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FLOOR DEBATE

January 21, 2004 LB 479

to LB 479. Open for discussion, Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I am not going to spend any more time with the bill other than this set of remarks, but I do want to indicate that there is a portion of this amendment that I truly believe is problematic and that needs further examination. And it's language that's on page 6 of the amendment which says: This definition applies to contracts entered into before, on, and after the effective date of this act. And my suggestion to you is that there is a serious question here with regard to the impairment of contracts similar to a question we had a while...not so far back with regard to LB 775 and a certain action on the part of the Governor dealing with the possible question of impairment of contracts. In any event, the language to which that applies is language that clearly has or may have a definite effect on one or more producers with regard to the amount of money that they could recover under the ethanol program. I think also the language that appears on lines 11 through 17, the new language, also should be examined with regard to whether it's an impairment of a contract. The very able staff of the Revenue Committee informs me that the question involves really a two-part kind of test; one is it an impairment, and, two, if it is, is it substantial in nature? That would be what the court would look at. To the extent that somebody has planned to and intends to do something contrary to the provision that's shown at the bottom of page 5 and the top of page 6, it most certainly would be an impairment. Whether it's substantial is a question that remains to be seen in a particular case. But let me tell you that I have been and I think reliably informed that at least one company out there called Nordic has invested as much as \$5 million in the process of locating a plant, and to the extent that a provision like this might preclude them from all or a portion of the credits, you would have a case on your hands where the impairment would be very substantial. So because of that, and I hope this is all right with Senator Baker and Senator Kremer and others interested in the bill, I intend to ask for an Attorney General's Opinion on that question and we will see what he has to say. But in any event regardless of what he has to say, I believe there is a substantial question here and we should proceed with caution. Thank you.