

SENATE PUBLIC RESOURCES AND ECOLOGY

Friday, March 9, 1973

The meeting was called to order at 1:30 p.m.

Senator Wilson in the Chair

PRESENT: Senator Blakemore
Senator Young
Senator Echols
Senator Dodge

Mr. Banner
Dr. Broadbent

Also present were interested citizens - list attached hereto and marked Exhibit A.

Senator Wilson asked if the witnesses would direct their comments to S.B. 333.

Dick Allen, Regional Planning Division, Reno-Sparks
Mr. Allen expressed his support of S.B. 333, and that the provisions of the bill reflect the view points that were expressed at the hearing last year. Mr. Allen further stated that there are questions regarding the bill: 1. They do wonder about putting the entire responsibility for this matter on one man; 2. The proposed agency - the membership of this agency is left up to the descretion of the Governor. In the bill, a plan that has been established is referred to - yet other language in the bill refer to a plan that has been adopted by the director.

Senator Dodge commented that there was comments made in regard to this on Wednesday. Possibly there should be something specific about the advisory board coordinating state and local planning.

Mr. Allen stated that they have been working with the water planning team and much of the work of an agency or person would tie into that team. Mr. Allen further stated that he would like to point out the possible need for a definition of "key facility". Mr. Allen commented on the possibility of funding.

Senator Wilson stated that the funding goes something as follows: the Governor's budget has been to some extent reorganized to provide a staff. This bill is designed to respond to the qualifications of the Federal Bill, which Senator Jackson introduced in the last Session. Based on his testimony, they drew a vehicle from which to

Senate

Public Resources and Ecology

March 9, 1973

Page Two

start hearings. The funding ratio will probably be 1 to 3. Senator Dodge commented that this bill is not clear about the mechanics of standard concurrents by local sub-divisions. Should we draw more concrete guidelines?

Senator Wilson stated that there should be some in-put:

1. Composition of advisory board; 2. What should the advisory board's duties be; 3. What should the relationship be between the advisory board and the director. Also should we request for a working procedure between the state agency and local government.

Elmo J. DeRicco was next to testify (See Exhibit B).

Senator Wilson asked if they want an administrator and a secretary. Mr. DeRicco stated that the planning program will go into the State Land office. Mr. DeRicco commented that the comprehensive land planning program goes beyond the capabilities of his Department. If the entire land planning program were put in his office, there will have to be established a strong economic section and a strong section on the social end. Mr. DeRicco is hopeful that, in the next Session, a process will be developed and that it will show a coordinated program of developing a comprehensive plan.

Norman Hall read suggested revisions of S.B. 333 (See Exhibit C). Senator Wilson asked for explanation of their suggested revision. Mr. Hall complied by referring to their first revision, Section 12, Page 5, Number 1, stating that they feel when the Director designates an area of environmental concern, he should immediately promulgate minimum standards and criteria for that area. Mr. DeRicco stated that what they are trying to do is establish standards for designation.

Senator Dodge commented that maybe there should be some reference made to administrative procedures. Mr. Hall stated that Page 6, Line 24 speaks to that.

Senator Echols pointed out that in the memo concerning revision of Section 14, Line 37, Page 6, the "and" was omitted in the memo. Mr. Hall stated that the "and" should be left in - was an error in typing the memo.

Senator Wilson asked is travel and per diem is in the budget. Mr. De Ricco stated that it is not - they could not justify a budgetary item for it, without knowing how many people would be involved. It can be done if Federal funding becomes available. Senator Dodge referred to the advisory council and some observations made previously. 1. There should be spelled out a more detailed balance on the advisory council and 2. another suggestion for criteria of qualifications for appointment on the council. Mr. Hall stated that the Federal Act requires the State Land Planning Agency be advised by an advisory council that shall

Senate

Public Resources and Ecology

March 9, 1973

Page Three

be composed of chief elected officials of local government and urban and non-urban areas. The Governor shall appoint a Chairman from among the members. The terms of service of each member shall be two years.

Mr. DeRicco stated that he believes they do not have to confine the membership to just those elected officials.

Senator Dodge asked if we should say "elected representatives of urban and non-urban areas? Mr. DeRicco felt that it would not hurt to put it in. Senator Dodge asked if we should also say "and other members of public and representatives of environmental interest, as determined by the Governor"?

Mr. De Ricco felt that this would be good. It would give flexibility as to size.

Senator Wilson asked if Mr. Hall would provide them with a list of definitions.

Senator Wilson referred to Page 4, Section 7, Line 19 which states "The director may" - possibly this should state "shall".

Senator Dodge made reference to testimony made by Mr. Milligan at a previous meeting. It was suggested that you should work in interim and come back to the Legislature with some ratification. Senator Dodge asked if there is a way to draft language where they would comply with Federal legislation, so as to tie down areas of what will be done in the future.

Mr. DeRicco stated that what they should do is try to define. Set these up into definitions - what is the inventory, what is the planning process, what is a critical area.

Senator Dodge asked if these definitions could be put into the bill, saying these are the things Legislature wants you to accomplish. Mr. DeRicco concurred.

Senator Wilson asked who is going to approve the bill.

Mr. DeRicco stated that it will have to go through the Governor, and if he approves, it will come to the Legislature.

Senator Young asked what Mr. DeRicco could for the Flood Plain Management under this bill. Mr. DeRicco stated that the key feature will be identifying the flood plain, as in Section 3, Page 2, Line 21.

Mr. H. R. Conrad, Prospector, stated that he likes the Muskie Bill, and further stated that he is in favor of S.B. 333.

Mr. Conrad stated that he would the committee to consider the prospector - keep the prospector from out from under the thumb of an ecologist who isn't aware of prospecting.

Daisy J. Talvitie, League of Women Voters. (See Exhibit D for contents of Mrs. Talvitie's testimony).

Richard Arden stated that S.B. 333 is a good bill, provided

Senate

Public Resources and Ecology

March 9, 1973

Page Four

that it acts as a means of helping and guiding local agencies. Mr. Arden stated that he is concerned about putting all the authority into the Director. Also concerned about what is going to happen in the next two years. Mr. Arden commented that he feels we should designate Mr. DeRicco a staff of about ten people to get going on this plan. This is a very big task and will take many people to get it developed.

Senator Dodge stated that he sees nothing that would tie down the areas of pursuit, that would stop the planning in local areas unless they fall into one of the critical area. Senator Dodge asked Mr. Arden if he agrees that if there was an honest determination supported by a record of some critical area which was about to be damaged beyond recall, that there should be an authority to start doing something about it. Mr. Arden stated that he feels this is correct, but would there be the staff available to go in and get this done.

Senator Wilson stated that it would depend largely on federal funding and whether President Nixon freezes it. This bill will respond to the Jackson Bill.

Being no further business at this time, Senator Wilson adjourned the meeting at 4:20 p.m.

Respectfully submitted



Sharon W. Maher, Secretary

APPROVED

Thomas R. C. Wilson
Chairman

3-9-75

Public Resources of Ecology

Name	Who Representing
Bill Neely Press	Leg. Intern
H. R. Conrad	prospecting
Joseph S. Lodato	SELF
Joe Midmore	Builders Assoc. of N. Nevada
Ernie Gregory Arman Hall	Nev. Division of Health Dept. Conservation
ELMO DERICCO	" "
DICK ALLEN	REG. PLANNING DIVISION - R100 SPAR

COMMENTS OF ELMO J. DeRICCO MARCH 9, 1973

BEFORE ECOLOGY AND PUBLIC RESOURCES COMMITTEE

S.B. 333 HAS BEEN DRAFTED FOR THE PURPOSE OF LAUNCHING THE STATE OF NEVADA INTO A COMPREHENSIVE LAND USE PLANNING PROGRAM.

IT WAS MENTIONED BY GOVERNOR O'CALLAGHAN IN HIS MESSAGE TO THE 57TH SESSION OF THE LEGISLATURE AND I WOULD LIKE TO QUOTE HIS COMMENTS:

"BEFORE EXAMINING THE SPECIFICS OF MY BUDGET PROPOSAL I RESPECTFULLY INVITE THE ATTENTION OF THE LEGISLATURE TO A RECOMMENDATION TO CREATE A NEW DIVISION OF LAND USE PLANNING IN THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES.

"THIS IN MY VIEW, IS AN ITEM OF CRITICAL IMPORTANCE. THE STATE HAS HIRED A STATEWIDE PLANNER AND ALSO HAS IMPLEMENTED LONG-RANGE PLANNING IN WATER RESOURCES. IT IS ESSENTIAL THAT WE HAVE A COMPANION EFFORT WITH RESPECT TO LAND."

IN DRAFTING THIS LEGISLATION IT WAS NECESSARY TO ANTICIPATE THE IMPACT OF THE PROPOSED FEDERAL LEGISLATION ON THE PROGRAM. AS A RESULT, THE LEGISLATION IS BRIEF BECAUSE TO MAKE IT COMPREHENSIVE COULD RESULT IN A PROGRAM WHICH WOULD BE IN CONFLICT WITH ANY FEDERAL LEGISLATION THAT MAY BE PASSED. WE CANNOT AFFORD TO BE IN CONFLICT WITH THE FEDERAL LEGISLATION BECAUSE:

(1) FEDERAL LEGISLATION PROPOSES SUBSTANTIAL GRANTS TO

EXHIBIT "B"

STATES AND LOCAL GOVERNMENTS TO ASSIST IN THIS PROGRAM.

(2) FEDERAL LEGISLATION MAY PROVIDE CROSSOVER PENALTIES WHICH COULD RESULT IN PENALTIES TO STATE HIGHWAYS, AIRPORT, AND LAND AND WATER FUND GRANTS.

(3) THE STATE OF NEVADA IS 87 PERCENT FEDERALLY OWNED; COORDINATION AND PLANNING, COMPATIBILITY WITH FEDERAL GOALS IS MANDATORY OR OUR EFFORTS WOULD BE INEFFECTIVE.

THIS BILL IS THE FIRST STEP IN INCEPTING THE LAND PLANNING PROGRAM. ITS FOCUS MUST BE TO COMPLY WITH THE FEDERAL ACTS, BUT WE CANNOT IGNORE THE STATE AND LOCAL NEEDS. IRREGARDLESS OF THE FEDERAL ACTS, WE MUST COMMENCE THE EFFORT TO PLAN THE PROPER USE OF OUR BASIC RESOURCES: LAND, AIR AND WATER, NOW.

THE PROPOSED PROGRAM AS REFLECTED IN THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES' BUDGET IS SMALL. WE ARE ASKING FOR AN ADMINISTRATOR AND A SECRETARY TO BE INCLUDED WITH EXISTING PERSONNEL IN OUR STATE LAND OFFICE. THE OFFICE IS PRESENTLY COMPOSED OF A DEPUTY STATE LAND REGISTER AND A PRINCIPAL CLERK TYPIST. ON THE SURFACE, THE PROGRAM MAY APPEAR TOO SMALL BUT THE LOW-LEVEL STAFFING IS INTENTIONAL BECAUSE WE ARE CONFIDENT THAT FEDERAL FUNDING WILL BE AVAILABLE TO BOLSTER THE PROGRAM DURING THE COMING BIENNIUM. AND,

(1) THE INITIAL PHASE OF THE PROGRAM WILL BE TO DEVELOP A LAND PLANNING PROCESS AS REQUIRED UNDER THE FEDERAL ACT:

(2) TO IDENTIFY THOSE AREAS OF CRITICAL CONCERN WHICH CAN BE FACTUALLY SUPPORTED AS AREAS OF STATE CRITICAL CONCERN;

(3) A BASIC NATURAL RESOURCES INVENTORY MUST BE DEVELOPED.

THROUGH THE DIVISION OF WATER RESOURCES WATER AND RELATED LAND RESOURCE PLANNING PROGRAM WE HAVE ALREADY MADE AN EXCELLENT START IN THE BASIC WORK WHICH WILL BE NEEDED.

AND LAST, BUT NOT LEAST, EXISTING FEDERAL LEGISLATION DOES NOT PROVIDE RETROACTIVE PRIVILEGES IN MATCHING FEDERAL FUNDING. IF WE ARE TO INCEPT A LARGE PROGRAM NOW, IT IS ENTIRELY POSSIBLE THAT NONE OF THE FUNDS APPROPRIATED TODAY WOULD BE MATCHED WITH FEDERAL FUNDING WHEN IT BECOMES AVAILABLE. WHEN WE CONSIDER THAT MATCHING FUNDS WILL BE A MINIMUM OF ONE TO ONE, WITH A MAXIMUM OF NINE TO ONE, WE CANNOT AFFORD TO TAKE THIS GAMBLE.

THE LEGISLATION ALSO PROVIDES THAT THE GOVERNOR MAY DESIGNATE OTHER AGENCIES TO ASSIST IN THE LAND PLANNING PROCESS. YOU CAN APPRECIATE THAT THE MAGNITUDE OF THIS PROGRAM WILL REQUIRE NOT ONLY THE ASSISTANCE OF OTHER GOVERNMENTAL AGENCIES BUT THEIR ACTIVE PARTICIPATION IF IT IS TO BE EFFICIENTLY ACHIEVED.

WE ANTICIPATE THAT, IN ADDITION TO A FULL REPORT ON WHAT HAS BEEN ACHIEVED DURING THE NEXT BIENNIUM, IN THE NEXT SESSION OF THE LEGISLATURE YOU WILL RECEIVE EXTENSIVE PROPOSALS FOR LEGISLATION WHICH WILL ESTABLISH THIS PROGRAM IN ACCORDANCE WITH FEDERAL LAW. COMPLETION OF THE PLANNING PROCESS SHOULD BE WELL ON ITS WAY BY THEN, AND WE WILL BE ABLE TO PROVIDE YOU WITH A STATE STRUCTURE TO ACHIEVE COMPREHENSIVE LAND USE PLANNING THROUGH A GOVERNMENTAL STRUCTURE WHICH WILL PROVIDE FOR THE GREATEST EFFICIENCY AND BEST RESULTS.

I WOULD NOW LIKE NORMAN HALL, ASSISTANT DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, WHO HAS EXERTED GREAT EFFORT ON THIS PROGRAM, TO GO BRIEFLY INTO SOME OF THE DETAILS OF THIS BILL.

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STATE OF NEVADA

Department of Conservation and Natural Resources

OFFICE OF THE DIRECTOR

CARSON CITY, NEVADA 89701

March 9, 1973

MEMORANDUM

To: Senator Thomas Wilson, Chairman
Public Resources & Ecology Committee

and

Assemblyman Roger Bremner, Chairman
Environment and Public Resources Committee

From: Elmo J. DeRicco

Subject: Suggested revision of S.B. 333, an Act relating to
land use planning.

S.B. 333

Section 12 does not specify clearly that the "standards" and "land use plan" under subparagraphs (b) and (c) are meant to apply only to areas designated critical environmental concern under paragraph (a). In order to obviate the possibility of an interpretation problem, I would suggest the following revision of Section 12:

Section 12. 1. The Director, acting through the state land use planning agency, shall /:/ designate areas of state or regional critical environmental concern, and shall:

/(a) Designate areas of critical environmental concern within the State of Nevada./

/(b) (a) Promulgate minimum standards and criteria for the conservation and use of land and other natural resources therein/ within such areas.

/(c) (b) Adopt a land use plan for the integrated arrangement and general location and extent of, and the criteria and standards for the uses of land, water, air space and other natural resources within the area, including but not limited to, an allocation of maximum population densities.

EXHIBIT "C"

S.B. 333

Section 14 relating to the availability of funds limitation only applies to "state land use program". We believe that the intent would be much clearer if, on line 37, pg. 6, be changed to read:

Section 14. In undertaking the state land use program provisions of this act, the director

Section 7, paragraph 2 states: "The director may:". To be consistent, we feel that this should be changed to, "The director shall:"

Section 9 relates to the state land use planning advisory council. We feel that there should be some provision for the lay members of the advisory council to receive travel and per diem when federal funds become available. Members of this council which are appointed or employed by other levels of government should be supported in their travel and per diem by the agency they represent.

Definitions. We feel that there should be a section on definitions, which would include, among other things: key facilities, large scale developments, land use planning process, and land use planning program, as a minimum.

Spent to Cliff's flood plain

I am Daisy J. Talvitie, Environmental Quality Chairwoman, League of Women Voters of Nevada. Although the League of Women Voters of Nevada supports S.B. 233 as being, Nevada- in the overall, a good bill, we do have some major areas of concern. The League has found that, regardless of what problem area we are studying, there is always involved in the problem some questions relating to land use. In making land use decisions, many factors are involved that directly relate to problems of the elderly, the handicapped, ethnic minorities, unemployment, etc. as well as the physical environment. For this reason, that when we think of planning and the development of a State Comprehensive Plan, we must include factors such as health and human welfare as well as factors listed in S.B. 233--and also feel that, establishing the administrative agency totally within the Department of Conservation and Natural Resources may lead to lack of consideration of factors not within the expertise or interest of the conservation department where we see a danger that the chief emphasis will be on land use as related to water. The League certainly recognizes the importance of water and land use relationships--have so stated publicly many times--but we strongly emphasize that in planning, we must also give major consideration to other factors. We much prefer the approach recommended by the Governor's Environmental Council in the report, The Quality of the Environment, with (1) there being an adequately funded and staffed planning coordinator in the Governor's Office with the director directly responsible to the Governor for the development of a policy framework within which various state agency plans may be developed along with plan and program priorities, thus resolving conflicts between agencies and (2) there being a state planning agency to accomplish planning matters of critical state concern, establishing minimum guidelines for regional and local governments, and establishing close co-operation with agencies of all levels of government.

*is not
precluded
from
local
agency*

In the State planning process, the League believes there should be representation of both the general public and local planning bodies on the advisory council and we further believe that, although the State should have final authority over questions falling under the State's jurisdiction as defined by statute, that before the State overrides a local decision, there should be review by an appeal board. A quasi-judicial board operation would have the additional advantage of being able to settle many disputes without having to go into a court case which, under S.B. 333 as now written, is the only available enforcement procedure.

Of major concern to the League is the establishment of regional planning agencies conforming with districts set up by the State with regional plans required in each region by a specific date. In general, the League feels that the State agency should be able to provide overall, objective viewpoint on planning, setting standards, establishing criteria, especially in areas of critical concern and should be authorized to give aid to those local or regional planning bodies where there is need for this assistance. Specifically, the League recommends that the State should establish regulations governing areas of critical concern, such as flood plains, scenic historic areas, watersheds, high seismic activity, etc; areas impacted by key facilities such as airports, highways, recreation lands, etc; and proposed large scale developments having significant effect on the environment. These things we find in S.B. 233 but another area that the League feels strongly should be subject to State regulation is that of land uses which might be excluded by restrictive or exclusionary regulation. All too often in recent years, there have been examples of exclusionary regulations for the purpose of excluding necessary housing for lower income families or ethnic minorities. This factor is not covered by S.B. 233.

The League has also found some specific language in S.B. 333 that disturbs us:

In the stated policy, Section 2, page 2, lines 18 and 19, we find a policy directive for the use of lands in accordance with environmental, economic, and social considerations. Yet in sections on implementation we do not find the social considerations previously mentioned.

Section 5, paragraph 2, page 2, line 35--the words "subject to availability of funds", appear unnecessary since no State agency can ever do anything without funds. The emphasis placed here, coupled with Section 7 where the emphasis is on data collection, further coupled with the limited budget proposals for State planning, and projected timetables we have heard discussed--"Possibly 8 to 10 years of data collection" we find to be alarming. This indicates to us a failure to recognize the urgency of the problems in Nevada related to land use.

Section 6, paragraph 2--page 2, lines 42-46 again fails to recognize the human or social problems.

Section 6, paragraph 3, subparagraph d page 3, line 5, calls for projections of transportation needs. In light of the proposed bill to establish a Dept. of Transportation with only highways being considered as transportation, the League would like to see the transportation directive here clearly defined as including mass transit.

Section 6, we believe, should also be clarified to insure that there is a mechanism for determining areas of local critical concern and their regulation or acquisition.

Section 7, paragraph 1-b-1,2,and 3--page 4, lines 3 to 9. The League questions that the Director of one agency, having its own plans for land use in some of the agency divisions, should have the responsibility for co-ordinating planning of all State Agency land use plans. This seems to us is giving one director authority that really should be the function of a co-ordinator in the Governor's office.

In Section 7, paragraph 2, line 19, we violently object to the word may. This should be shall. There should be no choice when it comes to public hearings and availability of public records.

In section 11, paragraph 1, beginning at line 46 on page 4 and going over to top of page 5, we find the wording "upon completion of the land use planning process shall develop a land use process as provided in section 6 of the act." It seems to the League that a state land use planning process should be a continuous process and that the meaning of these sentences should be clarified. They presently seem to indicate that the first few years will do no more than plan a process to continue planning.

Section 11, 1-b, page 5, line 4. The wording "prepared by ~~local~~ the State land use planning agency or by local governments or both" seems to give the State Director complete control over even local government zoning. We believe a better approach would be to say "in co-operation with local governments." We also recommend that this section should be written to assure input from local governments and review by both the agency and the advisory council.

On page 5, line 7, we suggest insertion of the word regional in front of the words planning districts.

On page 5, lines 43 and 43, we find that public hearings are only required for adoption of the program, plan, districts, and methods. We recommend addition of the words criteria, standards, and regulations. There must be public participation all the

In section]2, we request that local government be allowed to make recommendations on areas of critical concern. Finally, the League believes that the State should devise a mechanism --purchase, land exchange, etc. for land acquisition in areas of critical concern whenever regulation would result in inverse condemnation.

flood plains - structure -

Again, the League wishes to emphasize the urgency of land use planning in Nevada, the urgency of implementation of land use controls. We simply cannot wait for 8-10 years before we do something about uncontrolled land development, uncontrolled development on watersheds, in flood plains, etc. We cannot wait any longer for implementation of plans for land use in relation to air pollution. We cannot wait a longer for an attack on land use as related to human resource factors. The time for implementation is now. Just this once, let Nevada move ahead under its own steam without waiting to be forced into it by federal law.