

CLERK: Mr. President, on 45? Mr. President, the E & R amendments to LB 45 have been adopted. Next up is an amendment offered by Senator DeCamp found on page 880 of the Legislative Journal. (Read amendment).

SENATOR DeCAMP: Mr. President, you remember we're back on LB 45, the bill dealing with trying to force state officials to follow the law. I suggested to you last time, and I've read it and reread it, that if you take the action as 45 is written all you're going to do is create problems. I've gone over it with Senator Murphy. I guess maybe we have a disagreement on understanding. I repeat, when we pass a bill here now into law it is considered constitutional until such time as the Supreme Court says it is unconstitutional. State officials, whether they're agency heads or anybody else, are duty bound to implement those laws. If they don't, for one reason or another, then they are subject to being sued, they are subject to a writ of mandamus with all the consequences therefrom. The fact that this rarely happens, the fact that you rarely have people filing these actions doesn't mean the law and the remedy doesn't exist. So my suggestion was that instead of taking the approach of Senator Murphy, we make this right that exists a little stronger by making it possible for somebody to actually get their expenses if they have to file a suit to make one of these laws enforce. Now, as I suggested to you last time, I think if you read LB 45, maybe go talk with somebody you have some confidence in, who can analyze it for you, you'll see that you're going to be actually taking a step backwards and doing the opposite of what you want, at least in my opinion. I really wish you would read it before you ever pass something like that. I think it's going to give agency heads and others the ability to thwart the legislative bills we pass here, rather than implement them. I urge adoption of the amendment.

PRESIDENT: Senator Murphy.

SENATOR MURPHY: I have passed out to you an amendment that I decided should be made to the bill, although it currently exists in law. I'm incorporating it by reference, for clarification. I believe I pointed out this fact when we first discussed the bill that there is already a provision in law. I am dealing with this act, not with particular performance under mandamus, as Senator DeCamp refers to, but with the challenge of constitutionality. I do not wish to become involved with the issue of mandamus. It is in the books, it is there and it is available. If some one wants to compel a particular performance by any officer in government, that act is still there and should remain there. I do, however, want to create the proposition that an issue of constitutionality shall not go unchallenged, and that an agency thereby hide behind an Attorney General's opinion which is expressly forbidden in repeated court tests. In the amendment that I am adding the reference to the Section, I have given you a supplementary one, and it specifically says that the Supreme Court may, if it finds any one of three different conditions, pay for the costs and fees in order to accomplish this challenge, or this support, or this failure of any ruling by the Attorney General. Mandamus, like quo warranto, go to entirely different subjects than are in this bill. I would not want to complicate a constitutional situation with a simple performance required by writ of mandamus. Mandamus is there, it can be used as specified. I would prefer that that amendment not be adopted, but rather in lieu of it the amendment I have offered that relates strictly to the issue of