
Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE

SENATE BILL No. 1

(The "Highlands Water Protection and Planning Act")

LOCATION: Committee Room 6
State House Annex
Trenton, New Jersey

DATE: May 20, 2004
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Stephen M. Sweeney, Vice Chair
Senator John H. Adler
Senator Andrew R. Ciesla
Senator Henry P. McNamara



ALSO PRESENT:

Judith L. Horowitz
Algis P. Matisoska
*Office of Legislative Services
Committee Aides*

Kevil Duhon
*Senate Majority
Committee Aide*

John Hutchison
*Senate Republican
Committee Aide*

***Meeting Recorded and Transcribed by
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SENATOR BOB SMITH (Chair): Good morning. Welcome to the weekly meeting of the Senate Environment Committee.

We're all here for a single purpose, and that is to protect the water supply for the people of New Jersey. And everybody has worked hard and in good faith. And I think it's a fair statement to say that we are so close that it hurts. It literally does hurt at this point.

We are going to reconvene this meeting today, immediately following the conclusion of the Senate session, at which time we hope to release this bill. So I thank you all for coming out, and I hope you can stay a few more hours.

I believe the birth pains in the process have begun. The labor's underway. And we're hoping for a delivery this afternoon.

So if you can hold on for a little bit longer -- hopefully right after the Senate session. And I guess we're going to meet back here.

So we'll see you a little later on this afternoon.

And thank you all for your help.

(RECESS)

AFTER RECESS:

SENATOR SMITH: Good afternoon.

We're here tonight -- or today -- it could be tonight -- we're here today for the Highlands bill.

Ms. Horowitz, if you would, please read for the Committee the amendments that are on the desk.

MS. HOROWITZ (Committee Aide): I will describe the changes that have been made to the amendment document since the amendments from May 10 were passed out.

There have been changes to Section 11, which provide for the contents of the master plan. The proposed amendments add language to require that the plan include: in its financial component, the costs of watershed moratorium offset aid, planning grants, and capital requirements for the TDR Bank. In the Smart Growth component of the plan, the council is required to identify undeveloped areas in the planning area near existing development and infrastructure that could be developed, and voluntary receiving zones in the planning area for the transfer of development rights.

Section 13 changes include: language to require the council, within 18 months of the date of enactment, to identify areas in the planning area that are appropriate receiving zones; to set a goal of identifying 4 percent of the land in the planning area that would constitute voluntary receiving zones, to the extent that the goal would not compromise the ecosystem; and to provide assistance to those municipalities that are in the planning area, are designated for conservation, and want to create sending zones.

The bill provides incentives for municipalities in the planning area to establish voluntary receiving zones consistent with the regional plan. The incentives include: authority to impose impact fees of no more than \$15,000 per unit if a minimum density of five units per acre is established, increased planning grants, legal representation for challenges to land use decisions, priority

status for State capital and infrastructure programs over other Highlands region municipalities, and other assistance provided in the act. The amendments would also make the incentives available to municipalities outside the planning area, that lie within any county with a municipality in the Highlands region, that establish voluntary receiving zones.

The bill adds Subsection M to Section 13 to govern the imposition of impact fees.

The amendments add new sections 19.1, 60, and 61. These sections create the Highlands Protection Fund, credit the fund from the Realty Transfer Fee with \$12 million for 10 years -- annually for 10 years -- and \$5 million per year thereafter. If the required moneys are not appropriated each year as provided, then the Realty Transfer Fee may not be imposed.

There are changes to the appraisal process for State open space and farmland acquisitions in sections 51 and 52 to provide a process that would apply statewide.

Sections 39 and 40 are amended to allow the extension of water and sewer service to grandfathered developments.

In Section 28, the exemption section, the reconstruction exemption now authorizes building on 125 percent of existing impervious surface, as long as the impervious surface increases no more than one-quarter acre.

The exemption provided for improvements to places of worship, schools, and hospital allows new structures.

There is a change in the exemption for the construction of a single-family home, for the individual's own use on a lot owned by the individual on the date of enactment, to also allow the construction of a single-family home for

an individual's own use on a lot for which the individual has a contract of sale on or before May 17, 2004.

There is a new exemption for developments in planning areas 1 and 2 that are the subject of a settlement agreement and stipulation of dismissal issued by the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair-share obligation of the municipality in which the development is located. The exemption expires if construction beyond site preparation does not commence within three years of the issuance of final approvals, pursuant to the municipal land use law.

There is an exemption for any lands of a Federal military installation existing on the date of enactment that lie within the Highlands region.

There are changes in sections 3, 5, 6, 7, and 65.

There will be technical corrections to Section 7, the metes and bounds description of the preservation area.

The amendments delete Subsection K of Section 6 concerning the council's powers.

They add a new section to establish the Pinelands Property Tax Assistance Fund, to which will be allocated \$1.8 million annually from the Highlands Protection Fund for aid to municipalities in the Pinelands area for five years.

The amendments add language to provide that nothing in the act shall be construed to change the obligation of public entities to pay property

taxes on lands used for water supply protection, without regard to buildings or other improvements thereon.

The amendments assure that the moneys spent each year for open space in 2005 through 2009 will be the same as the moneys spent for each county in Fiscal Year 2004 -- 2002 to 2004. And there's a parallel farmland provision in Section 52.

In Section 65, the amendments remove language that prevented the State Planning Commission from denying plan endorsement if a municipality in the planning area fails to designate a voluntary receiving area identified by the council.

There is a change to the boundary description to correctly describe and exclude the town center in Byram Township.

There is a change in the definition of mine site.

There is a provision to prevent the duplication of property tax aid by prohibiting double-dipping under the watershed offset aid provisions and the property tax stabilization provision.

There's additional boundary changes to clarify some of the town and regional center boundaries.

And, finally, the sections will all be renumbered, and numerous technical and corrective amendments will be made.

SENATOR SMITH: Any discussion on the amendments? (no response)

There being no discussion of the amendments, let me just point out, with respect to the amendments, that they are the result of input from all Senators on the Committee, from all of the groups involved. And we believe

they strike a balance with regard to property owners who have equity in the Highlands land now. We believe that, as we mentioned earlier, we have resolved all issues with the agricultural community.

There was one amendment, as you note, with regard to allowing for some small expansion of business uses. That was a request of the business community of New Jersey, but it's extremely limited. And, again, it has to meet the one-quarter acre impervious cover requirement.

The modifications to the places of worship, schools, and hospitals were as a result of numerous communications from religious organizations, boards of education, hospitals in the Highlands region.

The COAH language is in response to concerns expressed about affordable housing.

The removal of Picatinny Arsenal was a strong request from our Federal representatives and, in light of these dangerous times, totally understandable.

You will note that there's new property tax assistance to the Pinelands in an attempt to provide some equity and relief to Pinelands towns who, as was pointed out in many of our hearings, have suffered because of an improperly constructed bill 30 years ago.

There are protections that the open space and farmland preservation programs will be applied in the future in an equitable fashion so that no area of the state is not treated fairly.

There were minor corrections to boundaries as a result of discussions with the DEP about some inaccuracies in the map. And that's been taken care of.

There has been a modification to the quarries exemption so that, in fact, we protected some of the pristine jewels of the Highlands area.

And, all in all, I think the amendments have been fair and equitable to all parties.

There appears to be no discussion on the amendments.

Is there any discussion on the bill? Anybody? (no response)

All right, well, I'm going to take the prerogative of the Chair and move the amendments and the bill together. So please consider this a motion to release the bill as amended.

Is there a second? (no response)

There appears to be no second, but let me ask one more time. Is there a second? (no response)

Well, under the rules -- for the people who are here -- if there is no second, there can't even be a vote. And what that means is, that this bill will not be released today. And I would say in response to that, that I'm extremely disappointed that we could not release the Highlands bill today. However, I am not giving up hope that, ultimately, this State will do the right thing and protect this water supply for 4.5 million people.

I would point out that this bill is not about trying to create any disparities between people of different regions of our state. And, unfortunately, that's what's been focused on in this whole discussion. I think we all realize that some mistakes have been made with regards to Pinelands preservation 30 years ago. But I would hope that that would not be a reason to keep this bill from seeing the light of day and helping out half the population of this state.

I think, as a result of the thousands of pages of testimony and the hundreds of witnesses that have come to this Committee, that, as a State, we realize we have a very serious and real water crisis on our hands. And that if we don't do something soon, immediately, to protect the Highlands region from overdevelopment, and industrial contamination, and sprawl we're about to lose this water supply, both in quality and quantity.

I would say, after this long process, I really do believe that I understand the unique problems of southern New Jersey, and I think we've addressed them. One of the things that you heard in the amendments today is aid to Pinelands communities.

But I would implore my colleagues to not let this bill get done because there's some issue between North and South. There is-- We should care about the well-being of all of our citizens in this state whether -- no matter where they live. And I would point out that if someday this water supply is not there-- Water moves through pipes, and the water supply of South Jersey will also be impacted.

Now, obviously, we haven't -- we're not in a position to release this bill today. But I will tell you that it's my intention to post this bill in every Environmental Committee meeting from now, for the next three and a half years if necessary, until this bill is released. It is that important to the people of the state.

And I hope today is not the first shot in the Civil War between the North and the South. This is not about North or South, it is about what's good for the state.

Do any Senators want to make a comment?

Senator Adler.

SENATOR ADLER: Mr. Chairman, thank you so much.

First, thank you to you and to the other members of this Committee; and our counterparts in the Assembly Environment Committee; and your fellow sponsor, Mr. Chair, Senator Martin; and I guess just as much for the technical staffing from OLS and partisan staff for the amount of time they've spent.

Each time we've looked at this bill, we've gotten it closer to a form that's really good for the long-term interests of New Jersey for generations. And it may well be that, with the amendments that Ms. Horowitz read to us just now, that this satisfies all the needs for the Highlands region and all the drinking water needs that you, Mr. Chairman, spoke about a few moments ago.

I'm confident that we're either there or very close to being there. And so I applaud you not just for your patience and perseverance over the past several weeks and months, but also for your commitment to bring this bill up again, and again, and again until we pass it.

I'm confident that you and I are going to vote together on this bill in the affirmative, and I'm confident we do it very soon. Just as I was confident that each draft of the bill would get better than the preceding draft. And each time we've looked at the bill closely, each of us on this Committee, and the various stakeholders in the environmental, and development, and municipal, and water supply communities have looked at this bill -- and planning community, excuse me -- have recognized flaws, defects, minor drafting errors that could have substantial effect on the outcome of our communities for generations to come.

And so each time we've gone back to the drawing board, we've gotten a better product with a better, long-term effect for the State of New Jersey. Not for the South versus the North, as some of the Chairman's comments suggested, but for all of New Jersey, and particularly for the Highlands region for generations to come.

I am confident that we are either there or almost there. And I commend the members of the Committee for the patience they're showing in taking a very, very large set of issues of great, long-term significance for New Jersey -- in terms of preservation of land, and of water supply, and of housing needs, and of regional balance, and of statewide balance -- and dealing with them in a serious (indiscernible) way, not rushing with the first map and the first draft, but going back again and again, with the perseverance that Senator Smith described -- he will show as Chairman on this bill -- but going back again, and again, and again to try to make it right, long-term, for New Jersey.

We may already have achieved that, and the bill in this form may be the best thing we can do for New Jersey, environmentally, for decades to come.

And I think a sober review over the next couple days by the various stakeholders, by the various experts and analysts will tell us if, in fact, we've now gotten it right. I think we're very, very close.

And I detected some sense of discouragement in the Chairman's voice. I hope that was just my misreading it, because I think we should be very encouraged that, after a number of years of neglecting this region, we are now very close to preserving much of that area and the water supply that we derive from that area for generations, and maybe for well-beyond that.

So I'm enthusiastic about the process, which is painful, and tedious, and slower than some people would like, and much faster, frankly, than other people would like, but a necessary part of balancing legitimate, competing interests for the long-term benefit of New Jersey. And I think we're very, very close. And I think we should leave this room with a sense of optimism about the Highlands region, about water preservation, and about the democratic process.

Thank you, Mr. Chairman.

SENATOR SMITH: Senator Sweeney.

SENATOR SWEENEY: Senator Smith, I personally want to thank you for your patience, for the enormous amount of time you've put into this bill; and to listen to, what I feel, are legitimate concerns that have been raised, and your willingness to address them. You've been more than fair.

Understanding that this bill -- the intent was to release this bill out of this Committee, and to take this right to the Senate floor, makes it that much more important that we get this bill right.

I said this on numerous occasions, and I say this today. I am committed to voting for a strong Highlands bill. I look forward to the day that we can pass this, because, quite honestly, I'm exhausted myself. But realizing the mistakes that have been made, this bill--

What this bill did, was it did open some old wounds. It reminded people that live in South Jersey of the Pinelands, the mistakes that were made 30-some years ago that were never corrected. The fact that-- Look, you can't live in the past -- well, we're living it today, and we're still living it today. And what we are doing in this piece of legislation, knowing how important it is, is

making sure that when we walk away from this most important piece of legislation this Committee is going to release -- that when people look back, they won't talk about this bill -- the Highlands bill -- in the distaste that they talk about the Pinelands. They're going to say, "Senator Smith and this Committee got it right. They protected drinking water," which is so important for the whole state. It's not North and South.

It did open up some old wounds. It reminded people of the failures of the past. And the fact that bad legislation doesn't always get corrected, that 30 years later, we were discussing-- The intent was good, the reasoning was right -- to protect drinking water -- but you violated people's land rights, we hurt governments, and we did some bad things back then with the right intent, not intentionally.

Based on that, I feel it is so important to get this right because, once it leaves here, we know it's going to go to the floor for a vote, and I would expect it would be successful. That being the case -- and that's why I feel so strongly about it.

Again, Senator Smith, I can't thank you enough for your patience and understanding, and the frustrations dealing with me. I recognize the little bit of frustration in his voice is the fact that this has been a very tough and tedious process.

So, again, Senator Smith, you have my commitment to keep the pressure on. We said earlier, the pressure is on. We are working day and night. We have been working from 6:00 in the morning until 10:00 at night -- our offices all have. And I think that's a good thing, to keep the pressure on. I don't think the pressure should come off. I agree with you, this bill should come up

again. And hopefully, by the time it comes up again, we will be there and ready to cast a vote to support this bill.

So, again, Senator Smith, thank you for all your hard work on this bill.

Thank you.

SENATOR SMITH: Senator Martin, co-sponsor of the bill.

SENATOR ROBERT J. MARTIN: Thank you, Mr. Chairman. I'm not a member of the Committee, or I would have been happy to second your motion. (laughter)

I am the co-sponsor of the bill, which gives me some opportunity to speak. I am disappointed about the fact that this bill hasn't moved today. I trust that-- And I know Senator Sweeney, I know Senator Adler. If they're good to their word, which they have always been, as far as I know -- I do take them at face value -- that they will be open and, at some point, be prepared to support this. Then I will leave with some of the enthusiasm that Senator Adler asked us to be optimistic about, and to walk away with.

I, along with Senator McNamara -- as I'm sure you may point out if I don't-- We're the ones most affected by this. In my district -- at least among the Senators here -- is the one most in the Highlands. I represent 15 municipalities, I represent 11 that are within the Highlands bill, including my own town. I am convinced that the people in our area, as a whole, support this, look forward to it, feel that it's absolutely necessary. And at least on their behalf, I will continue to fight to see that this bill gets enacted. And I'm pleased that Senator Smith has indicated that he will take this fight for as long as it takes.

I've heard Senator Sweeney, for example -- and I respect him. He represents his district. And last week, I recall a bill that was in another committee -- Education -- where he was talking about a certain need for one of the communities within his legislative district. I feel just as passionately about our area, and I think this is a compelling need. What I think really makes this stand out is not only its scope within my district, but the fact that this does represent, I think, a general good for the State of New Jersey. It does -- it's not just about the-- It's something about water, and it's something about quality of life. But its impacts, especially the water, affect almost all of North Jersey. And, potentially at some point -- as mentioned with piping -- it could eventually affect the whole state.

So without getting into the details-- It's been said, sometimes you can miss the forest for the trees. And you can also -- if you cut down all the trees, you can -- you won't be able to see the forest at all. I hope we don't let some small details get so much in our way that we lose this forest, because this is, really, I think the outstanding environmental bill of the 21st century.

Thank you.

SENATOR SMITH: Thank you, Senator.

Senator Ciesla or Senator McNamara, anybody want to say a word?

SENATOR CIESLA: Mr. Chairman, I don't have much to add other than to echo the sentiments of the Senators that have spoken. We'll continue to work on the bill. I'm certain that, in the future, we'll come to a position where we will vote the bill one way or another from the Committee.

We've worked long and hard on it, and I'm certain that we'll continue along those lines.

SENATOR SMITH: Senator McNamara, anything?

SENATOR McNAMARA: No.

SENATOR SMITH: The next meeting of the Senate Environment is June 14, and S-1 is the top of the agenda.

Meeting is adjourned.

(MEETING CONCLUDED)