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March 13, 2006 LB 57, 786, 904, 915, 933, 968, 994, 1060
1086, 1226

Senator Howard to LB 57; Senator Beutler, LB 1226; Senator Beutler, LB 933; Senator Howard, LB 994; Senator Landis, LB 1060; Senator Aguilar, LB 915; Senator Synowiecki, LB 1086; Senator Brown, LB 968 (also Senator Chambers to LB 904). (Legislative Journal pages 964-1003.)

Mr. President, the next amendment I have to the committee amendments, Senator Chambers, FA553. (Legislative Journal page 1003.)

SENATOR CUDABACK: Senator Chambers, to open on FA553 to...

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this amendment would deal again with this area of the bill talking about malfeasance in office. What the language does is to set a legal standard, a standard by which to determine whether or not a person can be held culpable for committing a certain act. The word chosen by the committee is "willful." The committee language says, malfeasance means the willful commission of an unlawful or wrongful act. The term "willful," w-i-l-l-f-u-l, is kind of like a chameleon word, and it means different things. Courts have wrestled with that word, and they wind up using other words trying to define or make clear what it means. Strictly speaking, it could simply mean that a person commits a volitional or voluntary act, a person exercises his or her will before acting. That could mean that the act is premeditated, because you thought about it before you did it. But when you consider the law, especially the criminal law, the word "premeditation" has a lot of baggage. So rather than take a word like "willful," which requires a lot of explaining, a lot of substituting of other terms, I would strike that word "willful" and substitute two words, joined by "and," which appear throughout the criminal law and even the civil law in some instances. Instead of the word "willful," I would substitute "knowing and intentional." Malfeasance means the knowing and intentional commission. If it's intentional, why do you have to have "knowing"? In order for something to be done intentionally, the actor has to know. But in a legal sense, the word "know," k-n-o-w, is different from the way the word would be construed in a discussion on the street. A person may intend to place a certain act. And that act which I intend is to throw