

## Senate

## ENVIRONMENT AND PUBLIC RESOURCES

April 4, 1975

The meeting was called to order in Room #213 at 3:15 p.m. on Friday, April 4, 1975, with Senator Thomas Wilson in the chair.

PRESENT: Senator Richard Blakemore  
 Senator Thomas Wilson  
 Senator Carl Dodge  
 Senator Richard Bryan  
 Senator Gary Sheerin  
 Senator Mary Gojack

ABSENT: Senator Joe Neal

OTHERS PRESENT: See Exhibit "A"

S.B. 158: Makes geothermal resource development subject to regulatory control of state engineer.

Senator Dodge commented briefly on this bill and suggested some amendments.

Senator Dodge motioned to amend and re-refer to committee.

Senator Bryan seconded the motion.

Vote was unanimous with Senators Dodge, Blakemore, Bryan, Sheerin and Wilson voting. Senators Gojack and Neal were absent.

Mr. Glen Griffith, Department of Fish and Game, asked the committee to introduce legislation to provide \$6500 to cover the cost of the 65th annual meeting of the International Association of State Fish and Game Commissioners, which Nevada is hosting. Mr. Griffith discussed this briefly and was given the permission of the committee to go to the bill drafter and have the bill drafted.

Senate Bills 462, 463, and 464, Senate Bills 114, 117, and 7, are all part of the Fish and Game package. It was decided to hold hearings on these bills on April 14, 1975, at 7:00 p.m. in Room 131.

S.B. 324: Makes certain conduct in state parks unlawful.

After a brief discussion, the following action was taken.

Senator Bryan moved that S.B. 324 be re-referred to Judiciary Committee.

Senator Gojack seconded the motion.

Senators Wilson, Bryan, Sheerin, Dodge, and Gojack voted aye. Senator Blakemore voted no, and Senator Neal was absent.

Senate Bills 284 and 418 will be heard at another time.

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S.B. 342: Allows veterinarians to use assistants.

After a brief discussion, the following action was taken.

Senator Blakemore moved that S.B. 342 be re-referred to Commerce and Labor Committee.

Senator Gojack seconded the motion.

The vote was unanimous with Senator Neal absent.

Senate Bill 7 was scheduled to be heard on April 14, 1975.

Senate Bill 112 and Assembly Bills 214, 288, 47, 138, 139, 213, 137, 140, 202, and 335 were scheduled for April 7, 1975, at 1:00 p.m. in Room 213.

S.B. 254: Makes various substantive and technical changes in the Tahoe Regional Planning Compact.

The record will show that Gary Owens, Legal Counsel for Tahoe Regional Planning Agency, was present at the request of Senator Wilson.

The committee discussed briefly the first reprint of S.B. 254. Mr. Owens said he had looked them over earlier, and saw no problems with the amendments.

Senator Wilson explained what the amendments did. Senator Bryan said that the Judiciary Committee had discussed the liability of public employees that same day. He asked the committee to take a look at Page 5, Article 4, Lines 29-34. Senator Dodge asked Mr.

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Owens if they could or should be shielding someone from liability. Mr. Owens said he thought this language actually only refers to malicious acts or omissions which he thought was more than intentional act. Senator Dodge asked where it said that and read from the act. Mr. Owens said he didn't know why this was included but thought it was because of all the concern of all the inverse condemnation cases because some of those cases do name individuals as defendants. Senator Bryan said they should not establish different standards for employees of the agency than they do for state employees. Mr. Owens said the NRS was not very definitive on this. Senator Dodge said there was no way they could cover an employee with the state's immunity. Senator Bryan said what they had done was give a very limited waiver of sovereign immunity provided the maximum liability for the state or the subdivision, which is \$25,000. This has been sustained by the Supreme Court of the State of Nevada. There is no comparable immunity for employees of the State and no way that they know that they can do. A bill has been processed out of the Senate Judiciary Committee which requires that individuals suing state employees must join the State of Nevada pursuant to the provisions of Chapter 41, which is the special procedures section. It further provides that the State, at its own expense, shall defend the employee. In Subsection 3, it provides that if the action which is the subject of the suit was the product of gross negligence or malicious or intentional act on the part of the employee, the State of Nevada has the right of contributory recoupment if the judgement is against the State. Mr. Owens said a solution would be to provide applicability of the law to the state where the person resides. Senator Dodge said this gets into the question of whether you are involving the State in potential liability in which you don't want to run the risk of doing, particularly in the official document.

Senator Bryan said that one reason some of the committee discussed concern about the direct appropriation by the state to the agency was the question of whether that weakens the argument that TRPA is not a state agency. Senator Dodge said this was compelling and thought it should be taken out. Mr. Ray Knisley spoke from the audience and said they were overlooking the appointed people. He said state employees were covered under NRS. He said you have a class of people in state government that have absolutely no protection of any nature, as the legislators have none. Mr. Knisley said that Elmo DeRicco, because he is appointed by statute to TRPA, may not be defended by the Attorney General. Mr. Knisley said he he, himself, had to look to his own resources for his defense. Senator Dodge said that this is exactly what they are trying to cover in the bill that Senator Bryan explained. Senator Dodge said they could not waive immunity. Senator Bryan said that what Mr. Knisley was saying that in the case of Elmo Dericco, his exposure would be as a member of TRPA and not as a state employee, which he is. There is no provision for the Attorney General to defend him because he is not defending him in the capacity as a state employee.

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Senator Dodge asked Senator Wilson if his bill addressed boards and commissions. Senator Wilson said yes, but he was wondering if that applied to the above situation. Senator Dodge asked if there was any way they could amend to say that people who are appointed by virtue of statutory requirement. Senator Bryan asked Mr. Knisley if it would help at all if they said in the compact that the agency counsel must defend. Mr. Knisley said he felt it would best be handled by general legislation if you are going to be specific enough to catch all of the appointees. Senator Dodge said that Senator Wilson, that morning, had obtained Judiciary Committee approval of a bill which purported to cover the situation which the Supreme Court recently ruled on in the case of a school board member. Senator Dodge said they should see what they could do with that piece of legislation to clean up TRPA, as such.

Mr. Knisley said that the warden who was sued in a rape case had to defend himself.

Senator Dodge moved that lines 29-31 be removed from S.B. 254.

Senator Bryan seconded the motion.

Motion was unanimous with Senator Neal absent.

Mr. Ray Knisley, former Governor's Representative at Large to the bi-state agency, came forward to testify at this time. He stated that at the present he was an ordinary citizen with an interest in the Lake, but no longer with responsibility in the matter. Mr. Knisley asked the committee to look at Page 3, line 26, of the bill. The word "his" had crept in to designate both sexes. It should read "the directors designee." Senator Gojack said she would move that the word "his" be changed to read "the director's designee. However, there was no vote on the motion.

Mr. Knisley said it was his opinion that the changes being contemplated will probably, in the long run, be harmful rather than helpful. He would suggest that the committee consider amending the provision, Section K, page 9, so that it is no longer possible to make it more advantageous to be denied than to get joint approval on a proposition before the agency. Senator Wilson indicated that there was a division on the committee and that Mr. Knisley should go ahead and make a statement for the record. Mr. Knisley said at the present time, under Judge Thompson's interpretation, for which he has no quarrel, it is more advantageous for an applicant to come before the agency and to be

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approved by one state and denied by the other, than it is to come before the agency and be approved by both states. The reason for this is none of the conditions sought to be imposed by staff, the technical conditions governing whatever the project may be. If it is a subdivision, the requirements for culverts and grades do not apply. He said you have a situation now, that if it were in legislature, if the Assembly approved a bill across to the Senate and the Senate objected, it would become law anyway, in 60 days. Senator Blakemore asked if this was in regard to a variance as well as a project. Mr. Knisley said this was in regard to any project. Mr. Knisley said that he and Art Wood, developer of Incline, came before the committee last session. Mr. Wood asked that the usual provision governing planning commissions be inserted. He had language which Mr. Swobe approved, as an attorney, that went in the bill verbatim. Mr. Knisley said he didn't believe anyone believed it would create the conditions it has. Mr. Knisley said that he thought if this were amended so that it required positive action and you leave the membership alone, and amend so that no state could pass legislation that superceded that of the compact, you would have a highly superior document. Mr. Knisley said he was thinking of the conditions on both sides of the line when he says this. He said it was true that the state has had difficulties between the state and the counties. He said this was personal and said they had an excellent working organization there for a while. Mr. Knisley said that appointing the seven members and leaving this in here, you are creating a worse condition than if you leave the bill entirely alone.

Senator Wilson said the committee was divided in its opinion on this very thing but it was the general consensus that they should increase the balance or do nothing. Mr. Knisley said he realized it was an imposition to come in at this late hour and suggest amendments. Senator Wilson said he thought Mr. Knisley's comments should be in the record.

Mr. Knisley said he would like to point out that the first line amendment that would prohibit the states from passing superior legislation could very well save the compact. It was his opinion that if California continues with its CTRPA in its present aggressive form, that the next session the legislature would appeal the act. Mr. Knisley felt this was inevitable because California through its CTRPA will have complete jurisdiction on the California side of the line. Senator Wilson asked if he felt it would be more strict than the NTRPA. Mr. Knisley said yes. He said the Nevada group will have no voice because of the superior conditions over there. Yet, the California group will have equal voice in Nevada. Senator Wilson and Mr. Knisley discusses this briefly. Senator Sheerin said this was not our problem, if California is undermining TRPA. Mr. Knisley said he resented, as a citizen of the State of Nevada, a condition being created whereby the compact as formed and California by a subsequent act nulifies the participation of Nevada in that section of California, yet retains it right to act in Nevada. Mr. Knisley said that maybe that wasn't Senator Sheerin's business, but as a citizen he resented that type of situation being created. Senator Blakemore said if this was true, we would all be better off to get out now. Mr. Knisley said no, because he thought there would be enough pressure put on California if they could come up with a workable document. Senator Blakemore said that anything they do, California is going to have to approve. Mr. Knisley said that with three simple words that he suggested on the amendment, you would take care of CTRPA. Senator Gojack asked what the words were. Mr. Knisley said "if it pre-empt's for this agency legislation in the field of planning in the Tahoe Basin." Senator Bryan asked what page and line. Mr. Knisley said that he had not had time to study this. Senator Wilson asked if he was talking about amendatory language which would prohibit a state agency at the Lake from enacting standards more restrictive. Mr. Knisley said yes, in the section that says either state may pass superior language, if that was stricken. Senator Wilson asked if he recommended striking then. Mr. Knisley said yes. Mr. Owens said that was Article 6, page 7.

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Senator Bryan said he assumed that when Mr. Knisley said the amendments would be harmful he meant that more harmful the way the compact is presently constituted. Mr. Knisley said yes, he was looking at the make up of the California structure not criticizing what was done on the Nevada side. He said it was a different structure in California. Senator Wilson said it expanded to seven. Mr. Knisley said the result of the expansion was not going to be the same as the result of the expansion on the Nevada side. Senator Dodge it seems to him that without knowing the people involved and who the appointees of the Governor may be, the balance of control is outside the basin, in both cases. Mr. Knisley said it was not in the CTRPA. Senator Bryan said they were not referring to the CTRPA, but the bi-state agency. Senator Dodge said that one California member should be a resident of the ten southernmost counties and one should be a resident of one of the main counties. Senator Dodge said if the Governor were to appoint an at-large member from within the basin that would be correct. Mr. Knisley said the seventh member is within the basin at the present time. Senator Dodge not in the make up of the bi-state agency. Mr. Knisley said he could be from anywhere in California. Mr. Knisley said that from four years of working with it, the structure will not improve the agency. Senator Bryan said the italicized language said that the representative at large shall not reside within the region. Senator Wilson read the new language and the committee discussed it briefly. Senator Wilson said that language was intended to provide more balance and said the CTRPA has a need for that improved balance, which is shown by the overdevelopment on the California side of the line. Senator Wilson said they made the judgement that

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both sides required an improved balance on the respective delegations. Mr. Knisley said the development on the California side of the line is due to unlicensed planning and building prior to the agency and not subsequent to the agency.

Mr. Knisley said that if they were going to consider S.B. 327, it has a weakness, which he wanted to point out. Page 9, sections L and M, particularly section L. He said he supposed the intent here was to impose the liability on the agency for each and every act of financial liability. He thought if the committee would read carefully, with L particularly, and without the amendment he suggested to the 60 day provision, it would be possible for California to come and petition the agency to condemn all of the gaming in Nevada and Nevada could vote solidly against this but with the default provision of the 60 day, it would prevail in 60 days. Going further, the liability would go equally against the two states. He said he was sure the introducers of the bill did not intend to create this situation, but it is there and he did want to bring it out.

Senator Dodge asked Mr. Knisley if he had any comments on S.B. 326, which was also introduced by Senators Sheerin and Blakemore. Mr. Knisley said this was a federal field and not state. He said he didn't think Congress would give the agency any authority whatsoever in dealing with land exchange, other than to say it should work in good faith with the land owner. The problem on exchange is that the states have gotten their backs up on exchange. A proper exchange in Nevada is that property must be exchanged for other property in Nevada. Senator Dodge asked if Mr. Knisley thought they had adequate authority now to encourage and facilitate this. Mr. Knisley said yes. Senator Sheerin asked Mr. Knisley to point out the language which gives TRPA the power to act. He said there was no language in the present bill. Mr. Knisley said he could see there is no language to give the compact power to act. Senator Sheerin said his question was where was the language that gives them the power for land exchange. Mr. Knisley said he thought the general language in the compact was broad enough that it is the obligation of the agency to do land exchange. He said it was inherent. He said he saw no harm in that kind of language. Senator Dodge said he would agree with that.

S.B. 326: Authorizes governing body of Tahoe Regional Planning Compact to maintain reserves of real property and to negotiate with owner of real property affected by governing body's regulations.

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Mr. Gary Owens, legal counsel for Tahoe Regional Planning Agency, testified regarding S.B. 326 and S.B. 327. Mr. Owens prefaced his remarks by saying that as the agency's attorney and here as opposed to S.B. 254, when he couldn't really express his feelings, he felt, because he has a duty to defend the agency. He felt that S.B. 326 and S.B. 327 threaten the agency very significantly in its legal position. He has no objection and encourages land exchanges and purchases. He said he felt that the agency is not the entity to be involved in land exchanges and purchases. The agency is a planning and a regulatory body only and if it were to pass, this would put upon the agency things that were not intended and would cause the agency substantial liability. The reasons he gave are as follows: 1) felt the word "substantially" is vague and unworkable, line 13, page 9. 2) felt that the language proposed in S.B. 326 would destroy the legal arguments which they have recently accomplished. 3) S.B. 326 would cause the agency, he felt, to be condemning rather than a regulatory body requiring the agency to negotiate for exchanges. He felt that to require the agency to negotiate is to require it to admit, in essence, that it has condemned somebody's property. Senator Sheerin said he realized the problem and asked if lines 13-14 were stricter. Senator Wilson said the amendatory language would require the governing body to maintain a current list of real property. Mr. Owens said he had problems with causing them to participate in negotiations at all. He said there are cases that have been used against them that say that if you enact zoning for purpose of ultimately acquiring or causing to be acquired property at windfall value, then you are guilty of an act of inverse condemnation. He felt that in light of the fact they are strict, if they were compelled to maintain a list, they would be or it could be said that they enacted the thing originally for the purpose of depressing the property value and then allowing the agency or someone to take it. He felt that weakened their position substantially. Senator Blakemore said he didn't understand the rationale of the agency if that was the case. Mr. Owens said did he mean as to the purpose of the agency. Senator Blakemore said yes. Mr. Owens said it was a technical legal point that a regulatory agency only regulates. Senator Blakemore said he was not alluding that here. According to Judge Thompson's and what you said yourself, that you are decreasing values. Mr. Owens said no, what he was saying, was that according to the law you may decrease values and still regulate at the same time. Senator Blakemore asked if they were getting into a constitutional area. Mr. Owens said yes, extremely. Senator Blakemore said it seemed to him that the agency might be looking to do anything they could to alleviate this problem or show good faith. .

Senator Dodge asked if it would help if they were to address a resolution asking the agency to do whatever they could to encourage land exchanges. Mr. Owens said a way to consider that is to memorialize the people like the Bureau of Land Management, U.S. Forest Service, and divisions in the state of Nevada. Senator Wilson addressed himself to this briefly, and said he would support such a resolution.



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Senator Wilson indicated that Senator Dodge had to leave at 4:45 p.m. and suggested they return to S.B. 254.

Senator Bryan moved an amend and do pass on S.B. 254, with the amendment consisting of the deletion of lines 29-31 on page 5; page 3, line 26, deleting the word "his" and inserting the words "the directors", and ask the bill drafter to conform this throughout the bill.

Senator Bryan said so amend on the above.

Senator Gojack seconded the motion.

Senators Wilson, Dodge, Bryan, and Gojack voted aye. Senators Sheerin and Blakemore did not vote and Senator Neal was absent.

S.B. 44: Abolishes Nevada Tahoe regional planning agency.

Senator Sheerin said one of the things that brought about this whole situation is the gaming on the Nevada side. He said he was personally not interested in more hotels and motels being built at Lake Tahoe. He thought that Nevada should control its gaming. He said that was one reason he was opposed to some of the changes in S.B. 254. He said in order to keep Nevada in control of its gaming, NTRPA has to be kept, for the sole purpose of controlling gaming. Senator Dodge said to keep NTRPA alive and suggested they amend the NTRPA to conform the membership to what they were doing in the TRPA.

Senator Wilson said he didn't know if NTRPA was needed if the balance on the agency is increased. There was discussion about making this a triggering mechanism. Senator Bryan said he agreed with Senator Sheerin that Nevada should assume the responsibility as to what type of gaming expansion occurs at Lake Tahoe. He said he would favor retention of NTRPA. Senator Bryan asked Senator Sheerin how he would feel to amending the members of the NTRPA to conform with the expanded membership of the agency. Senator Sheerin said the NTRPA does not have the law making powers the TRPA has. He said he would have no objection to having the two memberships coincide.

Senator Bryan said that Senator Sheerin, as sponsor of that bill, would he want to do any amending that would cause embarrassment to him. Senator Sheerin said he would have no objection.

Senator Bryan said he would move to amend and do pass to expand the membership of the NTRPA at such time as S.B. 254 is approved by the California Legislature and subsequently by Congress to expand its membership to include the Secretary of State and the Lt. Governor.

Senator Dodge seconded the motion.

Senator Wilson said his only question was what if S.B. 254 was not ratified by Congress. There was a short discussion of this after which Senator Bryan withdrew his previous motion.

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Senator Bryan then moved to amend and do pass S.B. 44 to expand membership to reflect the inclusion of the Lt. Governor and the Secretary of State.  
Senator Dodge seconded the motion.

Senator Bryan asked Senator Sheerin if that, bearing his name as sponsor, create any problems for him. Senator Bryan said he felt it was very important that this not cause any problem for Senator Sheerin. There was discussion about whether this should be processed as a separate bill under sponsorship of the Environment and Public Resources Committee. After the discussion the following action was taken.

Senator Bryan moved to have a new bill which would amend the NTRPA.  
Senator Dodge seconded the motion.

Senators Wilson, Gojack, Bryan, and Dodge voted aye. Senators Sheerin and Blakemore did not vote and Senator Neal was absent.

There being no further business, the meeting adjourned at 4:50 p.m.

Respectfully submitted:

Kristine Zohner  
Kristine Zohner, Committee Secretary

APPROVED BY:

Thomas R.C. Wilson  
Senator Thomas R.C. Wilson, Chairman

SENATE Environment COMMITTEE

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COM # 213  
 DAY Friday DATE April 4, 1975

NAME ORGANIZATION ADDRESS PHONE NUMBER

\*NOTE: PLEASE PRINT ALL THE INFORMATION CLEARLY.

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