

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE**

**Seventy-Seventh Session
June 1, 2013**

The Senate Committee on Finance Subcommittee was called to order by Chair Aaron D. Ford at 5:17 p.m. on Saturday, June 1, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Aaron D. Ford, Chair
Senator Ben Kieckhefer
Senator Justin C. Jones

STAFF MEMBERS PRESENT:

Michael J. Stewart, Chief Principal Research Analyst
Wayne Thorley, Program Analyst
RJ Keetch, Committee Secretary

OTHERS PRESENT:

Leo M. Drozdoff, P.E., Director, State Department of Conservation and Natural Resources
Kyle Davis, Nevada Conservation League

Chair Ford:

I will begin the meeting on Assembly Bill (A.B.) 461.

ASSEMBLY BILL 461 (1st Reprint): Enacts provisions governing the management of sagebrush ecosystems. (BDR 26-1194)

Leo M. Drozdoff, P.E. (Director, State Department of Conservation and Natural Resources):

If approved, this bill will codify actions taken under Executive Order No. 2012-09. A previous advisory council formed by Governor Brian Sandoval in spring 2012 made a set of recommendations. Those recommendations led to an

action before the Interim Finance Committee (IFC) in October 2012 that largely embodies what is before you today. At the IFC meeting in fall 2012, we were asked to keep the Legislature informed regarding our progress. That led to the Administration's decision to put forward a bill as opposed to remaining operational under an executive order.

The sage grouse listing issue is shared by 11 western states. All 11 states are operating along these lines, under executive orders. The Administration chose to put forward this bill because we were told that the statute would be viewed as stronger by federal agencies in terms of durability. We felt that would put Nevada in a better position when the federal government is required to make their decision in fall 2015 regarding sage grouse. We were also asked during that IFC meeting to work with the Legislature and we thought of no better way to do that than to move forward with a bill.

We have established the Nevada Sagebrush Ecosystem Council, which consists of a nine-member board appointed by Governor Brian Sandoval representing a variety of interests, such as ranching, mining, conservation, Native Americans, local government, etc. The Council also consists of six *ex-officio* members, from three federal agencies, including the director of the State Department of Conservation and Natural Resources; the director of the Department of Wildlife (NDOW); director of the State Department of Agriculture; the State director of the Bureau of Land Management (BLM); the State supervisor of the U.S. Fish and Wildlife Service; and the forest supervisor for the Humboldt-Toiyabe National Forest.

The Council makes policy and has the ability to take actions and hear concerns that may stem from the management of this issue. We also put in place a technical team which is represented in all of our agency budgets. The technical team is loosely modeled after the Tahoe Regional Planning Agency, where we brought interests from various states' agencies to work together for a common cause. We have local government interactions through our conservation district programs. There will be a local conservation specialist for Elko, Winnemucca and Ely who will work with local governments to be a conduit of information both to and from the Council.

A large part of the strategy is to develop a crediting system. The State has a strategy that if you have a development project, the first order of business would be to try not to go into that habitat, then to minimize what goes into the

habitat and finally to mitigate the impact on the habitat. Mitigation is the area that is going to take the most work because you have to set up some sort of crediting system where, in exchange for the ability to conduct a development project in an area where there is habitat that could be impacted, some type of common currency is required in order to offset those impacts throughout the State.

We are in the middle of that process now. We had a Council meeting on Friday and heard four presentations regarding this crediting system.

The purpose here is to do our best to work with the other ten states, and the federal government, to avoid listing the sage grouse under the Endangered Species Act; or, if this species is listed, to be in a position to deal with it so it does not have profound economic impacts to the State.

The challenge is that Nevada is comprised of 15 percent private land and 85 percent federally managed land. Despite all of our best efforts, we obviously need assistance from federal agencies. The fact that they have agreed, and are ex-officio members of this Council, sets us apart from our neighboring states.

We worked extensively on the Assembly side to add some provisions to this bill, such as the ability to pursue cost recovery. We have committed to provide a written report to the Governor which will be shared with the Legislature. We basically put into this bill the codification of everything we are doing with regard to this effort. We think it is a good way to continue to work collaboratively with the Legislature and will send the right signal to the federal government.

Chair Ford:

One of the questions that has come to me in my capacity as Chair of the Senate Committee on Natural Resources is the composition of the Council. Has the composition been the same since the onset of the concept?

Mr. Drozdoff:

Yes. A previous advisory council was formed with a similar composition. When that advisory council ran its course in summer 2012, and this Sagebrush Ecosystem Council was put in place, the membership was similar. I believe five of the members of that council are actually members of the Sagebrush Ecosystem Council.

In our discussions in the Assembly, we pursued the addition of someone from the Assembly and Senate, but the Legislative Counsel Bureau Legal Division had some concerns about the separation of power.

Chair Ford:

The only aspect of the bill on which I have heard feedback is not based on Senate versus Assembly membership, but whether some of the groups represented have overlapping interests. Several of these groups have diverging interests, while others have overlapping interests. We were wondering if there is sufficient representation of sportsmen groups and environmentalist groups. Can you address those concerns?

Mr. Drozdoff:

If you were to ask each of those groups if they are adequately represented, they would probably say no. We are trying to do a number of things with the Council, including setting policy and establishing a common currency. We are essentially creating a new regulatory scheme. We wanted to bring those varied interests to the table. I have heard the same issues about overlapping interests. For example, the local government representative, J.J. Goicoechea, happens to be a rancher. Anyone attending the meetings would see that these individuals are working in a collaborative way. No one is singling out anyone else. I have yet to see any issue become polarizing or pitting one side against the other. In fact, I cannot think of a single motion that has not been unanimous.

I have heard this on the Assembly side and we have committed that if there is a problem with the composition of the Council, we will be back. This is a 2-year commitment. There will always be people who feel that they, or their interests, should be better represented. It is a public process. People are welcome to come to the meetings. If there is a sense of any divisiveness, or some interests outweighing another, we stand ready to fix those issues.

Senator Kieckhefer:

The bill does not define what a "credit" is, or what a credit is against. Is a credit monetary, or is it consideration of something else? It seems strange we are putting this in statute without defining what it is. Can you explain this?

Mr. Drozdoff:

We are trying to line up, on one side of the ledger, development projects of one kind or another, whether it is renewable energy, a gold mine, a transmission line, etc. Those projects will run through the filter of "avoid, minimize and mitigate." If they find that they cannot avoid, and they have minimized as much as they can but still have not minimized enough, then they are in this mitigation arena. In order to move forward, we need to establish a crediting system. On the other side of the ledger, we will have a number of different resources projects. There will be areas throughout the State such as the pinion juniper encroachment, that would be a reasonable tradeoff, or credit, for another development project. The art is to develop this common currency, or crediting system, which is yet to be defined. Last Friday, we had presentations from four nationwide consultants with different ideas and different ways they think this crediting system will work.

Senator Kieckhefer:

Do you envision that the overall guidance of this type of system would be done through the regulatory process? What concerns me is if someone comes in for a development project and you want them to provide some type of credit, and there is nothing in statute that defines a credit. If they say no, and sue us, then we are in litigation.

Mr. Drozdoff:

Correct. Candidly, that is happening right now. The BLM, the U.S. Forest Service and, to some extent the NDOW, have been doing this, but on a project-by-project basis. What is currently happening is focused only on the project footprint. The benefits and virtue of what we are proposing is that it will be done in a transparent way. We will hire a consultant to provide a service to us, but it is going to be this Council and the team that will implement the procedures consistently on a statewide basis. Whether it is through development of regulations or policy, it will be done in a transparent and consistent way.

This crediting system will allow us to take the impacts from a project in one location where the opportunities for resource enhancement are not great and use them in another area. Some individuals may not think this is the fairest or most consistent system. We are trying to fix that to the extent possible.

Senator Kieckhefer:

Section 6, subsection 6, paragraph (c) of the bill references *Nevada Revised Statutes* 701.600 through 701.640 which relate only to energy projects. Can you only recover costs from energy projects?

Mr. Drozdoff:

That is correct. This request for cost recovery was modeled after Assemblyman David Bobzien's bill, A.B. No. 307 of the 76th Session, whereby we will allow the Council to evaluate and consider cost recovery.

Senator Kieckhefer:

Have you recovered any costs to date?

Mr. Drozdoff:

No, because we have not started any of these projects yet. The first order of business for us is to establish a common set of mapping requirements, which is under way. The second order of business is to establish the crediting system. Once we have a crediting system, we will be in a better position to start recovering costs.

Chair Ford:

Would the Governor be amenable to augmenting the membership by one to include another environmentalist or conservationist or someone of like interests?

Mr. Drozdoff:

We had this discussion in the Assembly and the short answer is no. We agreed to a compromise of adding two legislators and that is where we are now. I do not believe that will change, but if you wish, I will ask again.

Chair Ford:

I am not certain that I agree with my colleagues on the other side of the hall on this particular issue. I will continue to think about it. We will have to give a report to the Senate Committee on Finance.

Mr. Drozdoff:

If there is an issue of any kind, I am putting it on the record that "we will deal with it and I am also saying that individuals can come to these meetings." There is public comment throughout. If there is any concern about votes, or individuals being maneuvered, there is plenty of opportunity to work through it. If we find

that is happening, I am sure we will be willing to change the membership composition.

Senator Jones:

Attending a meeting is great, but having the power to vote is what matters. Individuals come to our hearings and we love that they are involved in the democratic process, but what matters is that we get to vote on the issues.

Mr. Drozdoff:

Fair enough. All I am saying is I have yet to see that as an issue.

Senator Kieckhefer:

This cuts both ways. J.J. Goicoechea, for example, represents the local government, but you could just as easily have the public member be a member of the Sierra Club, or you could have individuals who have multiple interests. Not everybody focuses on a single perspective and point of view. Trying to appoint more individuals from a specific category seems like stacking the deck when there could be overlap going either way, depending on who it is.

Chair Ford:

I do not disagree with that. The concern is that several members of this subcommittee oftentimes have overlapping interests. Whether there is an overt attempt to team up, it does not change the fact that sometimes those votes do not consider the concerns of other groups. That is the point of my questions, and the concerns that I have received from those who would otherwise speak to me on the Senate Committee on Natural Resources. I understand your response and will certainly take that into consideration. You have our respect for what you do. This might be one of those issues where we agree to disagree.

Mr. Drozdoff:

We did not have to come forward with this bill. We are doing it, in large measure, to respond to what the Legislature asked us during the IFC, which is to be involved. We could not think of a better way to involve the Legislature than to bring this bill forward. The other 10 states are all operating under executive orders. I reaffirm what I said earlier: if there is an issue with the composition of this Council, we will deal with it. Senator Kieckhefer is correct, that no matter how you structure these nine people, someone will always feel it is not enough. I am sensitive to that and to Senator Jones' concerns. However,

to date we have had three meetings and one telephone meeting, and I have yet to see an issue. If there is an issue, we will deal with it.

Kyle Davis (Nevada Conservation League):

I am speaking to this bill in the neutral position because I appreciate the work that has been done. It is a positive thing that we are paying so much attention to this issue. It is significant in terms of the potential for listing the sage grouse as an endangered species. The key point is making sure that we are doing everything we can when it comes to devising our State-level plan and the regulatory structures that we have in place.

It is uncertain whether this effort will be sufficient to result in conservation efforts that make a difference in the long-term trends of the sage grouse populations. Will these efforts be enough to enable the U.S. Fish and Wildlife Service to say a structure is in place to prevent the sage grouse from being listed on the endangered species list?

There are still some concerns, although I think this is a structure that can work and I am appreciative of the effort that is being put into this. You have discussed some of the issues that have come to my attention in terms of the composition of the Council. I do not know exactly what that answer is. I appreciate the mention of potentially more conservation and environmental representation. My main concern is that you have some positions on the Council with similar interests, where the conservation and sportsmen's positions are both somewhat similar and somewhat different. That is a concern, but it is something that can be resolved. I also have some concerns about the language that allows this new Council to direct other agencies in these areas because statutory authorities exist, especially in NDOW and the management of wildlife. We would not want to get into a situation where direction from this Council conflicted with what NDOW needs to do with respect to wildlife management.

We want to ensure that what we are doing will provide us the best chance of success in terms of getting conservation measures on the ground to turn around the long-term sage grouse population trends and ultimately prevent that endangered species listing.

Senator Kieckhefer:

Who is currently the Council representative for conservation and environmental interests?

Mr. Davis:

The conservation and environmental representative is Tina Nappe.

Senator Kieckhefer:

Has there ever been a motion that Ms. Nappe voted against, or anything that has been offensive to the environmental members?

Mr. Davis:

The only vote that I am aware of is her vote against the election of J.J. Goicoechea as Chair.

Chair Ford:

I would like to have the Fiscal Analysis Division Staff summarize the content of this Subcommittee meeting and communicate that to the Senate Committee on Finance, noting that the discussion included the possibility of adding another member to the Council. This should include the concern that Mr. Davis just raised, which is that we do not want too much interference, or trump authority, over NDOW's management of wildlife, as well as the other items that were mentioned by my colleagues.

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Chair Ford:

Hearing no further comments, I will adjourn the meeting at 5:49 p.m.

RESPECTFULLY SUBMITTED:

Annette Teixeira
Committee Secretary

APPROVED BY:

Senator Aaron D. Ford, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance Roster