

The meeting was called to order at 2:04 p.m. Senator Neal was in the Chair.

PRESENT: Senator Neal, Chairman
Senator Glaser, Vice-Chairman
Senator Faiss
Senator Jacobsen
Senator Lamb
Senator Sloan

OTHERS

PRESENT: Frank Daykin, Legislative Counsel Bureau
David B. Small, Carson City District Attorney
Bob Weise, Assemblyman, District #23
Roland Westergard, Director, Department of Conservation and Natural Resources
Pamela Wilcox
Ruth Zealand
Ross DeLipkau, attorney representing various Water Cos.
Debbie Sheltra, Virginia Foothills Property Owners Assoc.
M. Douglas Miller, representing mining
William Hancock, Secretary and Manager of State Public Works Board
Kelly Jackson, Department of Energy

Senator Neal announced that the time had arrived for the rescheduled hearing on S.B. 13 and the amendment suggested in the previous meeting as drafted in statute form (see Exhibit "A", attached).

S.B. 13 - Provides for an extension of time within which underground water appropriated for a subdivision must be put to a beneficial use under certain circumstances.

Senator Neal introduced Frank Daykin of the Legislative Counsel Bureau who explained the purpose and effect of the amendment proposed for this bill.

Mr. Daykin testified that the amendment provides for a mandatory rather than discretionary extension of time on the permit to appropriate water for subdivision purposes. Mandatory in the sense that the subdivider still has to show that he is proceeding in good faith and with reasonable diligence. In an ordinary case, the state engineer has discretion to grant an extension but is not required to do it, even though there is good faith and reasonable diligence.

Senator Neal asked how many years a person would have under the new law, if passed, to put his water to beneficial use supposing he received his original permit in 1978. Mr. Daykin replied that under the new proposal he would have anywhere from 1993 to 1998, depending on the size of the subdivision. Under the existing law, he would only have until 1988.

Senator Sloan questioned whether this bill would give the permittee the initial time provided for presently in Section 533.380, plus the time provided in the amendment. Mr. Daykin answered that it would.

The next speaker was David Small, District Attorney for Carson City, who spoke in support of the bill as amended. Carson City has enacted a growth management ordinance, which is based on a first-come, first-serve system. Therefore, subdividers, developers, improvement districts need assurances that they will have some constants to plan on. In the long term, Carson City would like to have the water last for more than 10 years.

Assemblyman Bob Weise testified next, and stated that he felt this piece of legislation is not a pro-developer, but a consumer bill. The people providing water services, whether they be cities or private water companies, are obtaining approval with state and local government sanctions to sell subdivisions with water and sewer available. When the consumer buys a lot he can see evidence of the water by way of the fire hydrant, the water service in the meter box, etc. When they are ready to build maybe five years later, they are told they cannot get a building permit because the water permit ran out on the property because they did not build. Then the problem is compounded if the state engineer determines that the water rights have expired on one lot, and they are turned over for redistribution to someone else, then they again expire and are turned over again.

Senator Sloan pointed out that he found it difficult to believe this bill is geared to the consumer, since the time allowed for proving beneficial use is tied to the size of the subdivision. A consumer would have to realize that if he bought a lot in a subdivision of 75 or more units, he would be extended more time. Another objection Senator Sloan had was the problem of the consumer not knowing that he could lose the water rights if they were not improved within a certain time. He asked if there could be a requirement by law that a subdivider or seller notify the consumer that he has to put the water to beneficial use within a certain amount of time.

Assemblyman Weise replied that he would have no objection to removing the size limitation from the bill, but felt that there would be definite problems enforcing a requirement for notification by the subdivider or seller since most buyers do not read the property disclosure statements, or study the map, where the requirement would have to be contained.

Senator Neal asked Mr. Roland Westergard, Director of the Department of Conservation and Natural Resources, what was required to prove beneficial use. Mr. Westergard replied that it would depend on the type of use for which the water had been appropriated, but in the case of a subdivision it would mean that the lines have been installed, the water service is available, and a house is built so that water is actually being converted for use in that given unit.

Senator Lamb then asked Mr. Westergard why the department needs this bill. Mr. Westergard replied that the department did not request the bill, and in fact, the law could be administered without it.

Mr. W. W. White, an engineer who has been engaged in building the Incline Village development, spoke next in favor of the bill and amendment. He felt that the bill would give the developer a little more peace of mind if it were passed. He could not see any reason to apply the time limitations according to subdivision size, as long as the provision for due diligence is included. Mr. White explained that Incline Village has lost some of the water rights it had applied for because they were not extended.

Then Mr. Leonard Ainsworth of the Silver Lake Water Company at Stead testified in favor of the bill, if amended. He told the committee members that the water company he represents had been established to provide water to the Lear-Reno development, which consisted of residential and commercial properties. He recounted how the developer had received water rights in the 1960's and dug 4 wells at considerable expense. Building was delayed because of poor financial conditions and their application for extension was denied. They filed for judicial review and the matter was settled out of court, but at considerable expense to the developer. He requested that if this bill did not pass, the law be rewritten so that developers and property owners have assurances that extensions will be granted when warranted.

Mr. Rusty Nash of the Washoe County District Attorney's office, representing the Regional Planning Commission of Washoe County, spoke in opposition to this bill and amendment. He felt that if the state engineer does not feel the bill is necessary, it should not be passed. He explained his concern for the retro-active effect of this proposed amendment in light of the fact that the state engineer has taken the position in the past of over-appropriating water in the outlying areas since historically 3/4ths of the permits granted never prove out. Another problem with making the bill retroactive is that prior to 1977, the state engineer did not have to sign the final plat guaranteeing that water was available so he did not have the same control over those subdivisions as he does now.

Mr. Nash also pointed out that the present law allows for extensions, and he objected to the amendment shifting to the state engineer the burden of proof that there was not due diligence or good faith efforts to put the water to beneficial use. Also, the amendment would mandate longer periods of extensions than currently exist for the initial application.

Mr. Roland Oates, representing the Associated General Contractors, spoke next in favor of the bill. He remarked that Roland Westergard is a highly regarded official who has been fair in his decisions regarding water rights, however, he will not be in office forever. This bill should be looked at as a lessening of the burden on the consumer so that somewhere down the line he is not denied the right to build his house.

Mr. Oates felt it was important to determine whether Mr. Rusty Nash was directed by the Regional Planning Commission to appear, or if he was testifying as a private citizen.

The next speaker was Pamela Wilcox, who is an appointed member of the Regional Planning Commission but was not directed by them to appear. She spoke in opposition to the bill and amendment by stating that as a planner trying to stay on top of the growth situation, the bill is: 1) not needed, and 2) not wise. She would support consumer protection legislation to put a warning on all lots sold that the water rights must be put to beneficial use within a time period. She also requested that if the committee does pass the bill, they make it apply only in non-designated basins.

The next speaker was Ruth Zealand, representing herself and Gene Giberson, who spoke in favor of the bill. She explained that she was a property owner who has not been able to build on the lot she bought 10 years ago, and she does not want to lose her water rights.

Ross DeLipkau testified again in favor of the bill. He explained that the bill would be beneficial to all persons involved with development. He reiterated that there are other provisions of the water law which will prevent the handing out of permits and protect the ground water basin so that the water table is not unreasonably lowered.

Mr. DeLipkau stated that the bill was approved by the Las Vegas Valley Water District, the largest water utility in the state, and reminded the committee that Mr. Westergard does not oppose the bill.

Senator Neal commented that again he had a problem with the bill because the time restriction is placed on the engineer at the bottom limit, but there is no time restriction on the top limit.

Debbie Sheltra once again spoke in opposition to the bill. She informed the committee that A.B. 97, if passed, would set up a board to be appointed by the Governor to review the state engineer. Section 3 of the bill provides for an appeal of the engineer's decision and allows the board to affirm, modify or reverse that decision. She felt if S.B. 13 was passed, making the present law open-ended, and A.B. 97 also passed, it would open the door for discretionary political use of the water.

Ms. Sheltra reminded the committee that Mr. Daykin stated that the amendment would allow the extensions to go on for 20 years, and that would be a long time without a review procedure considering how water situations change.

M. Douglas Miller spoke again, wishing to add to his previous statement made in favor of the bill. He discussed the basic projections the water rights engineer uses, and how it should be metered rather than wasted. He reiterated his support of the bill.

Senator Neal announced that no further testimony would be taken on S.B. 13.

S.B. 15 - Transferring certain duties from state public works board to department of energy.

Mr. William Hancock, Secretary-Manager of the State Public Works Board testified that this bill was introduced at the request of the State Public Works Board and it transfers the Board's responsibility for the development of energy conservation standards to the Department of Energy and repeals the Board's authority for eminent domain.

The Board was directed by the last session of the Legislature to establish standards which are now in effect, but the administrative load put on their staff is extremely heavy. The Department of Energy is more capable of administering those standards now that they are established. The Board would continue to provide the Department of Energy with technical assistance needed.

On the matter of eminent domain, Mr. Hancock testified that in the last session a bill was passed which conveys to the Divisions of Land in the Department of Conservation and Natural Resources the responsibility of acquiring land which the legislature approves. The Board is not in the business of acquiring land anymore, so they do not need the provision of eminent domain.

Senator Jacobsen asked if this bill could create a duplication of efforts. Mr. Hancock replied that there is a duplication presently, this bill would centralize the administration.

Mr. Kelly Jackson of the Department of Energy testified that the Department made a commitment to the Public Works Board that if the Board introduced this bill, they would not oppose it; but they are not actively seeking this particular regulatory function. They have been a funding source through various federal grants to the Public Works Board and there is an advantage of centralizing that into one agency.

Senator Jacobsen asked Mr. Kelly if the Department is providing any additional monies in their budget to handle this change. Mr. Kelly replied that they would not need any additional appropriations based upon this legislation.

Senator Jacobsen moved that S.B. 15 be passed out of committee with a recommendation of "Do Pass."
Seconded by Senator Glaser.
Motion carried.

There being no further business, the meeting was adjourned at 3:20 p.m.

Respectfully submitted,


Eileen Wynkoop, Secretary

APPROVED:

Joe Neal, Chairman

1979 REGULAR SESSION (60TH)

ASSEMBLY ACTION	SENATE ACTION	Senate	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to Senate	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. 13	Joint
Date:	Date:		Resolution No.
Initial:	Initial:	BDR 48-449	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by Committee on Natural	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>	Resources	
Date:	Date:		
Initial:	Initial:		

Amendment N^o 9



Amend section 1, page 1, line 1, by deleting "534" and inserting "533".

Amend section 1, page 1, by deleting lines 3 through 14 and inserting:

"1. Except as provided in subsection 2, whenever an application for a permit to appropriate water for municipal or quasi-municipal uses has been approved by the state engineer and the holder of the permit seeks to supply water to one or more subdivisions for which the final map has been recorded pursuant to NRS 278.010 to 278.630, inclusive, the state engineer must grant annual extensions of time, as provided in this subsection, in which to apply the water to a beneficial use if the holder of the permit makes timely and proper application each year for the extension and proves to the satisfaction of the state engineer each year that he is proceeding in good faith and with reasonable diligence. If the

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 LCB File
 Journal ✓
 Engrossment
 Bill

Date 1-29-79 Drafted by JW:sl

Amendment No. 9 to Senate Bill No. 13 (BDR48-449) Page 2

holder of the permit meets these requirements and seeks to supply:

(a) A subdivision of fewer than 25 lots, parcels, sites, units or plots, he is entitled to extensions for a period of not less than 5 years after the original date set forth on the permit for filing the proof of application of water to beneficial use.

(b) A subdivision of 25 or more lots, parcels, sites, units or plots but fewer than 75, he is entitled to extensions for a period of not less than 7 years after the original date set forth on the permit for filing the proof of application of water to beneficial use.

(c) A subdivision of 75 or more lots, parcels, sites, units or plots, he is entitled to extensions for a period of not less than 10 years after the original date set forth on the permit for filing the proof of application of water to beneficial use.

2. The state engineer may refuse to grant an extension of time under subsection 1 if he determines that the extension would seriously jeopardize the water resource or prior water rights and would thereby endanger the health and welfare of the users of those rights.

3. An extension of time granted pursuant to the provisions of this section must not be counted for purposes of computing the time necessary to work a forfeiture or abandonment."

Amendment No. 9 to Senate Bill No. 13 (BDR 48-449) Page 3

Amend the bill as a whole, by deleting section 2 and renumbering sections 3 and 4 as sections 2 and 3.

Amend section 3, page 2, by deleting line 44 and inserting:
"engineer [shall have authority] has discretion, for good cause shown, to extend the time".

Amend the bill as a whole by inserting a new section, designated as section 4, following section 4, to read as follows:

"Sec. 4. This act applies to applications for permits approved before July 1, 1979, as well as to those approved after that date."

Amend the title of the bill, line 1, by deleting:

"providing for an extension" and inserting "revising provisions for extensions".

SENATE BILL NO. 13—SENATOR RAGGIO

JANUARY 16, 1979

Referred to Committee on Natural Resources

SUMMARY—Provides for an extension of time within which underground water appropriated for a subdivision must be put to a beneficial use under certain circumstances. (BDR 48-449)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to appropriation of water; providing for an extension of time within which underground water for a subdivision must be put to a beneficial use under certain circumstances; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 534 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 *If the holder of a permit to appropriate underground water for land*
4 *which lies within a subdivision, as defined in NRS 278.320, files a*
5 *timely application with the state engineer for an extension of the time*
6 *within which to put the water to a beneficial use and satisfies the state*
7 *engineer that he has attempted in good faith and with reasonable*
8 *diligence to put the water to a beneficial use within the time set pursuant*
9 *to subsection 1 of NRS 533.380, the state engineer shall extend that*
10 *time, if the subdivision contains:*
11 1. *Less than 25 units, not less than 5 years.*
12 2. *Twenty-five units or more but less than 75 units, not less than*
13 *7 years.*
14 3. *Seventy-five units or more, not less than 10 years.*
15 SEC. 2. NRS 534.090 is hereby amended to read as follows:
16 534.090 1. **[Failure]** *Except as provided by subsection 2, failure*
17 *for 5 successive years on the part of the holder of any right, whether*
18 *it [be] is an adjudicated right, an unadjudicated right, or permitted*
19 *right, and [further whether such right be] whether the right is initiated*
20 *after or before March 25, 1939, to use beneficially all or any part of the*
21 *underground water for the purpose for which [such right shall be]*
22 *the right is acquired or claimed, [shall work] works a forfeiture of both*

Original bill is 3 pages long.
Contact the Research Library for
a copy of the complete bill.

SENATE BILL NO. 15—COMMITTEE ON
GOVERNMENT AFFAIRS

JANUARY 16, 1979

Referred to Committee on Natural Resources

SUMMARY—Transferring certain duties from state public works board to department of energy. (BDR 28-140)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to the state public works board; transferring to the department of energy certain duties relating to standards for the conservation of energy in buildings; repealing statutory provision relating to the power of eminent domain; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 523 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 1. *The department shall establish standards for the conservation of*
4 *of energy by regulation for all buildings, public and private, the con-*
5 *struction of which is commenced on or after July 1, 1978. The standards*
6 *shall apply to:*
7 (a) *Construction of floors, walls, ceilings and roofs;*
8 (b) *Heating, ventilating and air-conditioning equipment and systems;*
9 (c) *Electric systems;*
10 (d) *Water heating equipment and systems; and*
11 (e) *Insulation.*
12 *Modifications may be made to coincide with applicable federal require-*
13 *ments or for any other purpose in the public interest. The regulations of*
14 *the state public works board on the same subject remain in effect until*
15 *revised by the department.*
16 2. *The department shall establish exemptions for buildings to which*
17 *the standards, if applied, would not promote conservation of energy.*
18 3. *The standards must include provisions authorizing allowances in*
19 *design and construction to the extent solar, geothermal, wind or other*
20 *renewable sources of energy are used to supply all or a part of the*
21 *requirements of a public or private building for energy.*
22 4. *The standards must include provisions authorizing deviations from*