

February 25, 1992 LB 1120

SENATOR LINDSAY: Thank you, Mr. Speaker, members. Senator Lamb was questioning what the holes were in this particular proposal, if there are any, and I would like to just give my opinion of what those holes might be. First, we know from experience that this plan has been rejected by the federal courts on the basis of the 4-R Act. That same 4-R Act is going to still be in existence. That same court is going to hear the same appeal, and we are going to have the same decision. The railroads cannot be taxed discriminatorily. If we are going to exempt property, the same exemptions will apply to the railroads. We move from there into, again, past cases, Natural Gas Pipeline versus State Board found also that what we were doing was special legislation. Struck it down because it was special legislation. Number three, we look to MAPCO and also to Northern Natural Gas, the first case, where the court said the state, by not taxing the personal property of railroads and car companies, although acting involuntarily and under compulsion of federal law, nevertheless, by complying with that mandate, has denied Enron equal protection of the law contrary to the Fourteenth Amendment to the United States Constitution. So, if we can...and also in MAPCO we held, you know, concurring opinions; Judge Fahrnbruch reminded us that the U.S. Constitution, Fourteenth Amendment, is a consideration. So I guess what it is telling us is that there are no holes in this problem if the constitutional amendment we have amends not only the uniformity clause but the special legislation language in the Fourteenth Amendment to the U.S. Constitution. If we can find language in the constitutional amendment that will allow us to do that, I think we are probably on good soil. If we can't, we have got, not a little hole, but I think a huge hole that we can drive that railroad rolling stock through. I'd suggest that this plan is not going to cut it constitutionally, and I think from the grin on Senator Hall's face, I think he knows it. I think anybody that has read these cases knows that we just can't return to where we were and expect to be able to do that constitutionally.

SPEAKER BAACK: Thank you, Senator Lindsay. Senator Schmit, you are next. I don't see Senator Schmit. Senator Hall, you are next.

SENATOR HALL: Thank you, Mr. Speaker, members. The arguments that Senator Lindsay gave I am going to rewind and play when the 3-R proposal comes up because that exactly is the purpose, one of the purposes behind the amendment is to say, folks, you have