

SPEAKER BARRETT: Senator Goodrich.

SENATOR GOODRICH: Mr. President, members of the body, is Senator Landis around? Yeah, there he is. Senator Landis, would you...have you had time to read this particular amendment?

SENATOR LANDIS: I have.

SENATOR GOODRICH: Okay. Referring to page 1, line 6, shall be the exclusive remedy available to et cetera, aggrieved parties. Then going to the second page, line 21 and 24, the decision may be appealed. Now, is the fact that it says exclusive remedy, would that foreclose being able to take the matter on to district court?

SENATOR LANDIS: It would not foreclose it, Senator Goodrich. There is a long-standing principle that courts do not want to take issues for which there is an administrative mechanism that has been unused that might resolve the situation. By indicating that this is an exclusive remedy, it's meant to say that you have to take this step first before you go to court, but when you go to court the court is free to make its own fresh decision based on its own fact-finding process before it.

SENATOR GOODRICH: Okay, thank you very much. Now, on the second thing I had, the question I have with this whole amendment here, rather, is the page 1, line 19 where it says, if the agreement as to the designation of a third party is not reached within 15 days prior to the...15-day period, the public counsel shall be automatically designated. It's rather unfortunate, frankly, that we are wrestling with this particular point right now because there is, in my judgment, a party in the State of Nebraska here that would be a mutually agreeable third party. However, since one side or the other doesn't exactly want to give up without having the absolute advantage in the committee, then they're saying, well, that's not agreeable to us, we've got to have our own built in advantage in the bill so, therefore, we want to leave it in the Ombudsman's hands. And it is for that reason that I, quite frankly, feel that the Ombudsman would not be a neutral third party and consequently will not support this particular amendment with that feature in it. Thank you.

SPEAKER BARRETT: Senator Warner.