

of the body, if you look at Journal page 1452, what this amendment does is it on the amendment, on line 8, amendment 940, the present language says, "an additional judge of the court of appeals shall be appointed by the Governor upon certification. This simply changes that "shall" to a "may". What difference does this make? Well, under the present...the way this amendment is presently drafted, the Kristensen amendment is presently drafted, it basically, you know, takes all discretion away from the Legislature and says that there is an escalator clause that when the appeals or when the caseload gets at X amount a new judge kicks in. And that's not something totally new. As a matter of fact, I think on the juvenile court I think there was an escalator clause in on Lancaster County, a population figure of over 200,000 people a couple years ago and Lancaster County got a new judge. And that's fine but, I guess, I think I would be much more comfortable with my amendment and the reason is this, is because if you go with the Kristensen amendment, it says the Governor "shall" appoint a judge and whenever that magic figure is reached, the Governor has to appoint a judge the way the statute reads, but it doesn't say we have to fund it. I mean, there's nothing we can do in here that forces the Legislature to fund this particular new judge. Obviously, it would certainly give us a compelling argument to do it but wouldn't force us to do it. And I think, really, if you adopt my amendment, then all you do is you set a guideline in there. Senator Kristensen has an escalator clause that says when the caseload gets to such point there should be another appellate court and judge. I agree with that. But I don't think you should put in statute there "shall" be one because the worst case that can happen if you have a "shall" in there is if the Governor does appoint a new judge, the Legislature doesn't fund it, then Joe Steele or whoever is over at the court has a real problem how to fund it. You create a real problem. Whereas if you go with the "may" language, you...it is discretionary there that's it very clear that the intent of the Legislature is when the caseloads get to that level the Legislature is going to make a decision to fund the new judge and then in the course of that time it's strictly a funding decision because the statutory authority will be there. The "may" is there, the statutory authority is there but allows us the flexibility to look at that the given year that that situation arises and then make the proper funding decision whether or not we want to do it. And, you know, it's...you know, it's similar only on very different scale, obviously, many people in this Legislature get frustrated over things that