

SENATOR WITHEM: We will be back...

SENATOR SMITH: Over time.

SENATOR WITHEM: We will be back to square one. We will be back to Class I's will continue to exist, there will be no mandate on us to resolve the issue.

SENATOR SMITH: Thank you.

SPEAKER BARRETT: Additional discussion, Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker. Not getting on the policy question of LB 259 as before, simply a theoretical on the amendment, I'd like to ask Senator Kristensen a couple questions if he would indulge.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR BERNARD-STEVENS: Senator Kristensen, just in theoretical sense, we have a separation of powers on legislative, and the executive branch, judicial branch. What we're trying to do with this amendment, by mandating an Attorney General whose already given an opinion stating in his feelings it's constitutional, can the Legislature mandate to the Attorney General to force an action...I guess that whole concept, I'd like to have your viewpoints on whether or not you felt even that is constitutional in itself.

SENATOR KRISTENSEN: I want to make sure what you're asking me. Can we, as a Legislature, force the Attorney General to file suit?

SENATOR BERNARD-STEVENS: That's the first part, and the second part would be, is it possible then that the Attorney General, who technically has to defend the law, can actually, by legislative mandate now, be forced to press an action?

SENATOR KRISTENSEN: In my opinion, obviously, I haven't done a tremendous amount of legal research in that, but my initial opinion is that that is a violation of separation of powers, that we can't force the Attorney General to file a lawsuit.