

JANUARY 10, 2001

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FLOOR DEBATE

January 10, 2001 LB 443-447

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good morning and welcome to the George W. Norris Legislative Chamber for the sixth day of the Ninety-Seventh Legislature, First Session. Our prayer this morning will be by Senator Roger Wehrbein.

SENATOR WEHRBEIN: (Prayer offered.)

PRESIDENT MAURSTAD: Thank you, Senator Wehrbein. Members, would you please record your presence.

CLERK: Mr. President, I have a quorum present.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Are there any corrections?

CLERK: I have no corrections, Mr. President.

PRESIDENT MAURSTAD: Any messages, reports or announcements?

CLERK: Mr. President, a series of Reference report referring LB 224 through LB 305; also a series of gubernatorial appointees to refer to appropriate Standing Committee for confirmation hearings; and a couple of re-referrals, Mr. President.

I have a hearing notice from Revenue Committee signed by Senator Wickersham, as Chair; an announcement that Senator Vrtiska has been selected as Chair of the Building Maintenance Committee, Mr. President; Senator Redfield has been chosen as Vice Chair of the Urban Affairs Committee. And that's all that I have at this time, Mr. President. (Legislative Journal pages 211-217.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Members, we will continue with bill introduction.

CLERK: Mr. President, new bills. (Read LB 443-447 by title for the first time.) That's all the bills I have right now, Governor. (Legislative Journal pages 217-218.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Mr. Clerk.

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CLERK: Mr. President, before the Legislature proceeds with its business this morning, Retirement Systems will meet underneath the south balcony at 10:30; Retirement, south balcony at 10:30.

Mr. President, LR 7 introduced by Senator Coordsen and others. I do have unanimous consent by Senator Robak to add her name as cointroducer. Mr. President, the resolution, introduced by several members, establishes and calls for certain criteria to be adopted for the 2001 redistricting process. The resolution, as introduced, is found on page 162 of the Legislative Journal. (Legislative Journal page 218.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Coordsen, you're recognized to open.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. I think, for the benefit of all of us, as a refresher I'll very briefly go through a history of how we got to this morning. Two years ago, the Executive Board recognized that this would be the year when we would be required to redraw the lines, as a result of the national census, for all of those districts in the state of Nebraska that are divided by population. To accomplish that, the Executive Board, in last...the budget of two years ago, for that biennium, appropriated a sum of money both to buy the hardware and the software, to employ and to train individuals in the arts and skills necessary to redraw all of the district lines--legislative, congressional, Supreme Court, Board of Education, Board of Regents, and someone that I've forgotten, but it will come to me a little bit later--according to, first of all, federal law, federal constitutional requirements; secondly would be the, which is a primary guide, our federal court decisions over time as to what can be done and what can't be done; then third is requirements put in place under that umbrella by the state Supreme Court; and, finally, if there's any room left, the complying with whatever the requirements of state law might be. The Executive Board last session created a task force to put in place the machinery and recommend policy ways of complying with all of the restrictions that were in. For your information, last year the task or the last session,

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pardon me, the task force consisted of Senator Lynch, Brashear, Chambers, Schimek, Beutler, Hudkins, Bromm, Kristensen, and Coordsen. Then in the year 2000, after the session adjourned, the committee began to meet to do two things. One was to make recommendations for the administrative side, how was this going to be done, not what was going to be done, but how was it going to be done. And secondly, the substantive side of the issue which, in fact, are the policies under which the redistricting process would be carried out and to recommend those, both the administrative guidelines and the substantive guidelines to the Legislature. We divided into two subcommittees and had a number of meetings on both sides of that issue. The administrative guidelines culminated in the recommended rules change that we adopted yesterday that formed the nucleus for a Redistricting Committee, that is three members from each of the congressional districts balanced for political representation and provided for the method of determining who would be Chair and Vice Chair. This morning then, and if you would follow along in your Journal or if you happen to have a copy of it, we will go to the substantive guidelines as recommended to this body by last year's or the last session's task force. And I'm going to move through them rather quickly because, as I read in the paper, I talk quite slowly so I'm going to have to speed this up just a little bit to get through it all. First of all, the Legislature created a Redistricting Advisory Task Force, which I went through. We adopted substantive guidelines for consideration by the Legislature and then we'll go into the substantive guidelines at this point. At the bottom of page 1 says: In the event that two sets of population data, adjusted and unadjusted, are released by the Census Bureau, we recommend that the data determined by the Census Bureau to most accurately reflect the number of persons residing in this state will be used. Whether that is actual count or whether that is another set of figures that the Census Bureau feels is more accurate, we will use whichever is recommended to us as the most accurate. All of the district boundaries that we establish during this session of the Legislature shall be based on census geography. What we're doing today, what we'll be doing this year is the third phase of the redistricting process. The Legislative Research Division has been working in cooperation with the federal government Bureau of Census for several years in establishing a number of

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baseline criteria including the census blocks and the alignment of census blocks with precincts or within precincts across the state of Nebraska. So when we got the figures, we would have population figures that would be usable for us in accurately dividing the state into those districts that need to be. Then we're recommending that the districts shall follow county lines wherever practicable and shall define districts that are compact, contiguous as these terms are articulated by the United States Supreme Court. But since this is a state policy, these requirements may be waived to the extent necessary to bring the plan or any aspect of the plan into compliance with the federal principles. What this follows is the Madison County case which was decided by the state Supreme Court in about 1991 or 1992 where the state Supreme Court held that whenever a county fell within the guidelines to be a legislative district that county should be a legislative district and not divided into several districts. So that's essentially what that follows. The other thing is that it allows for individuals to more readily ascertain what Supreme Court district, what congressional district, what legislative district they fall in if the district boundaries follow recognizable political or geographic lines. And the resolution goes on to expand on that. The boundary shall define districts that are easily identifiable and understandable to voters and that preserve the cores of prior districts when feasible, when feasible. District boundaries shall coincide with the boundaries of cities and villages in addition to the provision for counties, if that's practical. District boundaries shall not be established with the intention of favoring any group, political party or otherwise. No consideration shall be given in drawing boundaries to political affiliations. Any...and a lot of this is stuff that we have to adopt to meet federal court decisions that have evolved over time. District boundaries which would result in unlawful dilution of voting strength of any minority population. General goal, and this is going to be something that I think there are going to be some discussion on to establish, the general goal of the redistricting process shall be the creation of districts that are substantially equal in population, again established language. The specific criteria will be spelled out in guideline 9. Now we have the meat of the issue is how shall the members of the House be...how shall the districts for our three

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members of the House be withdrawn and then how shall the legislative districts and others following that be withdrawn. The U.S. House requirements that are in here follow the federal requirements for the creation of House districts. Most importantly, the overall range of deviation, that's the difference in population between the largest populated congressional district and the smallest populated congressional district, may not exceed one percent or a relative deviation plus or minus zero, half of one percent from zero. So for all practical purposes, the burden on us for congressional districts is to draw lines that are as close to being exactly perfect as what it's possible to do within the census block...

PRESIDENT MAURSTAD: One minute.

SENATOR COORDSEN: ...information that we have. And then it goes on in the Legislature the requirements are almost the same except states for districts other than congressional districts are allowed a little more latitude for rational state policy. We will establish single member districts, 49, nearly as equal in population as possible. The overall range of deviation, and this again is...comes out of federal court cases, will be the overall range of deviation will be no more than ten percent, that is, no district shall be...differ more than another district by more than ten percent. To achieve that, and this is a state...this is a proposal that's not federal, but is carried in our proposal is that to achieve no less...no greater than ten percent that no district shall be drawn with an excess of plus or minus...

PRESIDENT MAURSTAD: Time.

SENATOR COORDSEN: ...five percent from zero. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Coordsen. For discussion of LR 7, Senator Bromm.

SENATOR BROMM: Thank you, Mr. President and fellow colleagues. A very, very quick point of, I won't call this personal privilege, I'll only take a few seconds. But I want to thank

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you all for your expressions of concern. My wife is doing well following the surgery yesterday and things are looking very positive, so I just want to thank you for all the comments and questions and notes so I appreciate that. I want to follow up on what Senator Coordsen has described in his opening a little bit. I want to just talk for a moment especially for the senators who weren't here the last couple of years about the process and the steps that have been taken to arrive at where we are today. And I might say that I am very...I'm very comfortable and very pleased with the process and the steps that have been taken up to this point. And I think we have in place, in what Senator Coordsen has described, a very good road map for us to follow this session as we do the...probably one of the most difficult tasks that we will undertake during our careers here in the Legislature, and that is to not only draw those district boundary lines for everyone else that's affected but also for ourselves. And that makes it especially sensitive for each of you. Last year I had a bill which set out a good share of the administrative and substantive guidelines that I felt the Legislature should start to talk about. Through the session and through discussions with many of the senators, I became convinced that it wasn't the best idea to embody that in a bill, but rather to pass a resolution of intent last spring which confirmed the establishment of the task force, reconfirmed that which the Executive Board had undertaken during the last session. We passed a resolution last session without any dissenting votes and the task force worked on procedure, primarily administrative guidelines and then the substantive guidelines that Senator Coordsen has described to you today that are embodied in this LR 7. I think we had a good representation of our entire body on that task force that worked on that this summer. We had a lot of good work done by not only the Research Office but the new people in the Research Office that are going to be actually physically working on drawing the maps. And I am going to tell you that I think if we stick with a couple ideas in mind we'll get through this in as good a shape as possible. Number one, we're going to keep this process open to all of the members so that each of us have a chance for our ideas and our input; and that will happen under the process that Senator Coordsen has described. There will even be in the...attached to the Research Office there will be a couple of computers that

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will allow you or your staff, once we have the census data, to go in and actually work on segments of the map or the map itself which gives you an excellent opportunity to see what can be done if you have ideas in that respect. Secondly, this is not in this resolution, but one of the things that I have been very, very adamant about and my colleagues have been...through the task force have been supportive and that is once we get...

PRESIDENT MAURSTAD: One minute.

SENATOR BROMM: ...a map developed later this session we will have a public hearing in each of the three congressional districts. Now that won't be easy time wise, but I think it's terribly important because that will bring an opportunity, if they wish, for the public to try to understand the rationale for the proposed map or maps and also to make their comments after which we will take final action here in the Legislature. So I want to thank Senator Coordsen and Executive Board and the rest of the leadership in the Legislature and the people on that task force for, I think, doing a conscientious and a very good job of getting us thinking about the principles before we actually have the numbers in front of us. If we approve these principles, it will be easier for us then to digest and deal with the numbers so...

PRESIDENT MAURSTAD: Time.

SENATOR BROMM: ...thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Further debate, Senator Kristensen.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. Senator Coordsen and Senator Bromm have certainly gone through the resolution and in terms of some of the specific things that are in there and why they're there; and I'm sure that we'll get a chance to do that. I want to give you an overview. We are far ahead of where we were ten years ago. Ten years ago we started off with everybody looking at each other with sort of a, well, I can't say an eye of suspicion, but certainly uncertainty that said, well, I don't know what's going

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to happen. We don't know what those numbers are. You know, last time we didn't have to lose a district from rural Nebraska, but this time we probably are and we waited and we waited and we waited and we waited and we waited and we got down to the end and there was a huge crunch. Now...and there was a lot of things that occurred that just happened naturally, and one of them is you just didn't get the numbers very early. It just mechanically isn't going to happen and we worked in short time frames, and we tried to follow what we thought a normal bill would be. This time we've started a year earlier. You had a resolution last year where people began to think about it. You had staff that began to think about it. You had a process that you began to follow. We are much further ahead of the process than we were ten years ago. Does it mean that the decisions we're going to have to make are going to get any easier? No, not at all. There's going to be some really very difficult decisions to make. And that doesn't mean that somebody is not going to have hard feelings and hurt feelings out of this because the reality is that there's going to be a district that's going to move. I don't know who that's going to be. And if anybody tells you on the floor that they do know who it's going to be, they're wrong. They don't know. No one knows. But what's important is the process and how we get to make that decision. That's what this resolution, that's what those rules that you did yesterday did was create a process that's not going to make the ultimate decision easier, but it's going to make you more comfortable in how you arrive at that decision. And so as we look at other states, I think we're ahead. I think we've got a process that's more open at this point in time. Anybody who looks at redistricting can say, well, you know, as a layperson who is not in the Legislature, I don't know how you do this. We'll have our critics that are going to, no matter what we do or how we do it, are going to be critical of the Legislature. Those people are always out there so I don't worry about them. I worry about the average citizen that says is this process going to be a fair one and is the best interest of the state going to be served? And the best interest of the state is going to be some of these very policies that are in this resolution. There are some court cases that are out there that talk about what things do we look at, preserving cores, looking at areas of interest, trying to come up with ideal districts, trying to have

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county lines that are honored because that's what our constitution says. And I think that that's what this resolution gets at. Why are we doing it now? Because this is the part of the process that we're ahead on. We could wait until March to do this, but you don't gain anything; and actually you put yourself behind. Doing it now makes good sense because we're going to continue to stay ahead of the curve and begin to look at a process. This task force will be the ones who are going to sit here and look at are we ready to make the decision mechanically. We've got challenges with staff that are going to have to make sure that mechanically this gets done. We have challenges for...

PRESIDENT MAURSTAD: One minute.

SPEAKER KRISTENSEN: ...each one of you that how are you going to approach looking at these? You know, what factors are important? The other thing that I wanted to tell you is that historically there's been great disparities in districts. Not all that long ago in this state you had districts that had 100,000 people and another district that had less than 20,000 people and those lasted for numbers of years. Redistricting isn't something that's happened since the beginning of this state. In fact, in the early years it rarely happened. And that's the reason we had court cases not only in this state, we passed constitutional amendments to look at area representation not just based on people. We had court cases in the early sixties that brought us to the day that we're at today. So the message I want to bring to you is that all of these are good policy things that we need to discuss and look at today. If we want to avoid having tales and people think that that's a...

PRESIDENT MAURSTAD: Time.

SPEAKER KRISTENSEN: ...thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Speaker. Senator Coordsen, for the debate on LR 7.

SENATOR COORDSEN: Thank you, Mr. President and members of the body. Anyway, some day I'm going to take a class and learn to

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speaking faster. But for the rest of the districts in the resolution that we must cover, essentially the same guidelines that we have proposed for the legislative districts will be those that apply to the rest of them. The deviation would be the same, the trying...if it's possible within the population available to make those districts adhere to county or other geographic...county or other political lines and geographic lines to the extent that that's practical to do. Following along with Senator Bromm and the Speaker, this is a process that for those...most of the members of the body have never been through this process. It is the single-most intentionally political, political being the relationship one with another, not partisan politics, the single-most political thing that we'll ever do. There is I think very little more important to any member of this body than the configuration of their legislative district, how that in their mind reflects the general needs and communities of their area. Several years ago, ten years ago we started out with a rule something like that and then the majority of the body decided to reduce the deviation. And we ended up in not necessarily for that reason, but we did end up with a redistricting plan that was brought before the Supreme Court of the state of Nebraska. I don't hope...I hope that that will not happen. We have also made, I didn't get to the part about who the support people are. It was mentioned by both Senator Bromm and Senator Kristensen that is that last year we designated the Legislative Research Division as a support staff. They will provide all of the physical support as well as legal advice as to what's allowable under guidelines and those sorts of things. We have also provided in that area, in the Legislative Research physical space, I believe it's two workstations so that any member of this body and the staff of any member of this body can work up their own proposals for redistricting plans or, in fact, can receive plans from the outside, from some other group that's looked at the figures. You won't be able really to do that until we receive the census figures for the...what is called the census blocks, the actual count, whatever the count that's declared the best count for Nebraska. Then and only then will we be able, "we" being the body of the Legislature or individual members, be able to accurately assess what the various districts might look like. We have tried to...every effort that we could think of to keep

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this as open as we can, as available to the members of the Legislature, one and all, as we could. The deviation will probably be mentioned yet this morning. I would...I would suggest that our goal, aside from the...from what our resolution might establish, which is the maximum deviation, our goal should always be zero or as...

PRESIDENT MAURSTAD: One minute.

SENATOR COORDSEN: ...close to zero as what we can find in all drafting of districts, and we move from that only to achieve other state policies as outlined and enumerated in the...in the resolution. So I think we've probably covered what's in the resolution and a little bit more beside on the administrative side of the process that we didn't mention yesterday during the discussion of the rules. Thank you, Mr. President.

PRESIDENT MAURSTAD: Senator Coordsen. Mr. Clerk.

CLERK: Mr. President, Senator Schimek would move to amend the resolution. Senator, the first amendment I have is on page 3, Section 9(c), in the third line of that paragraph change ".5 percent" to ".2 percent". (FA1, Legislative Journal page 218.)

PRESIDENT MAURSTAD: Senator Schimek, you're recognized to open on your amendment to LR 7.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Before I begin, regarding this particular issue and this particular amendment, I would like to say that I have appreciated being involved in this process. I think Senator Coordsen and the members of the committee have done a fantastic job in coming up with the guidelines, both substantive and procedural, and I know I served on one of those subcommittees and we really had a chance to burrow down and discuss these provisions at length. But today I want to bring to your attention the one issue that I think needs further discussion and elaboration on by this body, and I want to make you aware of the fact that in 1991, ten years ago when we did redistricting, in fact, we did exactly what this particular amendment suggests and that is you have a standard deviation of plus or minus two

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percent. It is true that the courts are more lenient with legislative bodies and legislative redistricting than they are with congressional redistricting. They have almost a zero tolerance on congressional redistricting. Ten percent is kind of the...the top line of tolerance perhaps for legislative redistricting, although there have been exceptions to that. What I want to emphasize this morning to you is that what we're talking about here is the...the principle behind all of these deviation numbers and that is the principle of one person, one vote. That is why we even...even bother to do deviation numbers anyway. It used to be that you...that...that states just deviated all over the place. In Wyoming, for instance, I think at one time every county was a legislative district and it didn't matter how big your county was or how small your county was, and same thing down in Oklahoma. They had huge variances in their legislative districts. Well, the courts have said you can't do that; it's got to be closer to the one person, one vote principle, so that's why I am raising this issue today. Two percent is not...two percent, plus or minus, is a four percent total deviation and it is fairly flexible. It gives you quite a bit of wiggle room. For instance, if we had 34,000 people in every legislative district, that would be the ideal standard, then 2 percent, plus or minus, would allow us anywhere between 33,320 or 34,680, which is a difference, a deviation, of 1,360 people, which is...which is more than most of...or a lot of the towns in Nebraska. I mean you've got quite a bit of wiggle room with point plus or minus two percent. With the range of five percent you get into a larger bit of wiggle room and that is 3,400. So what I wanted to do today was to offer you an alternative and listen to the discussion. There is a second amendment that I have taken to the Clerk's desk which I think that you have on your desk right now and I will attempt to explain that later. But I think this is a serious...I think this is a serious matter that we need to be discussing. And I know that it gets into the whole business of districts losing population and populations swinging to another geographical part of the state, but my plea would be not only to consider the principle but consider what it's like in ten years in some districts. If you start out with a...with a wide margin in the first place, it gets even wider by the end of that ten years. So, in the case of this year, like with Senator Dwite Pedersen's

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district, he has about 66,000 people in his district, which last time around it was 32,212 was the standard number that we used. You can see that in some districts it just makes it worse to allow a large deviation. So, with that, I would be happy to try to answer questions and discuss this issue with you any further.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. For discussion of the Schimek amendment, Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. Senator Schimek, a question if I may please, very briefly.

PRESIDENT MAURSTAD: Senator Schimek, would you yield?

SENATOR SCHIMEK: Yes.

SENATOR COORDSEN: We started out with the amendment and then you begin to talk about legislative districts. This amendment, in fact, unless I'm reading...I have the wrong one in my hand, is that deviation that affects congressional districts. Would that be accurate?

SENATOR SCHIMEK: No, this would not affect congressional districts. It would only affect...

SENATOR COORDSEN: Well,...

SENATOR SCHIMEK: ...the districts that are aligned with legislative districts under the guidelines, and that would be like Public Service Commission, State Board of Education. Now I...that's my intention anyway, Senator Coordsen.

SENATOR COORDSEN: Oh, well, in that...

SENATOR SCHIMEK: Did I..

SENATOR COORDSEN: ...I read it, it says on page 3, Section 9(c), on the third line of that paragraph change one-half of one percent to two-tenths of one percent, and that section of the resolution only applies to the United States

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House of Representatives.

SENATOR SCHIMEK: Oh, you are absolutely right, Senator Coordsen, and that is not my intention...

SENATOR COORDSEN: Okay.

SENATOR SCHIMEK: ...at all and I will...

SENATOR COORDSEN: Do you want me to go on talking or...

SENATOR SCHIMEK: Yes, please. Thank you. (Laugh)

SENATOR COORDSEN: Okay. Thank you. Thank you, Senator Schimek. The truth of the matter is that Senator Schimek is dead right in that ten years ago the body of the Legislature started out, I believe, with both a ten percent overall deviation and a one percent in congressional districts. Ultimately, at some point in time thereafter, that was reduced to, I believe, three percent in congressional and...and what would essentially be four-tenths of one percent...or three percent in legislative overall deviation and four-tenths of one percent in the members of Congress. The result of that...result of that was an anomaly that, hopefully, we will not do this time. In urban areas we had such a narrow deviation in legislative districts that...that some districts had to go across a major division between communities and take in a half a block or a block to meet the narrow restrictions. It wasn't much of a problem in congressional districts, but in the rural parts of the Nebraska many counties had to be divided that ordinarily would have not had to have been divided had there been...had there been a little greater amount of deviation. I think there's one district in the state that has a village out of one county attached to a legislative district that has no other part of the county and that sort of thing. That's what too narrow of a deviation happened. On the general topic of deviation, let me make this point very, very, very clear. The goal is always zero. The goal is always one person, one vote. But within that goal the courts of the federal government have allowed states some deviation for rational state policies; maintaining compact, contiguous, recognizable districts; the one

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that I wasn't aware of till we began this process was to maintain the core of existing districts with reflection to congressional districts. The goal is always zero. I believe that if we do not avail ourselves of the deviation flexibility that's allowed without question by the federal courts, who have essentially been the writers of redistricting data, we're going to find ourselves again with situations where districts might not appear very logical...

PRESIDENT MAURSTAD: One minute.

SENATOR COORDSEN: Nor, in fact, reflect communities of interest and all those things that are important to the people we represent. This body will establish whatever deviation they wish. I would think we should allow ourselves the maximum flexibility but always, always, always with a goal of having exactly equal districts. We have the...the...there was an assumption, an anecdotal assumption, by the way, because I wasn't a first person ten years ago, that there was some districts deliberately drawn small and some deliberately drawn large with the presumption that some would grow and some would shrink, and that did not necessarily happen. I think we'll find that there are districts in urban areas, when we get the count, this is just a guess on my part, just a guess, that we'll find there are districts in some urban areas who have been reduced...

PRESIDENT MAURSTAD: Time.

SENATOR COORDSEN: ...in population and will grow in size. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Coordsen. Senator Schimek.

SENATOR SCHIMEK: Yes, Mr. Clerk, do we have a redraft or am I being asked to close on? What I would like to do, I would like to withdraw this particular amendment and substitute the next one then.

PRESIDENT MAURSTAD: Without objection, so ordered.

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CLERK: Mr. President, Senator Schimek would move to amend. On page 4 of the resolution, paragraph 9, under the...the paragraph entitled "Legislature", in the sixth line of that paragraph strike "5 percent", change "5 percent" to "2 percent". Is that...am I in sync with you, Senator? (FA3, Legislative Journal page 219.)

SENATOR SCHIMEK: That is correct, Mr. Clerk, but we probably also need to change the "10 percent" to "4 percent" right above that. And I apologize for the mistake. I think everybody knows what I'm trying to do.

PRESIDENT MAURSTAD: Senator Schimek, I'll recognize you to open on your amendment.

SENATOR SCHIMEK: Okay. The amendment is basically what I said it was before, except that I didn't clearly state that it would apply to the Legislature and to those entities that are listed below that in the legislative resolution, which would be the Nebraska Supreme Court, the Board of Regents, the Public Service Commission, and the State Board of Education. And what it would do is it would say that, instead of having a 10 percent overall deviation, you would have a 4 percent overall deviation and it would be in...it would not be in excess of plus or minus 2 percent. And I hope that I didn't confuse people when they looked at that under the U.S. House of Representatives. That was not what I was trying to impact. The U.S. House of Representatives, as well as the Senate, are both pretty much determined by the court's rulings that a zero percent deviation is what is allowable. So, with that, I would be happy to answer any further questions and thank you, Senator Coordsen, for putting me on the straight and narrow.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. Senator Beutler, on the new Schimek amendment.

SENATOR BEUTLER: Mr. President, members of the Legislature, I was on the Redistricting Committee and thought I would just pass on to you my thought process on this particular question. I started out very much from the position of Senator Schimek in terms of not seeing, under the principles that we had set forth,

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the likelihood that any district would be of a deviation of more or less than two percent, and tended to favor then a low deviation rate. Senator Coordsen and others then pointed out that, well, we don't know what the facts are yet so, even though that may well be the case that there would not be, under our principles, any great deviation, why should we prejudge the situation? Why shall we not take the maximum that the federal constitution allows and then work from that? And so I was persuaded by not putting on an artificial limitation and so I cannot support the Schimek amendment, but I support the philosophy that she describes, as I think I understand Senator Coordsen to also support that philosophy. We have laid out in the resolution the reasons why there might be some deviation. We have talked about the state constitutional requirement of county lines, and then we talk about districts that are compact and contiguous. We talk about districts that are understandable to voters, preserving core districts, the coinciding with the boundaries of cities and villages, not favoring political parties or prior elections. All of these are legitimate factors in the discussion, as far as I can see. I think that the way that the committee should operate once it's formulated, and hopefully the way that it will operate, is to start from the premise that Senator Coordsen described of zero deviation, that's what should happen for all our constituents, to be fair, and then proceed very skeptically with regard to the review of districts that may purport to be larger or smaller than that by any great degree. And I would think anything that was larger or smaller than two percent would come under some kind of strict scrutiny rule, that is that there would be a detailed looking at such situations by the committee to determine whether in fact the principles are being applied fairly and evenly across the board. And I would think that any deviation above that, that appeared regionally anywhere, whether it's in Omaha or in the countryside or in Lincoln, would be doubly suspect. So I...in the end, it's the judgment of people. I hope that the committee has constituted, I think that it will be, a broad cross-section of people. I think that judgment can be trusted, and I think we're all on the same page and, for that reason, I would support leaving the resolution the way it is and not put in an artificial limitation, although I hope in the end, whether it was two percent or...one way or another, or five percent one way

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or another wouldn't make any difference because, hopefully, none of them will be greater or lesser than the...than the two percent figure. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. Further discussion on the Schimek amendment? Senator Kristensen, followed by Senator Jones, Schimek, Coordsen, and Bromm.

SPEAKER KRISTENSEN: Thank you, Mr. President. Members of the Legislature, I understand the discussion here and I want to try to explain one point of view. That point is that the danger when you go to redistrict is that in order to try to accommodate people, particularly in western Nebraska, will be that you will count those districts lightly, in other words, try to get as few of numbers in all of those districts so it would lessen the impact of any move or shift. I mean, I think that's, quite frankly, what...what happens. The bottom line is that you can't count everybody light. You've got to come up with the total number of people in the state of Nebraska. And so, to a certain extent, I understand that fear, but on the other hand you also have to understand that at the end the answer is there's, what, 1.7 million people in this state and these districts have to add up to that number. So you can't have everybody on the light side, in other words, everybody five percent under the ideal district, and then come up with only 1.5 million people or whatever in the state. You've got to come up with the total number of people in the state and you have to work from that. So what the deviations are really talking about isn't a way to make things easier for people. It does allow flexibility. My point of view, however, is this. If I got any remarks last time about suspicion from people about what were you doing, it was because they would see a half-divided county, they would see a tail that would go up here, they would see a district that might go along a little different lines, they'd look like Senator Hudkins' district, they'd look like Senator Coordsen's district. You would find that there were lines that if I had a half an hour to sit down and explain it to people they'd go, oh, okay, I understand that. But I didn't have that half an hour and most people didn't bother to ask. It was easier to rely on, oh, that was some underhanded suspicion; that was some plan to do this or do that. That's nonsense. The reason was that we had a very

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tight percentage of deviation so, in order to try to live with that deviation, we would go over and take over two or three precincts so it would be more ideal. That was hard for people to understand and, for the people who distrust us, it just fed the fires. From my point of view, I like the larger deviation because it gives us more flexibility so we maybe can avoid some of those tails and some of those districts that go along a flatter line or that are narrow in some spots. But the bottom line is we still have to pay strict attention to there's still 1.7 million people we have to try to put together equally. And so, yes, in some districts you could go and use that maximum deviation, but if you do that in an entire area you're headed for serious trouble and we...we need to make sure we keep that in mind. That's a reason the five percent, I supported that earlier. I will support that, Senator Schimek, now for the flexibility, because in some areas I think we can avoid some odd-looking districts and still, quite frankly, we're going to come up and I think be able to resist those court challenges. But I understand the concern and I think the admonition to that task force is you can't...

PRESIDENT MAURSTAD: One minute.

SPEAKER KRISTENSEN: ...have a grand plan for an entire area to be light, and as an entire group of counties or entire group of districts you're going to have to match the population of the state. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Mr. Speaker. Senator Jones, on the Schimek amendment.

SENATOR JONES: Mr. President, members of the body, I think I have to agree with a lot of things that's been said already because I think we're...all the goal is to go to zero deviation and I think that's our goal, but I think we need to leave it at this five because I can give you a little example on my district last year. I had a little town by the...like Comstock, and my biggest county had one precinct out, one little village, trying to match that deviation so we would be in line. And not that, you know, that that's not right, but I think we want to try to follow our county lines if at all possible, but I still think

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that we need that extra percentage in there just to figure out if we have to have it. But I still say, it's like been said before, that we going to have to try to go to the zero, but we need that flexibility if we need it. So I don't think this is a time to go down to the two, and so I hope that everybody would leave it like it is. So thank you.

PRESIDENT MAURSTAD: Thank you, Senator Jones. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. I appreciate the discussion and I appreciate the fact that I think everybody is very sincere about what they are saying in the discussion. I guess I would like to say, in response to Senator Kristensen's remarks, that I guess you could have a deviation in every district practically if half of them deviated one way and the other half deviated the other way, I mean that's the way I understand it, as long as your total deviation didn't get to be over ten percent under the way it's written right now. And maybe there is...maybe there is a compromise here. I...what I do not want to happen, and I do appreciate what you're all saying about those districts having little bumps and "quiggles" in them and people not being able to be in a...maybe a community of interest or a county even. I think maybe there are some really good reasons occasionally for deviating, but I would say only occasionally. And...and, remember, the ten percent is somewhat of an artificial standard too. I mean four percent is no more artificial than ten percent is. It's just...it just is determined by what we think we will tolerate, I believe. I...Senator Beutler, I wanted to ask you a question, if you would.

PRESIDENT MAURSTAD: Senator Beutler, would you yield?

SENATOR SCHIMEK: Senator Beutler, would you consider, at least, an approach that would maybe tighten this up a little bit so that not every district...we just deviated all over the place so that we could maybe have a...a parameter around that so only...we only tolerated so much deviation, or do you think that would be a wise and sensible idea?

SENATOR BEUTLER: Senator, let me...let me preface my response

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by saying a couple things. First of all, as you know, we're going to have an all new committee...

SENATOR SCHIMEK: Right.

SENATOR BEUTLER: ...so the people who were on the old committee may well not be on the new committee, although...

SENATOR SCHIMEK: Correct.

SENATOR BEUTLER: ...I think that group worked well together, so I may not have anything to say about it at all. But...

SENATOR SCHIMEK: Well,...

SENATOR BEUTLER: ...but to the...

SENATOR SCHIMEK: ...ultimately, we all do, because we adopt this particular...

SENATOR BEUTLER: Yes.

SENATOR SCHIMEK: ...resolution.

SENATOR BEUTLER: In that sense, yes.

SENATOR SCHIMEK: Okay.

SENATOR BEUTLER: But certainly if I were involved in the organizing process it would make sense to me to direct whatever groupings we looked at in the first place as far as legislative redistricting is concerned. I mean ten years ago and twenty years ago basically what happened is we...we said, Lincoln, you organize your area, Omaha, you organize your area, eastern Nebraska, organize yours, western Nebraska, organize yours, and then we kind of fit them together at the corners. Now, if that's the kind of process that this committee, in its formative stage, is...sets forth, then I would think within each one of those groups you would...you would not be coming back with an unbalanced configuration, that is, with...

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PRESIDENT MAURSTAD: One minute.

SENATOR BEUTLER: ...with all your districts below or all your districts above; that there ought to be balance within those...within those situations. Is that what you're asking? I'm not sure, I'm not absolutely clear what your question is.

SENATOR SCHIMEK: Yes, that is what I'm asking. And because we sometimes do break down into groups like that nobody, of course, really knows what the impact is going to be statewide and in the other districts. But what I don't want to do is encourage us to think that we should deviate or we can; that...that what we should be encouraged to do is come as close to zero percent as we can, and...and, you know, I...I don't know how to emphasize it any better than that. But if we don't have any language in here that says anything but that we can deviate plus or minus two percent, I'm afraid that...or five percent, I mean, I'm afraid that that's what will happen in each of these districts maybe.

PRESIDENT MAURSTAD: Time. Thank you, Senator Schimek. Senator Coordsen.

SENATOR COORDSEN: Thank you. Thank you, Mr. Speaker and members of the body. It's sort of interesting listening to the discussion because it's sort of like listening to a choir with different voices. We're all saying about the same thing in different ways. Again, the goal is zero. The ten percent, by the way, as I understand from the various seminars and...that one has attended and literature that one has read and research over at Legislative Research is not five over and five under in the eyes of the court. It's a deviation of ten percent, maximum of ten percent between the largest and the smallest district that's generally accepted to meet other rational state policy. Zero is always the guideline and, as the Speaker mentioned, the 49 districts must, in fact, total up to exactly what the count of the population of the state of Nebraska is. Complicating this issue a little bit further is a Madison County case which said that a county, when it comprised of a population that made a legislative district the right population for a legislative district would, in fact, be a legislative district. I'm afraid

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that if we draw our deviation too closely that we don't avail ourselves of what the federal courts have said are the maximum variations from a zero standard; that if we have a two percent and we have a county, and I believe there is one in the state, that would make a legislative district, if the variation was ten percent or, in our case, five over and five under, the court would say, no, you're wrong, this county cannot be divided because you had available to you the deviation to make that county, under the Madison County standards, a legislative district; you chose to deliberately not do that. Now I can't preguess what the court would do, none of us can, but I believe that that could be a very justifiable case brought by the people of that county. I think that we need to have, again, zero deviation as our goal, but allow ourselves the available standard of a maximum overall deviation of ten percent, five over and five under, and those are arbitrary figures only to achieve the other rational state policies that are outlined in the resolution and in state law. Thank you, Mr. President.

PRESIDENT MAURSTAD: Thank you, Senator Coordsen. Senator Bromm, on the Schimek amendment to LR 7.

SENATOR BROMM: Thank you, Mr. President, and I pretty much agree with all of the statements that have been made, both by the proponent of this amendment as well as those who have stood in opposition. I do stand in opposition to the amendment, and let me try to explain very, very quickly why. The United States Supreme Court standards that have been...have been articulated are within the deviation element what we are proposing in this resolution, and...and I think it's appropriation that we follow that particular guideline. I don't...I haven't heard any convincing argument as to why we should restrict ourselves more closely than United States Supreme Court has said that...that we have to. And I think that one of our goals in this process will be to avoid what happened last time, and that is a successful court challenge against a plan that is approved by this body. We can't guarantee that someone won't challenge the plan, it very likely could happen, but we want to put ourselves on as solid a ground as possible for defending the plan that we finally approved, and it will take 25 votes, of course, to approve that plan. So everyone on this floor is going to have a

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lot to say about what that plan looks like and I think the goal is common amongst us and that is to make these districts as even and the deviation to be as narrow as possible within the guidelines that we're adopting. Senator Stuhr and I share a very nice small town by the name of Shelby. Senator Stuhr rules the south half, and I rule the north half. (Laugh) In effect, we don't rule either one, but we have kidded each other a lot of times about what the south half wants and what the north half wants, and it's those kinds of things that I think we'll be able to have fewer of, fewer absurdities, absurd results, and I think a firmer ground upon which to defend the plan that we ultimately approve. So I do...I do resist or will vote no on this amendment. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Senator Vrtiska, on the Schimek amendment.

SENATOR VRTISKA: Thank you, Mr. President, members of the body. I'd like to ask Senator Coordsen a question, if I could.

PRESIDENT MAURSTAD: Senator Coordsen, would you yield?

SENATOR COORDSEN: I will respond, thank you, Mr. President.

SENATOR VRTISKA: Senator Coordsen, as a member of the committee that's been trying to put this thing together, and I...I don't know if this is of any value or not, but I was just curious as I was listening to the debate has anybody looked, and not that it makes any difference, but has anybody ever looked at what other states are doing? Is there a deviation been considered because the law...courts have said they could?

SENATOR COORDSEN: The federal standards apply to all of the states. The courts have held in some cases, in congressional districts particularly, that deviations in excess of ten percent were allowable, but that's extremely rare. The one that comes to mind is one in Wyoming where part of a district was going to be on the west side of the Continental Divide and part was going to be on the east side, with a mountain range in-between. There are deviations beyond the standard, Senator Vrtiska, but they are extremely rare and generally relate to the geography of the

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state.

SENATOR VRTISKA: Okay. Well, I appreciate that. I was just curious because I thought it would make some knowledge for some of the members of the body. I...I stand in opposition to the proposal that Senator Schimek has come forth because of some of the things that I've been listening to and I guess my own thoughts. It becomes awfully difficult, as been illustrated by Senator Kristensen and others, that there are situations where it becomes a real trying proposition in order to keep some sort of continuity how the districts are developed and so, therefore, I can't support the proposition as set forth by Senator Schimek and, with that, I will turn my time back to the Chair. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President. I think I'll withdraw this amendment at this time.

PRESIDENT MAURSTAD: The amendment is withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Schimek, I now have, Senator, a new amendment that would read as follows on to amend LR 7 on page 4, line 13, in the paragraph...after the period insert: "In no case shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population." (FA2, Legislative Journal page 219.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Schimek, you're recognized to open.

SENATOR SCHIMEK: Thank you, Mr. President and members. This probably is a good follow-up to Senator Vrtiska's question a few minutes ago. I flipped through some of the different states' redistricting guidelines this morning and there were two that...that I noticed. South Carolina has a plus or minus two

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percent deviation. They are one of those voting rights states and I don't know if all voting rights states have to stick with that kind of more stringent deviation. But the second state that I would like to call your attention to, and it's actually where this amendment comes from, the second state is Iowa, our next-door neighbor, and I'd like to let you hear the language there and it says no senatorial district shall have a population which exceeds any other senatorial district by more than five percent. That...that is a point or a 2.5 percent deviation either way. That's what Iowa has. But, in addition to that, what Iowa has is...and that's for both of their houses. In addition to what Iowa has is this language that says, "In no case shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population." Now, what that means I think can be explained fairly readily if you look at the second handout here where it says, at the top of the page, this is handwritten, it says 1 percent of 34,000 is 340, and if you take 340 by 49 legislative districts you end up with 16,660--a 1 percent deviation over all, right, because our population is 16,660, whatever. Okay, so how this would work is that when you draw your districts then you look at the deviation by district, like in District 1 this shows it had a 240 person deviation downward, District 2 a plus 50 person, 3 and so on, and you would do all those districts. You would disregard whether they were plus or minus and add all the numbers, and the total then should be less than 16,660. In this case, I imagine that the total was 15,200 and that would fall within the range. You could possibly, because Iowa has a lower deviation of point...2.5 percent, you could, I suppose, put this at 2 percent overall, rather than 1 percent, and then you'd get a deviation of 33,320 as a total to meet. I just asked Legislative Research this morning to call over to Iowa and find out a little bit about this particular provision in their redistricting guidelines, and Andy Slain from LR spoke with a fellow over in Iowa who's been a member of Iowa's redistricting team since the late eighties, 1980s, and the understanding that he got was that it's exactly the way we just told you and the implication is if some of them vary widely then others are going to have to be kind of close; but you just

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can't have this wild deviation all over the state. If you keep the deviation small, all or nearly all the districts could deviate to some extent and that's how they do it in Iowa. The in-house policy is to keep all of the districts below one percent. That way there's never any danger of violating the provision. This legislation was passed in 1980, so this is Iowa's third round of redistricting with that provision on the books. He indicated, this Gary Rudicil did, that Iowa has no problems with it to date. He did note, however, and I need to tell you this, that a problem might arise some day in the future if Iowa needed to create a majority/minority district. And in that case he said Iowa would probably have to create the district first and see how much of that variance it used up and then the other districts would have to be done in a way that they wouldn't exceed that limit. I just throw this out here for your consideration. I think it's a way of saying to ourselves we don't want to vary unless we have to. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. Debate on the Schimek amendment? Senator Schimek, you're recognized to close.

SENATOR SCHIMEK: Mr. President and members, this is a rather complicated proposition and I don't feel like it's ready to come to a vote yet. I would just like to say that I think it's...it is a...it is an idea that is worthy of consideration. I don't believe that it's gotten enough consideration to this point so, Mr. Clerk, I think I am going to also withdraw this amendment.

PRESIDENT MAURSTAD: The amendment is withdrawn.

CLERK: I have nothing further on the resolution, at this time, Mr. President.

PRESIDENT MAURSTAD: Further debate on LR 7? Senator Coordsen, you're recognized to close.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. LR 7 is a proposal to this body that the Redistricting Committee that we created yesterday would follow these guidelines in creating all of the districts that we must, by law, do before a year prior to the next general election. I

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think the debate, and thanks to Senator Schimek, has well established that our goal is not one percent over, our goal is not a deviation of...of overall ten percent, our goal is zero and we deviate from that only to follow rational state guidelines and the state court decisions established in Madison County. Each and every person here is going to be affected in some way. The numbers were mentioned last time of 32,212. As I recall, the only...only census figures we have for this year currently is the total state population, which I believe is...would make the legislative districts 34,923 or a figure something like that, just that change alone, without the migration within the state, is going to cause some massive district changes and some districts, unknown to us now both in location as well as...as where...where the districts will be moved to, are going to have to be done, and it's going to be very, very difficult. I think this...this redistricting process will affect each and every member of the Legislature in a way that they're going to be uncomfortable with, whether your district is identified as an urban district or whether your district is identified as a rural district. We have in-county migrations, we have migrations into the state, we have migrations from county to county. It's just impossible to make any kind of a guess at this time of what the first recommendations will be, but, in closing on this resolution, I would remind you to hold this with you, that each and every person here has the opportunity to propose plans, each and every person has the opportunity amend a committee plan, each and every person has the opportunity to vote yea or nay on anything that comes to the floor in the same manner we do for any other bill. If there's a way of making the process any more open, I would ask that you share that with whoever the people are that will be appointed probably yet this week to the Redistricting Committee. With that, Mr. President, I would ask for the adoption of LR 7. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Coordsen. The question is, shall LR 7 be adopted? Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of LR 7.

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PRESIDENT MAURSTAD: LR 7 is adopted. Mr. Clerk, items for the record?

CLERK: Mr. President, I have new bills, thank you. (Read LB 448-492 by title for the first time. Legislative Journal pages 219-226.)

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Speaker Kristensen, you're recognized to speak.

SPEAKER KRISTENSEN: Thank you, Mr. President, members of the Legislature. So you have some direction of where we're going to go tomorrow, the State of the State Address is tomorrow at 10:00 a.m. We're going to come in at 9:00 a.m. I anticipate that we're going to adjourn today here fairly quickly, so if you have bills that you want to get in, please get them in, in the next few minutes. Tomorrow, it would be best, if you have bills for introduction, to do them before the State of the State Address. We'll come in. There's going to be no action on the floor other than bill introduction and I would anticipate that we're going to adjourn shortly after the Governor's State of the State, so we may read in some things, but we probably won't have bill introduction after the State of the State Address. So if you're going to get those bills tomorrow, please do them prior to the Governor's address. And then, obviously, Friday we'll be here and have bill introductions on Friday. But, again, State of the State is tomorrow at 10:00 a.m.; we'll meet at 9:00 a.m. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Speaker Kristensen. Mr. Clerk, announcements?

CLERK: Mr. President, two more...or two new bills, I should say. (Read LB 493-494 by title for the first time.) Mr. President, I have a new resolution, LR 14CA, offered by Senator Hartnett. It proposes an amendment to Article VIII, Section 2, of the Nebraska Constitution. Mr. President, a series of hearing notices from the Government, Military and Veterans Affairs Committee, Natural Resources Committee, Health

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and Human Services, signed by their respective Chairs. I have a motion from Senator Brashear to be printed in the Journal (re LB 462).

Mr. President, I would like to announce that Senator...I don't want to announce that just yet, Mr. President. And a series of adds: Senator Wickersham would like to add his name to LB 185; Senator Dwite Pedersen to LB 340, LB 342, LB 341; Senator Aguilar to LB 114; Senator Preister to LB 430; Senator Chambers to LB 432; Senator Schrock to LB 113; Senator Dwite Pedersen, LB 426; Senator Chambers to LB 335; Senator Jones to LB 392; Senator Bromm, LB 186; Senator Engel, LB 462; Senator Erdman to LB 462; and Senator Foley to LB 462. (Legislative Journal pages 219-230.)

SENATOR CUDABACK: Mr. Clerk, further announcements?

CLERK: Mr. President, new bills. (LB 495-498 read by title for the first time.) The last item I have, Mr. President, a reminder, Reference Committee will meet upon adjournment in Room 2102, and that's all that I had, Mr. President. (Legislative Journal page 230.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Aguilar, would you like to make a motion?

SENATOR AGUILAR: I would move we adjourn till nine o'clock tomorrow morning.

SENATOR CUDABACK: The motion is to adjourn until Thursday morning at 9:00 a.m. All in favor of the motion say aye. All opposed. We are adjourned till nine o'clock tomorrow morning.

Proofed by: S. Ryan