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FLOOR DEBATE

March 24, 2004 LB 479

SENATOR CUDABACK: Senator Schrock, to open on AM3374 to LB 479.
Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, this amendment deletes language in Section 5 which prohibits the Department of Revenue from accepting any new applications for agreement for ethanol credits after the effective date of the act. The reasons for the amendment is this prohibition in the current draft is meaningless for all practical purposes for prospective applicants for ethanol development funds aware of the existing deadline for qualifying, and that existing deadline is June 30, and all the hurdles of having a plan in place to meet the deadline. The prohibition is meaningless because they will already have applied before the effective date of the act. Assuming the act is passed by the Legislature and signed by the Governor within seven days of passage, the act will become law prior to the existing deadline for qualifying, June 30, 2004. Any entity well-prepared to apply at a time so close to the deadline for qualifying must have made some investment based on reliance on current law and practices of the Department of Revenue, creating an implied contract with the state. The language enacted would foreclose application for a prepared applicant prior to the statutory deadline for qualifying for incentives, this...thus, violating the constitutional prohibition of impairing contracts. I do believe if we do not take this language out of LB 479 we will open the state up to unnecessary lawsuits. I kind of agree with Senator Baker, it would be nice to do this, but I don't think we can. And we also have this same issue, I believe, on LB 1059 and we have an Attorney General's Opinion there, and we asked for an Attorney General's Opinion here, and I think if you put this clause in for...if we don't take this out of LB 479, I think we are jeopardizing the bill, jeopardizing the ethanol program as it pertains to new plants. In other words, what we're saying is you can't change the rules in the middle of the game. We made an offer--come to Nebraska, we'll give you credits, we'll do this. And now LB 479 says, no, no, no, we didn't mean that. And you can't do that. I'm kind of like Senator Baker. I'd maybe like to do that, but you can't do that. And so that's what we're trying to do with this amendment. We're trying to take that provision out of LB 479. I think if we don't take it