

February 21, 1996 LB 1205

words, the plan shall comply with the fiduciary duties of the board, those words do not add anything to what the board is required to do, and if those words were not there, the board still would have that fiduciary duty? Do you agree with that?

SENATOR BROMM: Yes.

SENATOR CHAMBERS: Now, if we struck those words, the plan shall comply with the fiduciary duties of the board, and simply said the plan shall provide for the sale, we would still be saying the same thing as far as the legal impact. Wouldn't you agree?

SENATOR BROMM: I would...I would have a little reservation because I would like the record, at least, to reflect and the legislation reflect that the Legislature acknowledges there is a fiduciary duty and we expect the plan to be done responsibly and in accordance with their fiduciary duties. And that's...legally, I don't think it changes their duty, but I'd feel comfortable having it in there, but I will be willing to discuss alternatives with you as we get along with this bill. I am not...I am not hard and fast on that, Senator Chambers.

SENATOR CHAMBERS: I am going to offer an amendment to strike the language that I'm talking about with reference to fiduciary duty. The board members are not lawyers, apparently. I don't think we ought to enact a law dealing with them that can create the impression that there is some wiggle room being provided here which does not really exist. If it's the intent of the Legislature to mandate that this plan be drawn up by that date, then it should be an unequivocal mandate. We don't need to add temporizing language which has no legal significance. We don't need to create an arguing position...

SENATOR WILL: One minute

SENATOR CHAMBERS: ...for the board. So if you don't want to create an arguing position so that they can say we don't have to do this, why include language that has no legal significance but can create that ambiguity? Even though I don't like what this bill is doing, I still think it ought to be crisply and directly expressed with no extra terminology, and I think this reference to fiduciary duty is extra terminology. That duty is taken care of elsewhere, and there is no question or equivocation about the existence of that duty.