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FLOOR DEBATE

March 31, 2004      LB 657, 1090

SENATOR CUDABACK: Thank you, Senator Burling. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, we all have a balancing act to do on these relative amendments. And there are a number of factors that are certainly legitimate to consider. But with respect to this amendment, one factor you should not consider is whether this bill is constitutional or not. When this bill was in committee, constitutional arguments were raised by the lobby for the power industry. And I had read those provisions of the constitution before, and thought that there was a very low probability of any kind of constitutional problem. Nevertheless, that was the spin. That was the lobby's spin, as Senator Brashear describes the process. And it was a successful kind of spin, to a certain extent. I asked for an Attorney General's Opinion. There are two provisions of the constitution that in some way, arguably, could prohibit this kind of tax. One is Article VIII, Section 2 of the constitution, that says, the property of the state, dah dah dah...shall constitute a separate class of property and shall be exempt from taxation to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivisions. That is, is this surcharge a tax on the companies, or is it a tax on the consumer? The second provision of the constitution that's in question says, every public corporation and political subdivisions organized primarily to provide electricity or irrigation and irrigation shall annually make in lieu of tax payments, dah dah dah. And the question is, is that in lieu of tax, is that the only tax that can be charged those companies? And again, the question is, is the tax on the company, or is the tax on the ultimate consumer? And clearly the tax is on the ultimate consumer. So the Attorney General concluded, as I think most attorneys would conclude right off the bat, we conclude that the electricity surcharge proposed under LB 657 would not, if enacted, violate either Article VIII, Section 2, or Article VIII, Section 11 of the constitution. The matter should be settled with that. But you know, it's not going to be settled, because of the way our processes work. And I think of this...I mean, this is an example of the power of the lobby, in the sense that maybe it's settled for this year, maybe the