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Government, Military and Veterans Affairs Committee  
January 31, 2014

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[LB726 LB742 LB743]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 31, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB726, LB742, and LB743. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; Jim Scheer; and Norm Wallman. Senators absent: Tommy Garrett.

SENATOR AVERY: Good afternoon, folks. Welcome to the Government, Military and Veterans Affairs Committee. We have three bills that we're going to be discussing today. The order of that discussion is posted outside the room on the agenda, starting with LB726 and then moving to LB742 and following that, LB743. It looks like this is the day for the committee members to introduce bills because all three bills are sponsored by committee members. Before we start, I want to introduce the members of the committee who are here today starting with Senator Bloomfield from Hoskins. And I'm pretty sure that Senator Murante is here. Senator Murante is from...and he is Vice Chair of the committee, by the way, and he is from Gretna. Senator Lautenbaugh sits between Bloomfield and Murante. He is here and Senator Lautenbaugh represents the northwest portion of Omaha. To my immediate right, is Christy Abraham who is the committee counsel. I am Bill Avery from District 24 here in Lincoln and I chair the committee. Senator Russ Karpisek will be here in a few minutes, he is from Wilber. And Senator Norm Wallman also will be with us later, he is from Cortland. And the other empty chair over there will be occupied by Senator Jim Scheer who is introducing the first amendment. The last person I need to introduce is Sherry Shaffer who is the committee clerk. If you wish to testify for or against any of these bills, we need you to fill out this green form. Print clearly so that we can enter everything into the record. This form, once filled out, should be given to the clerk. Sherry will use this to make sure we have an accurate record of who appears before us. If you have material that you would like to share with us, maybe it's a copy of your comments or it could be supporting documentation, we need 12 copies. If you do not have 12 copies, we will get them for you. Simply hand the material to the clerk and the page...where is he? Do we have...we have a page who will be working with us today, Colton Wolinski. And he is from...where? Lincoln. All right. This form right here is for those of you who may not wish to testify but you have an opinion for or against any of these bills. And you can record that in the lines indicated and provide the information requested and just...they are available at each entrance at the tables there. The...one thing we'd like to ask you to do is to spell your name for the record so that we get it right. We will follow the usual order of business. The introducers have the first opportunity to speak and there are no time limits on that, Senator, but there may be a time limit on our patience. The introducers are followed by proponents who are then followed by opponents and neutral testifiers. Closing remarks are reserved for the introducer only. We ask you to listen carefully to the previous testimony if you are in the queue because we don't like and

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don't need, actually, repetitive testimony. So if somebody has already said what you want to say, please try to add something new. We're using the light system. The green light is a four-minute light. And after you've had four minutes, it will change to amber. You have one more minute, then, to complete your testimony. When the red light is on, you should be finished. Please turn off your cell phones and any electronic devices that make noise. And we are ready to start. Senator Scheer, LB726. [LB726]

SENATOR SCHEER: Thank you, Chairman Avery and committee members. I mentioned to our legal counsel this morning this would be a two-minute introduction and it will be. I'm Jim Scheer, S-c-h-e-e-r, representing the 19th District in the Legislature up in northeast Nebraska, here to introduce LB726. It is a permissive legislation that simply allows Class II and III school districts to change the number of their board members that now are set by statute from anywhere from a minimum of five members to a maximum of nine. The reasoning behind this, during years ago when it was set at nine was a time when we were going from approximately 1,000 school districts down to the neighborhood of the 249 to 300 that we currently had. When they started moving together, everyone wanted as many representatives from their previous district on the board so, therefore, we ended up with nine. That now has become a fairly large number to work with. However, if they were going to change, they would end up going to six, under statute. That's an even number. A lot of them did not want an even number. They may want to go to seven. Certainly, they will want to go to five because it's a less number and less elections. But they prefer odd numbers rather than even numbers just from a voting perspective. It's very simple. It's not required. It's up to the board to make that determination. And with that, I would enter any questions. [LB726]

SENATOR AVERY: Thank you, Senator Scheer. Class II schools, how large are those? [LB726]

SENATOR SCHEER: Well, it would be, essentially, everything other than Lincoln and Omaha. [LB726]

SENATOR AVERY: Senator Lautenbaugh. [LB726]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator Scheer, for bringing this. Let me say that I applaud your courage for being willing to take on the issue of changing the size of school boards. It takes a unique senator to be willing to wade into this area. But seriously though, I think it's safe to say that when you get a board larger than "sevenish," you start to encounter just the inefficiencies of large numbers. Has that been your professional experience? [LB726]

SENATOR SCHEER: Well, I think it is much harder to reach a consensus, certainly. The more numbers of anything you have, the harder it is to reach that consensus. And part of it, as well, Senator, is in the smaller school districts, there are much smaller

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numbers of people and electorate and it is harder to find those larger numbers to serve in the capacity as a board member. [LB726]

SENATOR LAUTENBAUGH: Has anyone voiced any opposition to this change to your knowledge? [LB726]

SENATOR SCHEER: Not that I'm aware of. However, there may be some behind me. You never know what is the will of those that wish to follow. [LB726]

SENATOR LAUTENBAUGH: Thank you. [LB726]

SENATOR AVERY: This kind of bill sometimes does cause heartburn. I think we still have the imprint of tracks on our backs from two years ago, was it, Senator? [LB726]

SENATOR BLOOMFIELD: Two years ago, I believe, that... [LB726]

SENATOR LAUTENBAUGH: It was just last year. [LB726]

SENATOR BLOOMFIELD: Oh, was it last year? [LB726]

SENATOR AVERY: Was it last year? [LB726]

SENATOR LAUTENBAUGH: Yeah. Misty, water-colored memories. [LB726]

SENATOR AVERY: When you're having fun, you forget about how long it took. [LB726]

SENATOR SCHEER: Well, the only difference, I guess, between this and the ones from the prints upon your back is this is permissive, it's not required. So that maybe takes a little bit of that away. [LB726]

SENATOR AVERY: Yeah. Any questions or comments? [LB726]

SENATOR LAUTENBAUGH: It's not our nature but, okay. [LB726]

SENATOR AVERY: I don't see any more. Thank you. [LB726]

SENATOR SCHEER: Thank you. [LB726]

SENATOR AVERY: Proponent testimony on LB726? Mr. Bonaiuto. [LB726]

JOHN BONAIUTO: Good afternoon. John, J-o-h-n, Bonaiuto, B-o-n-a-i-u-t-o, representing Nebraska Association of School Boards and Nebraska Council of School Administrators, here to support Senator Scheer in his efforts with LB726. And I have to

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say that Senator Lautenbaugh got us thinking about this issue. And what Senator Scheer has brought to you, really, is something that I have had school board members come to me and discuss. And some of these nine-member boards that were created years ago when districts merged and they needed to combine boards, that made sense. But now, all these years later, these nine-member boards, they like having the odd number of members for decisionmaking. They would like to have smaller boards, but they won't go to six. And I can tell you that this last...well, earlier this week, we had school board members here from all over the state for a conference and I talked to board members from Dundy County. And they said, you know, we have a nine-member board and we would go to seven or five in a heartbeat. And their community would like that too because it's not easy to get that many people to run for the empty seats in these smaller communities. And they're scrambling to fill spots on the board. And some board members continue to serve because they really don't feel comfortable leaving seats vacant with no one signing up. They say, well, if someone signs up to run for my seat, I surely may not run again. But they have a commitment. So we would wholeheartedly support this. It's a local control issue. And we would hope that boards would talk to their communities and get the input. But we see it as a positive thing. And with that, I'll conclude my testimony. [LB726]

SENATOR AVERY: Thank you, Mr. Bonaiuto. Questions from the committee? I thought we'd have the other members here by now. Senator Lautenbaugh. [LB726]

SENATOR LAUTENBAUGH: So this one, you support. [LB726]

JOHN BONAIUTO: You know, Senator Lautenbaugh, and we should have supported yours and I can say we didn't. And I wanted to mention it, that contrary to popular belief, we do not oppose all of Senator Lautenbaugh's bills or all of Senator Scheer's bills, so. [LB726]

SENATOR AVERY: If you were paying attention, I sometimes support his bills because I did work with him on that. [LB726]

SENATOR LAUTENBAUGH: And if I recall, you came in in opposition and said, yeah, but I'd like you to attach an amendment we want if it passes... [LB726]

JOHN BONAIUTO: Yes. Yes. [LB726]

SENATOR LAUTENBAUGH: ...which was the...I'm trying to think of a polite-company way to put it. It was an ambitious move for a lobbyist. [LB726]

JOHN BONAIUTO: It was very. You know, I was walking on thin ice in uncharted territory, Senator. [LB726]

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SENATOR AVERY: I don't see any more questions. Thank you for your testimony. [LB726]

JOHN BONAIUTO: Thank you. [LB726]

SENATOR AVERY: Additional proponent testimony? Mr. Habben, welcome to the Government Committee. [LB726]

JON HABBEN: Thank you, Senator Avery and members of the committee. Yes, I do remember your bill and testifying on it. And as we rethink ourselves as we move down the road, one of the things that I hear from board members in small schools is the struggle to find people who want to run for the board of education. Okay, allowing us to go to five certainly addresses that possibility. [LB726]

SENATOR AVERY: I have to stop you. I'm sorry. [LB726]

JON HABBEN: Uh-huh. [LB726]

SENATOR AVERY: Would you spell your name for the record? [LB726]

JON HABBEN: Oh, I'm sorry. J-o-n H-a-b-b-e-n. [LB726]

SENATOR AVERY: Okay. [LB726]

JON HABBEN: Thank you for reminding me. The other thing I hear, and as with John, I hear this issue of I wish we didn't have a nine-member board. But you also have to understand, in the district that likes it, there's a district that doesn't. In the district that likes an even number of board members, there's a district that doesn't. And I think the flexibility in this bill, from five to nine, and allowing that local decision to determine that and having a measured way of determining it, I think it's an excellent bill. Don't really need to say much more about it. The Nebraska Rural Community School Association supports it and hope it goes well. Thank you. [LB726]

SENATOR AVERY: Thank you. Thank you for your testimony. Questions? Don't see any. Additional proponent testimony on LB726? All right. And we'll now move to opponent testimony. Anyone wish to speak in opposition to this bill? Neutral testimony? Senator Scheer, you may close. [LB726]

SENATOR SCHEER: My 30-second close, thank you very much. And, yes, Senator Lautenbaugh, it is a special senator, indeed, that would introduce bills like this. It is even a more special senator that would get the support of both the institutions that it affects. Having said that, I would urge your support. I would urge your support to bring it out of committee. Thank you. [LB726]

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SENATOR AVERY: And don't you wish you'd do that well with the committee? Do we have any letters? All right. That ends the hearing on LB726. We'll now move to LB742 and invite Senator Murante to the table. [LB726]

SENATOR MURANTE: Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is John Murante, spelled M-u-r-a-n-t-e. I represent the 49th Legislative District in the Nebraska Unicameral which comprises Sarpy County and Gretna and Chalco. I'm here to present LB742. LB742 would move to implement an instant runoff electoral system for all statewide Nebraska primary elections in which there is more than one candidate on the ballot. LB742 allows voters to rank the order of their preferences on a ballot rather than just choosing a single candidate. The way that works is if a candidate on a ballot receives more than half of a vote in the election, that candidate wins. If not, then the candidate with the fewest votes is eliminated and the ballots assigned to that candidate are recounted and assigned to the remaining candidates who ranked next in order of preference on that ballot. This process continues until one candidate wins by obtaining more than half of the vote. This type of electoral system has a number of obvious advantages over plurality voting which we currently have. It ensures that the candidate who receives the nomination has the support of the majority of the voters in the primary. A minority candidate would no longer be able to win simply because of a splintered ticket. There are a number of other advantages including, I believe, it would inherently make races more positive in nature. Candidates would be less motivated to attack one another if they required the voters of their opponents' support at one point in the election. But I was happy to introduce this bill on behalf of Larry Bradley who has made a sort of life mission out of this subject matter. He's very passionate on this subject. He's here today to testify. And I would be happy to answer any questions that you have. [LB742]

SENATOR AVERY: Thank you, Senator. One question, would this add to the workload for election commissioners because you're counting ballots again? [LB742]

SENATOR MURANTE: I think it's just a matter of calibrating the machine and running the ballots through with the system. Other states have done this. I'm not sure it would add to the workload other than it would make them change the mechanical system that they have. But I have every confidence in our election commissioners across the state of Nebraska to implement new and brave ideas. [LB742]

SENATOR AVERY: I do, too. Senator Scheer. [LB742]

SENATOR SCHEER: Not so much a question as just a point of clarification. In looking at the fiscal note, although there is no fiscal amount for the state, all the counting goes to the costs of the counties. And so there may be some small expense, I would imagine, to the Secretary of State by having to tabulate all the difference in first, second, and

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third. It would consider a considerable chunk of change for those local counties to change the software and equipment that they utilize. And by the estimates of the Fiscal Office, it's around \$15.5 million. That may be too high, it may be too low. But it certainly gives one pause to think about as we're looking at additional requirements for the electoral process. [LB742]

SENATOR MURANTE: Agreed. [LB742]

SENATOR SCHEER: That's it, just a comment. [LB742]

SENATOR AVERY: Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: Thank you. Do you want me to bring up my more than one bite at the apple argument now or should I save it for later? [LB742]

SENATOR MURANTE: Whichever your heart desires, Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: Okay, I'll wait with it. [LB742]

SENATOR MURANTE: Okay, fair enough. [LB742]

SENATOR BLOOMFIELD: I'm told that Mr. Bradley may have a answer to that in his presentation so we'll see. [LB742]

SENATOR AVERY: Senator Lautenbaugh. [LB742]

SENATOR LAUTENBAUGH: Good to have something to look forward to today. I guess maybe I don't...I didn't visualize this properly then. Would there...all of the people be on the same...say there's five...say six people running for Governor. I can't keep track so undetermined. [LB742]

SENATOR MURANTE: Uh-huh. Maybe seven. [LB742]

SENATOR LAUTENBAUGH: Six, hypothetically, yeah. "Sevenish" people running for Governor. They would still all appear together and you would put one, two, three, four? Or how would you do it, mechanically. [LB742]

SENATOR MURANTE: The law doesn't really specify. As I've seen...what I've seen other states do is, you basically have a number of preference. So the candidates are listed in one column and then you'd have preference one, two, three, and fill in the circles depending on... [LB742]

SENATOR LAUTENBAUGH: I mean, would you show...okay, would you have the

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Governor's race on there? If there were seven candidates, you'd have it on there seven times? This time you vote for your first choice and this time you vote for your second choice, this time you vote for your third choice. I mean, if that were the tabulation, you wouldn't need different equipment at all. It would be a programming issue just to program and count those different fields. [LB742]

SENATOR MURANTE: Right. [LB742]

SENATOR LAUTENBAUGH: So I'm not sure where the new equipment would come in at all. [LB742]

SENATOR MURANTE: As I understand it, Minnesota did this. Now they conduct elections, in most cases, in a comparable way to what we do. The city of Minneapolis, for example, just had a mayoral election in which 35 candidates were on the ballot using this system. As I understand it, the machines were the same. It was just a matter of programming them such that they were able to figure out the first, second, and third preferences of the candidates and process them from there. [LB742]

SENATOR LAUTENBAUGH: And do all counties in Nebraska use scanners now to count their ballots? [LB742]

SENATOR MURANTE: Not the same scanner but, yes, as I understand it. [LB742]

SENATOR LAUTENBAUGH: Okay. I'm asking you and I'm staring at Neal. I'm sorry. Yeah, thank you. [LB742]

SENATOR AVERY: Senator Scheer. [LB742]

SENATOR SCHEER: And I just want to clarify because I believe this to be correct. In the statement of intent, it talks about if those five people that are running, the lowest vote getter of those five, then whomever voted for him in a primary as a first preference, then their second preference--whatever they tabulated--now goes up to somebody else. [LB742]

SENATOR MURANTE: Right. [LB742]

SENATOR SCHEER: And I guess what I would question, to me, that is allowing that individual to vote twice... [LB742]

SENATOR MURANTE: Uh-huh. [LB742]

SENATOR SCHEER: ...because if they vote for you and you are now the fifth or sixth and so it now gives them the second opportunity to select who they would like to have if



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they can't have you. [LB742]

SENATOR MURANTE: Uh-huh. [LB742]

SENATOR SCHEER: And from my perspective, an election is based on whatever candidate you choose, not which group of candidates you would have in a preference order, but what candidate you choose to select. And I have a...he has come and saw me and that was my biggest problem... [LB742]

SENATOR MURANTE: Uh-huh. [LB742]

SENATOR SCHEER: ...is, getting past the ability of what I perceive an individual having the opportunity to vote twice on a single election. [LB742]

SENATOR MURANTE: Right. I see the point. And it's really, it's kind of you put the issues on a scale and figure out where the balancing act is. I think an upside to that is, right now I think we can all agree that there are a lot of elections where there are numerous candidates. And what tends to happen is, whether it's...we're talking about polling or the amount of money a candidate is able to raise, a couple group up at the top. The way the system is now, where it's just vote for one candidate, really forces a voter...it doesn't ask them the question, necessarily, who do you think is the best candidate to serve in the office. Because a lot of folks would say, if they think the best candidate who is running doesn't have a legitimate chance to win, that they're throwing away their vote. So I think, at least, a balancing act is, you're giving those people an opportunity to vote for the candidate who they think is best. But if that candidate doesn't end up being in the top one or two, then they have an opportunity to vote for a candidate who ended up being one of the more...who was able to raise more money or do the other things that make campaigns competitive. [LB742]

SENATOR SCHEER: Well, understand. But it also in simplistically (inaudible), you could have...it's almost like we're turning a ballot question into a "yes," "no," and "maybe," and I'll vote "maybe." But if "no" wins, I really meant "no," so... [LB742]

SENATOR MURANTE: Right, uh-huh. [LB742]

SENATOR SCHEER: ...make it a "no" because maybe it didn't have enough votes. So now I'm a "no." And so it's defeated because my "maybe" didn't have the most. [LB742]

SENATOR MURANTE: Right. [LB742]

SENATOR SCHEER: And it's still, from my vantage point, if more than two people get into an elective race, that's understood that there's going to be a reduction in percentages of those that may ultimately get the nomination. The person may or may

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not get 50 percent and nowhere in our statute does it say that you have to have 50 percent of the vote to be... [LB742]

SENATOR MURANTE: Sure. [LB742]

SENATOR SCHEER: ...the election winner of any race. And so I'm just really having a hard time letting people have--as, I guess, that's what Senator Bloomfield was talking about, the several bites to the apple--because even following this farther, then, if, you know, you don't get the 50 percent by taking the lowest level person off, then we go up to the next group. And then that even begs the different question is, just because I picked the wrong person that got the fewest votes, I get that secondary vote. If that's enough to put somebody over the top, then I also...Senator Wallman voted for the next person that got the least amount but because my vote and those like me that voted for you as the lowest ranking one, put somebody up over the top, that next group never gets to vote its second vote as well because you go from descending order up. So you are selective on who gets the second bite of the apple because not everybody does. It goes up in order. So we are even selecting certain voters that get that opportunity to be heard more than once. [LB742]

SENATOR MURANTE: And the real purpose for that is, I mean, we could continue going up the ladder. But the purpose of stopping at some point is you stop when you hit the majority. [LB742]

SENATOR SCHEER: Understand but you are also excluding someone that had the same opportunity, made the wrong selection, but their second vote does not count. [LB742]

SENATOR MURANTE: Correct. [LB742]

SENATOR AVERY: Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: Thank you. And yes, Senator Scheer, that is precisely my problem. The second and third, possibly, fourth and fifth bite at the apple by the voters that took the guy that lost. I don't know where we would have ended up with this had it been in effect in our last U.S. senatorial race. But the person that...you know, you could have...theoretically, you could have 45 percent of the vote in a seven-man race coming out of the primary and end up losing to somebody else that had 20 percent of the vote when the primary was over. And I don't believe that's the intent. I actually had a bill drawn up to force a runoff election but I didn't think this was the year to bring it. I think we maybe should look at that next year. [LB742]

SENATOR MURANTE: But I think the example you bring up is a good one because let's take your hypothetical. A candidate...in the first preference, one candidate gets 45

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percent and another one gets 20 percent. So if that candidate who got 45 percent of the vote can't come up with an additional five percent, that means the remainder of the electorate almost universally detested that candidate. They found that candidate to be repugnant and the majority of that party did not want that candidate to get the nomination. Now you're saying, because he got a plurality and you had a couple of other candidates split the remainder of the vote but all of these people agreed with one...had one thing in common, this other person should not get the nomination. And that's the balancing act that we have to...which is more important, to say whoever gets the most in a single vote wins or whoever has the majority of support among those primary voters is the person who ought to win? [LB742]

SENATOR BLOOMFIELD: And that's why I think maybe we should look at going to a clear-cut runoff because now with three people in the race, two can go out and effectively campaign against the one that is the top dog. Vote for whoever you want but make sure you write the other guy's name in first because we don't want "Ellen Jones" to be the winner. [LB742]

SENATOR MURANTE: But that's what elections are about. And I think it does lend itself... [LB742]

SENATOR BLOOMFIELD: I think it opens up a very large container of worms to go divisive. [LB742]

SENATOR MURANTE: I think if you understand that everyone going out and voting in an election, they might not think you're the number one candidate but you have an opportunity to get their vote along the way. I think you are much less likely to go scorched earth after the candidate that they do support. And I think it will result in more positive elections and more issue-oriented elections because candidates are not going to want to go out and attack other candidates and alienate that candidate's voters because they may need them. [LB742]

SENATOR BLOOMFIELD: I think they would be more...far more apt to attack the front runner in hopes of putting their own vote between them. Either one of us would be better than that so-and-so. [LB742]

SENATOR AVERY: Election law is difficult, isn't it. [LB742]

SENATOR MURANTE: Uh-huh. I don't think they're...I think one thing we're finding is there's not, I don't think, a right or a wrong. It's the balancing act which is more important, I think. Everything that Senator Scheer and Senator Bloomfield have said is technically accurate. I can't say a single thing they've said is factually inaccurate. It's just a matter of which is more important, what matters the most, which priorities are most important. And that's the discussion we're having. [LB742]

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SENATOR AVERY: Senator Wallman. [LB742]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, it is kind of, you know, inexact science, voting. But is this patterned after one of the states in the South with a runoff system? [LB742]

SENATOR MURANTE: A number of states do it. The progression has generally been when a state legislature enacts this law, it starts with some sort of a political subdivision or a municipality. And so there are municipalities in the country that do this. Minneapolis was the most recent. But this isn't unique in anyway. [LB742]

SENATOR WALLMAN: Thank you. [LB742]

SENATOR AVERY: Senator Scheer. [LB742]

SENATOR SCHEER: Thank you, Senator. And not to (inaudible) but you had mentioned municipalities. Are there states that use this for statewide elections either from a federal or a constitutional basis? Or are these all based on more local entity races. [LB742]

SENATOR MURANTE: I had the list. And I believe I had the list of where this is applied. I don't believe there are statewide models on this right now. I could be wrong about it. If I'm wrong, I'll correct myself but that's how I remember it. [LB742]

SENATOR SCHEER: Okay. And you are suggesting that we do this on a statewide basis? [LB742]

SENATOR MURANTE: Yes. [LB742]

SENATOR SCHEER: Okay. Thank you. [LB742]

SENATOR AVERY: Have you thought about that it might be a better approach to authorize local governments to do this as a first kind of first cut at this innovation? [LB742]

SENATOR MURANTE: Uh-huh. Well, I think what we're doing here today--and we talked about it a little bit in the interim study--is at least having a discussion about the primary process. I think Senator Bloomfield has even acknowledged that there are inherent problems with the way that we conduct primary elections right now. It's not all upsides and the alternatives are downsides. So this is a good opportunity, I think, for us to explore those options. And if we want to try it out on a local level at some point in time, I'm certainly not opposed to that. [LB742]

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SENATOR AVERY: I think Minnesota has done that. [LB742]

SENATOR MURANTE: Uh-huh, that's correct. [LB742]

SENATOR AVERY: Any other questions? I don't see any. [LB742]

SENATOR MURANTE: Thank you. [LB742]

SENATOR AVERY: Proponent testimony? We're on LB742. Mr. Bradley. [LB742]

LARRY BRADLEY: (Exhibits 1, 2, 3) I brought along a few copies of my testimony from November 8. [LB742]

SENATOR AVERY: Okay. [LB742]

LARRY BRADLEY: Let me...I didn't bring 12 copies but I have sufficient that we might...for example, you could get this...given the questions that was asked, this sample ballot. Get some copies of that, that would be good. [LB742]

SENATOR AVERY: Welcome, sir. State your name for the record? [LB742]

LARRY BRADLEY: Thank you very much. I appreciate the opportunity to talk about this. [LB742]

SENATOR AVERY: All right. State your name and spell it. [LB742]

LARRY BRADLEY: Larry R. Bradley. In particular, again, I note the middle initial because my alter ego in Omaha just sent out a press release today that he's going to run for office again in 2014 so. He's a friend of mine and I know that sometimes if you have a name associated with an issue and you're on the opposite side of that person, you know, it goes down. So I'll distinguish myself from Larry S., okay, who's running for office. I'm Larry R. Bradley, B-r-a-d-l-e-y. Okay? Thank you very much for the opportunity to talk with you about this. You asked several good questions. As I stated in my testimony to this committee on November 8, if Nebraskans believe the outcomes of our elections should determine the will of the majority, then we, like so many other states, have a problem. The problem is the use of the winner-take-all ballot coupled with multiple candidates. And no runoff elections means a minority can obscure, if not even thwart, the will of the majority. Instituting runoff...instant runoff voting in our primary voting for statewide offices with more than two candidates on the ballot, can solve this problem. IRV will solve the problem by giving it an affordable, effective, and efficient way to determine a majority rather than a plurality winner. I'd be happy to answer whatever questions you may have for me regarding this bill. And I do have some pieces

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about the second bite of the apple to go through with you to maybe, hopefully, alleviate your concerns with that. First, though, I have two organizations here today to testify in support of this bill that I'd like to yield in order to let them make their statements. And then I'd come back and show you the other step, if I can. [LB742]

SENATOR AVERY: No, you can't do that. You have to do your testimony now. [LB742]

LARRY BRADLEY: Okay. [LB742]

SENATOR AVERY: And you don't get a second bite at the apple. [LB742]

LARRY BRADLEY: Okay. All right. And we can deal with that. So I'll be followed by...just to say this. I'll be followed by Sherry Miller, the League of Women Voters of Nebraska president and Ms. Miller will be followed by Mr. Gavin Geis of Nebraska Common Cause. What I have for you here today...and this might take a few minutes. But let's at least get started. I have suggested edits on LB742. [LB742]

SENATOR AVERY: We'll distribute that for you. You're using up your time on the light system. [LB742]

LARRY BRADLEY: Okay. These are comments I got from Mr. Drew Spencer of [FairVote.org](http://FairVote.org). He's an attorney who's on staff with that organization. He's involved with instant runoff voting and ranked choice voting--which, of course, are the same process just two different names--all across the country. A lot of his comments here are based on his experience with Maine. As you see here in the thing that I've handed out, I've given you his name, his e-mail address, and his phone number. The executive director of [FairVote.org](http://FairVote.org) is Mr. Rob Richie. His suggested edits are largely self-explanatory but per a telephone conversation with Mr. Spencer, I'd like to note the following: Regarding his comment marked as D3, one would think that if a voter writes in a candidate, then the voter would rank the write-in as a number one. But the language may want to specify the requirement for the voter to do so. Allowing the voter to write-in a candidate and then rank that candidate as something other than number one, may--underline may and bold--depending on the vendors' machines and software, require additional programming that would have to be paid for. Also, regarding his comment marked as D4, adding specific language regarding the following may be desirable. Specifically authorize the Secretary of State to use their discretion to limit the number of ovals in order to better fit the ballot. The...for example, in a field of three or more candidates, the Secretary of State may limit the number of ovals to the right of the candidates' names to a maximum of six or a minimum of three. This limiting of ovals still preserves voter choice with the intended effect of being able to determine a majority winner but, simultaneously, simplifies the ballot for the voter. Also, regarding Mr. Spencer's comment D4, the language might be scrubbed regarding how many candidates have to be ranked by the voter. If there are four candidates and four ovals, then the voter only

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has to fill out three ovals. The oval left blank is the candidate the voter wants to vote against. This is the same as with the winner-take-all ballot with only two candidates where the voter chooses between the candidates. Comment D6 is a revision using language from Maine's ranked choice voting law. Of particular note there, that should be good news to both the Secretary of State and members of the committee, Mr. Scheer and Mr. Bloomfield, is the ability to simultaneously defeat candidates who are mathematically incapable of winning. So in other words, instead of giving them four, five, six chances up through there--especially if you've allowed the people to rank their first three choices--then you take number four on down. You defeat them wholly. And you'd go immediately to their number two choices, redistribute those ballots, see if that moved number three to number two, and then go on to your final calculation. Does that make sense? Okay. Comment D7, simplify the language. If there are more than four candidates for four spaces, then allow voters to rank their top four choices. The four largest vote getters win. And I can answer questions on that as we go on. [LB742]

SENATOR AVERY: You're out of time already. [LB742]

LARRY BRADLEY: Well, what questions do you have? [LB742]

SENATOR AVERY: We'll get you time during the question period. Okay. Questions from the committee? Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: Thank you. Mr. Bradley, just because you have four people taking that second bite at the same time does not alleviate the fact that they're getting a second bite, is my opinion, anyway. [LB742]

LARRY BRADLEY: I appreciate. Here would be my thought. Let's think of this not in terms that there's five...you know, seven candidates or six to seven for Governor as there are right now. Let's think in...just in terms from a principle point of view. If there were three candidates on the ballot and we used ranked choice voting, what would happen is, of course, we would look at the totals based on the initial ballot of who got the most second and third first-choice ballots. Now at this point, we're eliminating candidate number three because they're in third place. And we're going back...the computer is going back to those ballots and the computer is determining who are those voters' second choice. And so we go through and we assign those votes, if given--because you don't have to rank choice--to one of the two remaining candidates. When we do that, we are not giving them per se any more of a second bite of the apple than we did when we have a runoff election. We are having a runoff election because we have a new field of candidates; there's only two left. [LB742]

SENATOR BLOOMFIELD: If I may, you're only allowing the people that voted for the lowest vote receiver to vote in that second election. [LB742]

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LARRY BRADLEY: Au contraire, if I could say that. We're querying all ballots but the people who voted for the first two vote getters, they already marked their first choice. I can't give them any higher than their first choice. Senator Wallman. [LB742]

SENATOR AVERY: No, wait. Wait, wait, wait. I recognize the state questioners. [LB742]

LARRY BRADLEY: Oh, I'm sorry. [LB742]

SENATOR AVERY: Senator Wallman, did you have your hand... [LB742]

SENATOR WALLMAN: No, no. [LB742]

SENATOR AVERY: All right. Senator Scheer. [LB742]

SENATOR SCHEER: I beg to differ. If you have a runoff election of those three candidates, the people that voted for any of those top three could unilaterally change their vote from the first to the second or to the third. They are not stuck with their original vote in a runoff. They are given the opportunity to vote for any of those three. You have taken that responsibility, that purpose, that option away from that segment of voters. Regardless of how you would like to spin it, that's gone. My question to you is, what do you perceive the harm if a individual...going back to whoever came up with the 45 percent. You've got five people running. Somebody receives 45 percent of the vote. What is the inherent harm of that person moving on to the general election, in your opinion? [LB742]

LARRY BRADLEY: The potential harm is that you nominate somebody based on a minority within the party who, then, turns out to be you, as a party, risk having nominated someone who is unacceptable to the general electorate. [LB742]

SENATOR SCHEER: Okay. You, as party members, did you not have the opportunity to vote for somebody else exclusively, if you wanted to, as a party? [LB742]

LARRY BRADLEY: Yes, you did. And in your case that you're saying to me, 55 percent of the party said they wanted somebody else. [LB742]

SENATOR SCHEER: No. They voted for somebody. It was maybe, perhaps, different than that person that received 45 percent. But if the party wanted someone else to be their person in a general election, has the ability to advertise, to do whatever they'd like to make sure that the person with 45 percent is at 45 percent and one other person, then, would be at 55 percent. That's the difference. [LB742]

LARRY BRADLEY: Yes, sir. And again, the difficulty we have--which Senator Murante was alluding to--is when we have multiple candidates in a winner-take-all ballot and you



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only have one shot, then people with this system are forced to choose candidates who...  
[LB742]

SENATOR SCHEER: Well, and you're saying that this, as well in primaries and, you know, there may be occasion where, for example, the democrats have a caucus system. So they don't elect their, at least, their Presidential nominee based on raw votes. It's on a caucus basis which completely is not under this purview at all. So now you're letting one party be, you know, a different selection process than another. So, you know, that compounds it. I...you know, I'm not in a position to try to perpetuate or save a party from itself regardless of which one it is. That's party politics. Anyone that belongs to that party has the same option...opportunity to run for whatever office it is, knowing that someone may or may not run against them or that there may be multiples. But having said that, that's their option. And the party has not, from my perspective--and I don't see anybody out here from a party that seems overly concerned that their party's nomination system will be askewed because somebody with less than 50 percent of the raw vote is the banner bearer for that party. Now, I mean, I'll wait to be proven wrong but I don't see anyone out here that I think is representing a political party. [LB742]

LARRY BRADLEY: Well, we'll see. Okay. Is there a question? [LB742]

SENATOR AVERY: I...yeah. Again, let me do my job and you answer questions. We have a fiscal note here that indicates that the counties might be faced with a pretty heavy expenditure because the current equipment that we use to count the ballots does not have the capability to handle this idea, this method. Is that true? I mean, I have no way of knowing whether our equipment...you've used the equipment as a voter, I presume. Do you know anything about the equipment that would make it impossible for them to process these votes under this system? [LB742]

LARRY BRADLEY: I believe Mr. Erickson is going to testify and he may shed more light on it than I will. Thank you for your question. My preliminary discussion with Mr. Erickson, I had thought that there was about half the state that did have machines that were capable of making these calculations with the optical readers and the other half did not. [LB742]

SENATOR AVERY: Uh-huh. [LB742]

LARRY BRADLEY: There are, of course, at least two options to be able to use this methodology. One is exactly as you say, that machines are in each one of the counties and the individual precincts and that the ballots are then counted in the county. And then the results are provided to the state for the final tabulation. It's all converted into a spreadsheet and then the manipulations are done with algorithms. The other alternative would be to buy sufficient machines just in Lincoln to have the ballots run in the counties and then physically transport the ballots to Lincoln, scan them all through the machines

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and then--like I say--convert it to the spreadsheet and do the calculations that way. I believe, also Senator Murante said this would not, you know, we're not doing this for this primary. We're looking for it to be effective January 1, 2015, so which gives them sufficient time to make purchases as are necessary. [LB742]

SENATOR AVERY: Yeah, well, it could be \$15.5 million according to the fiscal note. Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: And I'm going to ask this just because I can. What do you in a three-man race if the bottom two tie? [LB742]

LARRY BRADLEY: I think... [LB742]

SENATOR BLOOMFIELD: Where's Lydia (inaudible)? [LB742]

LARRY BRADLEY: What was that? What was that? [LB742]

SENATOR BLOOMFIELD: Thank you. [LB742]

SENATOR LAUTENBAUGH: He's wishing Senator Brasch was here. [LB742]

SENATOR BLOOMFIELD: That's kind of an inside joke. It is... [LB742]

SENATOR AVERY: We have a coin flip right now in the law, something similar to that. [LB742]

LARRY BRADLEY: Yes. [LB742]

SENATOR BLOOMFIELD: And it is, though, actually a concern that would need to be addressed if we were going to go to this. [LB742]

LARRY BRADLEY: Sure, absolutely. [LB742]

SENATOR AVERY: What do you do about write-in ballots? [LB742]

LARRY BRADLEY: I...the language that's here in the bill, the proposed bill and in the edits that I gave, are that you can write-in a name. And the...it can be calculated. You can rank that number one just like you do everybody else. The...I think the--and I, again, could be told wrong--but I don't think there would be a write-in candidate who, in historical perspectives, for the statewide offices that we're talking about using this in, who have had sufficient oomph to move the needle, so. [LB742]

SENATOR AVERY: Uh-huh. Any other questions? Thank you. You have others here

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who are going to add to your testimony. [LB742]

LARRY BRADLEY: Yes, sir. Yes, please. Thank you. I appreciate your attention today. [LB742]

SENATOR AVERY: Good afternoon. Welcome to the committee. [LB742]

SHERRY MILLER: (Exhibit 4) You know, those numbers, those percentages are like...so I'm not even going to pretend to address that kind of thing. I am Sherry Miller, I appear today as president of the League of Women Voters of Nebraska to speak in favor of LB742. The name is Sherry, S-h-e-r-r-y M-i-l-l-e-r. And I'm speaking from the League's history of advocating for voters, basically. A brief history of the League of Women Voters of the U.S. takes us back to 1986 when the League affirmed a key element of protecting the right to vote, that is, encouraging participation in the political process. In 1990, the League undertook a comprehensive effort to return the voter to the center of the election process with the goal of restoring voters' confidence and involvement in the electoral system. In the mid-1990s, original research by the League found that nonvoters are more likely to perceive the voting process as difficult and cumbersome. In 1996, the Leagues nationwide worked in coalition with other organizations to let voters know that they do have a stake in the system. And I feel that LB742 would enhance all of these efforts that the League has undertaken, to the good of the voters. Unfortunately, the high degree of partisanship and rancor found in recent high-level campaigns have persuaded voters they'd rather vote with their feet and stay home. LB742 offers a good solution to persuading voters that they should go to the polls and be counted. Ranked choice voting has been shown to pique voter interest when presented with several candidates for one office. If a political race attracts several candidates--which, in itself, should pique voter interest--then the voter should be able to rank choice his or her particular favorites with at least two selections made. Too often, going to the polls requires holding one's nose while looking through the choices and realizing that you have to pick just one. Ranked choice voting has been shown to increase voter turnout substantially, particularly when the process has been explained as a way to elect a candidate with a true majority vote count. And it's my understanding that this educational effort did take place in Minnesota and that the voters in the last Minneapolis city...it was a mayoral vote, actually, last November, was a good example of increased voter turnout and general voter enthusiasm according to surveys taken following the election. Lastly, voters understand ranked choice voting and do not find it frightening or onerous. Voters from across the spectrum of race, education, and economic status have been delighted to be offered a true method of expressing their political leanings. To sum up, ranked choice voting opens the political process to new voices among candidates and to new or renewed responses among electors. It promotes more diverse representation, again, among both candidates and electors. And it reduces negative campaigning methods promoting more civil, issue-oriented campaigns. And because all of these points align with the League's nearly century old

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positions on promoting and defending the right to vote, I urge you to move LB742 out of committee to General File. Thank you. [LB742]

SENATOR AVERY: Thank you, Ms. Miller. Senator Scheer. [LB742]

SHERRY MILLER: Yes. [LB742]

SENATOR SCHEER: Just a few comments in relationship to your testimony. [LB742]

SHERRY MILLER: Sure. [LB742]

SENATOR SCHEER: You say that voters are staying home and not voting. But actually, in the last two Presidential elections, we've had very high turnout. And they have been some of the most partisan, rancorous elections that have been known to man. So I'm not sure that this bill changes that. [LB742]

SHERRY MILLER: We only had two choices. [LB742]

SENATOR SCHEER: Well, but it still was rancorous. [LB742]

SHERRY MILLER: Yeah. [LB742]

SENATOR SCHEER: And you had said that they had become so rancorous that people are staying home. And so my point would be, that is not necessarily the case. [LB742]

SHERRY MILLER: I agree with you. And, frankly speaking, I think I'm really, really more concerned about what's happening in local races where, you know, you may...if, for example, to have a school bond issue on a nonpresidential or a nonfederal election year, if you get 30 percent of the people to turnout to vote on something as important as a school bond issue, for example, you know. But at the same time, if you had people running for city council and we could do it on a ranked basis, I'm just saying it might encourage voter turnout, voter participation. [LB742]

SENATOR SCHEER: Well, to me--which is an aside to this--but in conversation with you... [LB742]

SHERRY MILLER: Right. [LB742]

SENATOR SCHEER: ...it will be interesting to me to see how Lincoln's mail ballot... [LB742]

SHERRY MILLER: Mail-in ballot does? Uh-huh. [LB742]

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SENATOR SCHEER: ...you know, because you can't get much easier than mailing something back. [LB742]

SHERRY MILLER: Uh-huh. [LB742]

SENATOR SCHEER: And if you still only get 25 percent or 30 percent, then, you know, we've got problems with the electorate because you can't make it any easier than that. I mean, I suppose you could go on-line... [LB742]

SHERRY MILLER: Well, I'm...yeah. Yeah. [LB742]

SENATOR SCHEER: ...or something like that. But then those that don't...are not accessed to on-line but that's the side to this. The other question I would have, and you may not have this information... [LB742]

SHERRY MILLER: Uh-huh. [LB742]

SENATOR SCHEER: ...but you commented that on the race in Minneapolis... [LB742]

SHERRY MILLER: Uh-huh. [LB742]

SENATOR SCHEER: ...and perhaps somebody else would have the information other than yourself, that the voter turnout was much higher or higher. Do you know how much higher that was than any other historical race? [LB742]

SHERRY MILLER: Well, going back--not to the mayoral candidates' race--but going back to, I think, it was 2009 in Minneapolis...actually, it was in St. Paul, Minnesota, I think, when they had a ward. You know, they were electing representatives of a city ward. [LB742]

SENATOR SCHEER: Uh-huh. [LB742]

SHERRY MILLER: It doubled voter turnout from about 30-some-odd percent to about 66 percent. But that's...again, a lot of this information can be found on [FairVote.org](http://FairVote.org). [LB742]

SENATOR SCHEER: Okay. And just for clarification... [LB742]

SHERRY MILLER: Uh-huh. [LB742]

SENATOR SCHEER: ...this bill, to a large extent... [LB742]

SHERRY MILLER: Uh-huh. [LB742]

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SENATOR SCHEER: ...would not cover exactly what you're talking about. [LB742]

SHERRY MILLER: I understand that. I think this is a good bill for introducing conversation. And I think it's a good bill for narrowing elections down to one election. If you can do a primary and a general at the same time, I think it would save money in the long run. But I also feel like it would be a good one to pass in order to allow cities with charters to set up their own method of carrying out ranked choice voting. [LB742]

SENATOR SCHEER: Okay. Thank you. [LB742]

SHERRY MILLER: Okay? Okay. [LB742]

SENATOR SCHEER: Thank you, Senator. [LB742]

SENATOR AVERY: Thank you. [LB742]

SHERRY MILLER: All right. [LB742]

SENATOR AVERY: What do you think about the question I posed to Senator Murante starting out by having the Legislature authorize local governments to try this? Just...whether they want to, I mean, it would be up to them or whether they'd choose to. [LB742]

SHERRY MILLER: Well, I think it would be great because I could take Lincoln, for example, where we might have seven candidates running for city council and...or seven candidates running for county commissioner or something like that. I think it would be great to allow municipalities that option. I truly do. And just a little aside here, there are at least two states in the country that do use this choice...they use ranked choice voting for military and overseas ballots. [LB742]

SENATOR AVERY: Uh-huh. [LB742]

SHERRY MILLER: And then also, Australia has been doing this for decades. Just...I might look to see how they do it, I guess. All right? [LB742]

SENATOR AVERY: Thank you. [LB742]

SHERRY MILLER: Yeah, you're welcome. [LB742]

SENATOR AVERY: Additional proponent testimony? Mr. Geis... [LB742]

GAVIN GEIS: Be gentle. [LB742]

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SENATOR AVERY: ...welcome to committee. [LB742]

GAVIN GEIS: Chairman Avery, members of the committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s. And I am the executive director for Common Cause Nebraska. We are showing our support for LB742 because we think that the way the primaries are currently done really doesn't have much merit. It's just the system we have. But it's not necessarily a system that would work the best for voters. It's something that we should care about. We should care about majority vote. I know it's not required by law but I think that there's...in a representative democracy, we should care about what percentages we're talking about when we're talking about representation. Whether or not it's required by law, it's a standard to hold to. And I think it's something, no matter what, we should go back to and question whether or not we're living up to that. I've heard runoff elections mentioned here. Runoff elections are another way of doing this. But they have a whole slew of their own problems. First of all, they are expensive. They're just expensive processes to continuously call voters back. I know that this has expenses as well. But when you're looking at them side by side, I don't know that...I can't give totals for what those are but I know that it's not a...that's most of the reason we haven't done runoff elections. Finally, you have diminished turnout with runoff elections. Asking people to come back time and time again, you get fewer and fewer voters. That's its own challenge. But it's something to think about when we're thinking about adjusting the way we do primaries. In a lot of ways, instant runoff elections let us do both things. They let us worry about what the majority is thinking, finding a majority of the vote while, at the same time, not running into the problems that come along with runoff elections. Maybe it's not a perfect solution but there are very few perfect solutions when we're talking about voting and we're talking about democracy. We have to find solutions that work. As has been mentioned before, I don't necessarily know if this is a multiple bite of the apple sort of situation. Yes, maybe you will come back and the first time you voted for that person but the second time around you vote for somebody else who's also in it. Is that going to happen very often? I don't know. But if you vote first for someone, say, your number one choice, I would say the majority of voters are going to come back and make that their number one choice again. So in that way, it's just compressing all of those runoff elections into one setting and saying we'll do this all at once. We'll find out as many opinions as we can in one setting when we can get the highest turnout. And then making it work from there to find a majority. Like I said, it's not a perfect system but neither are runoffs and neither is our current system. And of all those solutions, I think what we have now is probably the lesser of the three. So we support LB742. We think that it's something that needs to be discussed. We have to talk about our primaries more seriously. And I would be happy to answer any questions. Thank you. [LB742]

SENATOR AVERY: Thank you, Mr. Geis. Questions from the committee? Senator Wallman. [LB742]

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SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming this afternoon. [LB742]

GAVIN GEIS: Yeah. [LB742]

SENATOR WALLMAN: You know, voter turnout, we discussed this and all these things. Are you familiar with the caucuses like Iowa uses? [LB742]

GAVIN GEIS: No, no. [LB742]

SENATOR WALLMAN: And that always seems...our kids go there. And there always seems to be a big turnout. [LB742]

GAVIN GEIS: Maybe that's a solution to discuss. Maybe that's something on the table. I'm not familiar with it, sorry. [LB742]

SENATOR WALLMAN: Thank you. [LB742]

SENATOR AVERY: Senator Scheer. [LB742]

SENATOR SCHEER: Just a point of clarification for Senator Wallman. The numbers for a caucus participation are actually lower than those of the electoral process. There are far fewer people involved in caucuses as a total number than electors that go to vote. Those that attend, obviously, are much more passionate of it. But the sheer numbers are not as great. [LB742]

SENATOR WALLMAN: Uh-huh. Thank you. [LB742]

SENATOR AVERY: Any other questions? Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: Going back to eating the apple, five men in the race. One and two, neither of them get the 50 percent number. You're going to go back, eliminate number five. He, then, gets his second choice. But the number four's voters do not get a second choice. Their man lost, too, just as badly as the other guy. Why do they not get a second? [LB742]

GAVIN GEIS: I think it would be a second. But I think that the analogy of second bite of the apple would apply if they did get a second choice. [LB742]

SENATOR BLOOMFIELD: I could get closer to this. I couldn't get to it, but I could get closer to this if you took all the numbers below the top two... [LB742]



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GAVIN GEIS: Uh-huh. [LB742]

SENATOR BLOOMFIELD: ...and did your blend. Not just the bottom of the heap. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR BLOOMFIELD: If you took everybody at one fell swoop, you got...it looks like in our gubernatorial race where we would do that, you'd have five different people taking a bite of that same apple at the same time. It's not something I would recommend but I think it would be closer. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR BLOOMFIELD: But it does not answer Senator Scheer's issue with the second place guy wanting to change his vote. [LB742]

GAVIN GEIS: Right. Right. And I think that...I think I'd just kind of go back to the notion that many of those voters aren't going to change. If we were saying we were doing a runoff election, right? If we said we did runoff elections, we wouldn't keep going. We'd get to a point where we found a majority and then that person would win. Correct? We wouldn't go back again and say, well, someone got a majority, let's vote again even though...let's bring back and vote on three candidates, let's bring back and vote on two candidates. [LB742]

SENATOR BLOOMFIELD: No, but you may not get to that position with your first two candidates. You may not...or your bottom two candidates may not push either of the top two over. It may take that third or fourth here to do that. [LB742]

GAVIN GEIS: And it might take that with this system as well. [LB742]

SENATOR BLOOMFIELD: If we were to eliminate everybody below the top two. [LB742]

GAVIN GEIS: Uh-huh. I think the main difference between a runoff election and this sort of system is where voters would come back and change their votes. Not necessarily that their candidate wouldn't exist anymore. It's they would say, I want to vote for someone else. Right? That would be the difference between these two, between a runoff system and this system. But everybody else who stuck with their candidate--even though he was in the bottom four--we eliminated number five and came back and did a runoff with the rest it really wouldn't change if they didn't change their vote. [LB742]

SENATOR BLOOMFIELD: But you did some franchising to a greater degree even,

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number three and four. But that's good enough for now. Senator Scheer has a question if Senator Avery wishes to recognize him. [LB742]

SENATOR AVERY: I will in a minute. Let's suppose you have a circumstance where there are a number of voters that picked the same person first, second, and third. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR AVERY: That just increases the vote total for the first choice, right? [LB742]

GAVIN GEIS: That just increases...I mean, they just chose that person for everything. [LB742]

SENATOR AVERY: Yeah. [LB742]

GAVIN GEIS: So if that person gets eliminated first, then that voter just said, I don't want anyone but this person. And if he gets eliminated, I don't want my vote going anywhere else. That's all it does. [LB742]

SENATOR AVERY: You're hard to trick up. Senator Scheer. [LB742]

SENATOR SCHEER: Well, you can only talk about hypotheticals so I'm going to give you one. You have, instead of the 45 percent individual, you have a 40 percent. The next largest person would be at 30 percent. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR SCHEER: Those are the two top vote getters and we're starting to go from the descending at the very bottom back up. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR SCHEER: Hypothetically, on the second-place ballot, 50 percent of the second choice of the second place is now the first place. With the 15 percent, he now has 55 percent of the vote. But he may not get there because we're going from the bottom up instead of the top down. [LB742]

GAVIN GEIS: So first place has 40 percent, second place has 30 percent. [LB742]

SENATOR SCHEER: Uh-huh. And 50 percent of those at the 30 percent, have number one as their second choice. But we may never get up to the second place because those others may put the number two person over the top. [LB742]

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GAVIN GEIS: Right. You're saying that they may supersede that number two person. [LB742]

SENATOR SCHEER: Uh-huh. [LB742]

GAVIN GEIS: But their votes...I think that the point is that their votes, they would also have the opportunity to vote for that number two person. [LB742]

SENATOR SCHEER: No, they wouldn't. [LB742]

GAVIN GEIS: Not the second place person, correct? [LB742]

SENATOR SCHEER: That's right but...whoa, whoa, stop. Absolutely. [LB742]

GAVIN GEIS: Yeah. [LB742]

SENATOR SCHEER: But the second-place person... [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR SCHEER: ...at 30 percent... [LB742]

GAVIN GEIS: Right. [LB742]

SENATOR SCHEER: ...half. Fifteen percent, then, of the total, second selection is the person that has 40 percent. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR SCHEER: Their second vote never gets counted. And it, indeed, would have put the 40 percent over 50 percent. [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR SCHEER: Now is that fair? [LB742]

GAVIN GEIS: A lot of numbers. Is that fair? I...and like I said, I view it as a compressed runoff. [LB742]

SENATOR SCHEER: Like I said, I don't expect an answer. But, I mean, it may. [LB742]

GAVIN GEIS: Right. [LB742]

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SENATOR SCHEER: But I guess I'm just saying, you're right. There's no perfect system. [LB742]

GAVIN GEIS: Right. [LB742]

SENATOR SCHEER: This is far from it as well. What we have is a system that functions. It functions. [LB742]

GAVIN GEIS: Right, it does. [LB742]

SENATOR SCHEER: It works. It works as it's supposed to work. However, having said that... [LB742]

GAVIN GEIS: Right. [LB742]

SENATOR SCHEER: ...if we're going to change it... [LB742]

GAVIN GEIS: Uh-huh. [LB742]

SENATOR SCHEER: ...I would prefer to be able to change it to something that I can't, in three seconds, come up with a bunch of hypotheticals that make it, in my opinion... [LB742]

GAVIN GEIS: Right. [LB742]

SENATOR SCHEER: ...worse than what we have to work with. It doesn't solve the problem, it may exacerbate it. [LB742]

GAVIN GEIS: I understand what you're saying. I don't know if I perceive that as being worse. I don't know if I perceive that as unfair. [LB742]

SENATOR SCHEER: It doesn't improve it. It doesn't improve it because you still have numerous flaws that don't do what this is portraying itself to do. [LB742]

GAVIN GEIS: And that may be the case. I still think that the current system just ignores the majority vote entirely. And I think that's a bigger problem. [LB742]

SENATOR SCHEER: Fair enough. Have a great week. [LB742]

SENATOR AVERY: I don't see any more. Thank you, Mr. Geis. [LB742]

GAVIN GEIS: Thank you. [LB742]

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SENATOR AVERY: Any additional proponent testimony? Any opponent testimony? All right, any neutral testimony? Welcome, sir. [LB742]

NEAL ERICKSON: (Exhibit 5) Thank you. Chairman Avery, members of the committee, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. I'm Deputy Secretary of State for Elections here on behalf of the Secretary of State's Office testifying in a neutral capacity on LB742. And ostensibly, I think the Secretary of State wanted me to be available to answer questions you might have. I do have some copies--and I don't know if Mr. Bradley had those in his stuff--but a copy of the ballot in Minneapolis. So it can give you an idea of what the ballot would look like, at least. I do have a little bit of knowledge about ranked choice voting. That was how I first learned it. An instant runoff is kind of a function of ranked choice voting. You know, my experience with it has been more in the academic setting, listening to academics talk about ranked choice voting as opposed to it in the real world. I think Mr. Bradley is right, we do have some municipalities across the country that have utilized it. Minneapolis probably the most recently. The city of San Francisco did previously, as well. It has been used internationally. It has been used by private organizations. But it's still relatively new here in the United States, so. Like I said, I was here basically to answer questions. One thing I would point out about the language in the bill, and I think this may be addressed by the comments from FairVote is, it doesn't deal with the write-ins the way, at least, we have historically dealt with write-ins in Nebraska in the sense that it limits...the bill limits to one write-in line. We do have offices where we vote for more than one, such as school boards that are elected at large or something like that. And the current system puts three write-in lines. That person has to do that. I also thought it was interesting that the bill, as written, requires the person using a write-in to vote for that person as the first choice and doesn't provide other opportunities to be second or third, etcetera. And so with that, I'd answer any questions. And I know one that may come up real quick is the fiscal note. Currently, our equipment that we have which is, to give you model numbers, it's the model 650 and a model 100, currently will not handle instant runoff or ranked choice voting. The next generation of equipment will. When we bought the equipment for the state or the state bought for the counties in 2005, the total bill on that was about \$12.5 million. Since then, the costs have gone up a little bit on this equipment. The 650, which is the big scanner that we use, ran about \$60,000. The new 850 models that will handle ranked-choice voting will run about \$100,000. So it...we did not...we could not legitimately say that there was a state fiscal note because the state's under no obligation to buy equipment for the counties. In talking to the Fiscal Office, it would be appropriate that since it's not necessarily costing the state, we can't put a fiscal note on it. But they did want us to put the notation that, yes, our equipment does not currently handle ranked choice voting. [LB742]

SENATOR AVERY: Questions? Senator Scheer. [LB742]

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SENATOR SCHEER: This is the ballot from Minneapolis? Then my response would be, I can see why they may have instituted this. Or maybe this...the other side may be the positive note that it got more people involved. But they, literally, had 35 names running for mayor. [LB742]

NEAL ERICKSON: Right. [LB742]

SENATOR SCHEER: So that seems to be much more crowded than...not that it can't happen. [LB742]

NEAL ERICKSON: Well, and I would also note that they limited it to three choices. [LB742]

SENATOR SCHEER: Uh-huh. [LB742]

NEAL ERICKSON: If you did it under the auspices of the bill, there would have been 35 columns...actually, 36 columns with the write-in. [LB742]

SENATOR SCHEER: Yeah. [LB742]

NEAL ERICKSON: And you're talking multiple pages on that. [LB742]

SENATOR SCHEER: So we would maybe have more of a spreadsheet going this way. [LB742]

NEAL ERICKSON: Yeah. [LB742]

SENATOR SCHEER: All right. Thank you, Neal. [LB742]

SENATOR AVERY: Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: I'm going to use his name just because I think it's a cool name here. The second guy down, Captain Jack Sparrow. Had I, as a voter, marked his name three times, what happens to my ballot? [LB742]

NEAL ERICKSON: Well, typically, and I think under this bill and I think it's typical to ranked choice voting, if you had marked Captain Jack Sparrow in as first place in all three, the first one would have counted but the second two would have been, in effect, considered a dead ballot at that point. [LB742]

SENATOR BLOOMFIELD: Okay, thank you. [LB742]

SENATOR AVERY: Is this an actual ballot? Christopher Robin? [LB742]

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NEAL ERICKSON: It's probably...it's reduced. It's reduced in size. And I'll tell you, after I saw those, I looked it up. They must have different laws on names. We would never allow those names on there. Although, theoretically, the person could have legally changed their name to that and we have had that in Nebraska. [LB742]

SENATOR AVERY: You've got Abdul "The Rock." But this is the state, also, that elected Jesse Ventura. Okay. Well, I don't see any more questions. [LB742]

NEAL ERICKSON: Okay. [LB742]

SENATOR AVERY: Thank you, Mr. Erickson. [LB742]

NEAL ERICKSON: Thank you. [LB742]

SENATOR AVERY: Any more neutral testimony? I don't see any. Senator Murante. He waives. That ends the hearing on LB742. [LB742]

SENATOR MURANTE: That horse is beat to death at this point. [LB742]

SENATOR AVERY: We now move to LB743. Again, Mr. Murante is sponsoring this bill. Welcome, again, sir. [LB742]

SENATOR MURANTE: (Exhibit 1) Thank you. Well, once again, my name is John Murante, spelled M-u-r-a-n-t-e. I represent Nebraska's 49th Legislative District in Sarpy County, Gretna, Chalco, and northwest portions of Sarpy County. I am here today to introduce LB743. And to the members, Senator Karpisek and Senator Avery who are on the Executive Board, we talked about a similar piece of legislation today in the Executive Committee. This one is the Tony Fulton bill. This was the bill that Senator Fulton's situation was sort of the genesis for how we got here. I do have a handout for the members if the page would distribute it, please. Really what it boils down to is this. Voters in Nebraska went to the polls and enacted term limits. As will be passed out, I'm passing out the constitutional provision. What it says, we get two four-year terms, of course, and that service in office for more than one half of a term shall be deemed service for the entire term. Unfortunately, we don't really have a definition of what a half of a term is. And we don't really have a definition for what an entire term is. We know that our terms are four years but, of course, they're not exactly four years so it's difficult to quantify what exactly one half is. And considering this constitutional provision requires us to know what half of a term is and that half of a term has a significant meaning, we are here today to attempt to provide a definition. Back in...when Senator Fulton was contemplating running for reelection to the Legislature, there were two separate Opinions. One was offered by the Attorney General's Office and one was offered by the Secretary of State's Office as to what one half of a term meant. And they

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both disagreed with each other. And, quite frankly, I'm not an attorney but I read both and I thought both were perfectly reasonable interpretations of what one half of a term could be. What I do know is, that there are going to be instances where members of the Legislature, halfway through their term run for another office and win. And the appointee that is selected to serve that senator's term is going to be sworn into office on the first day of the Legislature. So Senator Fulton's situation is going to happen again and again and again. And considering the number of state senators that are currently running for higher office, I think the likelihood is that that eventuality will happen sooner rather than later. So if we don't define what this term means now, it is going to be decided in court because eventually someone is going to press for that extra term even though Senator Fulton did not. And the courts are going to be deciding it. So what my proposal is, is pretty simple. It uses the basic framework that the Attorney General's Office put together which is, for the purposes of our terms in the Legislature--really, any term--when you're sworn into office in the January after you get elected, after the November election, that's your first day of office. The first day of the legislative session a year later is one quarter of your term. The first day of the legislative session a year after that is half of your term. And if you are sworn in on that day, you will have served exactly half and not more than half and you can seek an additional four-year term if you are reelected. That is what we are attempting to do with this legislation. I can tell you, I have consulted with...to call it an informal Opinion is probably an overstatement. But I have received an informal, informal Opinion from the Attorney General's Office who has said that we are capable of defining terms that are not defined in the constitution. We can do that statutorily. And I have also consulted with an attorney at Husch Blackwell that has confirmed the same, that we do have...we are likely able to be able to define a term that is undefined by the constitution. So this seeks...I think an important element of this is that if we don't do it this way...doing it this way does a couple of things that I think are inherently beneficial. First of all, it treats every member of the Legislature the same way. It doesn't matter if you got appointed on the first day and that happened to be in a leap year because you don't want...we're not counting the calendar days. Two people could be in the exact same situation two years apart. One person could be able to seek another four-year term and one person cannot. So this treats everybody the same way. The system we have now also creates a temptation. If the legislative session begins on Wednesday and the Governor of Nebraska knows that he can appoint a member on Friday and a member appointed on Friday gets an additional four years but if you appoint them on Wednesday, they only get six years instead of a ten-year term, it's going to be an awful temptation for the Governor to say, well, we can sacrifice two days of the legislative term to buy four years on the back end. And this provision would take that temptation away. It applies a uniform standard. I think it has the fewest downsides but it defines the term and it keeps us out of court for years to come. So I hope you'll support it. But I'd be happy to answer any questions that you have. [LB743]

SENATOR AVERY: Thank you, Senator. Let me start by asking you if you know when does the clock start on senators' pay? [LB743]



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SENATOR MURANTE: I believe it is when they are sworn in. [LB743]

SENATOR AVERY: Wouldn't that make more sense that the day you are sworn in and the clock starts on your pay, that's the day you start the clock on your term? [LB743]

SENATOR MURANTE: When the clock starts isn't the issue. It wouldn't matter one way or the other. The question is, when you reach half of that term, if that makes sense. Does the...when the clock starts, are you at half? And if you're sworn in on the first day of the Legislature, are you at half or are you at a few days ahead of half or a few days behind it? That is the question. So whether you get paid or not, I'm not sure that makes a difference. [LB743]

SENATOR AVERY: Well, the way we do it now, isn't it the day you're sworn in, that's when the term begins? [LB743]

SENATOR MURANTE: Yes. And this doesn't change that. What this says is... [LB743]

SENATOR AVERY: It changes when you are... [LB743]

SENATOR MURANTE: Because right now, the standard the Secretary of State uses--which is the standard that we're currently living under that Senator Fulton had to abide by that ruling and didn't choose to challenge that in court--is to say that you start...the calendar starts at the same point that it would under this provision. But you basically count the number of calendar days that you serve for the four-year term. You count the calendar days till four years later when the next...when your successor is sworn into office and divide by two. And that's half of a term by that definition. The problem with that is, you do get into the question of, well, what if it's...what if there's a leap year involved? And there are going to be instances where senators are treated differently because that's just the way the calendar works out if you happen to get sworn in early in one year. There's not anything anybody can do about that, that's just the reality. That was the Secretary of State's Opinion which, again, I think it's a reasonable interpretation but it has some downsides to it. [LB743]

SENATOR AVERY: Senator Bloomfield. [LB743]

SENATOR BLOOMFIELD: I was sworn in about two weeks before session started for the third term of that four-year election. [LB743]

SENATOR AVERY: You mean the third year? Yeah. [LB743]

SENATOR BLOOMFIELD: Yeah. Bob Giese had been here for two years and then out up until the new senators would have been sworn in. But I was sworn in about two

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weeks ahead of that. I'm entitled to run...the last time I did, I'm limited to six years. And that's fine because there is that clear-cut two weeks. What we're looking at here, is that exact line where we're sitting. The case Tony Fulton was in where he was sworn in the same day all the new senators that were elected were sworn in and nobody knows whether or not he can run again because he served exactly half, not more than half, not less than half of that term. And I think what we're doing here, what Senator Murante is proposing here, does give us a clear-cut line in that. It's not the line I would have chosen but it's a line anyway. [LB743]

SENATOR AVERY: Senator Scheer. [LB743]

SENATOR SCHEER: I'm sure there's a logical reason. Why are we excluding the State Board of Education? [LB743]

SENATOR MURANTE: Because the State Board of Education is sworn in on the first day of the Legislature but they don't...their first meeting is not the first...they're sworn in on the first day the State Board of Education meets which is the provision that the...how the statute reads. [LB743]

SENATOR SCHEER: Okay, well, for clarification purposes though, the members that are elected... [LB743]

SENATOR MURANTE: Uh-huh. [LB743]

SENATOR SCHEER: ...until they are sworn in--and that is usually the second day of their meeting--are not allowed to vote or participate and they're assumed they are not elected members officially sworn in until the next day. So I'm not sure this would be correct to exclude them based on their practice. [LB743]

SENATOR MURANTE: Okay. I don't have any...whether they're included or excluded, it kind of doesn't matter because they don't have term limits anyway. So this...sure, go ahead. [LB743]

SENATOR SCHEER: I guess it would make sense not to exclude them... [LB743]

SENATOR MURANTE: Sure. [LB743]

SENATOR SCHEER: ...because they're really...you're right. They're not termed so it really doesn't make any difference how we classify them. [LB743]

SENATOR MURANTE: Uh-huh. [LB743]

SENATOR SCHEER: I think it should be more uniform than... [LB743]

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SENATOR MURANTE: Sure. Sure. That was the rationale that the bill drafters had given to me. They excluded them because they...the board...and you were a member of the board of education... [LB743]

SENATOR SCHEER: Uh-huh. [LB743]

SENATOR MURANTE: ...so you're far more familiar with how the scheduling and the agendas work. But that was the rationale that was given to me. They are sworn in on the first day of the Legislature, not the first day the board meets, which was the distinction. [LB743]

SENATOR SCHEER: Yeah, but they are not considered seated members until they are sworn in. [LB743]

SENATOR MURANTE: Right. [LB743]

SENATOR AVERY: Senator Karpisek. [LB743]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Murante. So first of all, this wouldn't let Senator Fulton back, right? [LB743]

SENATOR MURANTE: He can already come back... [LB743]

SENATOR KARPISEK: Dang. [LB743]

SENATOR MURANTE: ...I'm sorry to say. That will take a constitutional amendment, Senator Karpisek. [LB743]

SENATOR KARPISEK: I just had to put that one in there because that's what was my main concern. [LB743]

SENATOR MURANTE: I'm sure he's listening right now... [LB743]

SENATOR KARPISEK: I hope he is. [LB743]

SENATOR MURANTE: ...so you can throw a few barbs at him. [LB743]

SENATOR KARPISEK: Okay. Would this change Senator Bloomfield's situation? [LB743]

SENATOR MURANTE: No. [LB743]

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SENATOR KARPISEK: It's already too late for that or... [LB743]

SENATOR BLOOMFIELD: There is a clear...the question was asked of Senator Murante. I shouldn't jump in. [LB743]

SENATOR KARPISEK: Okay. Okay, that...okay. Would this have affected the Governor, instead of being able to serve ten years...and I...maybe you don't know exactly where he... [LB743]

SENATOR MURANTE: No, because as I read the constitution regarding the Governor's term limits, they don't reference the half of a term. This is a unique...I'll defer to legal counsel, but this is a unique in the constitution element that the one half of a term constitutes a half of a term. As we talked about earlier today in the Executive Board, there are some unusual provisions that are unique to the Legislature. And I don't know why they do it that way or did it that way but that's where we're at. [LB743]

SENATOR KARPISEK: I guess that I wish somehow we could figure out to, even on an appointment, figure out so they can do eight years instead of six or ten because, to me, neither one is fair. But I know that would be a lot, probably, harder and more thinking. [LB743]

SENATOR MURANTE: I think to do eight instead of six or ten... [LB743]

SENATOR SCHEER: It would put them in the wrong rotation. [LB743]

SENATOR KARPISEK: I know it would be on the wrong rotation. Just something to think about. Again, I don't think it's fair that Senator Bloomfield can only serve six. I thought it was fair that Senator Fulton could, but not Senator Bloomfield. I don't think it's fair that the Governor can serve ten. So anyway, thank you. [LB743]

SENATOR AVERY: You wanted to ask Senator Murante a question? [LB743]

SENATOR BLOOMFIELD: No, I wanted to make a comment. And you'll think it's even less fair that Senator Kintner would get to serve nine. [LB743]

SENATOR AVERY: Any more questions for Senator Murante? Thank you. We will move to proponent testimony. Does anyone wish to support LB743? [LB743]

SENATOR BLOOMFIELD: Where's Tony? He should be coming in any minute. [LB743]

SENATOR AVERY: Well, seeing none, we'll ask for opponent testimony. Also seeing none, we'll ask for neutral testimony. Seeing none there, we'll accept a closing statement from the introducer. He waives. That ends the hearing on LB743 and the

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hearings for today. Have a nice weekend. [LB743]