

area that we're dealing with but I don't feel that LB 45 addresses itself in a proper legal manner to the issue that Senator Murphy has raised. I think still that the writ of mandamus with the state picking up the tab is the proper way to compel a public official to do his or her duty which he or she is failing to do. In that fashion, in one action without creating any additional liability for anybody that already exists by virtue of being in that office charged with the duties of it, the propriety of the act itself on which the complainant says the duty hinges and the failure to do what the complainant feels should be done can be disposed of in one legal action before the court. I don't think that it is proper to do the two things that I see here. First of all, placing an affirmative action on a state official to go into court to have a law vindicated or struck down. Or in a sense, creating a cloak by a state official saying, well I'm going to go ahead and implement this law even though I know it's unconstitutional. There is case law which says it's unconstitutional. Members of the Legislature knew when they enacted it that it was unconstitutional but to put somebody in a bind, they went ahead and enacted it. Since it's their desire that I implement anything that comes out of the Legislature even if there are legal infirmities, I'm going to implement it with a vengeance. Then certain senators might say, well that individual should have used some disgression and some good judgement. The act was so obviously unconstitutional that there should be personal liability on the official for carrying it out. I don't think that the bill, Senator Murphy, properly solves the problem which I think overshadows the entire discussion. That problem is the natural hostility which exists between the executive and the legislative branches of government. Not only in America, but in every country where they have a form of government which is divided into at least three branches, supposedly for the purpose of checking and balancing, there are irritations that will occur. But there is very little in government that doesn't irritate somebody. In this case, the Governor used very strong language, stronger than even I would use to make a point which I think is valid. There is a proper means available right now which could have been improved upon by an amendment which makes it possible for a citizen or an aggrieved official even to compel a person to do what is his duty or to refrain from doing that which is not his or her duty. I have to vote to sustain the veto this morning and will have an opportunity to see though whether the discussions that have occurred thus far will have any impact on the state officials who might be involved. If it has no impact, then I think the amendment which makes the state pick up the cost of a mandamus action should be enacted as an independent bill next session.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature. I just want to say that I share Senator Murphy's concern about the lack of proper enforcement of laws that were enacted by this Legislature in due process. I share his frustration and did so deeply when the medical malpractice bill was not implemented based upon an Attorney General's opinion. I made my speeches on that a number of times and I could repeat them today. I think it is imperative that a constitutional officer does carry out the mandate of the Legislature. I had hoped that Senator Murphy's LB 45 would be one of those steps that we could utilize to require a constitutional officer to enforce