

shall be confidential and not subject to discovery, except for perhaps very extreme circumstances. The committee amendment which said that this shall just not be a public record was an attempt to alleviate concerns about describing this as an attorney-client privilege. The Attorney General, I think, had some concerns about that, about whether or not it really was an attorney-client relationship, and that language is not in statute, as I am told, any other place which describes that relationship as one which exists between an attorney and a client. So in discussions after the bill got out on the floor and as a compromise I have suggested that we change the wording because public record is vague, what...what not being a public record means, we don't know for sure. So with my amendment it would read that the advice from the Attorney General shall be privileged and treated the same...shall be treated as privileged the same as between an attorney and a client pursuant to Section 27-503. In other words, we're not saying that the attorney-client relationship exists between the Attorney General and the Governor, or between the Attorney General and the director of the agency or the department, but what we're saying is that his advice, after reviewing the proposed amendment, rule or regulation, shall be treated as privileged, the same as it would be if the attorney-client privilege existed, the same as if that relationship existed. So we have...I guess I had direct conversations with Randy Wood from DEQ about this, and we also had the Governor's office involved in the discussion. And my understanding was that they were more comfortable with this amendment and felt that this language was language they could live with. We did also advise the Attorney General of this amendment. I would have to say that we have not heard one way or the other how the Attorney General feels about it. However, I would think that the Attorney General would be much more comfortable with this than the original bill language, and I know that DEQ is not comfortable with the committee amendment which says that it shall not be a public record because I think DEQ's concern is that just because it's not a public record doesn't mean it can't be discovered in legal proceedings. And it's not our intent, with LB 168, to set something up here that could be used against DEQ in a subsequent legal action or against the Governor, if he signs the amendment or the rule or regulation. So, with that explanation, I would encourage the body to adopt the amendment. Whether you're for the bill or against the bill I think the amendment is the course of action we should take. I think it does two things, it gets rid of a vague term, public record, and it verifies that the advice of