

Warner.

SENATOR MCFARLAND: Thank you, Mr. President. This bill does raise several concerns with me and it has to do with a general policy of whether we should defer to the Attorney General's office decisions about indemnifying particular individuals when those individuals may be held individually responsible for their actions in depriving some person of their constitutional rights or statutory rights, or what have you. The question that occurs to me that...is that if the court makes a determination that not only the state should be held liable for the actions of that particular employee during the course and scope of his or her employment but also makes a determination that that individual employee should be held individually accountable and liable for their actions as well, why we should necessarily always defer to the Attorney General's office in making a determination to indemnify that employee, in effect, that employee does not have to pay those damages. It seems to me one of the purposes that we place in these kind of discrimination laws or constitutional rights laws is that you want to hold persons individually responsible for their own actions so that that will serve as a deterrent to these individuals from going beyond the limitations of their employment and discriminating or violating the rights of other individuals. And these rights, we often hear them in the context of inmates but I can tell you that there are a vast number of lawsuits where the rights that are being violated not only are just...are other employees and other people that are citizens of our state as well. The question that occurs to me is certain people are found individually responsible, they have a process right now whereby they can come before the Legislature, as has been done in the most recent cases, and ask the Legislature for indemnification and then it is the Legislature's responsibility and the Labor Committee's responsibility to decide whether their individual damages should be indemnified. With this bill, the problem I see is that we delegate that responsibility to the Attorney General's office. Once the Attorney General's office makes that determination, then they have this fund available to indemnify employees and the Legislature doesn't get to review that process in any way. And that, to me, seems to be counterproductive because it, in effect, eviscerates the deterrence effect that courts have in levying individual liability upon particular state employees for their own actions. The second thing that bothers me about it is that there are sometimes inherent conflicts of interest of the Attorney General's office representing the state and at the same