

March 21, 1989

LB 77

frankly, did not know the reply to the...it's on page 7, lines 7 through 13, and the reference there was to Section 81-8,239.05, and what that...and as I understand now what that does, it makes it clear that if any of these are damages or judgments, rather, were outside and were not within the scope of employment of the individual, then there is no liability of the state or any participation on the part of the state in that judgment. So it has reference, as I understand it, solely to whether or not it was in or outside the scope of employment which, incidentally, under existing law the Attorney General also would be the one making that initial determination. As I have been listening to some of the concerns expressed, it would appear to me that rather than with LB 77 it goes to other process that is currently statute and which apparently there has been some concerns about. I would like to tell the body why I became interested in this issue, because it seems to me it is ultimately inexcusably unfair but currently is law. As I understand it, some of these cases are very apt to be filed in federal courts, most usually are, and the state cannot be sued so the individual is the one that is sued. And the one example I know where it went up on appeal and under the federal requirements...federal court requirements an appeal bond had to be filed. Now this is not the kind of bond where you go in and you pay a fraction of the face value in order to secure the bond. You have to...it's fully collateralized. You have to have the full amount. And the one instance that I know of the employee...and the issue was whether it should...the incident is almost immaterial, because of the full face value and the individual had to provide the funding up front, the one individual actually was having his wages garnished. It was a garnishment, in order to pay the bond, and the money goes to those...and a big portion of it happened to be attorney fees, the bulk of it, as I recall, but the individual, through his wages having a garnishment on them, was paying it with no assurance of getting it back. So even if the appeal won, that is if the employee's position was upheld by appeal court, there was no assurance that they were getting money back. And it makes no sense to me that when an individual employee, working under the direction of the agency for which that individual is employed, that they ought to have had the proper training, that the atmosphere within that agency should have been one in which whatever act was done, if it was within that scope of employment, it is unreasonable that you would expect an individual to provide the funds for the appeal to be...go forth when essentially it's only most likely directed to the