

**\*\*\* CORRECTED \*\*\***  
**ARIZONA STATE SENATE**

43RD LEGISLATURE  
FIRST REGULAR SESSION

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**MINUTES OF COMMITTEE ON  
APPROPRIATIONS**

**DATE:** Tues., March 4, 1997    **TIME:** 8:00 a.m.    **ROOM:** Senate Room 109

**CHAIRMAN:** Senator Bowers                      **VICE CHAIRMAN:** Senator Cirillo

**ANALYST:** Tami Ryall                              **COMMITTEE SECY:** Alice Kloppel

**INTERNS:** Mei Wong and Robert Hornby

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**ATTENDANCE**

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**BILLS**

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Arzberger	X			H.B. 2119	DPA S/E
Senator Bundgaard	X				
Senator Cirillo	X				
Senator Conner	X				
Senator Freestone	X				
Senator Gnant	X				
Senator Henderson	X				
Senator Huppenthal	X				
Senator Lopez	X				
Senator Richardson, G.	X				
Senator Rios	X				
Senator Soltero	X				
Senator Wettaw	X				
Senator Bowers, Ch.	X				

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**SPECIAL PRESENTATIONS**

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**GOVERNOR'S APPOINTMENTS**

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Chairman Bowers convened the meeting at 8:10 a.m. and roll call was taken. He announced that testimony would be heard until 10:30 a.m. at which time members would proceed to the floor for the second reading of H.B. 2119 and its assignment to the Appropriations Committee. Senator Bowers further related that testimony and action on the bill would resume upon recess of the floor.

### **APPROVAL OF MINUTES**

**Without objection, Senator Bowers announced the minutes of the February 19, 1997 meeting stand approved as distributed.**

### **CONSIDERATION OF BILLS**

#### **H.B. 2119 - schools; support levels; technical correction - DO PASS AMENDED S/E**

**Randie Stein, Senate Research Analyst**, explained the Huppenthal strike-everything amendment to H.B. 2119 dated 2/28/97 at 4:00 p.m. has three main elements: 1) it enhances access to capital for low wealth districts through the Assistance to Build Classrooms (ABC) program, 2) it provides a mechanism for fast growth districts to receive state capital grants conditional on a local effort requirement and 3) it provides a cap on the bonding capacity of high wealth districts. She explained the ABC program is funded from the state portion of distribution-based revenues and does not impact the distribution to cities and counties. Ms. Stein indicated the amounts are \$350 per growth-weighted common school pupil and \$525 per growth-weighted high school pupil, with a deduction taken from the gross allocation amount based either on assessed value, equalization assistance or the portion of the capital and maintenance and operation (M&O) budgets associated with equalization assistance.

Ms. Stein explained the first element by referring to a handout, "Per Pupil Allocation With Growth," (filed with original minutes) which is a district-by-district analysis of the estimated funding for the ABC program. She indicated the net allocation shows the amount a district would be projected to receive, while the gross allocation is the dollar amount multiplied by the weighted student counts. Ms. Stein pointed out two columns showing the alternative deductions to be taken, noting it is the larger of the two deductions which will be applied to produce the net allocation. She further referred to another handout, "Assistance to Build Classrooms Calculation," (filed with original minutes) which walks through the calculation for a sample elementary school of 1,200 students. Ms. Stein explained the language in the strike-everything amendment specifies that school districts are not required to obtain voter approval to expend ABC monies except as they relate to revenue bonds and does require that the school district report to the State Board for School Capital Facilities on the disposition of the funds.

Ms. Stein next discussed the second element, the capital outlay override match program, aimed at fast-growing districts which have insufficient bonding capacity to pay the total cost

of a project approved by the State Board for School Capital Facilities. She noted there is a threshold bonding capacity per pupil requirement above which the school districts need to be, which are identified in another handout, "Overrides for Growth Districts," (filed with original minutes). She noted the handout provides a district-by-district analysis of the capital override match program and she described how districts become eligible: by meeting the bonding capacity per pupil threshold and then submitting a request to the Capital Facilities Board in an amount greater than the districts available bonding capacity and greater than the capital reserve available to the district. Ms. Stein noted the amounts shown on the handout are the amounts in excess of the bonding capacity and the capital reserve. She described the situations of a few specific districts as examples.

Ms. Stein explained the capital override requirement is a specified tax rate per \$100 of assessed valuation for each \$100 of state grant per growth-weighted student, consequently the higher the amount of the approved project per pupil, the greater is the capital outlay override requirement for the district. She further explained the strike-everything amendment requires that amounts levied on the capital outlay override over the five-year period must be remitted to the School Capital Equity Fund and that the legislation includes a building inspection maintenance program for which the Facilities Board privately contracts, requiring all school buildings in the State to be inspected at least once every five years. Ms. Stein noted that within 90 days of receiving an inspection report, a school district will be required to detail the measures taken or the plan developed to correct any deficiencies and submit this to the Facilities Board. Ms. Stein indicated this report is also included as an element in the school report card. She indicated an appropriation of \$400,000 each year is being requested for the inspection program to come from the School Capital Equity Fund. She noted the strike-everything amendment also allows for the use of excise tax improvement bonds which are subject to voter approval, are tax exempt and are repaid by ABC monies. Ms. Stein related that the legislation codifies the pledge of the State not to impair the ability of a school district to qualify for ABC monies until all bond obligations have been discharged, prohibits bonding from being spent for an item with a useful life of less than five years or for an item with a useful life less than the average life of the bond issued. In the event there are insufficient monies for a school district, Ms. Stein indicated the earnings on the State Land Trust Fund repay the bonds and a 15 percent reduction in state aid is applied per year until the State Land Trust Fund has been repaid. Ms. Stein also noted the legislation modifies the eligibility criteria for the School Capital Equity Fund, essentially conforming to the capital outlay override match program.

Ms. Stein explained the third element, the cap on bonding capacity for high wealth districts, establishes a bonding limitation that is the lesser of the amount specified in the Constitution and statute or a per pupil bonding capacity amount which is phased-in, with a completion date of January 1, 2002 for the phase-in.

Ms. Stein further noted the legislation authorizes payment of \$150 per day up to \$2,500 per year for the services of the private sector members of the Facilities Board.

Ms. Stein indicated the legislation contains a conditional repeal if the act in conjunction with the 1996 enactments establishing the State Board for School Capital Facilities and the Capital Equity Fund are adjudicated unconstitutional; this act as well as the 1996 enactments are repealed, although this does not invalidate any contractual obligations of the State and includes continuation for the State Board for School Capital Facilities for 30 days, after which time the outstanding responsibilities would be transferred to the Arizona Department of Education (ADE).

Finally, Ms. Stein indicated there is a retroactive effective date to July 1, 1997, to ensure the first payment of the distribution-based revenues will be properly executed.

### **PUBLIC TESTIMONY**

**Jaime Molera, Director of Policy and Federal Relations, ADE**, expressed opposition to the bill, emphasizing the importance of developing a system which produces the right incentives for schools by providing a value to attracting and retaining students, rather than a penalty by increasing class size. Mr. Molera also suggested the ABC plan does not address disparate property values and does not meet the "general and uniform" requirements of the Arizona Constitution. He spoke in support of equalizing school districts' capital funding before guaranteeing additional assistance to low wealth districts through the ABC plan. Mr. Molera related the position of ADE that it is disingenuous to say the plan would avoid a tax increase, but at the same time require local districts to pay more and more. He emphasized the issue must be addressed on behalf of students based on a student-centered financing system that includes charter schools.

Senator Henderson asked how soon the bill would address equalization for reservations. Mr. Molera expressed his understanding that with regard to certain allocations, some districts on reservations would benefit under the ABC plan, however, he indicated ADE is of the opinion the bill does not meet the structural defect in disparities discussed in Roosevelt v. Bishop and acknowledged that reservations are part of the plaintiff group.

Senator Arzberger asked how many fast growing districts needing assistance there are in the State, suggesting there are only a few that have used up their entire bonding capacity. Mr. Molera responded he did not have a specific figure but noted "hyper" growth districts, with about 5 to 10 percent growth per year, are seen primarily in the suburban areas of metropolitan Phoenix, Tucson, Yuma and Gadsden.

Senator Cirillo acknowledged Superintendent Lisa Graham Keegan would prefer using a sales tax to fund education, but expressed concern this is the most volatile tax of all, and suggested that property tax is more secure. Mr. Molera countered that ADE research shows sales tax has increased in Arizona over the past 20 years and has never been in decline, whereas property taxes fluctuated in the mid to late 1980's. He noted that an analysis performed by the Milliken Institute for Economic and Capital Formation in California at the request of ADE also shows a sales tax would be sufficient.

Senator Cirillo asked for confirmation that ADE would want to preclude a high wealth district from voting overrides to do more for its students. Mr. Molera indicated that ADE's school finance plan allows for overrides for those districts wishing to enhance their schools and asserted this is appropriate.

Senator Cirillo asserted that if high wealth districts are not capped, but allowed to fund and spend more money, the other districts will immediately say this is unfair and the "standard" will be a continually moving target. Mr. Molera acknowledged this will be a continual problem as long as disparate levels of valuation are relied upon. He emphasized the access to educational access should be the same, or standard, in all districts statewide.

**Dr. Richard Krempasky, Superintendent, Superior Unified School District**, spoke in opposition to the bill and amendment, emphasizing that small rural districts will not have the tools to access capital funding. He further emphasized that including a conditional repeal of the 1996 enactments, which have met part of the court order, is appalling and must be removed from the legislation.

Senator Huppenthal suggested that just as Dr. Krempasky expressed opposition to the 1996 proposals initially but now has come to support them, he may also be supportive of the present legislation years from now when he sees the benefits of the ABC plan.

Senator Arzberger indicated he has tried, but has been unable, to find the tax rate for each of the State's school districts, suggesting this should have some bearing in developing a plan for capital improvements. He asserted some districts have passed bonds to maintain their schools and currently have a high tax rate.

Dr. Krempasky acknowledged that although Superior has not bonded, it has implemented health and safety provisions in Arizona Revised Statutes (ARS) 15-907 to produce a local effort. However, he emphasized that one way or another the local effort is there and the tax rate bears this out.

Senator Arzberger suggested future bond issues in districts like Superior and his own would be passed by voters who have already passed bonds and are currently shouldering high tax rates.

Senator Bowers asked if the method other than bonding which Superior used to raise funding was heavily dependent on the copper mining industry that had been a mainstay in the community. Dr. Krempasky indicated it was not, that ARS 15-907 provides the ability to petition the County Board of Supervisors to approve an amount which is added to the local tax rate and shared by all taxpayers.

Senator Rios expressed agreement for removing the conditional repeal in the bill, calling it a "poison pill." He asked Dr. Krempasky if the solution to the school finance problem will have many facets as there are so many districts in different situations. Dr. Krempasky responded his view is that disparities exist and something must be done to bring the low

wealth districts up through utilizing the Capital Equity Fund and putting in place a system of fair and equitable financing for the future, such as the ABC plan attempts to do. He noted however, he does not see the ABC program doing this or passing the Supreme Court test.

Senator Rios asserted, and Dr. Krempasky agreed, the ABC program places the low wealth districts, such as Superior, in competition with the hyper growth districts. Senator Rios emphasized there needs to be a variety of applications to address the variety of issues districts have. In response to Senator Rios' request to know if Dr. Krempasky supports implementing a lease-purchase mechanism for high growth districts, Dr. Krempasky responded he does and agreed one type of legislation does not fit the many-faceted issues faces by different districts.

Senator Rios questioned why the conditional repeal is in the bill and suggested it may be to scare school districts away from further legal action or perhaps to put pressure on the courts and inhibit them from throwing everything out with the ABC plan. He indicated he will be offering an amendment to remove the conditional repeal.

**Barbara Robey, AZ School Boards Association**, expressed opposition to the strike-everything amendment and support for the plan in H.B. 2439, which she noted had bipartisan sponsorship, passed the House Education Committee with unanimous approval but cannot get a hearing in the House Appropriations Committee. She emphasized it is a sad commentary on the legislative process when a bill such as H.B. 2439 cannot get a hearing and instead a proposal crafted behind closed doors by leadership and the Governor with no input from those affected, is being moved through the process.

Ms. Robey asserted the ABC plan does not solve the capital funding problems of low wealth districts and does not address the needs of hyper growth districts. She emphasized the State has a responsibility to ensure resources up to an acceptable level or threshold. Ms. Robey spoke in support of establishing an adequate threshold before moving to a formula-driven distribution of assistance. She noted the bill is punitive in placing caps on bonding in high wealth districts, suggested audit requirements are not necessary as school districts are already required to be accountable and questioned how equitable the M&O formula is when it is diminished by the inadequacy of the funds generated, noting weights have not been adjusted to be realistic.

Ms. Robey expressed support for the Gnant amendment dated 3/3/97 at 4:00 p.m. which requires delaying implementation of the ABC plan for five years to allow time for the State to set an adequate threshold or standard.

Senator Huppenthal recalled that Ms. Robey testified in opposition to establishing the State Board for Capital Facilities and the Capital Equity Fund and she expressed her belief she did not; that she supported component parts of three bills moved last year and has been consistent. Again, Senator Huppenthal suggested that those testifying against the approach initially have come to support it and may feel likewise about the ABC plan.

Ms. Robey agreed with Senator Rios' suggestion that a multiple approach to meeting a variety of school district needs is very important.

Senator Huppenthal emphasized people must understand the State is faced with unlimited needs in the general population for which funding is being requested, and difficult choices have to be made in response to priorities.

**Sydney Hoff Hay, President, Lincoln Caucus**, expressed support for the bill on the basis it does not contain a tax increase and on the basis of statistics which show that capital funding in Arizona is on the high end nationwide rather than the low end.

**Mike Smith, representing Arizona School Administrators**, suggested the shared mechanism formula predicated on school district wealth, the cornerstone of the ABC plan, has real merit and ought to be considered. He expressed support for the Grant amendment which addressed concerns about the necessity for a critical "catch-up" mechanism to address districts with extreme needs before implementing it. Mr. Smith expressed concern a local tax effort is required to access capital funding through the Facilities Board.

Senator Wettaw indicated he did not support the Grant amendment, but asked if Mr. Smith would support funding the ABC plan with three-fourths of whatever amount the Legislature agreed on to address high growth districts and using the remaining one-fourth of the amount to address the extreme needs. Mr. Smith agreed he would certainly support such a concurrent effort.

Senator Huppenthal asked what Mr. Smith estimates the cost is to bring low wealth districts up to standards. Mr. Smith indicated the answer is based upon a set of hypotheticals, including what resources are available to relieve any pressure through a Facilities Board and through some assessment of those standards. He suggested that \$100 million over five years, as proposed in H.B. 2439, together with another mechanism such as a formulaic system would meet that demand.

Senator Freestone suggested there is very little difference between the hyper growth and low wealth districts as far as their financial problems are concerned and Mr. Smith agreed with one caveat; hyper growth has been transitory historically, while the ability to find resources remains in the poor districts.

Senator Freestone expressed concern the hyper growth districts have not been a beneficiary in school finance proposals and indicated he will be offering an amendment to deal with this on a long term basis. He suggested, as not everyone will agree to any plan, that it is important to try to achieve a beginning standard that is livable so that the value of public instruction does not decrease and Mr. Smith agreed.

Senator Rios related his understanding that hyper growth districts have indicated an ability to deal with their problems if they just had the authority to do so. He asked if Mr. Smith

would support an amendment to allow provisions such as lease purchase over time and the establishment of nonprofit municipal corporations that would remove hyper growth districts from competition with poor districts. Mr. Smith indicated he would support such an amendment depending on the mix of mechanisms, also noting it would reduce pressure on the Facilities Board.

**Tim Lawless, Vice President, Public Affairs, AZ Chamber of Commerce**, expressed support for the ABC plan because it: 1) focuses on districts where the greatest inequities exist but holds harmless the majority of districts which are in the middle, 2) it avoids a general tax increase by funding from existing tax revenue sources, emphasizing the problem is one of allocation and not resources, and 3) it specifies that expenditures of guaranteed capital assistance monies is for academic instruction facilities, rather than for other purposes. He argued that a uniform assessment for all classes of property is the correct way to comply with the Supreme Court decision and that the concept of capping high wealth districts and entitling low wealth districts is sound. Mr. Lawless viewed the ABC plan as a reasonable and prudent compromise among all the various stakeholders.

Senator Gnant asked for examples of the compromise being made. Mr. Lawless indicated there is a compromise in not raising any new taxes.

Senator Gnant asked who was involved in the process or had the opportunity to compromise and Mr. Lawless stated it was the "folks in this room," referring to the legislators. He suggested certain groups were not involved directly in negotiations because it has taken this long to arrive at yet another crossroad. Mr. Lawless asserted the ABC plan is the best that can be crafted in order to gain 16 votes in the Senate and 31 in the House of Representatives.

Senator Huppenthal suggested that Arizona's tax system creates a big discrepancy between residential and commercial taxes and suggested that the Chamber's willingness not to press that issue and to be present in support of the ABC plan represents a compromise on the Chamber's behalf. Mr. Lawless agreed this is unquestionably true, emphasizing that economic development is the Chamber's main purpose and improving the quality of life for all Arizonans by supporting the ABC plan helps that purpose.

Mr. Lawless asserted that Arizona's per pupil spending is fourth nationally, that its debt per pupil ranks third nationally and that K-12 school debt climbed 40 percent in the last ten years. He noted taxes for commercial properties are two-and-a-half times what is paid for residential properties. Mr. Lawless expressed concern other school finance proposals would have consolidated certain business classes for the purposes of redistribution, which the Chamber felt was unfair, and would have perpetuated the proportionately higher taxes that businesses pay.

Senator Rios noted that the Senate Democrats, representing 1.6 million people in Arizona, were also shut out of any compromises as was the public and the majority of the education community.

Mr. Lawless clarified the Chamber was willing to compromise by supporting the ABC plan, but was not privy to the negotiations at all.

Senator Richardson suggested the Minority always claims they are shut out of the negotiating process, as did the Republicans when they were in the minority and Senator Rios was then President of the Senate.

Senator Bowers announced **Ann Brown, AZ Association of University Women and Norman Adelman, Phoenix, AZ**, were present in opposition to the bill.

Senator Cirillo assumed the Chair.

**José Leyba, Superintendent, Isaac School District**, expressed opposition to the legislation proposing the ABC plan and expressed support for the Gnant amendment proposing the establishment of standards before implementing a funding mechanism to assist low wealth districts. He noted that under the ABC plan, Isaac would receive approximately \$1.6 million to remedy about \$25 million in needs and does not allow it to catch up.

Senator Huppenthal asked Mr. Leyba if he had talked to bond counsel, suggesting Isaac stands to receive a fairly high multiple of \$1.6 million per year through bonding, and Mr. Leyba acknowledged it would be a fairly high multiple of \$1.6 million but did not have actual figures, as discussions are just beginning. He did not agree with Senator Huppenthal's assumption that Isaac would be able to meet a fairly high percentage of its needs with the amount. Mr. Leyba explained Isaac would need approximately \$15 million to build a much-needed middle school comparable to others for its 1,000 students currently housed in portables and emphasized it would take a few years to arrive at this point.

In response to further inquiries from Senator Huppenthal, Mr. Leyba confirmed Isaac has submitted its application to the Facilities Board and the Board architect has been out to the Isaac campus. Mr. Leyba expressed hope that action will be taken on the application sometime in the near future, but could not tell members the figure Isaac would receive from the Capital Equity Fund. Mr. Leyba indicated the Isaac Business Manager has not projected an estimate based on the treatment of other districts going before the Board. Mr. Leyba further acknowledged some districts with high emergency needs have had some needs met, however, emphasized that \$100 million in capital available to the Board will not accommodate applications demonstrating \$800 million in needs. Mr. Leyba confirmed Senator Huppenthal's understanding that Isaac would probably receive a fairly high ranking based on its need.

**John Baracy, Superintendent, Roosevelt School District, and Cochairman, School Finance Reform Group**, expressed opposition to the proposed ABC plan and support for the Gnant amendment. He acknowledged his district would be the second highest beneficiary under the ABC plan but emphasized it does not create a general and uniform finance formula for funding education in Arizona and so does not meet the court test. He

further suggested the bill is mean-spirited with the inclusion of the conditional repeal and suggested it is outrageous to suggest that it is acceptable for disparities in the ratio of 4:1 to exist, when the Supreme Court ruling mandates substantial equity must be demonstrated in a funding formula.

Mr. Baracy noted the Legislature prides itself on fiscal conservatism and accountability, yet refuses to require standards in the school finance bill. He decried throwing more money at the problem without first establishing standards.

Mr. Baracy suggested the reason Arizona ranks high in spending and debt nationally is because it is a new growing state and should be, not because there is misspending. He emphasized the funding per pupil in Arizona has not kept up with the rate of inflation.

Senator Bowers resumed the Chair.

**Kevin McCarthy, President, AZ Tax Research Association**, expressed support for the strike-everything amendment because it does not contain a major tax increase and asserted the money being spent is well-directed and crafted to try to reduce inequities in the capital finance system. He noted there were enormous disparities, well beyond the ratio of 4:1 before this change was proposed. Mr. McCarthy suggested the K-12 lobby opposes reducing the ratio to 1:1, in opposing another bill which would have distributed the same amount of money to all districts.

Mr. McCarthy expressed opposition to establishing standards, suggesting this would take the State into a "black hole" from which it would not return. He suggested this would create future lawsuits which are not good for schools nor taxpayers.

Senator Conner suggested perhaps part of the problem experienced by the Facilities Board is that standards for health, welfare and safety were not set; opening the door for \$800 million worth of applications for gymnasiums, football fields and other things districts consider emergency needs, simply because other schools have them and they do not. He suggested true need would probably be around \$30 million to \$50 million.

Senator Bowers recounted that needs were described in relation to leaking roofs, uninsulated wiring, leaking toilets, cracked paint and other health and safety needs. He suggested this contributes to decisions made by the Board.

Senator Conner suggested applications such as he described may have been submitted to compel the establishment of standards, while schools attempted to show they want to be equal to other schools. He suggested having set standards in the first place would have facilitated decision-making by the Board.

Mr. McCarthy asserted the Board has not had difficulty determining which districts should receive grants without standards, short of defining "what is growth." He questioned why the Legislature would want to determine what "minimum" is, suggesting one district will then

question why it must operate at a minimum, when the district next door is above minimum and so on.

Senator Soltero suggested setting standards may be a driving force to settle the finance issue once and for all. Mr. McCarthy expressed disagreement, suggesting the definition of "minimum" would be an ongoing debate, with the "minimum" forever being raised, and asserting it does not fix the inequity in the property tax system.

**Jesus de la Garza, Ph.D., Superintendent, Dysart Unified School District**, explained he is a former migrant farm worker when he came to the Capitol for the first time in the 8th grade. He expressed opposition to the strike-everything amendment to H.B. 2119, asserting it does not address the issue of need nor satisfy the court ruling and expressed support for the plan in H.B. 2439, asserting it is much more comprehensive.

In response to Senator Huppenthal's inquiries, Dr. de la Garza reviewed the numbers of pupils and schools in his district, the growth rate over the past five years and the growth forecast. They discussed needs and the potential problem of being able to pass a bond without the support of his district's senior citizens. Dr. de la Garza indicated Dysart's bonded indebtedness is \$15 million out of a capacity of \$20 million and acknowledged that critical needs in the future will require outreach and education to the community in order to pass a bond.

Senator Bundgaard asked what standards or criteria were used to determine that there is about \$1.4 billion in needs among school districts. Speaking only for Dysart district, Dr. de la Garza responded his district used the MGT study commissioned by the Governor as the basis for assessing needs and also used a local firm.

**Dick Foreman, Tempe School District Governing Board Member, representing himself**, expressed support for the ABC plan and opposition to developing minimum standards. He related his experience of being sued twice as a Board member by his constituency over equality between facilities. Mr. Foreman suggested problems should be addressed at individual sites and local control should be maintained, as problems are usually not districtwide. He asserted ABC provides a first step in moving in the right direction toward equity and agreed allocation of resources is the key issue.

Senator Gnant asked if the lawsuits Mr. Foreman spoke of were initiated because it was claimed standards had not been met or because standards had been incorrectly or inartfully created. Mr. Foreman responded the reasons for the lawsuits concerns a bit of both issues, noting one lawsuit deals with equity in ball playing fields between facilities.

Senator Gnant asked if the district created those standards and Mr. Foreman responded they did not; that the U.S. Congress implemented standards under Title IX and emphasized that how they are interpreted becomes a matter of significant concern.

Senator Gnant asked for confirmation that Mr. Foreman is not being called to account for standards the district developed. Mr. Foreman countered that many standards developed by the district have put the school board members in the same situation as those developed under Title IX. He supplied another example of the criticism heard about specific types of fences and measurements when a school attempted to erect a fence to keep undesirables off school grounds.

Senator Huppenthal asked if a parent group would have a cause of action against a school board member at the local level if standards were created at the state level. Mr. Foreman emphasized they have had cause to this point.

Senator Lopez asked if Mr. Foreman's opinion about the ABC plan would be the same if his school district had \$30 million in needs and no bonding capacity. Mr. Foreman opined that requiring a local effort to obtain state aid is a reasonable requirement. He asserted that the ABC plan makes an effort to level the disparities once districts have exhausted their constitutional remedies and reached debt limits.

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Senator Bowers recessed the meeting at 10:30 a.m. for the second reading and assignment of H.B. 2119 to the Appropriations Committee. The recessed meeting was reconvened at 10:50 a.m. the same day with all members present.

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Senator Bowers announced **Mike Hoogendyk, Legislative Chair, Arizona Parent Teacher Association; Tom Heck, Superintendent, Litchfield Schools; Kay Lybeck, AZ Education Association; Phil Mac Donnell, representing Osborn, Madison and Phoenix Elementary School Districts; and Gary Knox, Superintendent, Crane Elementary School District**, were present in opposition to the bill.

Senator Bowers announced **Jim Bush, AZ Chamber of Commerce; Samantha Fearn, National Federation of Independent Business and Knox Kimberly, AZ Association of Industries**, were present in support of the bill.

**Gary Knox, Crane Elementary School District**, expressed opposition to the bill and support for the Gnant amendment and H.B. 2439. He explained Crane became involved in the Roosevelt v. Bishop lawsuit because of the great inequities around the State. Mr. Knox indicated under the ABC plan his district stands to gain \$900,000 to address needs, but his taxpayers would still have to pay \$2 for \$1 that other school districts pay in taxes. He called this unfair and called for setting modest standards affecting health and safety of facilities, such as adequate class size and playground safety.

Senator Huppenthal pointed out and Mr. Knox agreed that Crane would produce over \$6.3 million over a period of time. Mr. Knox indicated Crane has submitted applications to the

Facilities Board in excess of \$20 million, addressing its primary concern of building a new middle school. Mr. Knox indicated that Crane's Business Manager has no indication at this point that the district would receive any money from the Facilities Board, as Crane has done a reasonable job of maintaining its facilities and its concerns are not of the same quality as some in the State. Mr. Knox expressed his view Crane will not receive a great deal of money and will not be able to build a new middle school.

In response to Senator Huppenthal's inquiries, Mr. Knox related the assessed valuation at Crane is \$5,700 per student, noted it has grown 8 percent over the past five years.

Senator Richardson asked why Crane has not used its \$5.38 million remaining bonding capacity. Mr. Knox indicated Crane is saving this capacity toward the cost of a new middle school. Senator Richardson noted there are many districts which have come to the State requesting aid before accessing unused bonding capacity, acknowledging that some districts have a very difficult time passing a bond.

Senator Richardson asked how many children will be accommodated by the new middle school and Mr. Knox responded 1,000 to 1,200. Senator Richardson asked if the price per pupil is average compared statewide, commenting that the cost of some schools is more per square foot than the cost of an expensive resort. Mr. Knox assured members Crane's projected cost per pupil is average compared statewide and it will not be building a "Taj Mahal."

Senator Gnant clarified, and Mr. Knox confirmed, that Crane would not be required to bond in order to receive the annual \$900,000 over many years. Senator Gnant recited a number of instances where schools standing to receive money from the Facilities Board still have unused bonding capacity. Senator Gnant asked Mr. Knox if he feels this is a satisfactory allocation from a taxpayer's viewpoint. Mr. Knox responded it does seem reasonable, explaining that in the case of Crane, this unused bonding capacity is being saved to build a new school.

Mr. Knox agreed with Senator Conner that the issue of inequity brought the district into the lawsuit and asked for his view of Senator Gnant's amendment. Mr. Knox explained the Gnant amendment shows a light at the end of the tunnel and to this point districts have seen very little. He suggested that the most pressing problems should be dealt with for five years, during which time real progress could be made. Mr. Knox suggested there will be none if H.B. 2119 is not amended further.

Senator Huppenthal noted that under the ABC plan, Crane and all recipients will begin to receive checks in July, 1997. Mr. Knox emphasized his central concern is equity of opportunities for students.

Senator Huppenthal asked Mr. Knox if he believes parents in Crane would have a cause of action under the uniformity clause if standards were established. Mr. Knox suggested it

would have no more than Crane does now in relation to the Round Valley domed stadium. He spoke in support of a set of reasonable standards.

Senator Huppenthal suggested that once standards are established, a parent could sue the school board over an issue of disparity, and perhaps the school board could be ordered by the court to conduct a bond election or it could declare an emergency and impose a tax rate. Mr. Knox commented that if Crane wished to compare itself to Round Valley, it would perhaps have a cause of action which would go through the State once state standards were set, but argued instead for a cooperative effort to set reasonable standards.

**Jim Bush, Chairman, Education Committee, AZ Chamber of Commerce**, associated himself with the remarks of Mr. Lawless, Mr. McCarthy and Mr. Foreman in support of the strike-everything amendment to H.B. 2119. He further explained he is a former school board member who was also sued by constituents during his tenure. Mr. Bush reviewed precise language in *Roosevelt v. Bishop*, discussing what it means. He indicated the court said "it is not the existence of disparities between or among school districts that results in a constitutional violation, it is whether the disparities result from the scheme the State chooses." He further noted the court said the scheme shows heavy reliance on "property taxation, arbitrary district boundaries and only partial attempts at equalization." Mr. Bush emphasized Arizona has one of the lowest property tax systems in the United States. He suggested solutions that may satisfy the court but which may not be politically acceptable: equalizing assessment ratios or consolidating school districts to dispose of arbitrary boundaries. He questioned whether consolidation would result in economies of scale but agreed it would address the differences in property valuation.

Mr. Bush related that the court found Arizona has an M&O formula that relies heavily upon property tax, but does include a total equalization factor. The court noted that "each district's equalization includes a budget amount for capital...a district may use most of these funds for maintenance and operation. If the district repeatedly uses its capital funds for maintenance and operation, its facilities will deteriorate...the appropriate change must be either by appropriation or by redefining districts." Mr. Bush suggested last year's limiting the transfer of the Capital Outlay Revenue Limit is a structural change in appropriations to improve equalization and addresses the court's ruling. He questioned whether the capital component in the formula is high enough, but asserted that the adequacy of what is done is a legislative decision, not a judicial decision, and asserted an amount of money or setting an appropriation per pupil is a standard. Mr. Bush emphasized that if the Legislature determines an amount of money is adequate to perform a function, it is a standard.

Mr. Bush further related the court said: "Local control is an important part of our culture. Indeed if citizens were not free to go above and beyond the state finance system to produce a school system that meets their needs, public education statewide would suffer. Those who could opt out for private education would. There could be political pressure to fund the public school system at a level adequate enough to comply with the Constitution but insufficiently adequate to achieve academic excellence."

Mr. Bush asserted the court said that disparities are not a constitutional violation, but that arbitrary district boundaries, failure to control the transfer of money and only partial equalization have resulted in a scheme that is unconstitutional. He indicated that in his judgement, based upon what the court has said, H.B. 2119 as proposed to be amended meets the court's requirements.

In response to Senator Gnant's inquiry, Mr. Bush agreed the ABC plan is the legislative mechanism to establish a uniform system of funding schools. Senator Gnant also agreed it is, but suggested the court did not talk only about providing a mechanism, as it said "uniformity is but a necessary, but not sufficient condition under Article XI, Section 1." He asked if something other than uniformity would be required and asked if it would be reasonable for the court to expect that whatever mechanism is put in place would address these concepts of sufficient funds and adequate education.

Mr. Bush acknowledged there were some comments in the footnotes of the case in which there was free information with respect to "adequacy," and opined the court has no jurisdiction at all to determine whether or not what the State does is adequate.

Senator Gnant agreed the court has determined the Legislature must decide what is sufficient or adequate and questioned how the Legislature is supposed to do this without some sort of criteria or standard to measure against. Mr. Bush reiterated that a standard of what is adequate and sufficient is set when the Legislature makes a determination of an amount of money per pupil to be spent on education. He suggested what the local districts choose to do with this amount is up to their school boards. Mr. Bush spoke to the importance of also providing flexibility in addressing the needs of children, as some children need more money than others based on their early childhood experiences and environment. He emphasized the issue of quality in education is what the State should be worried about and also emphasized that what is sufficient and adequate in Joseph City may not be in Phoenix or Tucson where there are many cultural amenities.

In response to Senator Conner's request to know if standardization, such as square footage per classroom or students per class, exists in Arizona's M&O funding formula, Mr. Bush indicated it does not.

Senator Spitzer, sponsor of the bill, distributed written testimony (filed with original testimony) which sets forth his view on the constitutionality of the ABC plan. He opined the plan is constitutional and would be accepted by the Supreme Court. Senator Spitzer asserted the Supreme Court recognizes that allowing unfettered local control means total equality between school districts can never be achieved. He noted that the Roosevelt district transferred \$9,842,000 from capital to M&O between 1991 and 1995 and now it has capital needs. Senator Spitzer allowed this was done because the district thought it was the right thing to do for its students at the time. He noted the court ultimately found fault with this type of transfer, but acknowledged it demonstrates that the issue of how much money should go into the classroom and how much should go into bricks and mortar is an issue of contradiction.

Senator Spitzer acknowledged everyone is for equity, but suggested the Legislature should not tell local districts how to run their schools. He noted the Graham Keegan effort to eliminate bonding by districts would take away the right of their voters to subject themselves to taxation in order to build schools. Senator Spitzer related the view of another that this system works for 80 percent of the districts in Arizona. He questioned whether eliminating bonding fosters local control, which he called "fundamental and uniquely American," enhances academic achievement or encourages parental involvement in schools.

Senator Spitzer noted that Arizona spends a lot of money on bricks and mortar compared to the amount of money that goes into classrooms. He expressed his wish to solve the equity problem in a way that diverts more resources from bricks and mortar to the classroom, which he opined is presently underfunded.

Senator Spitzer expressed opposition to forcing districts to consolidate and to eliminating general obligation bonding. He asserted the ABC plan imposes accountability, adds to resources where lacking, complies with the Supreme Court ruling, creates a general and uniform school system and does so without harming local control or quality of education.

Senator Rios asked if Senator Spitzer still supports other finance mechanisms such as lease purchase and the formation of nonprofit municipal corporations that he earlier had proposed in S.B. 1460. Senator Spitzer agreed he does support such mechanisms in concept, but acknowledged they are not in the ABC plan due to compromises made.

**Senator Cirillo moved H.B. 2119 be returned with a DO PASS recommendation.**

**Senator Cirillo moved the strike-everything amendment to H.B. 2119 dated 2/28/97 at 4:00 p.m. be adopted.**

**Senator Gnant moved his amendment dated 3/3/97 at 4:00 p.m. to the strike-everything amendment be adopted.**

Senator Gnant explained his amendment appropriates funding to the Capital Facilities Board for five years, distributing it where is it most needed, based on a specific set of criteria narrowly set forth in the amendment. He explained they are set by the Capital Facilities Board, which is largely made up of legislative members, and must be adopted by the Joint Legislative Committee on Capital Review, which is entirely composed of legislators.

Senator Gnant acknowledged the ABC plan is a mechanism that the court would probably approve, but it does not address the court's requirements with regard to creating a "satisfactory level of funding" and "adequacy."

Senator Gnant indicated the plaintiffs' attorney in Roosevelt v. Bishop has indicated his amendment would satisfy the plaintiffs and they would not return to court, whereas adoption of the ABC plan would ensure their return to court as soon as possible. He also emphasized that there is nothing to prevent the State from doing away with the set standards if action is brought against it.

**Senator Henderson made a substitute motion to adopt his amendment dated 3/3/97 at 8:13 a.m. to the strike-everything amendment.**

Senator Henderson explained his amendment appropriates \$20 million each year to the Capital Equity Fund for use in issuing revenue bonds, producing up to \$450 million right away to address the greatest needs. He described the needs in the Ganado school district, noting the ABC projection falls short of its needs.

**The motion FAILED by a voice vote.**

Senator Rios expressed support for the Gnant amendment, suggesting it is a move toward equal educational opportunity.

Senator Huppenthal expressed opposition to the Gnant amendment, emphasizing there is no application process in the ABC plan; checks will be written beginning July, 1997. He commented that research shows schools perform better when control and responsibility is left at the local level, as the ABC plan proposes.

Senator Richardson also expressed opposition to the Gnant amendment, questioning how the ABC plan would be more acceptable to Senator Gnant in five years than it is now. He also suggested that setting standards would guarantee the State would return to court, as the experiences of witnesses have testified.

Senator Gnant reiterated that besides an equitable funding mechanism, the court also required a demonstration that the State is leading to an adequate allocation of revenues.

Senator Soltero expressed support for the Gnant amendment.

**The motion to adopt the Gnant amendment to the strike-everything amendment FAILED by a division of 6-8-0.**

**Senator Arzberger moved his amendment dated 3/3/97 at 3:58 p.m. to the strike-everything amendment be adopted.**

Senator Arzberger explained his amendment requires school districts to set aside one percent of their funding from the Capital Equity Fund and any capital overrides to be used for major repairs. He further explained the amendment requires an annual building inspection, a report to the Legislature specifying building conditions and a cost estimate to

correct identified deficiencies. He further noted the amendment specifies that a plan must be submitted to the Facilities Board outlining how districts would correct deficiencies.

Senator Bowers expressed opposition to the Arzberger amendment.

Senator Wettaw indicated he did not support the Arzberger amendment totally, but could support the first element of setting aside a building renewal fund.

**The motion to adopt the Arzberger amendment to the strike-everything amendment FAILED by a voice vote.**

**Senator Rios moves his #1 amendment to the strike-everything amendment be adopted.**

Senator Rios explained his #1 amendment gives high wealth districts a chance to take care of their own needs without competing with poor districts by allowing overrides over 20 years and lease purchase over time.

Senator Huppenthal expressed opposition to the Rios #1 amendment, indicating there is a separate bill moving to address some of these issues.

Senator Arzberger expressed support for the Rios #1 amendment which allows local control.

Senator Bundgaard expressed opposition to the Rios #1, suggesting lease purchase is another way to get around the constitutional debt limits.

**The motion to adopt the Rios #1 amendment to the strike-everything amendment FAILED by a voice vote.**

**Senator Rios moved his #2 amendment dated 3/3/97 at 4:39 p.m. to the strike-everything amendment be adopted.**

Senator Rios explained his #2 amendment removes the conditional repeal.

Senator Bowers expressed opposition to the Rios #2 amendment, suggesting that if the court finds the State is moving in the wrong direction, it should change its course entirely. He expressed his view the State is going in the right direction with the ABC plan.

**The motion to adopt the Rios #2 amendment to the strike-everything amendment FAILED by a voice vote.**

**Senator Lopez moved his amendment dated 3/3/97 at 2:59 p.m. to the strike-everything amendment be adopted.**

Senator Lopez explained his amendment puts another \$32.5 million into the ABC plan and suggested the Grant amendment together with the strike-everything amendment to H.B. 2119 would have complemented each other and improved the current funding system.

Senator Arzberger expressed support for the Lopez amendment, suggesting the ABC plan is not sufficiently funded to accomplish its goal. He emphasized the need to receive true state revenue projections from the Joint Legislative Budget Committee to determine what is actually available to fund efforts.

Senator Bowers expressed opposition to the Lopez amendment, asserting it is not the disparity that is the problem, but how the funding scheme affects the disparity. He suggested the Lopez amendment exacerbates these concerns.

Senator Bowers took a moment to thank members for their amendments and voiced appreciation for the level of thought and concern being expressed for the State's school districts.

**The motion to adopt the Lopez amendment to the strike-everything amendment FAILED by a voice vote.**

**Senator Huppenthal moved his amendment dated 3/3/97 at 4:11 p.m. to the strike-everything amendment be adopted.**

Ms. Stein explained the Huppenthal amendment to the strike-everything amendment makes technical changes, including several suggested by bond counsel. She further noted the amendment contains an appropriation for the building inspection program.

**The motion to adopt the Huppenthal amendment dated 3/3/97 at 4:11 p.m. to the strike-everything amendment CARRIED by a voice vote.**

**Senator Huppenthal moved his strike-everything amendment dated 2/28/97 at 4:00 p.m. as amended be adopted. The motion CARRIED by a voice vote.**

**Senator Cirillo moved H.B. 2119 be returned with a DO PASS AS AMENDED recommendation. The motion CARRIED by a roll call vote of 8-6-0. (Attachment #1)**

Senator Arzberger voted "no," asserting the ABC plan is not adequately funded and amendments would have improved the bill.

Senator Bundgaard voted "aye," in support of solving the school capital problem without increasing taxes.

Senator Conner voted "aye," agreeing the ABC plan is a start but it needs more funding.

Senator Huppenthal voted "aye," asserting the ABC plan is a clean proposal and gets money out to districts beginning July, 1997 in time for the next academic year. He expressed support for local control as a central aspect of the American culture and thanked the school superintendents for attending the hearing.

Senator Lopez voted "no," acknowledged the ABC plan does some very good things, but asserted the amount of the appropriation is not enough. He commented that figures show only ten percent of the school districts' needs are addressed by the bill.

Senator Richardson voted "aye," on the basis of his belief the ABC plan is a permanent structural change to the funding system that will pass court muster and agreed the disparities reflect an allocation problem not a resource problem.

Senator Rios voted "no," suggesting the strike-everything amendment is a work in progress and petitioned the Majority to be amenable to amendments on the floor.

Senator Soltero voted "no," emphasizing the Gnant amendment would make the legislation better and asked for continued consideration of it.

Senator Wettaw voted "aye," and acknowledged the work of Senators Spitzer and Huppenthal in bringing forth the plan, but asserted the bill is still not in final form.

Senator Bowers voted "aye," in support for equity, accessibility and local responsibility. He also thanked members and witnesses for their input and their concern for Arizona's children.

Without objection, the meeting was adjourned at 12:45 p.m.

Respectfully submitted,

Alice Kloppel,  
Committee Secretary

(Tapes and attachments on file in the Office of the Senate Secretary)