

ARIZONA STATE LEGISLATURE  
Forty-seventh Legislature – Second Regular Session

**LEGISLATIVE COUNCIL**  
Minutes of Special Meeting  
Thursday, July 27, 2006  
House Hearing Room 3 -- 12:00 p.m.

Chairman Weiers called the meeting to order at 12:25 p.m. and attendance was noted by the secretary.

**Members Present**

Senator Ed Ableser	Representative Linda Lopez
Senator Chuck Gray	Representative David Lujan
Senator Linda Gray	Representative Gary Pierce
Senator Thayer Verschoor	Representative Bob Robson
Senator Ken Bennett, Vice-Chairman	Representative Steve Tully
	Representative Jim Weiers, Chairman

**Members Absent**

Senator Linda Aguirre	Representative Leah Landrum Taylor
Senator Richard Miranda	

**Committee Action**

H.C.R. 2045 (2006) – DP (7-3-0-4)  
C-03-2006 – DP (7-2-0-5)

**Speakers Present**

Michael Liburdi, Conserving Arizona's Future  
Peter Culp, representing self

**CONSIDERATION OF BILLS:**

**H.C.R. 2045 (2006), state trust land reform – DO PASS**

**Senator Bennett moved that the Legislative Council further amend its action in adopting a ballot analysis on H.C.R. 2045, and moved that the analysis be further amended as proposed in the two-page amendment (Attachment 1).**

Representative Lopez questioned the purpose of doing this today. Chairman Weiers explained the purpose is because a lawsuit has been filed by the opposing side. The Court contacted the

Legislature to ask if the matter could be negated before the case actually goes forward. He said when the complaint was looked at, it was felt there were some changes that could be made that would quickly clear up the whole matter.

Representative Lopez said she was curious as to whether there have been any conversations with the group that filed the suit. Chairman Weiers replied that he has had no contact with them.

Representative Lopez said she assumes the opposition would have wanted to be notified in advance that this was going to happen and would have welcomed the opportunity to meet.

To that point, Representative Robson mentioned that it is difficult to sit down and have discussions other than through this mechanism since this involves litigation. He said he believes outside discussions would be somewhat inappropriate.

Representative Lopez asked whether there have been any discussions with the homebuilders or developers. Chairman Weiers replied in the negative. He noted that a public complaint has been filed with the courts as to what the opponents thought was an unfair application of this issue. He expressed his intent for this Committee to look at the complaint and come up with a fair, unbiased initiative. The proposal will be the decision of this Committee, not the decision of the homebuilders or anyone else.

Representative Lopez queried whether the homebuilders or their attorneys had any participation in developing the amendments before this Committee. Chairman Weiers replied the amendments were prepared by staff.

Senator Bennett noted that Mike Liburdi, Conserving Arizona's Future, has indicated that he would like to speak. He said he believes that Mr. Liburdi is a signatory on the lawsuit.

Mike Liburdi, Conserving Arizona's Future, advised that he has no comments on Proposition 105. He said his comments relate to Proposition 106.

Senator Bennett explained his amendment. His proposal is to reverse the order of the first and second paragraphs of the analysis so that the reference to the number of acres being preserved in the Legislature's referendum to the voters would appear second in order of the paragraphs similar to Prop 106. The other change would be to strike the phrase in paragraph 7 "to be reasonably accessible to the public" and reconfigure that paragraph to read the same as in Prop 106 which talks about restricting conservation against development, holding the conservation land in trust and managed in a manner consistent with conservation, and then use the same language relating to its accessibility to the public upon being conveyed out of the State Trust Land as is used in Prop 106.

**Question was called for on Senator Bennett's motion that the Legislative Council further amend its action for the ballot analysis of H.C.R. 2045 and that the analysis be further amended as proposed in the two-page amendment (Attachment 1). The motion carried by a roll call vote of 7-3-0-4 (Attachment 2).**

**Senator Bennett moved that the Legislative Council further amend its action in adopting a ballot analysis C-03-2006 as proposed in the two-page amendment (Attachment 3).**

Michael Liburdi, Conserving Arizona's Future, said Conserving Arizona's Future appreciates the opportunity to come back to this Council meeting to address the problems it has with the original ballot analysis. He advised he is one of the attorneys of record in the action filed against this body. He noted there are cases that are directly on point that make their arguments very succinct that if a ballot measure identifies one funding source, it must identify all of the sources, and that the initiative description must accurately state the effects of the amendment in the analysis. He said he thinks Legislative Council's proposed amendment is a step in the right direction but it does not address all of his concerns. He related that an amendment will be offered by Representative Lopez that does address all of his concerns.

Senator Bennett questioned whether the proposed amendment satisfactorily addresses concerns with respect to the proceeds from the sale of trust lands and the funding of the administration of the Board. Mr. Liburdi replied in the negative. He explained that because the way the initiative is drafted, it anticipates its funding from the Legislature from the General Fund. If that does not occur, or if it is not fully sufficient to fund the activities of the Board that are identified in the initiative, then the initiative provides for a supplemental funding source from a new Trust Fund, and that needs to be identified. The proceeds from the sale of the Trust Fund Land is just a supplemental appropriation. Moreover, the anticipated amendment will also identify other revenue sources, such as revenue from existing and future leases, special use permits and other uses that are grandfathered in under the initiative.

Senator Bennett told Mr. Liburdi that the deficiency he finds with this language does not specifically identify special use permits in some of the other minor potential sources of funds. Mr. Liburdi agreed. He said the major source of funding that the initiative anticipates for the Board is from the Legislature, and that needs to be made clear.

Senator Bennett noted that B.5 of the purpose statement that Conserving Arizona's Future proposed to the voters says "provides funding for effective Trust administration by authorizing the allocation of the percentage of Trust income to fund Trust related activities." He asked where else it clearly indicates that funding source is secondary to the primary funding coming from the legislative appropriation. Mr. Liburdi directed Senator Bennett to the new section 7.1 on page 2, the Trust Fund Management Fund. He noted that the Management Fund shall only be used to supplement funding for the administration management planning.

Senator Bennett said that sentence continues on to say "subject to appropriation by the Legislature." He asked whether the intent of the initiative is to include any supplemental amounts from the Trust Fund from sale or lease of Trust lands to be appropriated by the Legislature. Mr. Liburdi replied that the way he envisions this funding mechanism working is that General Fund monies could be used to fund the operations of this Board. If the Legislature does not appropriate any money, or if the Legislature does not appropriate enough money, then this mechanism will kick in to provide funding for the Board.

Chairman Weiers expressed confusion with Mr. Liburdi's statements because they describe something that may never happen in anticipation of an act that could not or may not ever take place. He said that is somewhat misleading. Also, suggesting that there is going to be an appropriation by the Legislature is contrary to what was passed by the voters two years ago. He said he thinks this is confusing the issue for the voters of what already is law. He reiterated that the courts have contacted the Legislature to see what it is willing to do to resolve this issue fairly. He said he believes Mr. Liburdi is taking the issue in another direction by the misleading statement that something will happen, even though it may not happen, and he said that is in violation of State law. To come back and suggest that something may happen is touching on uneven ground as to what you can and cannot do and is a violation of what the true intent of the law is, passed by the voters two years ago.

Mr. Liburdi directed Members to cases that have been decided on in this context.

Chairman Weiers stated that those cases were prior to the new law that was passed by the voters. He maintained that one cannot direct anything that uses the appropriations process of the General Fund as a source, suggesting that something might happen. He said he does not want this to get to the point of legal challenge. Mr. Liburdi told Members he disagrees on that point and said he does not feel it is necessary to address the issue further because it does not seem productive at this point.

Senator Ableser said it is the Legislature's discretion to allocate funds. Even if it chooses not to allocate any funds, it is still an allocation if it does not happen. Chairman Weiers said the voters would not have a clue about the meaning of that statement. Senator Ableser pointed out that a funding source has to be identified.

Representative Lopez announced that she has prepared an amendment to the analysis and asked permission to review the changes. She called attention to the following:

In the second sentence: "This trust land would be restricted against future development, but would continue to provide revenue to the trust for schools and other public institutions through sales of "provisional reserve lands" for conservation purposes, existing and future leases, special use permits and other uses that will continue to be permitted." She noted the language was taken out of the initiative and mirrors the language on pages 1 and 2.

The last sentence in paragraph 1 has been changed: "The costs associated with the Board can be paid with appropriations from the Legislature and supplemented by funds from the trust lands management fund" described in paragraph 8 below." Again that comes directly from the initiative on page 3.

The language in paragraph 3, "Generally the land in the Conservation Reserve must be restricted against "development" and be managed in a manner consistent with "conservation" as those terms are defined in this proposal, and subject to the following:" She said she deleted the words "but not required to be accessible to the public unless and until conveyed out of the state land trust."

On page 2, paragraph 7, the words “the designated conservation land must be restricted against “development” and be managed in a manner consistent with “conservation.” were deleted. Additionally, the words “but not required to be accessible to the public unless and until conveyed out of the state land trust” were deleted. Again, that comes from the first page of the initiative and applies also to the change made in relation to that on the first page of the amendment.

The following was added to paragraph 8: “Currently, all of the proceeds go to benefit schools and other beneficiaries of the state trust.”

**Representative Lopez moved that the above changes be made to the Legislative Council analysis (Attachment 4).**

Chairman Weiers queried whether Mr. Liburdi was consulted on these changes. Representative Lopez advised that she met with him 15 minutes prior to this meeting and reviewed the proposed amendment.

Chairman Weiers asked Mr. Liburdi if he had a hand in these changes. Mr. Liburdi replied in the affirmative. Chairman Weiers asked Mr. Liburdi if he supports the changes. Mr. Liburdi said he does.

Senator Linda Gray questioned where the language in paragraph 7 of the proposed amendment referring to the deleted portion “but not required to be accessible to the public” is in the document. Mr. Liburdi stated there is nothing in this amendment that requires that land be restricted to the public at any time. By stating that the land is not required to be accessible to the public unless and until conveyed out of the trust misleads the voters into thinking that they will not be able to use the land for any purpose until it is conveyed.

To that point, Senator Bennett queried that if it was the intent of the initiative to allow reasonable public access to the lands while they were in the conservation state before they were transferred out, why was that phrase not explicitly referred to. The requirement that they be subject to reasonable public access is almost certainly mentioned when they are conveyed in one of the other reserve land accounts. Mr. Liburdi answered that he is not sure why; however, nothing in this initiative prohibits such access. He said this language conveys to a reasonable voter that they will not be able to use the land until it is conveyed for recreational purposes. The intent of this initiative is to preserve land to allow more public access and conservation.

Senator Bennett contended there is nothing in the initiative that specifically precludes access by the public while the lands are in the conservation designation. He said when you specifically provide for an allowable activity in one section of a statute but leave it unmentioned in another, then that is interpreted by the courts that you intentionally intended something to happen under those conditions, and it must not have been intended to exist under other conditions. He thinks that concern is the reason why the initial amendment he proposed purports to the fact now in Prop 105 and Prop 106 that while these lands are in the conservation category, and unless or until they are conveyed out in one of the other trust categories, they may not be accessible by the general public.

In response to Senator Bennett, Mr. Liburdi stated that the Conserving Arizona's Future initiative is a very comprehensive piece of legislation by the people. He advised that Peter Culp, one of the individuals who drafted this is here to briefly address the statutory construction argument. In addition, by saying that one alternative may be prohibited and certainly something that we think as frightening as what is put in this initiative, one is advocating against the adoption of this initiative by telling the voters that public access to this land is not allowed. As the people who drafted this initiative will testify, it is intended that they will have access.

Chairman Weiers queried what is so frightening about what is in the initiative. Mr. Liburdi answered that his comment referred to the fact that the land will be restricted from public access. For the record, Chairman Weiers asked Mr. Liburdi's opinion if there is anything frightening in the initiative. Mr. Liburdi responded in the negative.

Senator Ableser asked Senator Bennett why he chose to go with the negative connotation instead of saying "and be required or can be accessible to the public." Senator Bennett explained that language was not intended to reflect the negative connotation but was intended to use the same language that is in Prop 105. It was intended that the Board could allow reasonable public access to those lands while they are in the conservation category; however, there is clearly no requirement for that until conveyance of those lands into one of the other trust categories. He said that is when, and only when the initiative language requires that, reasonable public access to those lands will be maintained. He thinks Mr. Liburdi's comments are critical to the point he is trying to make. It was not intended to be a negative connotation but was intended to reflect the very careful wording of and distinction in the initiative that requirement only exists if and after the land is conveyed out in one of the other categories. Senator Ableser again stated his concern with the negative connotation of the language rather than the proactive connotation of public use and public access for these lands.

Chairman Weiers noted that currently, one needs an easement, a lease or a special use permit for access to State land. The initiative does not confer the unrestricted public access on conservation until the land is conveyed. And the conveyance is at the discretion of the new Board. What this Committee is trying to do is to be as clear, concise and fair as possible.

Peter Culp, representing himself, advised that he is an attorney with Squires, Sanders and Dempsey and had a role in drafting the initiative that is at issue here. He opined that the Lopez amendment is more accurate because the intent in establishing the conservation reserve is to restrict this land against development and to ensure that it is managed consistent with conservation. Beyond those two restrictions, there is absolutely no change intended to the current management structure for State Trust Lands. The intent is for this land to remain in the Trust membership and to continue to be usable by the State Land Department for surface leasing. All the existing uses on State Trust Lands are grandfathered in, including grazing leases and special use permits, and any public access that is current today, such as hunting and fishing, and so forth, so there is no change to the management structure. It is intended to be managed the same as it is today under the same rules. And that would occur under the rules that the Legislature has laid down, so it is not up to the discretion of the Board. He said he thinks the role of the Board is limited.

To that point, Chairman Weiers contended that accessibility will not be changing a great deal even if this particular initiative passes.

Mr. Culp said it is accessible to the public in the sense that all State Trust Land is currently accessible to the public according to the rules laid down by the Legislature.

Chairman Weiers asked whether State Trust Land is public land. Mr. Culp said he believes it is a form of public land. Chairman Weiers again asked if the public views this as public land where they can access it any time they wish. Mr. Culp stated it is not the same as other forms of public lands. It is currently accessible to the public under the rules laid down, however, accessible in a different way than the rules that apply to national forest lands or other State parks. He said the intent here is to say that current management structure is not being changed, but that once conveyed out of the public ownership, the land has to remain accessible to the public in a reasonable manner.

Senator Verschoor referred to the comment that this land is not a form of public land and is not the same as other public lands. He asked what authority drives public land. Mr. Culp replied that the land is managed by the State Land Department, the agency charged with establishing rules and administering the State Trust Lands.

Senator Verschoor asked how that would change under this initiative. Mr. Culp answered that would not change because the current management structure is being preserved. He said he is talking about the land being restricted against development. The Land Department can no longer sell the land for development purposes; it might sell it for conservation purposes. In addition, it has to be managed in a manner consistent with conservation as defined in the initiative.

Senator Verschoor asked Mr. Culp if he considers that a fundamental shift in what the current practice is. Mr. Culp said it is a shift in the sense that currently any land in the State Trust portfolio could theoretically be sold for development purposes to a private party at auction. The change that would occur here would be to essentially restrict the lands in the conservation reserve from development, however, they could be used for a variety of other purposes, including public access.

In response to Chairman Weiers, Mr. Culp said his position on H.C.R. 2045 is the same as Mr. Liburdi's position.

Senator Bennett queried whether it is his intent that lands can be in the conservation category but not yet fully conveyed either to the educational, the permanent or the provisional trust category. Mr. Culp said that lands are placed into one of those three categories.

Senator Bennett asked whether Mr. Culp believes that at no time would a particular piece of land be considered part of the conservation reserve without having been fully conveyed into one of the other three sub-categories. He explained the reason for asking is that although these lands may ultimately be headed for one of these three sub-categories, there is a timing element prior to that where lands may be just in a conservation reserve but not yet fully conveyed into one of these three sub-categories, and that the language of the initiative clearly and only requires reasonable public access upon the conveyance to one of these three sub-categories. He pointed out that Section 1.1.A talks about conservation reserves and it is consistent. It is restricted against development and managed in a manner consistent with conservation. The concern is about the timely difference where land sits in these designations. If the land is in the

conservation category, but not yet completely conveyed to one of the three sub-categories, there is no requirement that it has reasonable public access.

Mr. Culp noted that the lands remain in one of those categories until they are conveyed with the approval by the State Land Department and the Board of Trustees to a third party owner, whether that be to a county, city or town in the case of the permanent reserve. If it is in the provisional reserve, it could be purchased by a variety of parties to remain in conservation status, and with the educational reserve, it would be conveyed to the Board of Regents.

Senator Bennett queried whether land could be in the conservation category and yet not be in one of the three sub-categories. Mr. Culp replied in the affirmative. He explained it would start in one of the three categories and remain there until conveyed. During that time, it would be subject to the same rules that apply to all trust lands with the additional restriction that it may not be used for development unless managed in a manner consistent with conservation. He said his intent is that it remains subject to the same rules, remains accessible to the public in the same rules as today, and must continue to be accessible to the public.

Senator Bennett noted that if that was the Legislature's intent, it would have been spelled out in the initiative because this Council can only really consider the stated intent. He stated that when the Council contemplates putting an analysis before the voters of what the intent is, it is difficult to base its analysis on anything other than the stated intent.

Chairman Weiers noted the language of this amendment was drafted by staff and is the best language as far as balance and fairness is concerned. On the other hand, an amendment was drafted by the opposition to give them more of an advantage. As Senator Bennett pointed out, the opposition is asking people to read into this something that was never stated.

Senator Ableser again voiced his concern about the negative connotation of the language of the amendment. He said he feels that conveys personal opinion and the hope to see it fail. He encouraged Members to change the language to a positive connotation so it looks like the public does have access, especially when it is sitting in the conservation reserve. Senator Bennett reminded Senator Ableser that the language he is suggesting is precisely the language that was just added to Prop 105. Senator Ableser pointed out that he voted against that.

Senator Bennett claimed that if his amendment passes, the same language would be in both propositions and land would not be required to be accessible to the public until conveyed out of the State Land Trust.

**Question was called for that the Lopez amendment to the Legislative Council analysis be adopted (Attachment 4). The motion failed.**

Senator Ableser asked for a roll call vote on the amendment.

**The Lopez amendment failed by a roll call vote of 2-7-0-5 (Attachment 5).**

**Question was called for on Senator Bennett's motion that the Legislative Council further amend its action in adopting a ballot analysis on C-03-2006 as proposed in the two-page amendment (Attachment 3). The motion carried by a roll call vote of 7-2-0-5 (Attachment 6).**

Without objection, the meeting adjourned at 1:30 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)