

January 12, 1982

LB 341

SPEAKER MARVEL: Senator Vard Johnson, do you wish to speak to the bill?

SENATOR V. JOHNSON: Mr. Speaker and members of the body, the argument that I would make on this bill is pretty much the same argument that I made in the previous bill. The previous bill did affect tort claims that an individual files against a local subdivision. This bill affects tort claims that an individual files against the State of Nebraska. I was quickly checking the Nebraska Claims Board Act to see if there are contract claims that are fileable under the State Claims Act. It appears that there are only tort claims. Now the Nebraska State Tort Claims Act is a hair different from the Political Subdivisions Tort Claims Act in that the Nebraska Tort Claims Act does allow an attorney's fee to be recovered from the avails. In other words, if someone is injured by a state employee and that person who was injured files a claim with the State Claims Board for compensation for the injury and if that individual is successful, under existing law the State Claims Board may allow the attorney for that individual a fee, but that fee is to come from the ultimate award. It is not over and above the award. I don't think that exists under the Political Subdivision Tort Claims Act. Traditionally attorneys' fees are negotiated with the litigants themselves at the outset and the litigant understands that some portion of his or her avails will have to be set aside to the use of the attorney to compensate the attorney for the work done. But again it seems to me that there is no solid policy reason for the state in the respondeat superior concept with the state really standing as a private party because that is all this amounts to, to be treated differently as a defendant from any other private party as a defendant and under Anglo-American law private party defendants even when they lose cases are not responsible for the attorney fees of successful private party plaintiffs, and unless we want to change the law that applies to private party defendants, I don't think we should change the law that applies to the state defendant sitting almost as a private party under the State Claims Act. And for that reason I would ask that this bill not be advanced.

SPEAKER MARVEL: Okay, Senator Hoagland, do you want to close on your bill?

SENATOR HOAGLAND: Let me just close briefly, Mr. Speaker, by saying first of all that any awards that are made by the State Claims Board, of course, are approved by this body, and if award which this body determines is excessive in the attorney fee area comes in that bill we have every