ARIZONA STATE LEGISLATURE

Forty-sixth Legislature – Second Regular Session

AD HOC COMMITTEE ON STATE TRUST LAND REFORM

Minutes of Meeting
Thursday, June 10, 2004
Senate Hearing Room 1 -- 9:00 a.m.

Chairman Bennett called the meeting to order at 9:15 a.m. and attendance was noted by the secretary.

Members Present

Senator Carolyn Allen
Senator Tim Bee
Senator Robert Blendu
Senator Jack Brown
Senator Robert Cannell
Senator Ken Bennett, Cochair
Representative Tom Boone
Representative Chuck Gray
Representative Linda Lopez
Representative John Nelson

Members Absent

Representative Leah Landrum Taylor
Representative Deb Gullett (Alternate Member)
Representative Jake Flake, Cochair

Speakers Present

Mark Winkleman, Commissioner, State Land Department
Richard Hubbard, Deputy Commissioner, State Land Department
Janice Palmer, Arizona School Board Association
John Keegan, Mayor, City of Peoria
Karen Cooper, Council Member, City of Flagstaff
Carla, Executive Director, McDowell Sonoran Land Trust
Roger Hacker, Grants Coordinator, City of Apache Junction
Albert Elias, Planning Director, City of Tucson
Thomas Hulen, Conservation Director, Desert Foothills Land Trust
Jack Simon, Director, Arizona Wildlife Federation
Sandy Bahr, Conservation Director, Sierra Club – Grand Canyon Chapter

PRESENTATIONS:

Mark Winkleman, Commissioner, State Land Department, advised that rural issues will be the subject of the meeting scheduled for Monday, June 14. Conservation issues will be heard on Wednesday, June 16. Today's meeting will focus on planning disposition. Yesterday, Members heard how the Land Department operates, how monies are spent and what could be done with more resources. He said it is evident how the Department is handicapped and what the potential is if the Department can take advantage of additional tools, both financial and legal. He recapped the areas identified as problem areas addressed in the proposed plan:

- Disjointed planning process - there is no system to facilitate the Land Department working with the communities to come up with a plan.

- Leapfrog development - the current system encourages people to circumvent the Land Department instead of planning development in an orderly fashion.

- Ability of cities to obtain open space - the current tool does not work well and is not effective.

- Development agreements - the Land Department lacks the ability to enter into complete development agreements.

- Participation - current tools are elementary.

- Dedication - the process relating to infrastructure does not make sense.

Richard Hubbard, Deputy Commissioner, State Land Department, reviewed the State Trust Land Reform Proposal (Attachment 1):

- ADMINISTRATION:

  Present Structure:

  The Land Commissioner is the executive of the agency, appointed by the Governor and confirmed by the Senate. Currently, no specific professional qualifications are required relating to real estate management, planning or disposition. In the past, the Land Commissioner has been subject to political pressure regarding decisions related to State Trust Land. There is no oversight or participation by the education community, the major beneficiary of the Trust, in the planning or disposition of State Trust Land or in the investment strategy of the Permanent Fund.

  State Trust Land Reform Proposal:

  The Land Commissioner will remain the executive of the agency, appointed by the Governor and confirmed by the Senate, and will be required to have basic experience in land use planning and real estate disposition. A seven-member Board of Trustees will be established for oversight and review of the Land Commissioner's major decisions relating to the management, planning and disposition of State Trust Land. Specific review duties of the Board include the formation of participation agreements, five-year disposition plan and any planning done with the cities on a major basis. Members will be appointed by the Governor and confirmed by the Senate. All Board members are required to have substantial experience with the matters before the Board. No more than four members will be from one political party and terms will be staggered.

Senator Allen noted that the Board will oversee the Land Commissioner. She wondered whether the Board will supersede the Commissioner's power if there is disagreement between the Board and the Commissioner. Mr. Hubbard answered it is anticipated the Board will have review and recommendation powers, with some approval of major decisions.

In reply to Senator Allen, Mr. Hubbard advised Board members will serve six-year terms.

Senator Allen queried who the Board answers to. Mr. Hubbard related that the Board will not have significant authority with respect to the decisions of the Land Commissioner. Senator Allen observed there is no recourse should the Legislature become concerned about the actions of the Board. Mr. Hubbard disagreed. He advised there is removal for cause. In addition, the Board must always act in the best interests of the Trust. There is a significant amount of language in the enabling act, the Constitution, the statutes and throughout the history of the statehood relating to the fiduciary obligation of the Commissioner which would extend to the Board of Trustees.

Senator Allen said there is an attempt in the proposal to remove political pressure on the members. Mr. Hubbard thinks political pressures will be lessened because of staggered terms, public meetings and decisions that are governed by fiduciary obligations.

Senator Allen asked Mr. Winkleman for his comments on the Board. Mr. Winkleman stated there has been great political pressure put on the Commissioner in the past. He believes the Board would shelter the Commissioner from that happening in the future.

Senator Bee commented that the Board would have the ability to approve the budget, replacing the Legislature in the budget-approval process. He asked for an example of a participation agreement. Mr. Hubbard explained the Land Department would option a participation agreement to a select number of private sector real estate developers. The terms of the participation agreement are intended to be long-term. The proposal is to zone and title a piece of raw land, put in infrastructure, and sell parcels individually over a long period of time, with a contractual obligation for the Trust to receive profit participation on the retail sale of those parcels. Because it is a long-term contract and profit participation, it is believed the Board should have an oversight role in that selection and in the terms of the contract.

Senator Bee asked Mr. Hubbard to expound on "select." Mr. Hubbard advised that currently any major disposition of Trust land must be done by public auction. The only requirement is a 10 percent down payment of the appraised value. The Department is attempting to limit the ability of private sector parties to bid and participate in these large-scale participation agreements. In addition to a Request for Proposal, a Request for Qualification will be required to advise the Land Department of the bidders' qualifications, their financial capacity and how they intend to develop the property. The Land Department will then select those best qualified to participate in the auction of the participation agreement.

Senator Bee queried whether every developer would have the opportunity to participate in the process to develop state land. Mr. Hubbard answered this is not intended to exclude anyone, nor is the participation agreement intended to reduce the ability of the Land Department to hold public auctions.

Representative Lopez pointed out the language in the proposal calls for four-year terms for Board members.

Representative Lopez wondered whether the Land Department can already do participation agreements. Mr. Hubbard advised there currently is a participation contract statute, but because of the public auction requirement the Department can only participate in the percentage of the end sale.

Representative Lopez asked about the selection process for the bidders. Mr. Hubbard answered there will be a Request for Proposal and a Request for Qualification. The process will go before the Board. The Land Department will outline the required parameters based on its fiduciary duty. Representative Lopez queried whether that will be in statute or whether it will be part of Rules. Mr. Hubbard said it is in statute, and the Board has the authority to create Rules under the proposal.

Representative Nelson stated the purpose is to look for the best developers to participate in this type of contract to develop property in order to maximize the return on investment. Mr. Hubbard concurred. He said that is exactly what the goal is.

Chairman Bennett asked whether there is an appeals process to address someone being left off the list. Mr. Hubbard replied there is no formal appeals process, but a developer can present his case to the Board. In addition, there is nothing to prevent a judicial review. He said it is ultimately the Board who has the final approval for the selection and for the participation contract.

Senator Bee expressed concern that politics may enter into the process.

To that point, Representative Nelson stated this process is being created to by-pass politics as much as possible to get the best and most qualified candidates. He said the Board would have tremendous peer pressure to make the right decisions to get the best and highest use of that land. Mr. Hubbard agreed. The fiduciary obligation to act in the best interest of the Trust would overshadow any attempt to involve politics, as well as the openness of the process through the open meetings process.

Representative Gray said he is worried about setting up an autonomous entity that may, in the future, do things and that the Legislature would not be able to do anything about it. He inquired about the possibility of drafting language so there will be oversight of the Board. Mr. Hubbard deferred to the beneficiaries of the Trust to explain their position on the Board. He reiterated that the fiduciary obligation and abuse of the fiduciary duty standard is strong and would subject the Board to great scrutiny.

In reply to Senator Cannell, Mr. Hubbard explained the Permanent Fund is a part of the State Board of Investment which deals with all state revenues. He said a subcommittee of the State Board of Investments will be formed to review the investment of the Permanent Fund.

Representative Lopez said the proposal states that three members of the Board can make decisions for the Board. She expressed concern about giving authority to make decisions to three members.

- FUNDING OF LAND DEPARTMENT OPERATIONS:

  Present Structure:

  The Land Department is a state agency funded entirely by the General Fund. The state is prohibited from transferring any revenue generated from the sale or lease of State Trust Land to the Land Department for operations.

  State Trust Land Reform Proposal:

  One of the goals of the proposal is to make the Land Department a self-funded operation, while remaining a state agency. The Board of Trustees would be authorized to approve retaining up to 15 percent of the average five-year revenue generated from the disposition of State Trust Land for the Land Department's budget operations. This would be called the Management Fund. In the event the Management Fund exceeds two times the operating budget of the Land Department, the excess will be returned to the Permanent Fund. The Land Department needs the resources to retain professionals in land use planning, engineering, accounting and legal resources to increase revenue generated from State Trust Land, and that is the intent of using these operating funds.

Senator Allen commented that the State Land Department has not had adequate funds in the past to do its job. She feels the additional funds are needed.

In response to Senator Allen, Mr. Hubbard answered that membership on the Board is voluntary. Members will serve without compensation but will be reimbursed for expenses.

Representative Lopez concurred with Senator Allen that the Land Department needs more funding to do its job. Her concern lies with the provision in the proposal that the Land Commissioner and deputies are exempt from personnel rules. She asked how compensation will be determined. Mr. Hubbard said that provision applies to the professionals the Department hopes to retain in order to be competitive with the private sector.

Senator Bee asked how much money would have been put in the Management Fund based on last year's numbers had the 15 percent been in place. Mr. Hubbard replied the combination of income for the Expendable Fund and the Permanent Fund for this year will be approximately $200 million, so the amount would be approximately $25 million. Senator Bee said his concern is that when 15 percent is spent from the sale of the property, the money does not go into the Trust. He said he would like to see some other mechanism established where the Trust would benefit from additional monies instead of spending long-term assets for annual operations expenditures.

Senator Cannell asked about funds based on land sales over the last five or ten years, and on monies from grazing and mineral leases. Mr. Hubbard advised that the Speaker and the President have sent a letter to the Land Commissioner requesting specific revenue projections. With respect to the grazing and agricultural revenues, the information is available on the Department's website. He said he believes it is a little less than $3 million annually for grazing and $3 million for agriculture.

Representative Gray said he finds it interesting that Mr. Hubbard characterizes spending the principal as investing. This plan proposes to spend the principal in an effort to promote sales. He likened that to a spiraling down-spin, with the interest being lost for years to come. Mr. Hubbard explained that if 15 percent is taken from the Permanent Fund and invested in operations, Permanent Fund monies would continue to be replaced at a greater scale.

Representative Gray queried who decides what the operating budget is in the proposal. He asked whether the 15 percent will go to the Department to be used for operating expenses. Mr. Hubbard said it would be created as part of the executive budget process as the proposal is written today, and not part of the legislative budget process. He revealed there has been significant amount of discussion about that.

Representative Gray asked whether the 15 percent covers all leases and royalties from mining rights in addition to the sale of land. Mr. Hubbard answered that the number on which the 15 percent is based is a combination of all revenue earned by the Land Department.

Representative Boone asked for clarification that up to 15 percent would go into the Management Fund, with the Board controlling the amount that would go into the Fund. Mr. Hubbard answered that is correct, subject to the role of the Commissioner as the executive. He agreed that, as currently written, there would be no legislative oversight at that point. Representative Boone asked whether the budget information would be sent to the Legislature for informational purposes, but the Legislature would have no oversight over the appropriation of the Management Fund. Mr. Hubbard said that is correct.

Chairman Bennett referred to language relating to the provision that states excess monies would be returned to the Permanent Fund if the funds in the Management Fund exceed two times the operating budget of the Land Department. He also read the provision that the Land Department budget would still be a part of the Executive Budget Proposal for activities not related to the management of State Trust Land. He said that seems to be indicated in the pie chart (Attachment 2) as 14 percent of current spending or $2 million out of a total of $13 million. He said the math does not make sense. It would appear the amount would not be as much as what the Department has now to manage the Trust lands. Mr. Hubbard explained the goal is to segregate Trust management responsibilities of the Department from non-Trust management responsibilities. Under the proposal, the non-Trust management responsibilities would still be funded by the General Fund. The Trust management responsibilities would be self-funded. Chairman Bennett re-stated that the non-Trust management activities will come through the Legislature and the General Fund, but the Trust management activities will be self-funded. Mr. Hubbard agreed.

Representative Boone said he understands the "two times" provision relates to the Management Fund portion only and that budget is determined by the Board. It is not the non-Trust land activities management portion that comes through the Legislature. It is the "two times" that the Board of Trustees controls, not the Legislature. Mr. Hubbard concurred.

Senator Cannell said it seems the Legislature will want to have some control over the money the Trust is involved with, but as far as where the money comes from, he thinks there is some advantage for it coming from that permanent land sale.

Janice Palmer, Arizona School Board Association, testified that clarification needs to be made with regard to oversight. In the proposal, the Land Commissioner would provide a budget to the Board of Trustees. Meetings of the Board would be public, allowing scrutiny of the budget and to see not only whether the priorities of the Land Commissioner uphold the mission of the Trust, but also to ensure the resources will maximize the Trust. The budget would then go to the Governor's Office to be included within the Executive proposal, and then put to the Legislature. Language in the proposal needs to be added to give the Legislature the ability to appropriate those dollars.

Ms. Palmer advised that any of the earnings off the sale of land must be deposited into the Permanent Fund. In order to use some of those monies to have a self-sufficient Land Department for Trust-related activities, the Board would determine the percentage that would be used. In a land sale, the down payment would go into the Fund and the rest would be released on term sales. Over a five-year average of the Land Department, $66 million will be going into the Permanent Fund; 15 percent of the $66 million is $9.5 million and that would be the maximum that could be put into the Trust Land Management Fund for investment. Over time, the Management Fund will build up to ensure there is enough money within the Fund to make it self-sustaining. A provision is included in the proposal where the State would continue to fund the Land Department for Trust-related activities until fiscal year 2016. It is hoped at that time the agency will be self-sufficient and that the Land Department will not ask the Legislature for any General Fund money for Trust-related activities.

Ms. Palmer said any of the proceeds from the sale of land will go into the Permanent Fund. The interest is expended as well as lease proceeds. The expendable earnings go toward basic state aid and to schools. If 15 percent is taken off the sale of the lands, the impact to the classroom would be minimized. The earliest this could go to the voters would be fiscal year 2007 and the first time there would be the ability to make a payment into the Trust Land Management Fund.

Chairman Bennett reiterated a letter was sent to the Land Commissioner requesting a projection of the five-year disposition plan on sales and cash flow. He thinks that data would be helpful to Members to determine which numbers the 15 percent would be applied to.

Senator Blendu referred to the 10 percent down-payment required in the sale of land. He asked whether interest is drawn off the balance of the sale. Ms. Palmer said she does not know the terms of the sale. She will get that information. Mr. Hubbard explained the terms of the sale are that 10 percent of the appraised value is required at the auction. Within 30 days, the buyer has to make up the difference between the 10 percent of the sale value and the 10 percent of the appraised value. The terms of the financing are a 25-year amortization schedule with a seven-year call. Presently, interest rates are based on a floating percentage plus several basis points.

Senator Blendu said he prefers putting 100 percent of the principal in the Fund and fund the Land Department off the earnings. He believes it is the Legislature's responsibility to give the Department the money it needs to do its job.

Representative Boone asked whether the 15 percent, or $9.5 million, is less than the current budget for Trust Land Management. Ms. Palmer said she understands there is a $12 million budget for Trust-land related activities. In the past five years, $66 million has come into the Department from the sale of land, 15 percent of which is $9.5 million.

Representative Boone asked the Commissioner if that is correct. Mr. Winkleman referred to the breakdown of the budget shown in the pie chart (Attachment 2): (1) non-Trust land related activities, primarily fire, (2) Trust land management activities that support the preservation of the land and relate to the operations of the Land Department, including monitoring the land, dealing with trespass, running the state agency, etc., (3) natural resources revenue production and trust management and (4) real estate revenue production, which is how the Department makes money on urban state Trust land.

Representative Boone queried what the 15 percent relates to. Mr. Hubbard replied that the larger part of the pie would be Trust management-related budget activities and that would be the amount that would be funded from the Management Fund under the proposal. Ms. Palmer pointed out the red portion is non-Trust related; everything else is Trust related activities of the Land Department. Representative Boone asked whether the amount is 85 percent of the $13.5 million. Ms. Palmer replied in the affirmative.

Representative Gray wondered whether the Natural Resources Revenue Production and Trust Management of $3.6 million is used to manage the Trust Fund and bring in the lease monies. Mr. Hubbard answered that money is used to guard against trespass, administer the grazing and agriculture program, and for activities related to water.

Representative Gray asked what part of this budget generates most of the sales. Mr. Hubbard referred to the Real Estate Revenue budget, presently at $3.1 million. Representative Gray asked what the Land Department needs to increase sales to the levels the Department is projecting to maintain sales over the next ten years. Mr. Hubbard noted that is one of the questions the President and Speaker have posed to the Land Commissioner. The Department is in the process of preparing that information.

Representative Gray queried whether $9.5 million would greatly enhance the amount of sales. Mr. Hubbard said the question is how the money would be allocated. Representative Gray wondered whether sales would be enhanced by taking $9.5 million out of the education budget and giving it to the Land Department. Ms. Palmer said the current education budget goes to fund the entire school system and there is a complex formula of how the money is distributed. The funding stream from the Trust Land goes for teacher salaries and classroom opportunities and cannot be used for anything else. The funding stream should be kept separate because it is a specific dedicated funding stream.

Representative Gray noted that some people who have testified say they do not want to use the interest from the Fund to fund the Land Department; however, the 15 percent is off the top of all proceeds. A portion of that 15 percent is cash from all the leases that would directly reduce the amount of money sent to education. Ms. Palmer stated the intent is to minimize as much as possible the impact to schools. Based on the past five years, a 15 percent portion, up to $9 million, would be less of a burden.

Representative Gray clarified that he is speaking of the current lease monies that go directly to the schools. According to the proposal, only 85 percent would go directly to the schools, resulting in a direct immediate reduction in funds to the schools. Ms. Palmer said the intent was to have the 15 percent come off the sale of land and not to disrupt the expendable earnings. Representative Gray said he has received conflicting information. Mr. Hubbard explained the 15 percent is a combination of permanent fund earnings plus expendable revenues. The cash that constitutes the 15 percent is deducted prior to the deposit of Permanent Fund monies.

Chairman Bennett recommended that questions be held until a spreadsheet on the disposition plan is received.

Senator Bee asked whether an evaluation has been done on the impact to the expendable revenues to the schools by putting the 15 percent plus interest in the Fund versus expending out of the interest. Ms. Palmer replied in the negative. She said she will work on that.

John Keegan, Mayor, City of Peoria, testified in support of the proposal. He said the entire land system is over 90 years old, and this is an attempt to bring it into the 21st Century. Over the last ten years, the Land Department has improved the way state lands are managed and sold with the tools it has, but more needs to be done. The Committee heard from the Peoria Planning Director about Camino a Lago, the problems encountered and why this legislation is necessary. Some of the biggest problems local governments have are lack of appropriate planning. When the State cannot keep up with the planning activities and work closely with local government and private developers, they become the impediment and it creates problems for all citizens. The goal is to provide the best service for all citizens, and the State Land Department needs to be as responsive as local governments.

In response to Senator Allen, Mr. Keegan agreed that a collaborative process is necessary to ensure that the Land Department and local government work together in the planning of State Trust Land. He said he wants to work cooperatively with the State in the best interests of the beneficiaries of the Trust as well as the local citizens.

Senator Allen asked whether this plan gives the tools on the local level to accomplish that goal. Mr. Keegan replied in the affirmative.

Karen Cooper, Council Member, City of Flagstaff, advised the City of Flagstaff and Coconino County have completed a plan to comprehensively plan for a 525 square mile area that surrounds the City. A land-use plan was developed to maximize the use of open space and the value of land managed by the Land Department while protecting local quality of life. The goal was to streamline a land management process and enhance coordination between local communities and the Department. Their package provides three tools that will help local governments acquire land for open space: designation of 300,000 acres of land as conservation lands, designation of 400,000 acres as conservation option lands and identification and subsequent acquisition of land identified for conservation in the land use planning process. Once lands are acquired for conservation, they must be managed in a manner that led to their designation. Vertical construction is prohibited, including all commercial, residential and industrial uses. Roads, trails, picnic areas and similar uses are allowed. The creation of the Board of Trustees to approve land use plans and management, and disposition of lands, will provide safeguards to the mission of the Trust and improved public accountability. While communities, conservation advocates, land managers and others benefit, the result will be an increase of funding for K-12 education, the primary beneficiary of the Land Trust.

Representative Gray said he understands the City and County were able to purchase 500 acres of State Trust land. Ms. Cooper replied it is the hope to purchase those 500 acres. A County sales tax proposal was approved by voters a few years ago and voters approved bonding to acquire those conservation lands within the City.

Carla, Executive Director, McDowell Sonoran Land Trust, spoke in favor of the proposed comprehensive package which she said is good for all of Arizona. The plan provides for improved planning, coordination and ability to conserve open space. It also improves funding for education. She said there are issues that have split the conservation community, but many feel there will be many benefits from lands that will be on the map and new planning tools that will allow for new open space and better planning. For that reason, she urged Members to move this forward. The plan is not perfect but it is a compromise consensus document that provides for school children and the environment. She insisted the package is sound, and she urged that it be presented to the voters in 2004.

Senator Allen asked whether this package will have to go back to the stakeholders if the Legislature makes changes to the plan. Ms. Carla hopes there will be consensus by stakeholders for any changes made by the Legislature. She contended there is the ability to make adjustments in the future.

Senator Allen agreed this should be on the 2004 ballot. She asked Ms. Carla how long she anticipates the stakeholder group will take to reach consensus. Ms. Carla replied the stakeholders will do whatever it takes to come to a consensus.

Representative Lopez queried when this would go into effect. Ms. Carla answered this will go into effect once Congress approves it. Representative Lopez asked when Congress will act on this. Mr. Hubbard replied there has been an effort to keep in contact with Arizona Congressional staff. If approved by the voters in November, it will be presented to Congress in January 2005; however, it is unpredictable when they will look at it. Immediately upon enactment, these provisions will be in effect.

Representative Lopez referred to the statement made that statutory changes would not be voter protected, so statutory changes could be made as needed. She expressed concern about those areas that might be statutorily changed and those voter-protected provisions. Mr. Hubbard delineated the voter-protected provisions: the Constitutional changes and the provisions of session law that deal primarily with the conservation and conservation option lands designation. Ms. Palmer said the intent of the group was to have constitutional and session law go to the voters, but they did not want to protect statutory provisions in order to have flexibility to make changes. Because of concerns, that is being reviewed by School Board attorneys.

Chairman Bennett cautioned that even though statutory language may not be on the ballot, if it effectuates what the voters voted on, it still enjoys the same protection.

Senator Blendu said he does not think Representative Lopez's questions with respect to Congress should be underestimated. He pointed out that language is missing from this proposal. Not only is it not known when Congress will act, it is not known what Congress will do. Once Congress opens Arizona's enabling clause, there is no assurance they will not take away Arizona's State lands. He believes language needs to be drafted to keep Congress from taking back the land.

To that point, Representative Gray said he has heard that since Arizona's enabling act is tied to New Mexico's act, when one is opened, it opens the other. He said New Mexico is anxious for that to happen so they can get additional water rights. That is a concern form him.

To Senator Blendu's comment about Congress, Ms. Palmer advised there is session law language that it is conditional that Congress act by December 31, 2006. She agreed this will open up the enabling act, but it is hoped a strong message will be sent to the entire Congress that this is a collaborative effort and the intent of all the voters of Arizona. Senator Blendu said that although it is a collaborative effort in Arizona, Congress can literally do anything it wants. He wondered whether there is a different way to do this without opening the enabling act. He remarked that serious thought should be given to that because there are huge risks involved.

Representative Nelson said he is concerned because if Arizona does not act, Congress will do nothing. Arizona has to have an act approved by the voters to get Congress to move.

Roger Hacker, Grants Coordinator, City of Apache Junction, advised that within the City of Apache Junction incorporated area, there are 16 square miles of State Trust land and 48 square miles of State Trust land within its planning area. He expressed support for the proposed plan. It gives additional tools to communities to meet their open space goals. Apache Junction's open space plan is also economic development for the region, so it is of vital importance to the community. In addition, the proposal is also supported because of the planning issues. He asked Members to do due diligence, ask questions and then move this package of proposed changes forward.

Albert Elias, Planning Director, City of Tucson, stated that the City of Tucson is very excited about the opportunity the reform package presents to improve the quality of development. He advised that much of the future development in the City of Tucson will occur on Trust land. Tucson believes its commitment to ensure that this future development occurs in an orderly manner based on the ability to extend services and provide infrastructure is a key element of the community. The region continually misses out on considerable state-shared revenues because Tucson has approximately 300,000 urban residents who live outside the boundaries of the municipality. The reform package has many worthwhile provisions; however, the City is concerned about the provision that provides for mediation and arbitration by a third party if final agreement cannot be reached by the City and the State Land Department on planning decisions on Trust land within the City. It is felt that decisions are best made by local officials, not third-party mediators. There is also concern about provisions in the package that permit development agreements between the cities and the Land Commissioner that may place restrictions or development impact fees or other zoning regulations that are applicable to private land owners. The State Land Department and private land owners should be treated equally. The City believes that local election officials should have final regulatory decisions on subdivision control, zoning, official plans, and building-related matters for State Trust lands.

Senator Allen asked Mr. Elias if he is referring to the Trust Board when he mentioned third-party mediators. Mr. Elias stated there is a provision in the package for mediation and arbitration if a municipality and the Land Department cannot agree on a plan. To that point, Representative Nelson said that provision was included to bring the two parties together if the debate is to continue. The process forces the entities to come together to try to reconcile their differences rather than ending up in court. Mr. Elias reported that he is merely expressing the concerns of local officials to have any portion of their local authority potentially transferred to a third party.

Representative Lopez questioned whether the State Trust Land Department would be breaching their fiduciary responsibilities and duties by submitting to a third party for mediation and arbitration. Chairman Bennett suggested deferring that question until the planning and other elements of the proposal are discussed.

Thomas Hulen, Conservation Director, Desert Foothills Land Trust, expressed hope this Committee will make the recommendation to forward this proposal to the voters in November. With the suspension of the Growing Smarter Program and Arizona Preserve Initiative, the Desert Foothills Land Trust has had to suspend some of its planning efforts. Citizens in the Cave Creek/Carefree area have contributed several million dollars of their own money to be able to preserve open space in that area and they would like to have the opportunity to continue preserving open space.

Jack Simon, Director, Arizona Wildlife Federation, spoke against the proposed package. He said many comments have been made that it is more important to get this plan right rather than to get it on the ballot this year. He said all he sees is a rush to get this on the ballot in some form or another. He believes this package cannot be done right unless it is given careful study and reflection. The proposal is constantly changing. The discussions here today indicate there will be more changes coming. He submitted this cannot be thoroughly analyzed and studied in the next couple of weeks. There have been no studies done on questions posed by Members, how this will benefit the State, what the potential problems are and the value of these lands that are being given up. Not only are the conservation lands being given up for no compensation but the conservation option lands that are going to the cities can also be given away for free. He said the education proponents are selling this proposal to their members that it will generate lots of money for education. They are saying giving up conservation lands will increase the value of the remaining lands, but there is no study to show that will happen. He thinks education will take a financial hit if this plan is approved. He believes there are serious negative impacts to rushing this through the process. He said every participant in the coalition group is getting something they believe benefits them. He maintained the only thing Education will get out of this is that it will basically control the Land Department. He urged Members to consider this reform plan carefully.

Senator Allen asked whether the Federation's main objection to this proposal concerns grazing and getting cattle off the land. She queried whether there is concern about the land trades. Mr. Simon related the Federation has never advocated removing livestock from public lands. The Federation has always advocated for the proper management of grazing. The Federation does not like the grazing provisions in this plan. The major concern is the Federation sees this as a bad deal for Arizona and for education. Session law specifies that cities can get the conservation option lands without paying anything. Senator Allen said she would like to look at that language to see if the language has been changed. She believes there has to be better stewardship on the land. She asked whether there is concern about the 25-year leases. Mr. Simon replied in the affirmative. He agreed with the need for better stewardship but does not believe better stewardship will be forthcoming. He thinks ranchers do whatever they want to do. He opined the proposal locks in a system of bad management.

Senator Blendu disagreed with Mr. Simon's comments. He maintained that ranchers do not put out any more cows than the land can sustain.

Senator Blendu commented that Members of this Committee are here today because of their concern. Members understand that a group of people who have mutually beneficial interests have gotten together and agreed to something they want Legislators to do. The charge of this Committee is good public policy and to explain to the taxpayers whether the State and the educational system will be better off. He assured Mr. Simon that the Members of this Committee are not here to just approve what a group of people agreed upon.

Senator Brown stated ranchers in this State take better care of State lands than anyone else and that most ranchers are good stewards of the land. He maintained there is little overgrazing. He thinks we are on the right track with this bill. He would like to proceed and move forward with the proposal to see if things can be changed for the better.

Representative Lopez queried whether the Wildlife Federation has concerns about current degradation of range lands. Mr. Simon replied in the affirmative. He disagreed with Senator Brown about ranchers taking care of the lands. Many ranchers ignore agency directives to remove cows from the land when there is no food for them to eat. He believes some ranchers are forced to graze more cattle than the land can sustain because of financial considerations.

Sandy Bahr, Conservation Director, Sierra Club – Grand Canyon Chapter, testified the Sierra Club was part of the coalition group for three years until last year when they were asked to leave because they could not agree to the points that were being presented. The Sierra Club does not feel this package is good public policy, with an incremental improvement relative to conservation. She thinks it is unrealistic to expect this package can be evaluated in three weeks and information shared with the full Senate and House. She urged Members to hold off and be very prudent with this because it is a very serious and complicated package. She listed concerns:

- Disposition of land - The proposed constitutional amendment allows for disposition of land for non-monetary considerations, less than full consideration and less than full value. She referred to pages 11 and 12 of the constitutional changes (Attachment 3).

- Land exchanges - The voters have rejected land exchanges in various forms on five previous occasions.

- Grazing leases – This undercuts an Arizona Supreme Court decision relative to competition in grazing leases.

- Option lands – There is confusion relative to the provision specifying that no further consideration or value is required relative to option lands that are subject to a conceptual plan.

Ms. Bahr submitted a statement from the Tucson Audubon Society (Attachment 4).

Senator Allen noted that she and Ms. Bahr have always agreed that conservation of State Trust Land and preserving open space is important. She asked Ms. Bahr if there is concern if this does not get on the ballot in 2004 that open space and preservation will be harmed immeasurably and the things agreed upon in the past will not happen because this group will not stay together until 2006 and there will be a lot more houses built on the lands in Scottsdale. Ms. Bahr agreed it is difficult to hold the coalition together but if people are committed, a way will be found to do this, but not with this kind of package.

Chairman Bennett announced the schedule for next week:

Monday at 1:00 p.m. in Senate Hearing Room 1
Wednesday at 1:30 p.m. at the Land Department
Thursday at 1:00 p.m. in Senate Hearing Room 1

Senator Allen announced she will not be here on Monday. Chairman Bennett excused Senator Allen.

Chairman Bennett advised he will not be able to attend the Wednesday meeting.

Senator Brown asked whether meetings can be scheduled on consecutive days. Chairman Bennett noted that staff indicates that is not possible.

Without objection, the meeting adjourned at 12:01 p.m.

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Joanne Bell, Committee Secretary
March 7, 2017

(Original minutes, attachments and tape on file in the Chief Clerk's Office)