

fees and expert witness costs and other costs to a prevailing party in an action against the state where the prevailing party is not the state unless certain conditions exist, why we are changing it around to simply say the court may in its discretion grant attorney fees, expert witness costs and other costs. Now I think we have done this for two reasons. First this will bring this provision relating to the granting of attorney fees in line with other provisions we have in the Nebraska statutes relating to the granting of attorney fees where it is left completely discretionary with the court, without saying attorney fees shall be granted unless certain conditions exist. And even though I am an attorney and I suppose this is against the interest of my profession in some respects, I think it is better policy to leave the judges with complete discretion in determining whether or not attorney fees are going to be granted if we are going to permit attorney fees at all, rather than saying they have to be granted unless certain conditions exist. Now I think the second...so the first reason that at least I am cosponsoring this amendment is because it brings it into conformity with other provisions in the statute, other bills that have been introduced this year relating to attorney fees which puts it completely in the discretion of the court without any indication one way or another as to how the court should exercise that discretion. And I think the second reason that we are introducing this is we are afraid that it might operate too harshly on the state because it is the state and the taxpayers that are going to have to pick up the attorney fees under this bill, and the way the bill is written right now I think it is my feeling at least that we may wind up... the courts may wind up being forced to pay attorney fees and expert witness costs and other costs in litigation where the court would rather they not be paid and the public interest would not be served and the taxpayers' interest would not be served by making those payments. So I would urge your adoption of this amendment to the committee amendments, and some of the other cosponsors may want to speak and I would be happy to answer any questions anybody might ask.

SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Mr. President, I oppose this amendment. I think this is watering the bill down. The committee reviewed this and they agreed with the bill. I think if we are going to do something, we ought to do it properly and not "yes" and "no" and "maybe" and so I think we should spell it out in the law that they shall pay these court costs and attorney fees.

SENATOR CLARK: Senator Vickers.