

January 14, 1992 LB 262

SPEAKER BAACK: The floor is open for discussion on LB 262 as amended. Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members of the body. LB 262 is the companion to and an addition to the comparative fault bill which was passed last year. As a matter of record, I think it's important if you want to understand the change in tort law that you look to a series of bills that have been introduced over the last four or five years and the attending debate. LB 262 that I introduced today also reenacts the comparative fault bill. We are leaving it intact in terms of its intent, its purpose and many of its functions that were debated a year ago. Specifically, LB 262 has some exemptions in here to the State of Nebraska, to the political subdivisions in three areas. One of them is for the liabilities of issuing, denying or suspending permits, licenses and other orders. Those are things that go to individuals, the license to do a particular act or permit to do something. The second one deals with the area of permits. It also then goes to road design and conditions and allows for exemptions and immunity from liability. In the past, we didn't have to worry about this because we had the Public Duty Doctrine which said, look, you do these things for the general good. You have no specific duty to an individual. So when the Roads Department goes out and has a road that they design and do, as long as it meets the standards, the approved standards in designs that they were never really added as a defendant because they were following their standards, but sometimes people would add them just as a throw-in because if they couldn't collect money from anybody else, they could try to collect from the State of Nebraska. The political subdivisions, the State Tort Claims Act says that you can't sue the state without its permission, effectively, and in statute we allow for certain actions to occur unless you are exempt. These add to those exemptions. We also provide an immunity in here for the issuance of inspections. Those inspections are done by the state. Those inspections are done by cities and so on. There is no particular duty. Those permits and those issuance of inspections are done to the general good of everyone to make them comply with standards and to bring up the minimum standards. They are not a guarantee that everything we inspect is in good working order or that they are accurate. Those are the responsibilities of the people who own those. They are not the responsibility of the state or a county or a city who maybe will inspect it once a year. There is no purpose for the state, the city or the county to be the