government, Military and Veterans Affairs Committee. New bills: LB1228, introduced by Senator Wayne. It's a bill for an act

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

relating to the Good Life Transformational Projects Act; amends Section 77-4403, 77-4404, and 77-4405; defines a term; provides limits on good life districts; change provisions relating to project eligibility and size of good life district; harmonize provisions; repeals the original section. LB1229, introduced by Senator Wayne. It's a bill for an act relating to state government; amends Sections 19-5503, 58-226, 58-227, 58-228, 58-235, 58-241, 58-703, 58-705, 58-706, 58-707, 58-708, 58-709, 58-711, 71-15,141, and 81-1281, as well as Sections 81-1201.07, 81-1211, 81-1226, 81-1227, 81-1230, 81-1232, 81-1233, 81-1234, 81-1235, 81-1236, 81-1241 and 81-1242, as well as Sections 19-5504, 58-201, 81-1228, 81-1229, 81-1231, 81-1237, 81-1238, 81-1239, 81-1240, 81-1243, 81-12, 241; transfers powers and duties, functions, responsibilities, and jurisdiction relating to housing from the Department of Economic Development to the Nebraska Investment Finance Authority as prescribed; change provisions of the Nebraska Investment Finance Authority Act; provides for an annual report; eliminates the housing advisory committee; removes obsolete provisions; harmonize provisions; provides a duty for the Revisor of Statutes; provides an operative date; repeals the original section; and outright repeals Section 58-704. New bill, LB1230, introduced by Senator Wayne. It's a bill for an act relating to students; amends Section 79-234; change provisions relating to the applicability of the enrollment option program for any student who enrolls in another school district within the same city as the school district in which student resides; and repeals the original section. LB1231, introduced by Senator Wayne, is a bill for an act relating to school funding; amends Section 79-1001; adopts the Nebraska Education Formula; terminates the Tax Equity and Educational Opportunities Support Act; and repeals the original section. LB1232, introduced by Senator Wayne. It's a bill for an act relating to the Pharmacy Benefit Manager Licensure and Regulation Act; amends Section 44-4601; prohibits certain reimbursement rates; harmonize provisions; repeals the original section. LB1233, introduced by Senator Wayne, is a bill for an act relating to public buildings; amends Section 72-819; change provisions relating to a museum or visitor center honoring Chief Standing Bear; repeals the original section; declares an emergency. LB1234, introduced by Senator Wayne. It's a bill for an act relating to appropriations; appropriates funds to the Department of Environment and Energy; and declares an emergency. LB1235, introduced by Senator Wayne. It's a bill for an act relating to state government; requires the Department of Administrative Service to enter into a contract to provide life insurance to members of the Legislature as prescribed. LB1236, introduced by Senator Wayne, is a bill for an act relating to criminal justice; amends Section 50-433; changes the termination date

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

of the Nebraska Sentencing Reform Task Force; and repeals the original section. LB1270-- LB1237, introduced by Senator Machaela Cavanaugh. It's a bill for an act relating to the medical assistance program; amends Section 68-908; provides requirements for a report as prescribed; and repeals the original section. LB1238, introduced by Senator Walz, is a bill for an act relating to education; adopts the Special Educators of Tomorrow Act. LB1239, introduced by Senator Wayne, is a bill for an act relating to appropriations; appropriates funds to the Game and Parks Commission; declares an emergency. LB1240, introduced by Senator Wayne. It's a bill for an act relating to state agencies; provides a requirement for state officials or state employees who testify at a public hearing before the Legislature. LB1241, introduced by Senator von Gillern. It's a bill for an act relating to property taxes; amends Section 77-3442; changes provisions relating to levy limits; and repeals the original section. LB1242, introduced by Senator McDonnell. It's a bill for an act relating to appropriation; states intent regarding appropriations to the Board of Regents of the University of Nebraska for research. LB1243, introduced by Senator McDonnell. It's a bill for an act relating to wildland fires; adopts the Wildland Fire Response Act. LB1244, introduced by Senator McDonnell. It's a bill for an act relating to appropriation; appropriates federal funds to the Department of Natural Resources; and declares an emergency. LB1245, introduced, introduced by Senator McDonnell. It's a bill for an act relating to the lead-- lead service lines; amends Section 71-5328; defines terms; changes provisions relating to the Lead Service Line Cash Fund; provides for certain grants; repeals the original section. LB1246, introduced by Senator Brewer, is a bill for an act relating to county government; amends Section 23-103; change a provision relating to how the powers of a county are exercised; harmonize provisions; repeals the original section. LB1247, introduced by Senator Hansen. It's a bill for an act relating to the Board of Educational Lands and Funds; amends Section 72-204, Section 37-201, and 72-232; requires that certain school land owned or leased by the board be open to the public for hunting as prescribed; provide powers and duties to the Game and Parks Commission relating to the use of such school land for hunting; requires the Board of Educational Lands and Funds and the Game and Parks Commission to enter into an agreement relating to such school land use and the proceeds from the purchase of access stamps; harmonize provisions; repeals the original section. Turning to the agenda, Mr. President. Next proposed rule change, proposed rule change 21, from Senator John Arch, concerning Rule 6, Section 3.

KELLY: Senator Arch, you're recognized to speak and open.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

ARCH: Thank you, Mr. President. So we are now on proposed rule change 21, and this will amend Rule 6, Section 3(b). If that rings any bells, it should. 6 3(b) was probably part of everybody's discussion in this last session, the previous session, because I think the language is vague. The re-- the question was interpretation of 6 3(b). And so what we're trying to do here is we're, we're trying to clarify that interpretation. We have also added a, a, a, a clause here, as well, and I'll discuss that in just a second. So what this does is, what it-- what it says is 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. So those two priority motions, adjournment or recess, can be filed, but any other priority motions then would fall below the introduction of the bill and any committee amendment. Prior to 2023, this was being done routinely but not as a matter of rule, but just as a matter of process. And the committee-- where the committee amendment would be allowed to be introduced and before debating any priority motions. Now, I would say that the committee amendment, in my mind, can-- is and can be extremely important, because quite often, the committee amendment is actually a white copy amendment. So in other words, it is replacing the bill. There was a lot of work that was done in committee. And so that amendment, in essence, is the new bill. If that committee amendment doesn't get up on the board, not, not fully debated but at least introduced, then you're not even debating the, the right bill. You're debating an old version of the bill before the committee had done their work. And so I think that it is, it is appropriate to put that committee amendment up. In 2023, in, in our last session, some members wanted to interpret this section to mean that full consideration of a committee amendment would occur before priority motions would be considered. This rule-- this proposed rule is drafted in such a way that it only requires that the committee amendment be introduced, not fully debated. In addition, the introducer's amendment and it is singular by purpose; amendment, not amendments; amendment would be introduced following the consideration of the committee amendment, the consideration of the committee amendment, and any amendments thereto. And this is the current practice. Again, this just codifies our current practice. So with that, that is the-- that is the proposed rule change as introduced. Thank you, Mr. President.

KELLY: Thank you, Speaker Arch. Mr. Clerk, for a priority motion.

CLERK: Thank you, Mr. President. Priority motion, Senator Arch would move to recommit the proposed rule change 21 to the Rules Committee.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Senator Arch, you're recognized to speak and open.

ARCH: Thank you, Mr. President. So, again, this is the last of the four that I-- that I introduced and feel very strongly is, is something that we need to adopt. And so in order to structure the debate, I have filed a recommit to committee. And when that comes to a vote, I would ask that you vote no. Thank you, Mr. President.

KELLY: Thank you, Speaker Arch. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. And thank you again to Speaker Arch for laying the groundwork for this discussion. As it has been with all of these amendments and these, these, these rule changes, I do think this is one that is deserving of conversation and debate. Frankly, this is one of the, the ones that came out of the Rules Committee that I probably have the most questions about. I think there's a number of, of rules we've debated thus far and that are up on today's agenda that don't cause me a lot of pause, but this one seems a little bit confusing, I think, on first blush. And I also think it's a little bit potentially problematic. I was wondering if Senator DeBoer would be willing to yield to a few questions.

KELLY: Senator DeBoer, would you yield to some questions?

DeBOER: Yes, I would.

DUNGAN: Thank you, Senator DeBoer. So you are on the Rules Committee, and I think you know the rules better than a lot of other people. I'll admit, when I first looked at proposed rule change 21, it was confusing because it didn't seem like it had substantive changes, but the more that I delved into it, it seems like it does. Could you go into a little bit of detail about why on this first cross out and when it says the amendments, if any, recommended by standing committee shall then be "considered" is crossed out and "introduced" is put in there. What is the, the practical difference there, with putting introduced in instead of considered? And how, how would that affect sort of how debate currently is practiced?

DeBOER: I don't know.

DUNGAN: And, and I think that lends itself to some of the questions that I had. Speaker Arch, would you be willing to yield to a question?

KELLY: Speaker Arch, would you yield to a question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

ARCH: I will.

DUNGAN: Thank you, Speaker Arch. And I apologize. I'm not trying to interrupt your conversation.

ARCH: No, no.

DUNGAN: Genuine question. What is the practical effect of considered being crossed out and introduced being, being in there? I think you started to get into that with your conversation. If you could go into a little more detail that might be helpful.

ARCH: It, it, it is significant because this is where the confusion lies, part of it. Anyway, so, so in our last session, this, this was the challenge of interpretation. Now the way we have practiced this is-- the difference between considered and introduction, of course, is significant. Considered means you've actually-- you have debated. You have, you, you have come to the close of your debate. You have made-- you've taken action on this-- on this amendment. And so in, in, in our-- in our last session, that was how some wanted to interpret that. Well, it can be interpreted that way depending upon how you read that, but, but the-- but the precedent was that it had never been practiced that way. It would-- it had always been practiced "introduced." And so we said, let's clear that up. Let's-- let us get in line with precedent, and it is the committee amendment will be introduced, not considered, as I say, which has been the practice.

DUNGAN: OK. So that would essentially then, you'd have the introduction of the underlying bill. You'd have the opening on that, the committee amendment would go up, and then who would then introduce or who would speak on that committee amendment right away?

ARCH: I'm assuming the Chair or Vice Chair, depending upon, you know, who, who is there that day.

DUNGAN: And then immediately following that introduction, you would go to any other priority motions after that?

ARCH: Correct.

DUNGAN: If the introducer of the bill had an amendment, would that go before the priority motions or after the priority motions?

ARCH: No. So at the-- at the bottom-- oh, excuse me. In the middle here, I believe, the introducer's amendment, if any, shall be introduced following the consideration. So again, it, it, it, it, it

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

is the introduction the-- following the consideration. So after the standing or after the standing committee amendment, the introdu-- the, the primary introducer then shall have the ability to have their amendment introduced. Again, clarifying--

KELLY: One minute.

ARCH: --considered and introduced.

DUNGAN: And I-- thank you, Mr. President. And last thing I'll, I'll just ask, I guess. It says the introducer's amendments, if any, shall be introduced. Is that amendments intended to be singular or is it intended to be plural? So if you-- let's say the introducer of the bill loads that bill up with like 15 different amendments, would all of those be introduced prior to anything else?

ARCH: Oh, that's a good catch. I think it should be amendment.

DUNGAN: OK.

ARCH: So.

DUNGAN: Perhaps we could maybe do a slight modification.

ARCH: Drop the "s."

DUNGAN: OK.

ARCH: Yes.

DUNGAN: Thank you, Mr. President. And thank you, Speaker Arch.

KELLY: Thank you, Senator Dungan and Arch. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. So actually, the question that Senator Dungan asked was one of the ones that I was going to ask the Speaker, which is about the difference between considered and introduced. I think he's explained it. I think the difference is for him that, effectively, considered and introduced have been in practice treated the same way. But some folks thought that considered was decided. So usually in our Rules when we're talking about a, a matter that has been disposed of, we'll refer to it as disposed of, decided, something like that, and not considered. But I think out of an abundance of caution, the Speaker has chosen to amend considered into introduced, just to make it absolutely clear to everyone that

considered and introduced or in this case, we're just going to use introduced, and everyone knows that introduced is the controlling word here. So when I was asked what the difference between considered and introduced is, I really don't know, but I think it does make it practically even more ironclad clear to everyone that introduced means introduced. Considered is not in there. We know what we're talking about. So I think that that's why that word change has happened. I agree with Senator Dungan also that we want to make sure that we have amendments, singular rather than plural, since that was the spirit of what we were trying to do here. And then, you know, I voted for this rules change out of committee because I thought that it was worth talking about. This one does give me a little bit of, as we say around here, heartburn, just because I think when we mess with who gets to speak and when they get to speak and how they get to speak, and whose amendments get to go up first, and we kind of take away that egalitarian, like anybody has an opportunity if they have a good idea to introduce their amendment. It makes me nervous. So this one, of all the, the ones we've talked about so far, this one makes me a little bit nervous. And so I will probably continue to support it out of a spirit of goodwill, and because it seems like we can probably make it work, but it does make me nervous and it would make me nervous to go certainly any further than this. And so for future legislators, maybe let this one go through for a little while and see how it works out before we try to take-- try to take away the power of the 49 or 48 in this case, to get their amendments up in accordance with the principle that we're all here sort of equal as we're trying to get the best legislation through. We shouldn't be as territorial, right? So in my opinion, if someone has a good idea, they should have as much chance to get onto my bill as if I have a good idea. And that's what we want, right? The marketplace of ideas, the best ones come out in the end. So that's why I get a little nervous when we're limiting who can amend things and when they can amend them. Because we kind of want everybody to have an opportunity to get their day to talk about how to amend them. So while it is true that our rules have often-- have always, I guess, I don't know how long, said that the first crack goes to the introducer, I just want to make sure that we're not expanding that and that they only get one time at bat. Thank you, Mr. President.

KELLY: Thank you, Senator DeBoer. Senator Wayne, you're recognized to speak. Senator Wayne waives. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. I appreciate the conversation, colleagues, about this, this rule. And I think as I said before, I, I didn't particularly care for this rule, but spent some good

conversation on it and had some clarification on some of these parts. And I think it's helping me to have a better understanding of this, which I guess is, again, a good reason to pay attention and be open to the conversation about what we're talking about here, and how things will actually work themselves out. And so I would just tell you, my concern is I appreciate the clarification. I appreciate the fact that we're trying to make the rules more clear, so we have more certainty about what's going to happen when an issue comes up. Because we did incur-- encounter a couple times last year, where the distinction between considered and introduced was a relevant one, and made it harder on us all to have certainty about how a bill is going to play out. And that certainty does, you know, allow you, as a person who's a proponent of a bill, to know what it is you need to do, the steps you need to take and check the boxes to make sure, you know, your bill gets to where it needs to be, but it also gives the folks who are opposed to your bill clarity on what it is, what are the-- what's in bounds, what's out of bounds for finding something. So I appreciate the clarity about that. I, you know, previously said I'm, I'm not in favor of moving the committee amendment ahead of other priority motions. I do realize that had been practice previously and that we kind of diverted from that, and so I see where folks are coming from on that particular issue of wanting that kind of clarity. I would just say that after my conversations about, I was concerned about an interpretation of where-- what amendments came next. And so my understanding is that the order of priority will be the committee amendment, and then the motions in order of their priority, and then after the motions are disposed with, then it would be amendments to the committee amendment, would be in order. And then once that is all disposed with, then you'd move to the next step, which is the introducer's amendments. So the introducer would get a courtesy priority for maybe a corrective motion to be the first motion after the committee amendment is completely disposed of. They will not get a priority motion to or priority amendment to the committee amendment. Committee amendment will still be whoever files the first amendment to the committee amendment, they will be taken up in that order in which they have been taken up previously. So there's not going to be a change to that. And then, once you get past-- so once you get past committee amendment being considered, motions-- well, first, I guess you would-- the order it will happen is committee amendment will get introduced, motions will get-- would be put up, motions will be disposed of. Then you have amendments to the committee amendment, and those will be taken up in the order in which they're filed. And then once they're disposed of and then the committee amendment is voted on after all the amendments to the committee amendment are taken up, then

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

the-- then, you would get to other amendments in the order they're filed with the introducer getting the first place. So that is a little convoluted. And, you know, I don't want to say it multiple, multiple times, but if you're listening and you don't fully understand it, I had it diagrammed for me. So I'd be happy to diagram for other folks to help them understand that, as well. But that's, that's what my interpretation of that was. And I think there was some good clarity as to the legislative intent of this that Senator Dungan and Senator Arch were establishing, and I, I think they might do some more of that for us in a bit. But thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Jacobson, you're recognized to speak.

JACOBSON: Thank you, Mr. President. Well, I rise in support of this proposed rule change. And I want to kind of reference what Speaker Arch had expressed early on in the session before we started talking about rules, and that was that we often talk about the minority. And the minority is not necessarily what political party you are, but the minority can also be rural, urban, it can be on different focuses along the way. And I do believe-- OK. Better? OK. I guess my concern would be that being a rural senator, I often find that there are times there will be issues where I'm in the minority, as well. And I see this bill or this rule change as a protection of minority rights. If I introduce a bill and the committee significantly changes that bill, and then as we found last session, where we had periods of time where there was a-- everything was being blocked, we were getting to a cloture vote. We vote for cloture and either the committee amendment or my-- me as the introducer was not able to get an amendment up on the board prior to the cloture vote. If we truly want to be a deliberative body, if we truly want to improve legislation instead of just blocking it, it would seem to me that one way to honor minority rights is to allow the committee amendment up and to allow the introducer's amendment up, if it's been introduced prior to and not having them cut off by a cloture vote. So for that reason, I'm supportive of it. And, and Senator Cavanaugh, John Cavanaugh, I probably need to look at your diagram. Because I thought I was tracking with you, but then there was a point when you made a turn and I wasn't quite sure I was with you. So I'll sit down with you and look at your diagram. But that's really the focus that I've got on it. And so I look forward to hearing or seeing your diagrams. Thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. Senator Dungan, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

DUNGAN: Thank you, Mr. President. So we've had a little bit of clarification. You'll remember this last time I got up, I talked about the introducer's amendments versus the introducer's amendment. Originally, the Speaker and I, I think, on the mic had talked about needing an amendment to get rid of that "s." We've had a point of clarification. So I was wondering if the Speaker would yield to a question.

KELLY: Speaker Arch, will you yield to a question?

ARCH: Yes, I will.

DUNGAN: Speaker Arch, since I was last on the mic, we both spoke and I think we also conferred with the Clerk. Could you go into a little bit more detail about whether or not an amendment would be needed to get rid of that plural?

ARCH: No, I don't believe so, after speaking with the Clerk. So amendments is, is how the language is used throughout our rules, and that's because there could be actually amendment to the amendment and there could be multiple amendments. However, I, I think we need to state for the record here that the intention of this rule is that it is-- it is singular in that the introducer is not going to be able to just stack amendments and get ahead of everybody else and stop debate in that way. So the introducer will have an amendment. There could be amendments attached to that and so it might be plural. But for the legislative record, we want to say we intend for the, the introducer to receive one shot at, at, at having this-- at having this place at the-- at the head of the line.

DUNGAN: Thank you, Mr. Speaker. And I appreciate also the Clerk of the Legislature having that conversation. I think having that history is helpful, and we also want to make sure, again, on the record, it's clear. All of these can be confusing. And I know there's a lot of terms of art that are used. And I think it's a little bit confusing for me because it, it always does say amendments, but sometimes the rules mean plural and other times they mean a singular AM that has been attached to an LB. It sounds like in this circumstance and I want to reiterate for the record, that the introducer of the underlying bill can introduce one amendment with regard to the AM, 101 or whatever it's numbered. But because inside that amendment there could be multiple changes, just the way the rules are written seem to clarify amendments is necessary. So I don't think we need to bring an amendment at this time to get rid of that "s." But I do think it's, again, a good example of why we need to have these conversations and

be talking about these, these, these amendments to the rules. I think Senator Jacobson actually kind of hit the nail on the head that this gets really confusing, and you almost need a flowchart for determining the speaking order. I would say that that is currently the case, as well. I think that when you're new, coming into the Legislature, trying to understand the process and procedure for who gets to talk when, and when a priority motion jumps to the top of the queue, as Senator Machaela Cavanaugh was talking about, can be very confusing. So I do appreciate the desire and the effort to harmonize the rules with current practice. And I also do appreciate the desire to clarify and simplify the language of the rule to make it easier to digest. It's kind of-- it's reminiscent, and I'm sure the Lieutenant Governor knows this: When you're reading a Supreme Court case, for example, from modern time versus 50, 60 years ago, the language was much more complicated and a little bit more arcane back then. And so I think updates to the rules from time to time, much like our current Supreme Court cases are written, are a lot more clear and a lot better clarified. And so I do appreciate the efforts that are being made here to make this more modern and at least make it a little bit clearer. I still have some concerns. I'm going to be continuing to listen to the debate and listening to my colleagues talk about what changes this ultimately would entail. As I've said before, I think the number one consideration that we should have in mind when we're talking about the rules is ensuring that dissenting voices and that so-called minority voices on an issue still have an opportunity to be heard. And what I'm hesitant about is any reordering of the agenda or the process for speaking--

KELLY: One minute.

DUNGAN: --thank you, Mr. President-- in such a way that would create this sort of de facto stifling of the voice of any minorities that would make it easier to sort of just steamroll an issue through. That being said, it's always a balance, right? You have to make sure the Legislature continues to work properly, and I think that this rule is seeking to do that. I just-- I'm still questioning whether or not this puts up maybe, maybe one too many things in favor of the introducer. I want to make sure that those who dissent from bills can still have a chance to be heard, so I'll continue to listen to the debate. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator Fredrickson, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

FREDRICKSON: Thank you, Mr. President. Colleagues, I rise today. I am similar to my colleagues, Senator Dungan and Senator Jacobson, that I, I agree that this proposed rule change can be a bit in the weeds, but I, I certainly see the merit of it. I think certainly, our, our committees do a lot of really good work in them. And they obviously debate the bill. They discuss the bill. And when they have an amendment to the bill, especially a white copy amendment, we should certainly consider that, I think, a priority in the Legislature, because that's essentially how the bill is kicked out to the floor. And something that we sometimes say in here is, is floor ready. I do-- I was flipping through my Rule Book, and one thing that I am a little confused on with this rule proposal and in particular in the ordering of the amendments, Rule 6 Section 3(f), which sounds very detailed and-- but it's page 40 in the Rule Book, says essentially: in the event a motion to indefinitely postpone a bill is made before the bill is read on General File, such motion shall require the affirmative vote of a majority of the elected members. The principle introducer shall be allowed to open on the bill with the indefinitely postponed motion having previously been filed under this rule being taken up after the introducer's remarks, but prior to the opening on the committee amendment. So the way I read that, my understanding is that if that is still in effect, the-- I see the Speaker's nodding on me. OK. So maybe I'll have him-- OK. So, I'll-- the Speaker, if he will yield to a question, I would appreciate that.

KELLY: Speaker Arch, will you yield to a question?

ARCH: Yes, I will.

FREDRICKSON: All right. Thank you, Speaker Arch. So my question essentially is-- so page 40 of the Rule Book, Rule 6, Section 3(f), so with this adopted change, would if there was an IPP motions or an indefinite postpone motion, for those at home, on the bill prior to it being introduced, would that still be debated before the committee amendments?

ARCH: Yes. As a matter of fact, so, so (f) is not affected by what we're doing.

FREDRICKSON: OK.

ARCH: (b) is at General File, so upon introduction at General File. So ahead of that, (f) would, would take effect.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

FREDRICKSON: Perfect. Thank you so much, Mr. Speaker. That answered my question on that. So, you know, again, IPPing a bill, you could- if there's a particular bill that is being opposed or fought on the floor, that's something that you could consider doing. That's a nice tip for senators, if you wanted to have your amendment prioritized before the committee amendments should this proposed change pass. I'm going to continue to listen to the debate. That's all I have for now. Thank you, Mr. President.

KELLY: Thank you, Senator Frederickson and Senator Arch. Senator Conrad, you are recognized to speak.

CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I wanted to offer a few ideas in regards to some of the issues that I see in the proposed rule change before us, proposed rule change 21, put forward by Speaker Arch and that has been advanced by the Rules Committee. I know that as part of the Speaker's vision to update, modernize, strengthen the Nebraska Legislature, which I am fully supportive of, and I think that is an excellent goal and overarching theme for us to work together on in the 2024 session, to carry forward the tough lessons that we learned together last year, and to ensure the people's branch, to ensure our beloved Unicameral Legislature is as strong and independent as it should be and can be, particularly in the term limits era. As we see unchecked power and abuses emanating from other branches of government, it is now more important than ever that our institution is strong and thoughtful and effective. So I, I definitely have been working carefully in good faith with the Speaker and other members to bring forward thoughtful additions to our rules, to make important changes to our internal processes regarding support for staff, and ensuring we're meeting internal and statutory deadlines for our important work. Those issues are off to a good start after a robust discussion at Legislative Council this year and working their way through the Executive Committee, but I know there's additional work to be done in that regard. One thing that I am concerned about in regards to this specific rule, even though I do again understand the goal and the plan that the Speaker has put forth to make our institution as strong as it can be or should be, is that this is really being explained as a way to perhaps codify precedent or more of a technical change. But I, I do disagree with that assessment in many ways. While it is true that there was always, quote unquote, a, a gentlewo-- gentlemen's or gentlewomen's agreement with individual senators like Senator Chambers, who frequently invoked the rules and the rights of the minority to either A, make a point or B, try and delay legislation that they found was problematic from a variety of different perspectives. There was a historical practice and that kind

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

of informal agreement that they would allow the committee amendment to go before they embarked on their strategy with various rules--utilizing various rules to file different motions or, or different amendments. I, I do appreciate and understand that has been part of our process. However, I don't think it is necessary to necessarily make this change to solidify that process, because there's a couple of key distinctions about what is happening today versus what has happened in that historical practice. Number one, the committees, for the most part, have been the real workhorses of the Nebraska Legislature, have had a lot of trust invested in them, a lot of deference invested to them by the body to become subject-matter experts, to do the hard work--

KELLY: One minute.

CONRAD: --to keep-- thank you, Mr. President-- to do the hard work to keep bad legislation from hitting the floor, and to, to make legislation that was worthy of being advanced better through its amendment process. So that's why there has historically been more of a deference to the committee and the committee amendment. However, and I'm going to run out of time here so I'll hit my light again, that assumption cannot be brought into play in the present Legislature in the term limit dynamics. We have continually seen committee chairs that have been empowered through the vote of our colleagues who are not interested in doing the hard work of governing in their committee, who are not digging in on substantive amendments, who are not becoming subject matter experts, who are not holding staff's feet to the flame in terms of completing their work, who are not engaging with stakeholders inside and outside the body to either stop ill--misguided legislation or to improve legislation that has been brought forward through the committee process before it hits the floor.

KELLY: That's your time, Senator.

CONRAD: Thank you, Mr. President.

KELLY: Senator Cavanaugh, you're next in the queue.

M. CAVANAUGH: Thank you, Mr. President. Senator Conrad, I actually would yield you my time because I want to ask you questions, but you were on a roll. So for now, I'll yield my time to Senator Conrad.

KELLY: Senator Conrad, you have 4 minutes and 46 seconds.

CONRAD: Thank you so much, Mr. President. Thank you so much, Senator Cavanaugh. I appreciate it. But, but I wanted just to continue to, to

note that while there had been a historical agreement or common practice, part of our tradition usage custom where Senator Chambers or others who were engaged in filibuster would allow, quote unquote, the committee amendment to go, that was part of a different place in the Nebraska Legislature, when the committee Chairs and the committees themselves were working very, very diligently across the board and in good faith to kill poor legislation and to improve legislation that was worthy of further deliberation. We are not seeing that same level of rigor in the present term limits era when it comes to the deference we pay to committees. When you have committee Chairs that are not working hard to become subject matter experts, who are not engaging with internal and external stakeholders to kill misguided legislation before it hits the floor, and who do not have any interest in making thoughtful changes after public hearing or with colleagues who sit on the committee from across the political spectrum, no longer should we blindly afford such deference and such reverence to the committee process, to the committee Chair, to the committee amendment, as we have in the past, when the committees were working in a rigorous and robust and less partisan way. So that's one reason I'm concerned about making this change, because it misunderstands and conflates where we have been historically with our committees to where we are today. Additionally, you will remember that this Legislature, working together in 20-- in the tough 2023 session, through a, a host of different instances, has been able to identify effective strategies of, quote unquote, holding a committee amendment hostage, because, again, the committees are not doing their work or it is a key point of leverage for other members beyond the committee, in particularly to negotiate a change, that maybe would have come through the committee process in prior Legislatures and that is not present in the current configuration. So I, I do have great reservations and hesitation about codifying this or simply writing it off as a codification of past practice, because that simplistic explanation does not understand how the committees are working today versus how they have worked historically. And, colleagues, let me be clear. It's not to paint with too broad a brush. There are many people working very hard on committees to do their very best, but we all know in the term limits era that it takes a considerable amount of time and energy and expertise and resource to gain the knowledge requisite to become a subject matter expert. And so when you have Chairs that have served for, in some instances, in their first year or sometimes in their second or third or fourth year, they're, they're just not going to have the level of expertise that a long-standing Chair historically has been able to accumulate in the Nebraska Unicameral legislative

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

system. And I think by altering the order of consideration for individual amendments or motions that removes this key--

KELLY: One minute.

CONRAD: --leverage point-- thank you, Mr. President-- and gives kind of an, an extra boost or precedent to the committee amendment, I think that is a disservice to those outside the committee in particular, those within the committee whose attempts at good faith negotiations have been unheeded, and it, it just doesn't really square with where we are in the term limits era. So I, I, I do have reservations about this proposal. I think it is misguided. I think it is-- definitely misunderstands the, the practical realities of the term limited-- term limit era in the Nebraska Legislature. And I do think that this important leverage point needs to remain available so that senators can negotiate in good faith on substantive issues, as--

KELLY: That's your time.

CONRAD: --we saw happen last year in many instances. Thank you, Mr. President.

KELLY: Thank you, Senator. And you are next in the queue.

CONRAD: Thank you, Mr. President. I was wondering if perhaps there was a member of the Rules Committee that I might be able to ask some questions to on the floor to glean a little-- a little bit more information. Well, I see Speaker Arch is, is heading back to his podium, so just in the nick of time. Mr. President, I would like to ask Speaker Arch a question if he would so yield.

KELLY: Speaker Arch, will you yield to some questions?

ARCH: Yes, I will.

CONRAD: Thank you, Mr. Speaker. And I know that you and I have had a chance to talk a lot about this proposal on the-- in advance of this session and now during the Rules Committee process. But I was wondering if you could perhaps reaffirm for the body, particularly what you had in mind when you brought this forth. It's my understanding and please, please correct me if I'm wrong, that part of the impetus for this rule change was to address an issue. And I just want to give a concrete example here so that members can remember, one of the impetus for this rules was kind of the, the tangle that happened after a committee amendment on the ethanol bill last year wasn't able to, to kind of move forward. Was that the specific example

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

that you were thinking about when you generated the idea for this rule?

ARCH: That was-- yes. That was a piece of it as it relates to the committee amendment being allowed to come up on the board. So we got through General File, and that was an ag bill and that--

CONRAD: Yes.

ARCH: --committee amendment-- I think Senator Halloran-- that committee amendment was not allowed to get up. And so yes, that was for, for that particular piece, for, for the other clarification on consideration, introduction, all of that, that was happening kind of on the side as it-- as it relates to the interpretation, the precedent, all, all of those issues. And so, so there's a couple pieces to this, and one is just a clarification so that we bring it in line with precedent. And then that other piece was getting that committee amendment up on the board.

CONRAD: Thank, thank you, Mr. Speaker. I, I was-- I was just trying to think through a concrete example for how this rule had played out in the past and what the proposed rule might mean in terms of how it might look moving forward if it is adopted, and I think it will be adopted. But I, I thought that was perhaps the most concrete example from our recent experiences together that might help to enable members to kind of think through kind of what was at issue here. And I definitely appreciate and understand, for a whole different host of reasons, that when that committee amendment was not allowed to be taken up before other intervening actions came to play with filed motions or amendments, that it did cause a great deal of headache and heartache kind of behind the scenes from a technical perspective for the Clerk's Office and Revisors and other staff, just because our system, so to speak, technically our-- from a computer perspective, from a technical-- technological perspective, was not really prepared to handle that. And so it, it got a little bit messy behind the scenes. But I, I, I don't think that's reason enough for a, a rules change that removes a critical leverage point for people to negotiate upon and would suggest that the remedy in that instance is to update and address the system from a technical perspective, not to remove the rights of individual senators to fully utilize their power to file motions and amendments, as previously had been permitted--

KELLY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

CONRAD: --because there were a few headaches and heartaches. And it's not-- thank you, Mr. President-- that I don't have sympathy for our hardworking staff who is tremendous. I do. But I, I don't think that that's a good enough reason for a rules change. Additionally, I wanted to lift up that ethanol amendment and in full disclosure, I liked the original underlying bill, so there's that piece. But I, I do want to show how important that negotiation was. Ultimately, the committee amendment that was important to getting the bill moved, did move, was successful. It may not have been successful at the moment people wanted it to be successful at, but it was successful in our process. So number one, it, it doesn't need to go be remedied because it, it ultimately did prevail. Additionally, that leverage point at that key moment when there's a must-go committee amendment--

KELLY: That's your time, Senator.

CONRAD: Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Would Speaker Arch yield to a question?

KELLY: Speaker Arch, will you yield to a question?

ARCH: Yes, I will.

M. CAVANAUGH: Thank you, Speaker Arch. Sorry to just keep getting you on the mic, but I guess it is your rules change. So there you go. So we talked about this off the mic, but I just wanted to get this clarified for the record. So if there is no committee amendment, which does happen from time to time, it's not very often, but it does happen, then what is the order? The bill is introduced and then what happens?

ARCH: So after the introduction of the bill, if there is no-- if there is no committee amendment, then priority motions would, would, would take effect.

M. CAVANAUGH: OK. Before any other amendments.

ARCH: Yes, because the, the, the language of the introducer's amendment comes after consideration of the standing committee amendments, in which case there are none, the priority motions then would, would take effect.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

M. CAVANAUGH: OK. Thank you. I appreciate that. So I'm having very conflicting feelings about this particular rule change. I like some things about it. I don't like some things about it. I won't vote for it because as I've stated before, I, I don't feel that we need to be changing the rules right now. This is certainly one that I would have had an interest in discussing next year, or I still will have an interest in discussing it next year, I suppose. But for now, I am going to remain in opposition to this rules change. I do have 2 amendments that are pending to this rules change that I am considering withdrawing because I'm not sure that they-- well, we'll just see. I see there's people in the queue, so I'm going to continue listening and thinking about it. I'm not sure if there's any improvement upon what has already been put forward can be made. So I'm going to have to reflect on those two things. But that's where I'm at. Thank you.

KELLY: Thank you, Senator Cavanaugh. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. And I will yield my time to Senator Conrad.

KELLY: Senator Conrad, you have 4 minutes and 50 seconds.

CONRAD: The gift of time. Thank you, Mr. President. And thank you to my friend, Senator Wayne. I was not anticipating that. I thought I had a, a few more moments to, to gather my thoughts. But going back to the tangible example, as we work together on advancing important updates to our ethanol policy, thanks to Senator Halloran's leadership, Senator Dorn's leadership, that was an issue that was vitally important, not only to the Governor but to many members. And I just-- I wanted to lift up the fact that, again, one of the reasons that has been put forward about why we need to change our rules is because that experience last year kind of made it challenging from a technical or technology perspective for staff. Again, I, I appreciate and understand how hard they work and I am grateful for their commitment to service, professionalism and, and expertise, but I, I do not think that is a reason to change our rules. I think the remedy to address a staff efficiency or effectiveness perspective is to make appropriate changes and updates to our technology, not, not to change our rules. Additionally, I, I do want to lift up, again, that because there was so much import and power in regards to how necessary and requisite that committee amendment was to advance that critical piece of ethanol policy, it became an important focal point, an important leverage point not only on that bill, but in prompting a host of other discussions with the administration, with colleagues. And so rather

than holding that up as a cautionary tale, oh, my goodness, we must change our rules because this thing happened, I, I-- I'd actually have a different point of view there. I think that actually was a very important example of (a) the pri-- the prized committee amendment that everybody was deeply concerned about did pass, did carry the day. Yes, it was a little different than it normally looks. And I know that's no fun, Senator Dorn, and I know you handled it beautifully. But it, it did pass, because it was good policy. And, and people wanted to see that move forward, and I was fully supportive thereof, even though I supported the underlying bill before the committee amendment. But that's, that's one piece. And, and without the ability to use that leverage point, and I know it's tough when it's your bill that you've poured so much into becomes that focal point, becomes that leverage point, we had so many constructive discussions in the body and with the administration about a host of issues. And sometimes, in policy negotiations, you, you need that tension. You need that high stakes moment. You need that kind of opportunity to coalesce and recognize kind of a priority of what you want to move and when and why. And so in the rare instances when an issue like that does come to fruition, it's not necessarily a negative thing to, quote unquote, hold hostage a committee amendment while other negotiations happen. I know that sounds-- has very negative connotation, but it actually had a very beneficial outcome when it came--

KELLY: One minute.

CONRAD: --to negotiations-- thank you, Mr. President-- and when it came to results from those negotiations. So I would just caution the body to proceed carefully in consideration of this proposed rule change because I don't think it's necessary. I think the remedy is otherwise for issues that happen behind the scenes. I think it misunderstands where we are with the committee configuration and leadership in the term limited era. And I think it removes a really important focal point that can sharpen dialogue and negotiation in a productive and thoughtful way that is important for, for the legislative process. So I, I, I dislike this rules change that has been brought-- been brought forward for those reasons and, and would be happy to answer any more questions to it. But do appreciate the Speaker's hard work in regards to the updates and modernization efforts he's making within the Legislature. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. And you're next in the queue, and that's your-- and you waive. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Well, I just pushed my light when Senator Conrad was talking about technology. And I, I wanted to just say I actually agree with the point she was making about that we shouldn't change the rules in response to a technological problem. Because the rules are about how we behave in here and all the other things that are in service of that. We wouldn't change a rule because the font on the, the great new screens is too small. I've heard, a lot of people are saying the font is too small. Not me. My eyes are great. So-- but there-- we, we did put up screens where you can see who's up next in the queue, and we wouldn't make a rule change about the queue. You know, say only 12 people would be in the queue because the font is too small on the technology, because I'm, I'm told it's designed to be able to hold all 49 names at once. So if we said, well, the queue can only hold 12 people at one time, therefore, the screen will have bigger font and it will solve that problem. The technology is here to serve us, not the other way around. And so if we have a technology problem, let's figure out how to solve that. We don't need to change the rules in response to a technology problem. And that's it. I agree with a lot of what Senator Conrad was saying about, you know, the structuring the debate and making sure the ideas are actually being considered. And I didn't-- I don't think I agreed with the original ethanol bill, so disagree with her on that one. But, yeah, I think it's-- a lot of what we're doing, I've, I've said all along, I've generally been opposed to the idea of amending the rules at this juncture. However, if we do it, we should make sure that we're doing it, you know, for the right reasons and in the right way, and that I, I think there are some parts of this-- that amendment that do give us clarity. I think there's some parts where we've had some-- had some clarifying conversation on the microphone. So like I said, I guess, take it for what it's worth. But thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Machaela Cavanaugh, you're recognized to speak and this is your third time on the recommit.

M. CAVANAUGH: Thank you, Mr. President, colleagues. Senator John Cavanaugh, your comments about the queue screen made me think. I wonder if my opera glasses that you so kindly gifted to me, under \$50, of course, in value, last year, work better. And they do actually work better in seeing this screen than the screens from previous years. So thank you to the Clerk's Office for this technology improvement and, of course, to Senator John Cavanaugh for the opera glasses. They have come in the most useful. So-- but back to the, the topic at hand. So I previously spoke about how I had motions or amendments to the rules that are-- were pending. And I have gone and spoken with the Clerk and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

requested that they be withdrawn because upon reflection, again, and I-- it's so interesting how many times you can read something and then change your mind on the like hundredth time. So after reading this rule and listening to the conversation around this rule today, I have realized that my amendments do not offer anything. While Speaker Arch was gracious enough to entertain them, I don't think that they offer anything that actually approves upon what's in front of us. They are substantive changes, but I don't believe that they actually approve upon what is in front of us in any way that is going to move the body forward in a positive direction, so that's why I decided to withdraw them. They-- I think that after the conversation here this afternoon, I have come to understand what this actual rule change does a little bit better. And I am not going to support it, but I do believe that if it's brought next year, it's something that I would consider supporting. But right now, I'm-- I am-- stand in opposition to changing the rules at this moment in time. It-- it's interesting to me because it seems to be born out of that technology question of, of how our technology works. But it is a clarifying, much like the Oxford comma, rule change so I always appreciate that. So I just wanted to state that for the record that I was going to be withdrawing my pending amendments, and I will still remain in opposition. But thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in support of the recommit to committee and against the rule change. Again, I'll repeat, I don't believe we should be changing the rules. We have rules. And we should adapt to those rules and figure out how to get, get things passed around those rules. We shouldn't pause the game and say, hey. Imagine playing a basketball game. You get to halftime, and then there's a rule change and you come back and the ref says, you can't shoot three pointers anymore. You can't block shots. You can't drive to the hole. Would Senator Wayne yield to a question?

KELLY: Senator Wayne, will you yield to a question?

WAYNE: Yes.

McKINNEY: You used to coach basketball in the past, right? And you still do.

WAYNE: Yes. Still do.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

McKINNEY: How would you feel if, at halftime of a game, the referees came out and said, hey, you can't shoot three pointers no more and you can't block shots?

WAYNE: I think that would be unfair. And so we would have to-- we would have some problems.

McKINNEY: Or imagine that happened in the middle of the basketball season.

WAYNE: We would have some problems. There's a reason you take up rule changes before the season starts.

McKINNEY: All right. Thank you. I think it's clear that there are issues here. And I know everybody was upset how the session went last year, whether it was the Clerk's Office, the pages, senators, people in the lobby, the public; there was frustration to go around. But that don't mean sit through a whole interim and come up with all these rule changes and try to push them through the door because it was difficult. Life is difficult. These jobs aren't easy. Running for office isn't easy. But you know what isn't easy? Being in the minority and being oppressed and trying to navigate laws that were enacted to negatively oppress people. But we do that every day. I mean, I'm here, although there are a lot of laws on the book that aren't the greatest. And that's being nice. But maybe I don't want to listen, which is probably obvious. Nobody's really in the queue, and these rules just keep passing with 33-plus votes at a time. So I guess everyone is OK with changing the rules of the game in the middle of the session because we were uncomfortable last year. And that is a problem. So from here on out, if we get uncomfortable, we're going to come back every year and have a whole big binder full of new rules changes every year, every time we get uncomfortable, because you're setting a precedent to do that. Any time we have a long filibuster, come back and change 20-plus rules because we had a long filibuster. And it's just going to keep happening. And then, you're going to look back 10 years later and the rules that were OK last year are not even going to be close to the same in 10 years, because people get uncomfortable and don't like to play the game and like--

KELLY: One minute.

McKINNEY: --to change rules in the middle of the game because they were made uncomfortable and had to have a hard time passing bills. And we had to sit here late at night and be frustrated, sometimes hungry, and ready to go home. But we're going to change the rules-- well, I'm

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

not because I'm not voting for them. But you are changing the rules because you don't like being uncomfortable, and that doesn't make any sense when you're elected to be a senator. You were voted to go through uncomfortable conversations and take uncomfortable votes, but that doesn't mean change the rules. Thank you.

KELLY: Thank you, Senator McKinney. Senator Wayne, you're recognized to speak.

WAYNE: Thank you. We are on proposed rule number change 21. And it reads, strikes "considered" and adds the word "introduced." And so it says the amendments, if any, recommended by the standing committee shall be considered. And this says introduced which, I don't know the difference between introduced or considered, but considered, I think it means a vote, but introduced means that it doesn't. So by changing this to introduced, are we not allowing the committee amendment to be voted on? Will Senator Arch yield to a question?

KELLY: Senator Arch, will you yield to a question?

ARCH: Yes, I will.

WAYNE: By changing the word considered to introduced, what was the thought behind that?

ARCH: That was a-- that was the clarification of the interpretation that-- we have always practiced. That has been the precedent, where, where the amendment is allowed to be introduced, considered means goes through debate and comes out the other end with a vote. It is-- it's, it's considered. And so this would be-- this is the clarification. Because as I said in the last session, there were some that read this and could be interpreted this way, that it really means you've got to-- you've got to get through, actually, the consideration of the amendment before you get to those priority motions. And we have-- we had not been doing that, but the way this is written is a little confusing. So we wanted to clarify that and say no, it just means that that committee amendment can be-- needs to be introduced, but then the priority motions would come before full consideration of the committee amendment. I hope that clarifies that.

WAYNE: It does. It does. Just to remind everybody who's on the floor who doesn't know, a committee amendment cannot be withdrawn. A committee amendment has to be voted down, so it can't be withdrawn. But I understand the reason you want to add the word introduced and not considered, although I don't think that was a little ambiguity.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

But it also says the introducer's amendment, if any, shall be introduced following the consideration of the standing committee amendments and any amendments thereto. Speaker Arch, are you saying now that the committee amendment will jump the line of a priority motion?

ARCH: Yes. So the-- so the order would be the bill will be-- the bill will be introduced. The committee amendment will be introduced. Priority motions will occur. When those are disposed of, then the committee amendment will be considered and amendments to the committee amendment would be considered. And then the introducer's amendment, if any, will then come next, after the committee amendment and amendments to the committee amendment are fully considered.

WAYNE: So we have the amend-- we have the bill on the board, followed by the committee amendment on the board, followed by the introducer's amendment, then any additional amendments after that?

ARCH: Correct.

WAYNE: Colleagues, what's going to happen here is this is essentially going to end filibusters. I can tell you in good faith, it's no secret that if this rule would have been in practice on stern practice, which it always wasn't, a lot of your filibusters would have not worked. And I can think of one in particular with Senator Geist, because that introducer tried to bring an amendment and couldn't get it attached. I'm just telling you, be careful of your, your rules. There might be a practice, but that practice was the Clerk would ask that individual if he wanted to or she wanted to hop that priority line or let the introducer go first. And there were times that didn't happen. If you feel strongly about something, maybe you don't want it to happen. There are times that you have a special--

KELLY: One minute.

WAYNE: --special indefinitely postponed rule that was used periodically, and then it started becoming used a lot, and so we now also have changed that. The purpose of this, while it seems to be following just practice, I will tell you that that practice wasn't always followed depending on the situation and on the person in the Chair. So maybe having this in the rule is a good thing, I just don't think you should do it mid-- mid-section, mid-season and try to, and try to change this big of a rule. I think the only person that I remember to introduce or to push this was Senator Brewer last year, who called the rule out. But other times, it was really up to those

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

who knew the rule and who paid attention. And Senator Brewer did and then pushed himself to the front. But I don't know if you need to change it is my point. It seemed to be working just fine the way it was for those who knew the rules. Thank you, Mr. President.

KELLY: Thank you, Senator Wayne. Seeing no one else in the queue, Speaker Arch, you're recognized to close on the motion to recommit.

ARCH: Thank you, Mr. President. So, again, the recommit is there to structure the debate. I would ask that you vote no on the motion to recommit.

KELLY: Senators, the question is the proposed rule change number 21 on Rule 6, Section 3, the recommit to committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 3 ayes, 36 nays to recommit the proposed rule change.

KELLY: The motion fails. Mr. Clerk, for the next item on the agenda.

CLERK: Mr. President, I have a series of amendments and a motion from Senator Arch, all with notes that he wishes to withdraw. Additionally, series of amendments from Senator Machaela Cavanaugh, all with notes that she wishes to withdraw. In that case. Mr. President, I have nothing further pending on the proposed rule change.

KELLY: Speaker Arch, you're recognized to close.

ARCH: Thank you, Mr. President. So, again, we're on proposed rule change number 21, regarding priority motions and committee amendments. And thank you very much for the discussion. I ask that you vote yes on this proposed rule change. Thank you, Mr. President.

KELLY: Thank you, Mr. Speaker. Senators, the question is the proposed rule change number 21. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 33 ayes, 6 nays on the amendment to the permanent rules, Mr. President.

KELLY: Proposed rule change number 21 is adopted. Mr. Clerk, for the next item on the agenda.

CLERK: Mr. President, next item on the agenda, proposed rule change 30, introduced by Senator Wayne. Amends Rule 2, Section 2.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Senator Wayne, you're recognized to open.

WAYNE: Thank you. And now today starts the end of the beginning or the beginning of the end, however you want to say it. You know, what happens when you don't want anything and you're here and you didn't introduce that many bills this year? Maybe you thought last year was rough, but maybe this year might be a little rougher. We'll start with my rule. My rule is real simple. I think-- I'm not necessarily in favor of how you do this. I don't like switching rules, so I'm going to be consistent. I was going to withdraw this and then some people asked me to keep it on the floor. So I'll, I'll listen to the conversation. And at the end of my closing, I may withdraw it, I may not. But here-- here's the problem. The problem that we have when we suspend the rules is sometimes we don't know why we're suspending the rules, and if a vote to suspend the rules is also a vote for the underlining motion or bill or item. And so the thought was to separate out the vote to suspend the rules, so you can vote on whether you want to suspend the rules and then the subsequent motion for which rules are going to be suspended. So part of the problem is it's usually wrapped into one. So when you vote to suspend a rule, are you voting to suspend that specific rule? Are you suspending the rules to suspend that specific rule? And so I was trying to clarify, not sure if it worked out the way I wanted it to, but that was the, the thought process. So I'm going to open it up to debate and see what people say. And maybe I'll file a motion to recommit so I can see if there's enough people to vote against it, and then I will just withdraw it. That's actually how you're supposed to use motions to recommit and motions to indefinitely postpone and those kind of things. So just now that I have a little bit of time, I'll go ahead and talk. The person-- the purpose of the priority is, is serious. Like last year, we actually re-- we reconsidered a bill and we-- actually an appointment, and we recommitted that appointment and had a different person be appointed. So there are different purposes for those that may come up. But the main purpose for some of these, like motion to indefinitely postpone and the reason it's a priority bill is because you want to let the body know where everything's at. So, typically, when you take a vote on that, you know if you have 17 greens or 17 or 18 nonvoting, you know you're pretty close to making sure that this couldn't pass with a filibuster. So it's a way to signal to the introducer of the bill if you're not actually serious about postponing it. I mean, I have seen bills get postponed on the floor. I've seen a bill get indefinitely postponed that had like 25 signatures on the floor my freshman year. So I've seen those things happen is why we shouldn't necessarily be changing these rules, but it also gives people the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

ability to take a break. It does give the ability to skip a-- skip the line. But more importantly, if used correctly, it shows the body and shows the Speaker where things are at. So, again, if you take a motion to recommit and you post 17 greens, you know you got a problem on a filibuster and somebody better start talking about solutions or that bill is going to die. You take away that ability, then it makes the floor, I think, more chaotic. And that's what's going to happen. It's going to be more chaotic. So with that, I'm going to open it up to some conversations. And I might file a motion to recommit so I can-- so I can take a soft count on where we are and then go from there. But I think there does need to be some clarity on when and where and how you're-- and what rules you're suspending and, and what you're doing for what purpose. So I want to thank the educ-- education-- the Rules Committee Chair for making sure this was debated and, and getting it out. So thank you, Senator Erdman, Chairman Erdman. And with that, I'll yield the rest of my time.

KELLY: Thank you, Senator Wayne. Mr. Clerk, for items.

CLERK: Mr. President, an amendment. Senator Wayne would move to amend his rule change by adding the following language to Rule 3, Section 15: Testimony offered by agency directors or their designee shall be provided in a neutral capacity.

KELLY: Senator Wayne, you're recognized to open on the amendment.

WAYNE: I am-- thank you, Mr. President. Now I am very passionate about this amendment to my rule. I also just dropped a bill to put it in statute. I think one of the biggest problems we have with the executive branch is them coming in and testifying against or for a bill. They are the enforcers of a bill. They should not preemptively veto a bill by coming in, by saying here's why it doesn't work. They should come in and only talk about the technical aspects of a bill. Because at the end of the day, if we pass legislation, we have to signal to the, the, the state and on the citizens of the state that our Governor is going to fully execute the bill we passed. But think about it, Senator Brewer, how many times they've come in over your career and testified against your bills? I know they have against Senator McKinney, McKinney. I know they have against Senator Brandt. They come in and they say, this is-- we don't like this. The administration doesn't like this. And here goes all the problems with it. And they give the committee doubt before we ever have a real conversation about the bill. So I know rules may not be the best way to go about it. I do have a statute that I'm willing to put forth this year, too. But one thing from talking to the Clerk is we control all

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

of our public hearings. We control whether media is in there during Exec. We control whether the public comes in and public comes out. That means we also control whether the legislative or the executive branch can come in and testify and in what position they can testify. They should only testify in the neutral position. They should only testify about the technical issues that are with the bill, not whether the administration is for it or against it. We're going to hear that on Thursday when he comes in and talks about the State of the Union [SIC] and what he wants to do for this. But on a particular bill, we pay for PRO to stand out here, to contact us multiple times on why they are against the bill. They don't need to come into our public hearings and take a position to signal to the state-- the people of the state of Nebraska, that they won't even enforce a bill if it-- if it's passed. That is incorrect. So I do care about this amendment, but I want to hear the overall conversation because I have a backup plan to this amendment that will go to hopefully, Government. And we can get a priority out of Government, with Senator Brewer leading the way off of his op-ed of why the executive branch should not be testifying in positive or against any bill but only in the neutral position. Thank you, Mr. President.

KELLY: Thank you, Senator Wayne. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I do rise today in favor, I believe, of, of Senator Wayne's proposed rule change number 30. I did not have an opportunity to review the amendment that he just discussed, although I do think it's an important conversation to have. But I'm going to be speaking more towards the proposed rule change. So, colleagues, what this gets to, I think, is a question that came up last year that was very important with regards to the way our body handles our, our procedure, and that's when you suspend the rules, how do you do that and what is the effect that it has? So what this specifies, what this adds to this rule, is it says a vote to suspend the rules shall always be recognized as a separate vote from any subsequent motion for which the rules are suspended. And I think we can have a debate about whether this is the proper wording or process for this. But what I think this gets to is the fact that last session, in the midst of a lot of rancor and contention, there was a suspension of the rules. And if my memory serves, there was one vote that happened in order to suspend the rules and modify the rules to then say X, Y, and Z. So what we essentially had was one motion that had two separate outcomes. Right? One of them was do you agree with whether or not you should suspend the rules? Yay or nay. And then a subsequent question contained in that same that said, do you then also

think the rules from here on out should be X, Y, and Z? And we took one vote on that. And I found that somewhat problematic, given the fact that those are two separate questions before the body. And so what I think this clarifies is that in the event that somebody moves to suspend the rules, that is a separate vote from a subsequent motion for which the rules are then suspended. So the first question, I think, that would come before the body is should we suspend the rules, up or down, and then there would be a separate question once those rules are suspended as to what should happen. Now, I think part of the confusion that this may need to be clarified in is the wording of a rule suspension. So our current legislative rules go into some detail about suspension. And that's all contained in this Rule 2, Section 2, rule suspension amendment, so on and so forth. But, as always, if you want a bit more detail about the rules and where they come from, Mason's Manual is always informative. While not binding, it is informative as to where we come from. And I did a little digging here, and the copy of Mason's Manual that I have goes into some pretty explicit detail about suspension of the rules and what it normally does. And two things here that I think are of particular importance: One, a suspension of the rules is never intended to be for a long, ongoing modification of other parliamentary procedure or rules. It specifically says that a rule change is supposed to be limited in scope-- sorry. Suspension differs from amendment in being that it is limited in scope and in time. A change in the rules which could be-- would be in effect for more than a very limited period of time or which would be general in its application would, in effect, be an amendment to the rules and not a suspension, and would therefore be subject to different rules. So what Mason's Manual digs into is if this body is trying to do something and there is one particular rule that is preventing us from doing something, the way that I think you'd properly phrase that, according to Mason's Manual, was you'd put up a motion to suspend the rules that interferes with the thing that you're trying to do. And it's limited in scope and it has a one-time effect. What happened last year, and, and I think this was just frankly and respectfully the wrong way of handling it, was we had one vote that suspended the rules and then subsequently modified the acting rules that we were working under for the remainder of that session, which really does--

KELLY: One minute.

DUNGAN: --thank you, Mr. President-- fly in the face of what a motion to suspend truly does. A motion to suspend is a temporary and finite modification of the rules that govern the body, for one particular purpose or at least a limited-in-scope purpose. And so what I think

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

Senator Wayne is getting to here is trying to separate out that vote for a rule suspension versus any subsequent motion that were to happen once those rules are suspended, such as a quasi-permanent modification in the rules. So, again, I think we should continue to have this talk and, and see whether or not there's maybe a different way to word this that answers some of those questions. Perhaps modifying our, our rules suspension amendment to have a little bit more of the language from Mason's Manual with regard to the wording of a motion to suspend could be beneficial, but I do generally support the notion of what Senator Wayne is getting at here, which is to separate out those votes. Because having one vote to suspend the rules and then also, in and of itself modify the rules seems problematic and certainly not supported by--

KELLY: That's your time.

DUNGAN: --Mason's Manual. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator DeBoer, you're recognized to speak.

DeBOER: Good afternoon, colleagues. Actually, I had this rule change, the underlying rule change, rule change 30 drafted by the Clerk's Office. This came out of my little brain, and I stand by it. I think you should all vote for it. I think it's a good change. It just clarifies our rules. There was some question about whether or not-- I think in the committee, somebody asked if you suspend the rules, does that mean you can have debate about all the other rules? The answer is no. Someone said if you suspend the rules in one place, do you get to do all these other things? The answer is no. See, we colloquially say suspend the rules, but that's not what we're actually doing with a motion to suspend the rules motion. What we're trying to do is suspend a specific rule. So we have rules. They all have numbers. You've seen us talking about these over the last couple of days. And what a motion to suspend the rules does is it says, I suspend Rule 6, 3(b). I suspend Rule-- whatever rule that you're wanting to do, and only that part. That doesn't mean all the other parts of the rules are suspended. They're not. It's just that one is suspended for the specific purpose. What happened last year was we suspended the rule about change-- about suspending and changing the rules and at the same time, changed the rules, which isn't quite right. So what this proposed rule change 30 does, is it says, just so everyone is clear, you suspend the rules to change a rule, and then you have to take the vote on actually changing that rule. You can't do a bunch of other stuff at the same time because you've suspend the rules only on

changing rules. But then you have to say, do we want to suspend the rules on changing rules? The answer is yes. OK, great. Then do we want to change them in this way? If the answer is yes, great. The difference would be and what someone pointed out in the committee hearing, I want you all to know, is that someone asked, what happens if it's something that doesn't require a vote in the first place, like introducing a bill? So sometimes, we will suspend the rule that says you can only introduce a bill in the first 10 days of session, and then someone introduces a bill if they're successful at suspending that rule. The sense that does not initially require a vote, in this instance, this rule change proposal number 30 would not require a vote. It's only in instances where there is a vote required to do whatever the underlying action is, you suspend the rules to allow that vote, and then you have the vote itself. But if it's suspend the rules for some other action, withdrawing a bill, introducing a bill, whatever other action you want to do, then you do the action. In this case, if you're suspending the rules to take a vote that you would always have to take but you're suspending the rules to make it appropriate to take that vote at that time, then you suspend the rules and you take a vote on suspending the rules, and then you take the vote as you normally would. So maybe that doesn't make a lot of sense to everyone, but what this rule change proposal number 30 recognizes is that there are suspending the rules about doing something at a wrong time, and then there are suspending the rules about doing something that requires a vote. And that's-- what we're looking at here, is we want to say, just to be absolutely clear with everyone, that when we're in a situation where we're going to need a vote to do the underlying action, the suspension of the rules is a different vote than the underlying action vote. You cannot--

KELLY: One minute.

DeBOER: --in one vote, do both things. If it doesn't require a vote, you suspend the rules, you can do the action. And that's a different situation. So I think that that is clear, hopefully, to everyone. And that's what we're trying to do in this rule change proposal. Now Senator Wayne has an amendment that would be an additional thing. I know Senator Wayne is very passionate about this. I actually see Senator Wayne's point, that if we are talking seriously about separation of powers, we should not have people from the executive branch interfering with our process, so they should come in a neutral capacity. But I think that's a separate question for a separate day than rule change proposal number 30, so I would ask you at this time to vote against this amendment and to vote for rule change 30. Thank you, colleagues.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Thank you, Senator DeBoer. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. So I, I think we're talking about Senator Wayne's proposed rule and then amendment, and the amendment is about the testimony offered by agency directors or their designees shall be provided in the neutral capacity. I agree with that 100%. I appreciate the technical expertise that the committees or that the agencies provide, but I think that they should limit their testimony to just that sort of technical expertise about how things will be played out, not whether or not we should do them. Because that is really the purview of the Legislature, is to tell the agencies what policy to implement. And they, they can come and tell us that it's not really going to work the way that you think it's going to work or it's-- will be very difficult to implement, but if-- that they-- this is how they would do it if we tell them that they have to. Seems like a pretty fair assessment to me. So I guess I'm in favor of that amendment to the amendment. As to the underlying amendment itself, I have, you know, mixed feelings about this one. But I do-- I think I agree with Senator Wayne about that it's not too much-- too onerous on the Legislature to require that you bifurcate the two so we're very clear about what we're voting on. Because we did have that incident, incident last session, where we had kind of what felt like a, a rush to amend-- suspend the rules and amend the rules, that seemed real-- I don't know. Well, it seemed rushed. It seemed like it was a bad idea. It was not a real good way to run the place. And, you know, just slowing down those sort of rushes to make decisions like that are probably a good idea. And so if we're going to-- any time we're going to suspend the rules, we should be very clear about why we're doing [RECORDER MALFUNCTION] what the purpose, you know, the ultimate goal is. I actually offered an amendment on this, that I hope we'll get to at some point, that I think addresses that specific concern. So maybe I'll reserve my conversation on that for that point in time. So thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I actually like the amendment Senator Wayne put forward, but I would still vote no on principle, because I don't think we should be changing the rules. But I do think this rule change needs to happen because too many times have agency people come in front of committees, committees that I sit on and oppose or support a bill. And then you go-- then you start asking them questions and then they'll say, that's out of my job description. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

can't answer the question. So then I ask, so why are you here? Why are you opposing a bill or supporting a bill, if I ask you questions, you're not allowed to answer them? Well, the obvious answer is their boss told them to come to support or not support the bills that are coming. And then, for example, what if they are the only opposition to a bill that could possibly get put on consent calendar or be considered for a Speaker priority? It's literally like a veto from the Governor without getting an actual veto, because somebody from some department came in opposition and was the only opposition. That could happen to somebody. I also don't think they should be allowed to come before us and not be neutral. We pass laws, they implement them. Or they're supposed to, but a lot of times they don't or they try to get around it. Then they try to find loopholes in anything we pass to slow-roll it or not do it at all. But honestly speaking, people from agencies should not be allowed to testify for or against bills. It is bad. I'm not sure how long they've been doing it, but they've been doing it, especially since I've been here. They've done it to many of my bills. Last year there was a discussion about HHS sending juveniles out of state or-- and still wanted to do it. And then I asked, so do you help the families? No, they don't help families. They don't care about families. They just care about shipping juveniles out of state that, that, that they don't want to deal with. Then the last Corrections director would show up in Judiciary, and I would ask him questions. And he'd say, oh, it's out of my job description. But he's supporting or against a bill. But if you ask him questions, it's out of his job description. He can't answer the question, or I don't draft legislation or I'm-- that's not my job to speak on legislation. So why are you supporting or not supporting a bill if you can't speak on legislation because your boss told you not to? So what that tells me is you should be neutral. You should only speak to the technical nature of a bill. And that's why I actually like that amendment. I hope one day we could get that passed somehow, because people and agencies should not be allowed to come before any committee and be a proponent or opponent. They should only be allowed to be neutral because it's, it's just bad precedents. I, I hate it. I honestly do. Especially in Judiciary, when people come from Probation or the Department of "Punitive" Services, they really annoy me. Also HHS. Because they forget that you're dealing with people at their worst a lot of times, but they don't care about improving these systems. They just care about upholding systems that--

KELLY: One minute.

McKINNEY: --oppress and put people in, in a worse position as possible. But they're OK with it because they get paid and their boss

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

told them to come in support or against a bill. And I actually like that amendment and I think they should be neutral. Thank you.

KELLY: Thank you, Senator McKinney. Mr. Clerk, for items and new bills.

CLERK: Mr. President, an announcement. The Urban Affairs Committee will be holding an Executive Session at 3:45 under the north balcony. Urban Affairs, Exec Session under the north balcony at 3:45. New bills: LB1248, introduced by Senator Kauth. It's a bill for an act relating to revenue and taxation; amends Section 77-2704.09, 77-2704.24; eliminates certain sales-- sales and use tax exemptions; provides an operative date; repeals the original section; declares an emergency. LB1249, introduced by Senator John Cavanaugh, is a bill for an act relating to the Motor Vehicle Certificate of Title Act; amends Section 60-119, 60-142.05; redefines the term; changes provision relating to kit vehicles; and repeals the original section. LB1250, introduced by Senator John Cavanaugh. It's a bill for an act relating to public health and welfare; provides grants for bike-sharing programs; states intent regarding appropriations. LB1251, introduced by Senator Linehan. It's a bill relating to revenue and taxation; amends Section 13-3102 and 13-3103, 13-3108; authorizes state assistance for certain small sports facilities under the Sports Arena Facility Financing Assistance Act as prescribed; defines and redefines terms; harmonizes provisions; repeals the original section. LB1252, introduced by Senator Linehan. It's a bill for an act relating to education; amends Section 79-2607; changes provisions relating to the Nebraska Reading Improvement Act; provides powers and duties to State Department of Education, the Commissioner of Education related to the creation and support of a professional learning system and regional coaches related to instruction in reading; requires the teacher to study-- teach students in grades kindergarten through third grade at an approved or accredited school receive certain training related to instructions in reading; states intent regarding appropriations; repeals the original section. LB1253, introduced by Senator Linehan. It's a bill for an act relating to education; creates the Dyslexia Research Grant Program. LB1254, introduced by Senator Linehan. It's a bill for an act relating to education; amends Section 79-2607; changes provisions relating to the Nebraska Reading Improvement Act; provides powers and duties to the State Department of Education, the Commissioner of Education relating to the creation and support of a professional learning system and regional coaches related to instruction of reading; requires that teachers who teach students in grades kindergarten through third grade at an approved or accredited school receive certain training in the instruction of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

reading; states intent regarding appropriations; repeals the original section. LB1255, introduced by Senator Fredrickson. It's a bill for an act relating to telecommunications; amends Sections 86-124, 86-101 [SIC--86-1001], 86-103 [SIC--86-1003], 86-1004, and 86-1029, Section 75-109.01; provides jurisdiction and certain regulatory authority for the Public Service Commission relating to the next-generation 911 service; restates legislative intent; defines terms; provides powers and duties to state 911 director, reconstrues commission authority on the 911 Service System Act; harmonizes provisions; repeals the original section. LB1256, introduced by Senator DeBoer. It's a bill for an act relating to telecommunications; amends Section 75-109.01; provides certain jurisdictional powers and duties for the Public Service Commission; defines terms; requires the filing of reports by a communication service provider relating to 911 service outages; and repeals the original section. LB1257, introduced by Senator DeBoer. It's a bill for an act relating to the 911 Service System Act; amends Section 86-1025; changes the duties of the Public Service Commission; and repeals the original section. LB1258, introduced by Senator Machaela Cavanaugh. It's a bill for an act relating to environmental protection; amends Section 54-2429; changes a requirement relating to the application of a National Pollutant Discharge Elimination System Permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act; provides requirements for livestock waste control facilities and animal feeding operations as prescribed; and repeals the original section. LB1259, introduced by Senator Meyer. It's a bill for an act relating to teachers; provides grants and bonuses for teachers; provides duties and powers; states legislative intent regarding appropriations. LB1260, introduced by Senator Jacobson. It's a bill for an act relating to power districts and corporations; amends Section 70-624.04; provides authority for a director of public power and irrigation district to take action on certain agreements in, in which such director has an interest; provides that such agreements are not void or voidable; and repeals the original section. LB1261, introduced by Senator Walz. It's a bill for an act relating to public health and welfare. Adopts the Amyotrophic Lateral Sclerosis Respite Services Act. LB1262, introduced by Senator Day. It's a bill for an act relating to the Commission on Indian Affairs; amends Sections 81-2501, 81-2504 and 81-2516. Names the Commission on Indian Affairs Act; changes provisions related to the Commission on Indian Affairs; and provides for an ongoing study relating to Native American voting issues; eliminates obsolete provisions that have terminated; repeals the original section; outright repeals Sections 81-2509, 81-2510, 81-2511, 81-2513, 81-2514 and 81-2515; and declares an emergency.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

LB1263, introduced by Senator Wishart. It's a bill for an act relating to education. Provides scholarship to students in trade programs as prescribed. LB1264, introduced by Senator Wishart. It's a bill for an act relating to appropriations. States intent regarding federal funds appropriated for develop-- developmental disabilities aid; and declares an emergency. LB1265, introduced by Senator Conrad. It's a bill for an act relating to civil legal services for low-income persons; amends Sections 25-3003 and 25-3004; changes provisions relating to certain grants; provides free civil legal services; harmonize provisions; repeals the original section. LB1266, introduced by Senator Conrad. It's a bill for an act relating to appropriations; appropriates federal funds to the Board of Regents for the University of Nebraska. LB1267, introduced by Senator Conrad. It's a bill for an act relating to civil procedure; adopts the Uniform Public Expression Protection Act; eliminates provisions relating to actions ingo-- involving public petition and participation; provides severability; outright repeals Sections 25-21,241, 25-21,242, 25-21,243, 25-21,244, 25-21,245, and 25-21,246; and declares an emergency. LB1268, introduced by Senator Conrad. It's a bill for an act relating to homesteads; amends Section 40-101; changes provisions relating to homestead exemptions for judgment liens and executions; and repeals the original section. LB1269, introduced by Senator Hardin. It's a bill for an act relating to crimes and offenses; amends Sections 28-1406, 28-1407, 28-1408, 28-1409, 28-1410, 28-1412, 28-1413, 28-1414, 28-1415, 28-1416, and 29-439; changes provisions relating to the duty to retreat when using force in self-defense or defense of another; provides for criminal and civil immunity when justifiable force is used in defense of another-- self or another; harmonize provisions; repeals the original section. LB1270, introduced by Senator Murman. It's a bill for an act relating to the Door to College Scholarship Act; amends Sections 85-3202, 85-3204, 85-3205; redefines a term; changes provisions relating to the powers and duties of an eligible postsecondary education institute and the Coordinating Commission for Postsecondary Education under the act; harmonize provisions; repeals the original section. LB1271, introduced by Senator Murman. It's a bill for an act relating to postsecondary education; amends Section 85-931; changes provisions relating to the definition of graduate degree program; and repeals the original section. LB1272, introduced by Senator Murman. It's a bill for an act relating to education; amends Section 79-77-- 79-770; updates terminology related to individualized education program for student for provisions regarding a certificate of attendance at a school district or participation in high school graduation; and repeals-- and repeals the original section. LB1273, introduced by Senator Murman.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

It's a bill for an act relating to education; amends Section 79-215, Section 79-2,136; changes provisions relating to the admission of students and require each school board to allow certain students that are not residents of the school district to participate in extracurricular activities as prescribed; and repeals the original section. LB1274, introduced by Senator John Cavanaugh. It's a bill for an act relating to insurance; requires coverage of the prosthetics and orthotics as prescribed; and defines terms. LB1275, introduced by Senator Brewer. It's a bill for an act relating to appropriations; appropriates funds to the Department of Administrative Services; and declares an emergency. LB1276, introduced by Senator Brewer. It's a bill for an act relating to the Nebraska Liquor Control Act; amends Sections 53-131, 53-133, 53-134, 53-1,115 and Section 53-132; changes provisions relating to the application, hearing, and licensure process for retail bottle club, craft brewery, and microdistillery license in a city of the second class or village; provides powers and duties to the Nebraska Liquor Control Commission and the city or village clerk in the city of the second class or village; harmonize provisions; and repeals the original section. LB1277, introduced by Senator Wayne. It's a bill for an act relating to emergencies; amends Section 81-829.40; changes provisions relating to an emergency proclamation made by the Governor; and repeals the original section; declares an emergency. LB1278, introduced by Senator McKinney. It's a bill for an act relating to public assistance; amends Section 68-901; provides for reimbursement of doula, doula and full spectrum doula services under the Nebraska-- under the medical assistance program; and repeals the original section. That's all I have at this time, Mr. President.

KELLY: Returning, returning to debate on the amendment. Senator Erdman, you're recognized to speak.

ERDMAN: Thank you, Mr. President. That was quite a lengthy introduction. I almost forgot what I was going to say. So we've heard numerous comments today about not adjusting or making changes to the rules in the interim and then in the middle of the biennium. I wish someone would have told me that before we went through all the problem to have those hearings for the rules. Right, Senator DeBoer? So the question I have to ask is, isn't changing state law, aren't we changing the rules? And we do that all the time. So I think changing the rules is an appropriate time-- is appropriate anytime we want to change it. And I think with 25 votes, generally, we can do about whatever we want. So I am in support of Senator Wayne's rule changes, both of them, the amendment. I've had several occasions when agencies of the state, for example, Game and Parks, don't want to move to Sidney. So their director comes in and explains all the negatives as

to why they should not move to Sidney. Last time I looked, I think they work for us. And so they come in and tell us, hey, we're not moving, so deal with it. So I think having come in neutral is a great idea, and I'll be voting for Senator Wayne's amendment. And I think, Senator Wayne, his intention on the underlying rule was to clarify what we do, because here we always talk about precedence. And so this clarifies what we should be doing by making a rule change. So I'm going to vote for both of those. So it's a little peculiar though in a way. Senator Wayne today had mentioned he wasn't really in favor of changing rules in the middle of the-- of the-- of the One Hundred Eighth Legislative Session, but I, I give him that. But those-- that rule makes it-- that amendment makes this rule change well worth voting for. So I encourage you to vote for both of those. Let's clarify what we do. And that way the next people that come after us will understand how they're supposed to do it. So thank you, Senator Wayne, for your amendment.

KELLY: Thank you, Senator Erdman. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. And, colleagues, I did agree that, I mean, I did say that I'm not necessarily in favor of changing rules during mid se-- mid biennium, as Senator Erdman pointed out. But when they're my rules, it's a different rule. I mean, I'm just being honest here. I mean, it's like we don't want to change statutes, but when it's your bill, you want it to pass. I mean, just sometimes a little honesty is the best thing here. And I'm just being honest here that I want my rules to change. I just don't like anybody else's rule to change. But anyway, so I forgot. And Senator Dungan brought it up when I said I was unsure about this amendment. I forgot about what happened and why I am sure about this amendment now. I, I mean about this rule change, is it should be two votes. The threshold on both is 30, so it kind of makes sense. But when you combined a suspension of a rule to change a rule, those should be bifurcated into two different votes. Because you may not care about suspending the rule, but you may care about changing that rule. And so those should be two different votes. Whereas some people might feel, no, I don't want to suspend the rules and they vote against it. And now with that rule, the suspension already happened, they say, well, I agree with supporting the underlining rule change or bill or whatever it may be. So I do think a bifurcation occurs. I do want to talk a little bit about this amendment. It was passed out. For those who didn't get it, it was passed out. And it says: adds the following language to Rule 3, Section 15. Testi-- quote, Testimony offered by agency directors or their designees shall be provided in the neutral capacity, end quote.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

Colleagues, every one of you in here has had an agency come in in opposition, and sometimes they don't even give us a courtesy heads up. Many times they tell you the day of or they tell you an hour before, and you're caught completely off guard at a hearing, not being able to address-- and the hope-- the best you can do is say, well, I'll work with you afterwards. I just think it sends the wrong message to the public. This really isn't about, for me, a separation of powers issue. This is really about the image we project to the public by saying no, although we're in charge, DHHS or the prison system-- Department of Corrections or any agency, although we're in charge, we don't agree with this. I just think it sends the wrong message. And too many times have I seen a preemptive veto by the administration, both administrations, where they come in and beat a bill down before the committee can actually have a conversation about that bill. And I think that is letting too many tentacles of other parts of our government into our house to have too much influence. I mean, think about this. We allow the Governor to come in here and lobby us on a bill that he's going to introduce. And at the beginning of the biennium, we don't even drop the bills until he first lobbies us, and then we drop them afterwards. That's like having people outside the glass come in and lobby us. Can you imagine them standing where the Clerk is and giving us a speech on a property tax bill? See, to me, when I read the constitution, it says the Governor "may" give us the State of the Union. He's not required to. And, in fact, we have to vote on that--

KELLY: One minute.

WAYNE: --before he's even allowed in. My point in saying all of this is this amendment makes sure that they're going to carry out the technical aspects of the bill and give us feedback, not take positions on the bill. Either we get rid of-- either we support this amendment or we get rid of the budget of PRO, but we don't need both of them in our committees telling us what to do. Thank you, Mr. President.

KELLY: Thank you, Senator Wayne. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. And thank you, Senator Wayne, again for sort of refocusing this. And I, I appreciate the comments made by everybody on this issue. And I think that we're all kind of drilling down to the point of what we're doing here, which is to clarify and to simplify, and to make sure that we have consistent practice moving forward. Again, I, I think that overall, I, I don't agree with the notion of modifying the rules halfway through a biennium. That being

said, I also acknowledge the fact that it's not unprecedented and that I, I understand that the reality being what it is, I think it's important to engage in, in helpful and vigorous debate about those modifications. And that's why I appreciate Senator Wayne's amendment here. I do think that this is directly related to confusion that occurred last year. I've been, as we're sitting here talking with other folks about how last year looked and what's happened in the past, Senator DeBoer brought up the modification of the rules to allow a bill to be introduced. I know we vote on that. According to Mason's Manual and our own rule book, there are also ways to suspend the rules by unanimous consent. And so, you know, in a circumstance like I think the introduction of a bill past time, if you wanted to suspend the rules, requesting unanimous consent. I don't know if our rules specifically provide for that, but that's something that Mason's Manual talks about. There are times that we can suspend the rules, but the consistent thread through all of the rules suspension is that they are done for a particular purpose, and that particular purpose has to be enunciated when the rule is being suspended. But that is a different vote from actually doing the thing. So, again, if you have a, a, a motion to suspend the rules in order to, you know, do X, Y, and Z, then that is what the people are voting on. And then I believe there be a separate initiation of X, Y, and Z that then is being taken care of. So in Mason's Manual, they, they specifically say at the end of the section about the suspension of the rules, if the motion to suspend the rules is carried, the business for which the rules were suspended is immediately in order. And the presiding officer should recognize, for the purpose of presenting the measure or business, the member who moved to suspend the rules. So, again, I understand that Mason's Manual is not binding, but what that's getting at is exactly the bifurcation that we're discussing in proposed rule change 30. It is saying that upon the carrying of the decision to suspend the rules for that particular purpose, the presiding officer shall then say, Senator so-and-so is now recognized to do the thing or to, to introduce the thing that you voted on the rules to be suspended for. So if that were to be a modification of the rules, the way I would see that going is you need the 30 votes to suspend the rules. And then once that's done, for example, if Senator Erdman or anybody else last session had tried to amend the rules, it would then be in order to recognize that senator to then say, I hereby am, you know, moving to modify the rules temporarily to X, Y, and Z. And so I, I do think that it's clarifying the way that this should be done moving forward. And I think that it's also important to make sure, as Senator Erdman said, that future legislatures understand the way that process should go. We can have a conversation, and I anticipate we will have a conversation

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

regarding whether or not the suspension of rules should happen to modify the rules. I, you know, I think that anytime you start arguing that might is right and that we have the votes to do whatever we can do, so we should be able to do it. It's a little bit problematic. Again, I think the, the North Star of what our rules are here to do is to ensure a safe flow of business in the Legislature while still securing and protecting those minority voices. And so I, I think that we, we need to be careful to not let ourselves deviate too far into that direction. So--

KELLY: One minute.

DUNGAN: --thank you, Mr. President-- I do want to speak briefly to the amendment to the amendment that Senator Wayne has, has introduced. I would agree with this amendment too. I think that we have agencies that work incredibly hard to work on the laws or to execute the laws that we put in place as a Legislature. But I do think it becomes problematic when the very entity who's being tasked with enforcing a law comes in and says, we do not like this law. I think it puts the individuals in that executive agency in a-- in a tricky position. I think it puts them in a little bit of a predicament. And certainly I think that while testifying in a neutral capacity, you are still allowed to highlight concerns about execution you may or may not have. And so I don't think that this amendment inhibits them in any way from sharing facts with the Legislature. In fact, I would encourage them to continue to do so, as it's very helpful to hear how these laws would ultimately be executed. But I do think this amendment to the amendment is helpful in clarifying that they are simply coming in and testifying in a factual capacity.

KELLY: That's your time, Senator.

DUNGAN: Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Speaker Arch, you're recognized to speak.

ARCH: Thank you, Mr. President. I have a couple of questions that I would like to pose to Senator Wayne, if he's willing to answer.

KELLY: Senator Wayne, would you yield to some questions?

WAYNE: Yes.

ARCH: Thank you, Senator Wayne. So the way the motion to suspend the rules is, is worded generally, as I understand, is motion to suspend

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

the rules for the purpose of adopting, advancing and definitely postponing, reconsidering. It could be a number of things that you would suspend the rules. For instance, if there was-- if, if reconsideration had already taken place, you would have to suspend the rules to offer another motion for reconsideration. So that is a-- that's, it-- I, I see that as a single motion. And I think that that's the way-- that's the way the body sees that. And yet we would be voting twice. Is there any way to, and this would be a big concern of mine, is somehow split that motion so that this "for the purpose of" could somehow be changed or amended or, or in, in, in some way messed with. Could, could you do that or is this still a single motion, you're just voting for those two components separately?

WAYNE: Yes. So I was-- I see this as a two motions, but in a continuum, almost like the amendment versus the underlining rule. So, so I would see the suspension being the first vote. Immediately, the second vote being the adoption of a, like a, a new proposed rule or something like that. And the reason I say that is I don't think it should be I move to suspend Rule 12 and then halfway through the debate, switch it to Rule 2. It should be the same way through. And so I'm willing to, after this, get off the mic with Brandon to make sure if we need to add an immediate subsequent vote language with no debate. I mean, not no debate because you should still be able to debate the underlining, but you can't change. So I can get off the mic and go see Brandon if we need to add something and maybe come back to this overall proposed rule change--

ARCH: OK.

WAYNE: --with another white copy amendment. But I didn't think of that scenario. But to answer your question, it should be vote and immediately the vote on whatever you're suspending to do. It shouldn't be able to change that suspending to do part.

ARCH: OK, thank you. I, because as I read the language, which by the way, I'm, I'm in favor of with, with, with the correct language. It-- a vote to suspend the rules shall always be recognized as a separate vote from any subsequent motion for which the rules are suspended. So that's where I-- that's where I stumbled. And maybe it's the right language and the Clerk can, can work with you on that. But it is, is-- it's the motion to suspend the rules. So that's a motion. Is the purpose of adopting, advancing, IPP a second motion? And so that's-- if, if there's some clarification on that, that would be great. I, I also just have a, a just a observation, I guess, with regards to the amendment that Senator Wayne has proposed here. And that is the

testimony offered by agency directors or the designee shall be provided in a neutral capacity. I think that there are certainly times when the department does have an opinion. Like, well, like this is going to violate federal law. And this, this runs in conflict with, with our requirements by the federal government. And, of course, we want to know that. Would that be opposition or would that simply be to the committee, you need to be aware that if you pass this bill, it will be in conflict with federal law or whatever the issue might be? And, and if, if they can present that in a neutral capacity--

KELLY: One minute.

ARCH: --that's, that's good. But I would say that all committees want to know. That's information that needs to be shared, or whatever it might be if the-- if the department has a specific issue with it. And so we don't want to discourage that. If that can be done in a neutral capacity, that's great. But we, we do want that information. Thank you, Mr. President.

KELLY: Thank you, Speaker Arch. Senator Conrad, you're recognized to speak. And waives. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. A couple of things I want to clarify. First, well, Senator Wayne is busy, but I will note this one thing for you, Senator Wayne. With respect to your amendment, it might need a hearing. Because that particular amendment, while I would support the change, has not actually had a hearing. And so we might need a public hearing on whether or not to allow the executive branch to come in, in only a neutral capacity. I will say that it makes sense to me as a rule to require them to come in in a neutral capacity. However, I think that doesn't change the fact, I mean, all of you all, you've all been here a year now, with the exception of, I think, two of you. You've all been in hearings where you hear neutral testimony that is the least neutral that you've ever heard. Something to the effect of: I'm here in a neutral capacity, I hate everything about the bill. But other than that, it's great. Right? So neutral testimony does not mean you can't point out the errors if there are something like situations where this will get in the way of some federal law or something like that. Obviously, we want to hear that information, as the Speaker pointed out. So I am very intrigued by Senator Wayne's amendment here. With respect to the underlying rule change, which is about taking, first, the vote to suspend. Again, not the rules, but specific rules, like Rule 2, Section 2, or something like that. Perhaps we should just think about this the same way we think about motion to return to Select File from Final Reading. When we bring

something back from Final Reading, we say it's a motion to return to Select File for a specific amendment. And we all know that you can't do a different amendment, you can only do that amendment. So that's pretty much how these motion to suspend the rules should work, in my opinion, is that if you do a motion to suspend the rules, you're doing it for a specific action. Whether that action requires a vote or doesn't require a vote. And if it does require a vote, you take the action, which is the vote. And if it doesn't require a vote, you take the action, which is whatever it is. Introducing a bill, whatever it is. So, to me, this is very clear because it says you can do the motion to suspend the specific rules. Those specific rules, once suspended, can allow a specific action, which is part of your original motion to suspend the rules. So that's how it works in my mind. I think that that allows for only the one action, suspending the rules for that specific action only. And only that one action can be taken, so you can't sort of hijack the suspension of the rules to do some other thing at the same time. You suspend it only for this specific thing. Much like if we bring something back from Gen-- from Final Reading for Select File, it's only a specific change to the bill that we bring it back for, one amendment only. You can't bring a different amendment. It's only that amendment that you're bringing it back for. In this case, if you are suspending the rules-- and, by the way, this has already been the practice. If we suspend the rules-- I remember in, it wasn't the special session, but that short piece of session during 2020 when we had suspended because of COVID and we came back in the summer, there were a couple of bills that were introduced. Senator Wayne had one, Senator Vargas had one, in which we did a motion to suspend the rules to allow someone to introduce a bill outside of the 10 days.

KELLY: One minute.

DeBOER: And Senator Wayne's was successful. And then there was another one later, and it was Senator Vargas brought another motion to suspend the rules. Separate motions, same action to do them, i.e., to allow something outside of the 10 days. One was successful, one was not. So we have already a long-standing tradition and practice of you can only do one thing once you suspend the rules. Suspending the rules is only for that one insular action. And just suspending the rules doesn't say, OK, now we can have free rein to do whatever we want in here. But it says that we can only do the specific thing. So I think that's clear. If it's not clear, we can make it clear. But I think that's clear. I like Senator Wayne's amendment here about the executive branch and hearings. It hasn't had a hearing, so I'm not going to be able to support it at this time. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: Thank you, Senator DeBoer. Senator Wayne, you're recognized to speak.

WAYNE: Call of the house.

KELLY: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 15 ayes, 2 nays to place the house under call.

KELLY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Wayne, we are under-- call of the house. It wasn't your close and that's the only time a member can be recognized. Senator Wayne, we're missing Senator Linehan. How do you wish to proceed? Senator Wayne, you're recognized to speak. That's 5 minutes.

WAYNE: Thank you. So I learned something new today. I'm gonna share it with everybody. So anybody can call the house at any time. You can stand up while somebody is talking, when they're done talking and say call the house. And everything stops, including my 5 minutes. So now my 5 minutes is going. However, when you call the house on your closing, the clock will continue to run. Just a little strategy you might-- now everybody is shaking their head like, oh, where's that been for the last seven-- I don't know, I just never-- it happens. So here's why I called the house. Because, one, I have a closing, I don't wanna take all my closing. But the real reason is, is there's two things that I think are important. I forgot about the amendment or the, the change of the suspension of the rule to change the rule. That is one in particular we should always keep separate. That way-- you may be OK with changing a rule. You may be OK with changing doing something. And I recall, particularly with Senator Vargas and I, after COVID, had two bills that we wanted to introduce after the 10 day. And Senator DeBoer just talked about it, but not everybody was in the Chamber. Mine dealt with police oversight. Senator Vargas' dealt with workers' conditions in packing plants, we'll call it. People were OK with suspending the rules on mine. But I also heard afterwards people were OK with suspending the rules for Vargas, but didn't want to support the underlying bill being introduced. And that's where the confusion came on the one vote. Just like last year, we had the one vote to suspend the rules and change the rules. Those should be two separate votes. Because I may be OK with suspending the rules to move

something from General File to Final Reading, just skip Select altogether. But somebody else may be OK with suspending the rules, but not OK with moving it from General File to Select File. So that's what we're trying to separate the ideology just saying you might be OK with suspending the rules, but you may not support the underlying idea of changing the rules or introducing a new bill. And you don't want that vote to be on your record saying I support X, Y or Z. That's why it should be bifurcated. So it's clean. What Speaker Arch talked about was the flow. How you write a suspension of the rules is: I move to suspend Rule 12. I want to change the threshold to 30. Two different votes. One motion that's turned in, but we're bifurcating the vote because you're saying you're suspending the rule and you want to change the rule to 30 or whatever-- 30 votes instead of 25. People may agree with suspending the rules, but may fundamentally disagree with changing the vote number. So it should be two different votes. So we're just adding clarity there. Now the amendment, honestly, guys-- and when I say guys, it's general. I don't mean everybody. So don't cancel me, I'm sorry. But, honestly, everybody here has had the administration-- and not this administration. I don't know if you had on this one, but at least in the 7 years, I've listened to everybody say, I can't believe Game and Parks came in and testified against it. They shouldn't be able to tell us what to do. I can't believe this person came in. I can't believe HHS came in. In Judiciary, I'm used to it. Everybody is against every bill introduced, except for like the prosecutors and cops are for harsher punishments. If it's not in that little bitty niche, everybody's against it. So I'm just used to everybody being against it. It's kind of like education. All I hear is no, no, no for 5 days straight. Everybody is against education change. My point in saying that is--

KELLY: One minute.

WAYNE: --the administration should come in and tell us the technical problems. Will we lose federal funding? That is a technical problem, not a reason to be against the bill. It may ultimately be able to cancel the bill or kill the bill because of it, but we should be able to have our committee hearings and discuss with the administration on the record about the technical problems, not a preemptive veto. The Governor already has a right to veto at the end. We have PRO who is out here every day pulling people out. But in our committees, that's kind of, besides this floor, our sacred ground. They should only be able to tell us the technical problems, not what the administration feels on the record for and against the problem. Because it sends the wrong message to the public: that we may pass it and they still might not enforce it. That's fundamentally wrong. So that's why I would ask

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

for a green vote on both of these, the under-- the underlying amendment and the underlining bill, because it's good, a good rule change for this body. Thank you, Mr. President.

KELLY: Thank you, Senator Wayne. I raise the call. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. I would like to ask Senator Wayne a question, if he would yield to a question.

KELLY: Senator Wayne, would you yield to a question?

DeBOER: Senator Wayne.

WAYNE: I just want you to know I lost four votes right there by interrupting that-- we were closing, it was ready to go. OK, I'm ready to go. Go ahead, I'm sorry. I'm just giving you--

DeBOER: Senator Wayne, that was a yes or no. Will you answer a question? [LAUGHTER]

WAYNE: OK. I'm sorry. Go ahead.

DeBOER: Hijacking my time. All right. So, Senator Wayne, the one question I have for you is, has there ever been a hearing on this part of the amendment that would require the executive branch to become only in neutral-- to come in only in neutral?

WAYNE: No.

DeBOER: OK, so that's my issue with that one. So I wanted to tell you that. The other thing I want to clarify is, in the circumstance where you had introduced a bill during those 17 days in 2020, where we came back in the summer, you introduced it outside of the 10 days. So you did a motion to suspend the rules to introduce a bill outside of time, is that correct?

WAYNE: Correct.

DeBOER: And when you did that, we took one vote, which was whether or not you were allowed to suspend the rule that says you have to do it within the first 10 days. And then we did not take any other votes. Correct?

WAYNE: Correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

DeBOER: That would stay the same even under this proposed rule change, because you don't have to vote on whether or not somebody could introduce a bill. The only thing that prevents a person from introducing a bill is that they're outside of time. I don't get to now today, when we're in bill introduction, I don't get to say to you, um, Senator Wayne, you can't introduce that bill. Right?

WAYNE: Correct.

DeBOER: So in those circumstances where there is no second vote to be taken, this rule proposed change would not change anything. Correct?

WAYNE: Correct. So you can-- yeah, so I spoke in error. It only requires when you're changing other motion-- other bills. But technically I could add it to a bill. But no, I guess in that case you wouldn't have to.

DeBOER: So in that sort of circumstance where a vote is not required to do the underlying action, there is no vote required after this rule's proposed change. It's only when there is a vote required to do the underlying action and you're suspending the rules to allow you to take that vote that it would be two votes.

WAYNE: Correct.

DeBOER: Correct?

WAYNE: Correct.

DeBOER: OK. Thank you, Senator Wayne.

WAYNE: Thank you.

DeBOER: So just to clarify for everyone here, this, this rule change, proposed rule change number 30, which is the underlying rule change, not the amendment. The underlying rule change would just clarify what is already the practice of the rules, which says that when you do a motion to suspend the rules, that motion to suspend the rules is an action and you can take a vote on it. But whatever underlying rule you are suspending, if you don't need to take a vote on it, you just proceed. If you do need to take a vote on the underlying action, i.e., changing the rules, then you would have two votes. That is already what our rules say. But we are clarifying that if you have to take a vote to do whatever the action is that you're suspending the rule to do, you first say, do you want to suspend the rules to do this? You may, you may not. And then if the body decides they want to suspend

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

the rules for that discussion, then the only thing that can be discussed is that change or that action that requires a vote. You take that vote as a separate vote because that is different than suspending the rules. So there are two things that are being done every time you suspend the rules. One is you're suspending the rules, the, the second thing is you're doing the action. Sometimes that action requires a second vote. If it does, you can't do it all in one vote. That's what this proposed rule change number 30 says. The amendment, which I think is great, but it hasn't had a hearing. If Senator Wayne would like to bring that to the Rules Committee for a hearing, I'd be happy to convene again. But you'd have to ask the Chair if he would be, and we could have another--

KELLY: One minute.

DeBOER: --hearing on that, and then I will be all for this amendment. But until then, because we have not had a hearing, I will not support the amendment. Thank you, Mr. President.

KELLY: Thank you, Senator DeBoer. Seeing no one else in the queue, Senator Wayne, you're recognized to close on your amendment to proposed rule change 30.

WAYNE: Thank you, Mr. President. I won't be long, colleagues. What's interesting about the rule for a hearing-- not even a rule, believe it or not, is I could put up a rule to suspend that, and we could vote on it and change it. The fact of the matter is, is this only affects one group, not the public at large. So I'm not worried about a hearing on that rule, nor is it required by statute. What I do know is too many times good legislation gets vetoed before it even gets heard by the committee. It goes proponents, opponents, neutral. We should at least get through the proponents and opponents before we hear from a government agency. Our rules define that, and this rule will define that for our directors of these agencies. We want to change the rules. This is probably the most significant rule to a limit real-- or to make sure we have real debate in our committee hearings. It's hard to argue with an agency at every committee hearing that I've been in where they get up and say they're against it, and you ask them questions and they say they're not allowed to answer those questions. They're just against it. And I only got these four talking points and I can't go outside of these talking points. That doesn't do any-- that's not productive at all. So I would ask for a green vote for both. And I ask for a roll call in reverse order.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

KELLY: There's been a request for a roll call vote, reverse order on the Wayne amendment to proposed rule change 30. Mr. Clerk.

CLERK: Senator Wishart not voting. Senator Wayne voting yes. Senator Walz voting yes. Senator von Gillern voting no. Senator Vargas. Senator Slama. Senator Sanders voting no. Senator Riepe voting yes. Senator Raybould. Senator Murman voting no. Senator Moser. Senator Meyer voting yes. Senator McKinney voting yes. Senator McDonnell voting no. Senator Lowe voting no-- voting no. Senator Lippincott voting no. Senator Linehan voting yes. Senator Kauth voting no. Senator Jacobson voting no. Senator Ibach voting no. Senator Hunt. Senator Hughes. Senator Holdcroft voting no. Senator Hardin voting no. Senator Hansen voting no. Senator Halloran. Senator Fredrickson voting yes. Senator Erdman voting yes. Senator Dungan voting yes. Senator Dover voting no. Senator Dorn voting yes. Senator DeKay voting no. Senator DeBoer voting no. Senator Day voting yes. Senator Conrad voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting yes. Senator Bostar voting no. Senator Bosn voting no. Senator Blood. Senator Ballard voting no. Senator Armendariz voting no. Senator Arch voting no. Senator Albrecht voting no. Senator Aguilar voting no. Senator Hughes voting-- excuse me. 17 ayes, 23 nays, Mr. President, on the amendment from Senator Wayne.

KELLY: The amendment fails. Mr. Clerk, for motions.

CLERK: Mr. President, an amendment from Senator John Cavanaugh. On the fourth line after "rules are suspended," insert "A motion to suspend the rules shall not be permitted to adopt an amendment to the permanent rules."

KELLY: Senator John Cavanaugh, you're recognized to open on the amendment.

J. CAVANAUGH: Thank you, Mr. President. That was a really interesting vote. I appreciated the conversation and on Senator Wayne's amendment to this amendment. So this is another one, where I was kind of reading the rule and I saw I thought, well, this is something. While, while we're under the hood, like we did on, I think, the second rule proposal, we should probably address this. Which is we've been talking about it here, how we voted to suspend the rules last year to amend the rules. And there was some confusion about that. But I would just point out, like Senator Wayne, I wasn't in favor of changing the rules right now. But we're doing it. And we adhered to the process in the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

rules for how we're amending the rules. And I don't know how many we've gone through so far. I think 4 to 6. Had the hearings, they were very efficient, well-run by Chairman Erdman. Got some conversation and feedback, got those rules amended, had them on the floor. We've had some good robust discussions about how those rules will play out, and so it is possible to follow the rules-- to amend the rules. And you just gotta-- probably shouldn't do as many at a time that we're doing. We're amending more rules now than I think we did at the beginning of the session, when we amended rules before we adopted them. But this proposal would just simply say that the suspension of the rules can't be used to amend the permanent rules. So you can't go-- you have to go through the actual process, which is what we're doing right now, showing that it works, to get a change to the rules. I think it lends legitimacy. It allows for that actual, real, robust conversation, making sure we have that hearing. You have the notice so people, our constituents can look at them and give us that-- those comments and feedback, and then time to just sit with things, to think about them. Because if we suspend the rules to amend the rules, things happen quickly and you don't quite get the opportunity. The simmering, you know, the sa-- the, what is it, the saucer, the cooling-- cooler of the government is the United States Senate. We are, I guess our committee process, is sort of that saucer cooling process. So I just think it's-- this is a-- would be a good addition to Senator Wayne's proposal about how we're just trying to clarify this and make sure that we're not-- people know what they're voting on. And one of the ways people know what they're voting on is if it goes through a hearing process. So I'm, I'm suggesting that we make sure that just as it pertains to rule changes, that we cannot suspend the rules to amend the rules. If we need to amend the rules quickly, we can certainly get a hearing. We got a hearing on Day 2, got them kicked out basically the next business day. And-- or I guess the hearing was on Day 3 and the next-- then we had the next business day or I'm, maybe I'm conflating. But, anyway, this happened pretty quick. And we've been debating the rules. We're almost, you know, tomorrow's Day 10. So we're, we're able to move quickly with purpose and intention and still follow the procedure. So I think it's important that we not allow for that to happen. So that's my proposal. I'd be happy to talk about it some more. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I do rise today in support of Senator Cavanaugh's amendment to rule change 30. I think that what this gets to at the heart of it is ensuring that if we

modify the rules moving forward, they are permitted the normal process and procedure that a-- that a rule change should have. So, obviously, for those watching at home or who aren't paying attention, all of the rules that we are currently debating on the floor went through the process and procedure that is dictated by our Unicameral rule book, which means that they have to, within a certain amount of days after being introduced, go to a public hearing. That public hearing is one where people can come and they can testify about a bill-- or I'm sorry, a rule change. They can talk about whether it's good, whether it's bad. And you can have the introducer of that bill talk about-- I'm sorry, rule change-- talk about why they want to modify that rule. So the benefit of that is that it allows for this opportunity of public comment. I know a lot of people are at home right now or on the Internet watching this debate, because the public cares greatly about the rules with which our Legislature conducts itself. Last year, when we took a vote to suspend the rules and then modify the rules moving forward, one of the biggest rules that we-- that we suspended was this requirement for a public hearing. So as I've already talked about ad nauseam, generally speaking, when you suspend the rules, it's intended to be a finite and limited-in-scope suspension. So the rule suspension normally is we're suspending the rules right now in this moment in order to do a thing. And the problem with what we did last year is we suspended the rules and then we modified the rules for the remainder of the session. And that completely circumvents the entire point of having a Rules Committee, of having a public hearing, of having debate, because what it ultimately allows is input from the public and, frankly, input from other senators who are or aren't going to be affected by that rule change. And so I think what Senator John Cavanaugh's amendment is getting to here is it prohibits you from suspending the rules at one point in time to then immediately modify the ongoing rules that are going to be utilized in the Legislature. And I think that's a good thing. Rule changes should be short in nature. I'm sorry-- rule suspensions should be short in nature, they should be, again, limited to a specific purpose. And we should not be able, as a Legislature, to suspend the rules in order to immediately modify the rules dictating how we're going to conduct ourselves through the remainder of a session. That's not at all what we're intended to do, that's not what I think our rule book contemplates. I think the very existence of a Rules Committee lends itself towards the idea that these should be things that are thought about and processed deliberately and have debate on. And so I think this amendment is (a) substantive. This is not at all a frivolous amendment or intended to sink this; (b), I think it speaks towards the heart of proposed rule change 30, which is to say what we did last year in that one vote to

do all of that was somewhat problematic. And then, (c), I think it's a-- it's a simple and clear solution to ensuring that there is continued public input on rule changes, and that we have time as a body to consider them and actually debate them. So the amendment that Senator John Cavanaugh has proposed goes hand in hand with proposed rule change 30. I don't think it modifies it or circumvents it, beyond what its original intent was, which is to ensure a deliberate process and procedure for dictating our rules moving forward. So, colleagues, I would encourage you to vote for John Cavanaugh's amendment to rule change 30, and I look forward to having at least a little bit of discussion about this, because I do think this is something we should talk about as a body. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I, I just wanted to acknowledge that Senator Wayne got me to do something that I did not think I was going to do this week, which is to vote for a rules change, because I have stood pretty ardently in opposition to rules changes of any stripe this year. But even further, Senator Wayne got Senator Erdman and myself to vote for the same thing in the same way. So kudos to you, Senator Wayne. I did get some text messages about the, the vote board and how interesting it was. And one of the things that I would note about the votes on there, all of the people that voted for that change, I think you could go to each and every one of them and they would tell you that the departments have come in opposition to something that they should have come in neutral or in support if you're-- I'm looking at Senator Riepe, if we're talking about Medicaid. Sometimes they've come in support when others would prefer that they came in neutral. But I do think that it is important for us to hear from state agencies and to hear how legislation works or doesn't work. I think that's a really important cornerstone to good, strong public policy, but they should not be supporting or opposing legislation. I recall my bill, LB376, that the HHS Committee, when Speaker Arch was the Chair, prioritized. And then I reprioritized it the following year. It was a family support waiver. And initially the agency came in opposition. And that was very problematic because the committee, clearly it was a committee priority, was full-throated behind the legislation, but it did have technical problems. And we were able to work behind closed doors in meetings to talk through that and create an amendment that addressed those technical problems. But that's the role of the agency, is to come in and tell us, hey, this is your idea. Whether you do it or you don't do it, these are the changes that we need to see in order for this to function. And it is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

problematic. It does politicize legislation when the executive branch comes in support or opposition to legislation. It really puts the thumb on the scale from the executive branch in one direction or the other. And I use that specific term, thumb on the scale, because that is something that the Governor, Governor Pillen actually said to me once. That he does not want to be putting his thumb on the scale in this body. And so that's another reason that I think it is important that we have that rule amendment. So I appreciate Senator Wayne bringing it. I appreciate those who voted for it. I love the fact that Senator Erdman and I both voted for it, because it's always fun when we're on the same side of things, and it really throws people off their balance when we are. But, yeah, I just think that it's not appropriate for agencies to come in support or in opposition. And it is helpful for everyone when you come in neutral and tell us how to improve the legislation that we are trying to enact. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. I just wanted to point out that that vote that we just took was pretty interesting, and I think should indicate the sort of flavor of this body. Because there were quite a few of us, perhaps, who would have voted for that, had that had a hearing, which suggests that this body is pretty strongly against people coming in and speaking from the executive branch in a positive proponent or negative opponent position. The one place where maybe that's an exception is in the Appropriations Committee. Senator Clements pointed out to me that in the Appropriations Committee, when agencies are coming to make their agency requests for budget appropriations, they have to be in favor of their, their own request for a budget appropriation. So that might be an exception to the rule about whether or not an agency can come in a neutral or proposed or opponent-- proponent or opponent position. So I just wanted to point that out. And that's it. Thank you, Mr. President.

KELLY: Thank you, Senator DeBoer. Senator Wayne, you're recognized to speak.

WAYNE: Will Senator John Cavanaugh yield to a question?

KELLY: Senator Cavanaugh, will you yield to a question?

J. CAVANAUGH: Yes.

WAYNE: What does this amendment do?

J. CAVANAUGH: Oh, thank you for asking. So this amendment would amend your proposed rule, just adding the language after your last underlined. And so it would include, "A motion to suspend the rules shall not be permitted to adopt an amendment to the permanent rules." So it would essentially say that you can't do what we're doing right now by a suspension of the rules. Which I guess I should point out I said kind of like we did last year, which is not true, because last year was maybe not technically a, a-- an amendment to the permanent rules, because it was a temporary amendment. So it wouldn't allow-- it would require that you go through the process of having a hearing and notice and then having the committee kick it out and debating it on the floor like we're doing now for an-- for an amendment to the rules. Does that answer your question?

WAYNE: Thank you. Thank you. And, colleagues, who was-- with all you guys were watching the board and saw that bipartisan effort fail, I just want to say, welcome to the Legislature. That sometimes bipartisan ideas fall. I mean, when you get Senator Brewer and I on the-- on the same team, usually we're pretty successful. So we'll take a run in his committee at the bill that I introduced to make sure that committees-- or agencies can't testify in the positive or negative. I don't know how I really feel about the motion or the amendment, so I'll let you guys read it and decide. I, I support it, I guess. I don't know what-- I heard what he's trying to do, and we'll go from there. And it's 4:37 and I am going to go coach my daughter at 6:00. So we will be done here shortly. Thank you.

KELLY: Thank you, Senator Wayne. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good evening, colleagues. I rise in support of Senator John Cavanaugh's amendment and in support of Senator Wayne's proposed rule changes to our permanent rules. Just a few points of clarification. And perhaps it's a distinction without a difference, but in regards to the situation that we are concerned about, that we're trying to lift as a learning opportunity together to ensure that it is not repeated this session and moving forward, was this very grave decision by the majority to change the rules in the middle of the session without a public hearing. And that was masquerading as a suspension rather than an amendment, which it was. I-- again, it may be a distinction without a difference, but it was not a temporary change. It was a change to the permanent rules. It was, however, time-limited by the plain language of the suspension and

the rules changes beyond the typical one day for the remainder of the 2023 session. And, colleagues, this is something, again, that I'm thinking very deeply about. I, I think that moment last session was perhaps the most dangerous moment in the 2023 legislative session. Not to overstate it, but, but it was. Because it flew in the face of our rules. It flew in the face of transparency. It flew in the face of citizen engagement. It was unprecedented and, and I think it, it was very concerning that that happened. And I appreciate when frustrations come to bear, strange things can happen. But that's, that's exactly, that's precisely why we have rules in place. So that everyone is operating from the same standard, from the same set of rules, so that we aren't making poor, arbitrary decisions or arbitrary decisions in the heat of the moment because we're frustrated. Right? And so that's why rules matter. That's why parliamentary procedure matters. It helps us to have an orderly process to deliberate on really tough issues. And to sort through big personalities, to sort through challenging political dynamics. By having a system in place that applies equally to each member, we all have an awareness about how the process is going to play out. We are all familiar with how that is supposed to play out, and we should apply that process uniformly, regardless of individual personality or politics. And, and that's why I was so deeply concerned with how that was carried out last year. Colleagues, I'll tell you it, it also is a, a chilling precedent in terms of how I've been trying to approach the rules debate this very session. In trying to think through pragmatically what we have before us. Senator Erdman, Speaker Arch, to his credit, have put forward their ideas, have subjected them to public hearing, have stress-tested them through our process, and then have advanced certain measures for full deliberation by the body, have amended some, have decided perhaps not to send some forward. That, that's the appropriate way to do it, even if we don't like the outcome, those of us in the minority position or otherwise, and whether that minority position is progressive or rural or what have you, that's the way to do it. So that we have a uniform process with active engagement.

KELLY: One minute.

CONRAD: Thank you, Mr. President. And I'm deeply, deeply concerned that if we don't honor this orderly process, as we have thus far-- and I'm pleased at the tone and the tenor and the results of the debate thus far that everyone's been seriously engaging in. I worry about, if we don't have this debate, what's going to happen with repetition of that grave precedent. When, at what point, when the stakes get high and tempers get hot, will we see a suspension without a public hearing that seeks to change the rules in the middle of the game? That's what

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

we need to come together to guard against. That's the point of parliamentary procedure and our rules: to ensure even application, regardless of the contentiousness of the issue or the personalities involved. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Seeing no one else in the queue, Senator John Cavanaugh, you're recognized to close on the amendment.

J. CAVANAUGH: Thank you, Mr. President. Thank you, colleagues, for engaging in the conversation. I should just get up here and say what she said. But Senator Conrad just made all the great points in a much more eloquent way than I have about this. So I would ask for your green vote on my amendment to Senator Wayne's amendment. You know, like I, I was saying and like Senator Conrad said better, that having a structured way to change the rules is a bit more burdensome than just going through and suspending the rules to amend the rules. But saying going through the process clearly works. We're doing it. We're having a great conversation. We're fixing, we're making improvements, we're solving problems. The rule that was, you know, suspended last year and amended is amended in a different way this year that is more workable because of the committee process, because of this conversation, because of the way that it's been engaged with. And it will now be part of the rules going forward, or I guess already is part of the rules. But because it went through the right process and the right steps, it is a more useful rule. More workable for this body. So I would encourage your green vote on my amendment to Senator Wayne's amendment and your green vote on Senator Wayne's amendment. And thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Members, the question is the adoption of the amendment, John Cavanaugh's, to rule change proposal 30. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 12 ayes, 30 nays on the adoption of the amendment.

KELLY: The amendment is not adopted. Mr. Clerk, with other motions.

CLERK: I have nothing further on the rule change, Mr. President.

KELLY: The question is the adoption of proposed-- excuse me. Senator Wayne, you're recognized to close.

WAYNE: Thank you, Mr. President. Colleagues, this will be really quick. It's just to make sure that when we vote on a rule change, we have separate votes so people know exactly what they're voting on. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

it's really that simple. I appreciate the work that Senator Erdman and his committee has done to helping these rules get better. And I'd ask for a green vote on the underlining motion. Thank you.

KELLY: Thank you, Senator Wayne. The question is the adoption of proposed rule change 30. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 38 ayes, 2 nays, Mr. President, on adoption of the rule change.

KELLY: The rule change is adopted. Mr. Clerk, for items and new bills.

CLERK: Mr. President, new bills: LB1279, introduced by Senator Halloran. It's a bill for an act relating to revenue and taxation; amends Section 77-2716; provides an income tax adjustment for unrealized capital gains; repeals the original section. LB1280, introduced by Senator McDonnell. It's a bill for an act relating to public assistance; amends Section 68-1206; provides for eligibility for childcare assistance to qualified apprentices and semiconductor workers; harmonize provisions; repeals the original section. LB1281, introduced by Senator McDonnell. It's a bill for an act relating to the Nebraska Juvenile Code; amends Section 43-255; changes provision relating to when a juvenile detained or placed in an alternative to detention must be released; and repeals the original section. LB1282, introduced by Senator McDonnell. It's a bill for an act relating to juveniles; amends Section 83-4,125; provides for youth renewal centers for high-risk youth; defines and redefines terms; and repeals the original section. LB1283, introduced by Senator Arch. It's a bill for an act relating to the Medicine and Surgery Practice Act; amends Sections 38-2044 and 38-2045; corrects the name of a commission; and repeals the original section. LB1284, introduced by Senator Walz. It's a bill for an act relating to computer science and technology-- the Computer Science and Technology Act-- Technology Education Act; amends Section 79-3301; requires the State Department of Education to establish a statewide computer science education expansion program, provide training in computer science technology education as prescribed; provides powers and duties to the State Board of Education and the State Department of Education; states intent regarding appropriations; harmonize provisions; and repeals the original section. LB1285, introduced by Senator Walz. It's a bill for an act relating to labor; creates the Task Force on Supported Employment. LB1286, introduced by Senator Walz. It's a bill for act relating to the Legislature; amends Section 50-419; provide duty-- provides duties for the Legislative Fiscal Analyst; and repeals the original section. LB1287, introduced by Senator Ballard. It's a bill for an act relating

to appropriations; appropriates the feder-- appropriates federal funds to the Department of Environment and Energy. LB1288, introduced by Senator Raybould. It's a bill for an act relating to civil commitment; amends Sections 71-901, 71-902, 71-903, 71-910, 71-912, 71-919, 71-920, 71-926, 71-929, 71-936, 71-937, 71-939, 71-958, 71-961, 71-1201, 71-1203, 71-1204, 71-1206, 71-1210, 71-1213, 71-1220, 71-1221, and 71-1223, as well as Sections 83-338 and 83-364; provides for recognition of tribal mental health and dangerous sex offender commitment orders as prescribed; provides for tribal law enforcement officers to take a subject into emergency protective custody; provides for transportation of and commitment of persons committed under tribal law and for the payment of related costs; defines and redefines terms; harmonizes pro-- provisions; and repeals the original section. LB1289, introduced by Senator Bostar. It's a bill for an act relating to appropriations; amends Section 84-612; states legislative intent to appropriate funds to the Adjutant General; provides for a transfer from the Cash Reserve Fund; repeals the original section; and declares an emergency. LB1290, introduced by Senator DeBoer. It's a bill for act relating to public health and welfare; amends Section 30-3801; provides requirements for special needs trusts as prescribed; and repeals the original section. LB1291, introduced by Senator Conrad. It's a bill for an act relating to education; amends Section 79-10,141; provides legislative intent regarding Summer Electronic Benefits Transfer Program; requires State Department of Education to administer a program to provide electronic benefit transfer funds to eligible youth in the summer as prescribed; and repeals the original section. LB1292, introduced by Senator Conrad. It's a bill for an act relating to the Administrative Procedure Act; amends Section 84-911; changes provisions relating to actions for declaratory judgment; repeals the original section. LB1293, introduced by Senator Conrad. It's a bill for an act relating to government; amends Sections 43-4317, 47-904 and Sections 50-401.01, 81-8,241, 81-8,242, 81-8,243, 81-8,244, 81-8,245; states legislative findings and declarations; changes provisions relating to the appointment and terms of the Inspector General of Child Welfare and the Inspector General of Nebraska Correctional System, and the Public Counsel; provides for duties and powers for the Executive Board of the Legislative Council; provides subpoena powers as prescribed; changes powers of the Public Counsel; harmonize provisions; repeals the original section. LB1294, introduced by Senator Bostar. It's a bill for an act relating to data privacy; amends Sections 71-605.02 and 71-616, as well as Sections 84-712.05, 71-612; adopts the Data Privacy Act; changes provisions relating to preservation and use of certain certificates and information relating to vital records; provides for certain records to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

be exempt from public disclosure; provides an operative date; provides severability; and repeals the original section. LB1295, introduced by Senator von Gillern. It's a bill for an act relating to revenue and taxation; amends Section 77-5601; adopts the Financial Institution Data Match Act; harmonize provisions; repeals the original section. LB1296, introduced by Senator Hughes. It's a bill for an act relating to tobacco; amends Sections 28-1422, 28-1429 and 59-1523, as well as Sections 28-1418.01 and 28-1425, and Section 77-4001; defines and redefines terms; prohibits certain conduct relating to controlled substances and counterfeit substances; prohibits delivery and sales of electronic nicotine delivery systems; changes provisions relating to licensure for sales of tobacco products; provides for revocation of license for certain violations; provides requirements for manufacturers and licensees under the Tobacco Products Tax Act; creates a directory of electronic nicotine delivery system manufacturers; provides powers and duties for the Tax Commissioner and Attorney General; provides penalties; harmonize provisions; repeals the original section. LB1297, introduced by Senator Lippincott. It's a bill for an act relating to elections; amends Section 32-1041; provides for voting procedure secrecy and transparency of the counting process as prescribed; and repeals the original section. LB1298, introduced by Senator Lippincott. It's a bill for an act relating to the Motor Vehicle License-- Operator's License Act; amends Section 60-4,112 and Section 60-462; provides for the issuance of veteran, honorary, and distinctive licenses; harmonize provisions; and repeals the original section. LB1299, introduced by Senator Hughes. It's a bill for an act relating to the Tobacco Products Tax Act; amends Section 77-4008; changes the tax rate on sales of electronic nicotine delivery systems; and repeals the original section.

KELLY: Speaker Arch, you're recognized for an announcement.

ARCH: Colleagues, I have had, had a request from two senators. There's, there is a bill that is time-critical to be introduced today. It is on its way down from Bill Drafters right now. If we could just stand at ease for a few minutes before adjournment, that will be the last item. But we'll-- we will-- we'll give this a few more minutes here. Thank you.

[EASE]

KELLY: Mr. Clerk, for new bills.

CLERK: LB1300, introduced by Senator Bostar at the request of the Governor. It's a bill for an act relating to government; adopts the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 16, 2024

Pacific Conflict Stress Test Act and the Foreign Adversary Contracting Prohibition Act; provides severability; and declares an emergency. LB1301, introduced by Senator DeKay at the request of the Governor. It's a bill for an act relating to real property; amends Sections 4-107, 25-1081, 30-2312, 76-402, 76-405, 76-406, 76-407, 76-413, 76-414, 81-201, and 81-205; adopts the Foreign-owned Real Estate National Security Act; changes provisions relating to nonresident aliens taking property by succession or testamentary dispositions; changes provisions relating to foreign ownership of real property; provides duties for the Department of Agriculture and the Attorney General; harmonize provisions; provides operative dates; provides severability; repeals the original section; outright repeals Sections 76-403, 76-404, 76-408, 76-409, 76-410, 76-411, 76-412, and 76-415. New LR, LR280CA, introduced by Senator Wayne. Constitutional amendment to remove the Attorney General and Secretary of State from the Board of Pardons. Additionally, new LR, LR281CA from Senator Erdman. Constitutional amendment to provide for regular sessions of the Legislature to occur only bien-- biennially in odd-numbered years, beginning in 2027. Name adds: Senator Dungan to LB16; Senator Blood, LB31 and LB680; Senator McKinney, LB825; Hughes, LB856; Fredrickson, LB864; Jacobson, Kauth, Bostelman, Albrecht, Brewer to LB872; Blood to LB923, LB928, LB932, LB941, and LB961; Senator Day, name added to LB965; Senator Raybould, LB984; Senator Blood to LB1007, LB1037, and LB1040; Senator Ballard, LB1061; Lippincott, LB1101; Blood, LB1106 and LB1107; Dover, LB1108; McDonnell, LB1125; Blood, LB1126; von Gillern, LB1132; Jacobson and McDonnell, LB1133; Blood, LB1172; Hughes, LB1178; McDonnell, LB1212; Meyer, LR31. Notice that the Health and Human Services Committee will have an Executive Session under the south balcony tomorrow morning at 10:30 a.m. Health and Human Services under the south balcony at 10:30 a.m. Finally, Mr. President a priority motion. Senator John Cavanaugh would move to adjourn the body until Wednesday, January 17 at 9:00 a.m.

KELLY: The question is, shall the Legislature adjourn for the day? All those in favor say aye. Those opposed, nay. We are adjourned.