

SENATOR WILL: Senator Beutler.

SENATOR BEUTLER: Senator Will, members of the Legislature, I apologize for not putting my name on the amendment that was distributed to you. It's AM2724, which is in front of you, and it has just a couple of technical things in it, except for part three, which I thought was deserving of a serious discussion. Part three of the amendment would strike the language that involves the Attorney General in the process and substitute for that the "county attorney of the county in which all or a portion of the real estate is located". And the second thing that it does, it doesn't require the prosecutor to prosecute. I don't think that there's any meaningful way in the law that you can force a prosecutor to prosecute, as the language in this bill says. It says the Attorney General shall, upon referral by the secretary, file an action. Well, somebody has to make a decision, as we know from earlier discussions, as to whether the report should have been filed or not. And we know from the earlier discussions that the Secretary of State has no way of knowing that for sure. He cannot know from his corporate records necessarily that are filed in his office. And if it's on the basis of some kind of complaint, that involves the information in the complaint, the credibility of the complainant, and the viability of the evidence that's presented to show that there's a violation of the constitution. How can the Secretary of State, who is not a lawyer necessarily, how can he be making prosecutorial decisions? And how can you take away from the county attorney or the Attorney General the ability to make that decision once a matter is referred to him? It is contrary to all our established principles of law to try to assert in a discretionary situation or at least in a situation that involves an interpretation of facts and material to try to force a prosecutor to make a decision. The prosecutor in fact, whoever the prosecutor is, in fact is not going to make that decision until they do their own investigation. And if that's the case, then why are we going through all this process of reports and the Secretary of State? Why don't we go directly to the prosecutor and say, do an investigation? It seems to me that what we're doing is creating for a lot of people a reporting requirement that is not going to have any kind of effect at all beyond what can be done under the current law, that is go to the county attorney, go to the Attorney General, both of whom are authorized under current law to do investigations of this nature and asked for an investigation.