

# ARIZONA STATE SENATE

## 44TH LEGISLATURE SECOND REGULAR SESSION

### MINUTES OF COMMITTEE ON APPROPRIATIONS

**DATE:** March 8, 2000

**TIME:** 1:30 p.m.

**ROOM:** 109

**CHAIRMAN:** Senator Gnant

**VICE CHAIRMAN:** Senator Cirillo

**ANALYST:** Deborah Johnston

**COMMITTEE  
SECRETARY:** Melissa C. Upshaw

**ASST. ANALYST:** Ethan Shaner

**INTERN:** Michelle Thornham

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#### ATTENDANCE

#### BILLS

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<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. 2001	DPA
Senator Bennett	X			H.B. 2033	DP
Senator Grace	X			H.B. 2085	DP
Senator Guenther	X			H.B. 2153	DP
Senator Hamilton	X			H.B. 2170	DP
Senator Huppenthal	X			H.B. 2214	DPA
Senator Jackson	X			H.B. 2216	DP
Senator Lopez	X			H.B. 2229	FAILED
Senator Rios	X			H.B. 2230	DPA
Senator Smith	X			H.B. 2232	DP
Senator Solomon	X			H.B. 2354	HELD
Senator Wettaw	X			H.B. 2427	DP
Senator Cirillo, Vice Chairman	X			H.B. 2510	DP
Senator Gnant, Chairman	X			H.B. 2520	DP
				H.B. 2563	HELD
				H.B. 2595	HELD

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#### SPECIAL PRESENTATIONS

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#### GOVERNOR'S APPOINTMENTS

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<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Attendees Sign-in Sheet (Attachment A)

Chairman Gnant called the meeting to order at 1:32 p.m., and attendance was noted.

## **APPROVAL OF MINUTES**

Without objection, the minutes of March 1, 2000 were approved as distributed.

## **CONSIDERATION OF BILLS**

Chairman Gnant said there are a number of bills on today's calendar, and with some unanimous consents going around, Friday's calendar may be longer than it is currently. Although the Chair indicated he was not going to do any unanimous consents, he said he was told he had to and "under duress" the consents would be accepted. The members were informed consents would be coming around for their signature. The Chair said that with a mixture of some good and not so good bills on today's calendar, he would like to encourage the members to vote as they see fit on any of the bills.

**H.B. 2033 – appropriation; transportation projects – DO PASS**

**H.B. 2085 – vehicle license plates; number; replacement (now: secretary of state; census; appropriations) – DO PASS**

**H.B. 2170 – appropriation; developmentally disabled job coaching – DO PASS**

**H.B. 2216 – charter school board; technical correction (now: libraries; grants in aid – HELD**

**H.B. 2427 – appropriations; department of law – DO PASS**

**H.B. 2510 – schools; foreign exchange students – DO PASS**

**H.B. 2595 – retirement plan; judges; disability benefits - HELD**

As suggested by Senator Lopez, the Chair said the following bills: **H.B. 2033, H.B. 2085, H.B. 2170, H.B. 2427, and H.B. 2510** may be able to go under the Committee Rule, which allows the Committee to group some of the bills together and move them as a single motion. The Chair announced **H.B. 2216, and H.B. 2595** would be HELD.

**Senator Lopez moved H.B. 2033, H.B. 2085, H.B. 2170, H.B. 2427 and H.B. 2510 be returned with a DO PASS recommendation.**

Chairman Gnant asked the members if they had any objections to Senator Lopez's motion. No objections were made. The Chair noted he did not have any speaker slips indicating opposition to the bills.

**The motion CARRIED by a roll call vote of 10-0-4. (Attachment #1)**

**George N. Bays, Special Border Projects Coordinator, Arizona Department of Transportation (ADOT)/Motor Vehicle Division (MVD), was present to answer any questions if necessary for H.B. 2033.**

**Delia Garcia Kim, State Director, Census 2000, representing the Secretary of State, was present in support of H.B. 2085, and Debra Krol, representing the Arizona Commission of Indian Affairs, was present to speak if necessary.**

**Joseph Easton, Program Manager Legislation & Policy, Arizona Criminal Justice Commission (ACJC),** was present in support of H.B. 2427.

**H.B. 2001 – commercial vehicles; plate to owner – DO PASS AMENDED**

**Nadine Berrett, Senate Transportation Analyst,** explained H.B. 2001 establishes a “plate to owner” system for commercial vehicles. It allows an owner to transfer the license plate and the credit from the unextended portion of the fees and taxes to the new vehicle if both vehicles are commercial vehicles. Ms. Berrett noted there is an amendment proposed by Senator Hamilton, which appropriates \$849,800 from the State Highway Fund to the Department of Transportation in fiscal year 2000-2001 to implement the system. In response to Senator Smith’s inquiry, Ms. Berrett answered that the appropriation is for the Motor Vehicle Division (MVD) to implement the system for computer changes and update.

Chairman Gnant noted **Terry Smalley, Executive Vice President, Arizona Motor Transport Association,** was present in support of H.B. 2001, but he did not wish to speak, and **Penny Martucci, Assistant Division Director for Competitive Government Partnerships/MVD,** was present to speak if necessary.

**Senator Cirillo moved H.B. 2001 be returned with a DO PASS recommendation.**

**Senator Cirillo moved the 12-line Hamilton amendment dated 3/7/00, 2:14 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment B)**

**Senator Cirillo moved H.B. 2001 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 9-1-4. (Attachment #2)**

Chairman Gnant explained his vote by saying he votes no only because of the appropriation and the size of the appropriation.

**H.B. 2354 – wine or spirits producers; wholesalers (now: liquor licenses; computer fund) – HELD**

Chairman Gnant stated H.B. 2354 would be HELD.

**H.B. 2153 – board of dispensing opticians – DO PASS**

**Brian Townsend, Senate Commerce, Agriculture, and Natural Resources Analyst,** explained H.B. 2153 makes numerous changes updating the statutes of the Board of Dispensing Opticians relating to membership on the Board, powers and duties of the Board, licensure of opticians and establishments, fees, and investigation and adjudication of complaints. The bill increases from \$30 to \$50 the amount of board member compensation. The bill requires the Board to set maximum nonrefundable fees for: late renewal of an optician or establishment license of \$100; issuance of a duplicate dispensing optician license, name or location change and issuance of a duplicate optical establishment license of \$100.

Chairman Gnant noted there were no general fund monies associated with this bill, as the Board of Dispensing Opticians is a 90/10 board.

Senator Lopez asked the Chair if he had any speaker slips for those indicating to be heard on this bill. The Chair asked if there was anyone present who submitted a speaker slip that may have been lost when the speaker slips were turned in.

In response to Senator Lopez's inquiry, Mr. Townsend affirmed that this bill will be heard in the Commerce, Agriculture, and Natural Resources (CANR) Committee tomorrow morning. He informed the Members that **Corrine Hines, Executive Director, Board of Dispensing Opticians**, having been snowed in by Show Low, will try to come in tomorrow when the bill is heard in CANR or she will have the Chair of the Board attend on her behalf.

Senator Lopez stated these kinds of bills generally do not get any opposition. He queried whether he was missing something on the bill because the bill had 14 votes in opposition.

In response to Senator Lopez' question, Mr. Townsend answered he does not recall the testimony taken in the House, but the information can be obtained for him.

**Senator Cirillo moved H.B. 2153 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 10-2-2. (Attachment #3)**

#### **H.B. 2214 – title 15; department of education – DO PASS AMENDED**

**Kimberly Yee, Senate Education Analyst**, explained H.B. 2214 makes numerous changes relating to state and local responsibilities established in the Arizona education code. Ms. Yee noted that the Education Committee adopted an amendment to this bill and there are seven proposed amendments being offered in this Committee.

In response to Senator Solomon's inquiry, Ms. Yee answered that this bill as engrossed by the House is primarily a technical change bill to numerous areas of Title 15 and does not have any funds or appropriations attached to it.

Senator Solomon apologized for referring to the wrong bill, and thanked Ms. Yee for answering her question quite admirably.

Chairman Gnant stated there were three people present to speak on the bill. **Chris Herstam, representing McGraw Hill/CTB; Phil MacDonnell, Attorney, representing the Arizona Newspapers Association; and David Bodney, representing the Phoenix Newspapers, Inc., the Arizona Republic.**

In response to the Chair's question, Ms. Johnston said there was no particular order to hear the seven proposed amendments.

**Senator Cirillo moved H.B. 2214 be returned with a DO PASS recommendation.**

**Senator Rios moved his seven-line amendment dated 3/6/00, 5:09 p.m. be ADOPTED. (Attachment C)**

Senator Rios explained his amendment is for those students who were used as "guinea pigs" to take the Arizona Instrument to Measure Standards (AIMS) test last year, but are not required to pass the

AIMS test. The amendment prohibits the State Board of Education from putting the AIMS scores on the transcripts of this year's sophomores. For all the other classes coming that do have to pass the AIMS test, Senator Rios said he understands that the State Board of Education has said they will only use the best results of the test scores over their three years.

Senator Huppenthal stated he supports the Rios amendment. He stressed that a complete change in direction of the AIMS test was being embarked upon when there should be a vision for the AIMS environment that goes well beyond a decade or two. He said there is tremendous controversy over this "little side light" issue. It is as though there is this huge stack of assets that is distracted by this penny on the side. Passing the Rios amendment, he said, will help focus on the core issues and making AIMS successful.

**The motion to ADOPT the seven-line Rios amendment CARRIED by voice vote.**

**Senator Arzberger moved his six-page amendment dated 3/7/00, 8:27 a.m. be ADOPTED. (Attachment D)**

Senator Arzberger explained his amendment changes the definition of "rural areas" for the School Facilities Board (SFB) new construction costs. He said there was a bill to address the urban schools versus the rural schools. The bill passed out of Committee but did not make it through the process of going to the House.

Chairman Gnant said it is his understanding that the Joint Legislative Budget Committee (JLBC) will argue this will cost approximately \$200,000 per year because of the definition change, and it also brings some other things into play. Senator Arzberger replied that the cost is a little less than \$200,000 and the cost will not be every year and it could be spread out over a number of years.

Senator Bennett said he would like to state his support for the Arzberger amendment.

**The motion to ADOPT the Arzberger amendment CARRIED by voice vote.**

**Senator Lopez moved his seven-line amendment dated 3/6/00, 1:05 p.m. be ADOPTED. (Attachment E)**

Senator Lopez stated this is an amendment that most of the members may have already confronted since he has presented it in other committees and on the Floor, nevertheless, this is an issue that does not go away. As much concern continues about the AIMS test, he said he did not think there is anybody in this Body who does not want to have more accountability from the State's schools. He explained his amendment is the only vehicle he knows that will guarantee the State will have an instrument, over a period of time, that will allow students the opportunity to gain that academic achievement and graduate from high school meeting whatever standards are set.

Senator Lopez emphasized that too many students are reaching high school unprepared to pass the test, and two or three years is not sufficient time to reach that level of achievement. He said there is blame put all over the place, but he suspects the vast majority of parents in this State would like to see students at a third grade level begin to take the test, and the State should begin there. This would allow students to meet the standards so by the time they get to high school they will be able to pass the test.

In addition, he said he would like to make it clear that his amendment does not do away with the AIMS test until 2009. He still prefers the test be given and be used as an assessment tool to allow the schools to further align their curriculum with those standards that have been set. But it would not count towards graduation until this year's third graders reach the twelfth grade. By that time, he said he thinks all of the students in this State will be able to pass it. He expressed his hope that the Committee gives his amendment consideration.

Senator Huppenthal indicated that only 11 percent of the students passed the first round of the State's AIMS test commenting that there is a lot of controversy and discussion as to how much focus there was on it. He described a reference test as the Stanford 9 test could not be compared to the results of the AIMS test, which is a criterion reference test. Looking at the criterion reference test results of the State of Texas, he said he would project 28 to 40 percent of Arizona's students to pass the math portion of that test, and if the number were any higher he would be disappointed. He explained there should be good standards because a lot of work was put into what standards should be met if there was a good quality 13-year education. The problem is they were sprung on some of the students with a short time period for them to get to those standards. He thinks Senator Lopez's concept is correct, however, it would essentially destroy the AIMS environment that the State is trying to create and that is the creative tension saying the State expects its schools to perform at a certain level. He suggested the State would "stair step" from a basic skills standard to the AIMS standard over the period of time that Senator Lopez's amendment has played out noting that this idea has been advanced to the people and will continue to be discussed.

Senator Smith said to delay the effect and importance of the AIMS test for that period of time and to say that the test will be given, but will not count for anything, will mean the students are going to blow the test off like last time. He heard from parents, of the brightest kids, that their children blew off the test because it did not mean anything. He has greater confidence in the youth and the State's educational programs, and believes the goals can be met without extending the time period. Therefore, he could not support the seven-line Lopez amendment.

Senator Jackson informed the members that a delegation from the Navajo Nation would meet with the departments the following day to discuss the relevancy of the AIMS test. The Navajo Nation will plead for more time and has said "if we do not do anything about it, we will not have anybody graduating with the way the test is structured" and it is not relevant. Therefore, he supports the seven-line Lopez amendment.

Senator Lopez intervened to give the Chair notice that one of his bills was being heard at the House. In his absence he asked Senator Rios to present his amendments for him, with the exception of one. The Chair and Senator Rios both agreed.

Chairman Gnant said he thinks one of the underlying assumptions of the people who are critical of the AIMS test, critical of the implementation, and critical of anything else about it, is that this test was created in an environment in which the goal was to test the optimum, but there was not an adequate educational system already in place. In fact, he says that is not the case; the State has had an educational system in place for a hundred years. And one could, he supposed, criticize that the standards were set too high. He said it is questionable to him whether a 13-year head start should be given, when an acceptable system should have been in place already.

Senator Wettaw said he could see what is happening and thinks Senator Lopez has a point, but delaying the test just says students should learn more and get out. He said he thinks it would be a

mistake to do that, he could perhaps have gone for another year, but one would be shocked if they saw some of the incoming college freshmen. He said these students are as bright and nice a people as you would ever want. They have never been pushed in their whole academic career. He said students need encouragement, but if people are not challenged, they might never perform to their potential. Therefore, he thinks more work is needed than simply expanding the time.

Senator Bennett said he would like to speak in opposition to the seven-line Lopez amendment. He explained that the State has been at this process for some time. When he was asked to serve on the State Board of Education in 1991, they were looking at the old Arizona Student Assessment Program (ASAP), which was based on the essential skills that were established in the mid-eighties. Although ASAP was a disaster because of the way it was tested, those essential skills have been refined and developed into the AIMS standards. Arizona's academic standards have been acknowledged as some of the top in the nation. These were established with the input of parents, students, teachers, and administrators throughout the State to ensure that the State had something reasonable.

Senator Bennett said the Chair's point is well taken that the State has had a system in place teaching students to read, write, and compute. He does not believe this was sprung on anybody. If students are entering high school so far behind that they are not going to catch up, then delaying it is never going to accomplish what the State needs to accomplish and that is setting the standard and demanding the accountability. As stated by others, he has great faith in the State's teachers and students. If it is identified where students should be by a certain time then they will get there. Minor accommodations may be needed, and one accommodation is to rearrange the schedule during the 175 days of instruction. To make sure the students are focused on reading, writing, and math so when they graduate and start out in the world "it does not hit them square in the face" that they have been lied to for years as to where they really are in the system.

Senator Grace indicated that one could delay this all they want, but Arizona does not have a dependable population. It will not necessarily help the State because kids come to Arizona throughout their academic career. She stated the students will not necessarily be prepared, that is not to say that the State should not do anything in the younger years. It seems to her that it is the standards that are important, they are reflective of a good high school education. To a certain extent, she said, the State has to keep the focus on not how much, but how soon you start preparing for AIMS. She questioned if it is a good reflection of what the State should expect from anybody who comes into this State's school system, whether the students were in the State when they were in third grade or whether they just entered the system.

Chairman Gnant stated Senator Grace's statements were good points.

Senator Rios said he agrees and supports Senator Lopez's amendment. He stressed that all schools are not equal, and this is one of the reasons the Supreme Court of Arizona ordered the Legislature to come up with a plan to equalize funding in this State. The courts intervened by telling the Legislature that "you're not treating people fairly in this State." He said this was happening with Students First. He indicated that the State's population is growing, whether we like it or not, and 25 percent of that population is Hispanic and growing everyday, whether we like it or not. A lot of these students, he said, cannot pass the AIMS test, will not pass the AIMS test, and will have a very difficult time passing it even if they are granted another ten years. There are also students who will pass the AIMS test if given the tools in their school district to learn some of the advanced sciences, and math that they are currently not receiving. As indicated by Senator Jackson, he said, the Native

American population of this State is going to have a very difficult time passing the AIMS test. He questioned, "are we all willing to write off all these kids and say, they're just casualties of AIMS" because in essence that is what is being done.

Senator Rios said he argues for Senator Lopez's amendment because he believes in it and does not want students, especially in the Hispanic community, that are suffering from an extremely high school dropout rate, come to him and say "it is only going to get higher.., why should we stay in school, we can't pass this darn AIMS test especially in a year, two, three or four. " He said it would just create a bigger problem. Delaying the test until 2009 may not be the answer, and Senator Huppenthal's suggestion might help, but his suggestion is not before the Committee, it is the seven-line Lopez amendment. He emphasized a big injustice is being done to students in the State of Arizona, and that his concerns go well beyond his family, his neighborhood and to a lot of students in the State of Arizona.

Senator Solomon expressed sympathy for those students, who she believes will never pass the AIMS test. Those students who will forever be underclass citizens in the State of Arizona and those who will never have an opportunity to go out, make a living, and be productive citizens of this State. As a teacher, she has watched children whom she believed were never going to accomplish anything, accomplish a great deal, when high standards were set for them and by insisting they perform. But in addition, to the insistence, came support and tools that they needed, so that they could achieve. Therefore, she said she is reluctant to support an amendment that puts off what she thinks could be success for children. On the other hand, she said if the State is not willing to provide students with the support and tools they need to rise to the standards that have been set for them, then the State is doing a disservice to the children of this State. She did not think any of the Senators would want to do that. Having said this, she was not sure whether her comments were for or against the seven-line Lopez amendment. She indicated it is a dilemma, but she did not think she would support the amendment. However, she does know that over the next several years they all have to work to make sure the State's students have whatever they need in the way of tools, support, and remediations to pass this test.

In response to the discussion on relevancy, Senator Wettaw replied that there was not enough time spent on the concept of what is meant by relevancy. What is relevant and what is not? He said there are a lot of courses that he had over nine and a half years of attending college. Commenting that it was not all for an AA degree either, but what he would like to point out is, back to the relevancy. He said he could have done fine without biology, some history courses, or philosophy.

Chairman Gnant commented that we would have been fine if Senator Wettaw had not taken the philosophy courses.

Senator Wettaw continued that there are certain fundamentals people have to know, which are reading, writing, and math. If one can do those, they can do anything in the world. If either one of these three pegs are broken going into the 21<sup>st</sup> century or any other century, he said they are lost from the beginning. He emphasized that one should be careful when they say, "well what's relevant to me or what isn't?" There are certain things that are relevant as a base and that is what we are interested in here. Therefore, he thinks relevancy plays an important role, but there are certain things that are nonnegotiable.

**Jay Kaprosy, Legislative Liaison, Arizona Department of Education (ADOE)**, stated he is very happy to hear the discussion that is going on about this issue and the other amendments that are

here. He said he is not going to question at all that the Senators are looking out for the benefit of the children. However, these issues have been thoroughly discussed by the State Board of Education, which is the policy making body for the AIMS test. Referring to the seven-line Lopez amendment, he said the State Board of Education has discussed moving the test back to 2009 several times. In fact, the date has been moved back twice, and at this time there is not sufficient information to suggest the Board should move the date again.

Mr. Kaprosy pointed out ADOE has seen some of the results of the AIMS test, such as curriculum changes that benefit the students, and school districts and charter schools raising their standards for all students. With regard to those students who may or may not be left behind; he said those students are finally getting opportunities that they did not have in the past. Speaking to Senator Solomon's comments, it is as a result of setting high standards that all children were able to achieve, and moving the date back until 2009 will simply tell students that they cannot achieve.

Mr. Kaprosy expressed his thanks to Senator Wettaw for his comments, saying he is "right on." Reading, writing, and math are the basics, but we are in a time and place where we simply cannot get by with very basic math, reading, etc. The State Board of Education has set the standard for what is relevant in math. He pointed out that it is not realistic for people to learn more calculus, and trigonometry. The trigonometry and calculus questions on the test, he said, are to measure the State's highest performing students. Mr. Kaprosy stated the information that meets the standard, discussed by teachers at the State Board of Education is relevant to all students.

Senator Huppenthal asked Mr. Kaprosy what percentage of students the Department estimates will pass the math portion in three years. Mr. Kaprosy replied that at this time it is hard to determine that percentage for several reasons. He explained that the 11 percent is not accurate because of the need to look at more data that has some basis and reality before decisions can be made, which is being reviewed by the State Board of Education and ADOE. He said, the AIMS test is not a test that everyone is familiar with, it is not the Stanford 9 or the Nationally Standardized Norm-Reference Achievement Test as seen in classes. The AIMS test is a criterion reference knowledge base test that measures the knowledge of students. In fact, instruction is going to raise students to the level where they are meeting the standard. The type of instruction the Department has seen change as a result of Arizona's academic standards and the AIMS test.

Senator Huppenthal stated the AIMS test is thought of as something new and different because it is the State's first experience, but in fact, the body of knowledge that is taught through K-12 has been almost fixed for several hundred years. He said the new knowledge that has been created so phenomenally really comes in after the high school level, in college, where physics, chemistry, and more advanced calculus is being taught. He pointed out that what strikes him is everybody is always wanting to make the system better next year, rather than having a vision for the next ten or twenty years. He emphasized the system can be successful if there is patience to allow it to improve gradually rather than trying to strike out and improve it suddenly and fail. Although he does not support the Lopez amendment, he said Senator Lopez does bring up an important issue and that is the transition from one environment to another and right now this transition has not been thought through by the State Board of Education, Leadership, or ADOE. Senator Huppenthal believes this is a very important policy point that needs more work and has ideas for that transition.

Mr. Kaprosy said, to that point, ADOE and the State Board of Education have been thinking about this for a long time and are in a position where they need to await more data. He added that they

have been responsive to data, as it has come in, and have made good decisions regarding the test and that is where the policy making for the AIMS test is most appropriate.

Senator Grace said she agrees with Mr. Kaprosy that solid skills are needed in all three areas, but she thinks the math area should be analyzed. Commenting that there are clearly some problems there, and would disagree that everybody needs to have more than basic math to survive in this society. She said the reason she says this is because advanced math is not encountered everyday. That is not to denigrate math, she thinks math is important for developing certain skills, but reading and writing, especially reading, are fundamentals of survival in any society. She expressed her concern that if these standards are too high, students are going to take the approach of getting their General Education Diploma (GED). In the guise of improvement and better standards, she did not want to see the students pushed more towards getting a GED. She stated it is more important to have a strong working knowledge of computers, if one should put it in those terms.

Senator Cirillo said he had to look at the other side of this coin. As long as the implementation of the test as a requirement for graduation is delayed, the State will continue to turn out students that are not prepared to function in society at the best possible level. They will be able to function, but he does not think the State's objective in education is to turn out people who can barely function in an increasingly technical society. People are needed who will be able to advance up the ladder and function at a high level in society. He said he did not want to preclude them from doing it, rather, he would hold somebody back a year or two from graduation, give them the remedial work, and make sure they have the right skills when they do graduate so they can advance in society. He said he would vote against the seven-line Lopez amendment.

**The motion to ADOPT the seven-line Lopez amendment FAILED by a division vote with more votes in opposition than in favor.**

Chairman Gnant called for a short recess to give the members a chance to get refocused.

**The Chair RECESSED the meeting at 2:28 p.m. until the sound of the gavel.**

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**The Chair RECONVENED the meeting at 2:40 p.m.**

Chairman Gnant thanked Senator Lopez for the thoughtful and inspiring discussion on his seven-line amendment.

**Senator Lopez moved his three-line amendment dated 3/6/00, 1:10 p.m. be ADOPTED. (Attachment F)**

Senator Lopez explained his amendment keeps the AIMS test under the jurisdiction of the searches and copies provision of the public records statutes, title 39, chapter 1, article 2, ARS. Referring to Section 5 of the bill, he said his amendment strikes parts of line 17, and lines 18 through 20.

Senator Lopez said while he has sympathy for those testifying for this amendment, his rationale is somewhat different. The AIMS test is probably the most controversial piece of legislation that has been dealt with during the last two sessions. The reason is because there was very little opportunity for the public to engage in a meaningful dialogue on this issue. He said it seems to him that had the

public been engaged from the very beginning, had they known what was in it, they would have participated and helped shape the dialogue involving AIMS to a greater extent. He thinks that is the way it should have been resolved. He asked the Committee for their support on his amendment.

**Chris Herstam, representing McGraw Hill/CTB**, informed the Committee that McGraw/CTB prepares the test questions for the AIMS test. Mr. Herstam urged the Committee to maintain the existing confidentiality of the test questions. McGraw/CTB responded to a State RFP and bid accordingly based on the confidentiality of the test questions. Some of those questions are utilized in other states.

**David Bodney, representing the Phoenix Newspapers, Inc. (the Arizona Republic)** said he did not hear much disagreement about Senator Grace's statement that we want to know about this test. Mr. Bodney quoted Senator Grace's statement, "is it good reflection of what anybody would expect." He said If Senator Bennett's amendment is passed and ADOE is allowed to codify its position and allow people to see but not talk about it after it's given, and if Senator Lopez's amendment is not passed, there will be a situation where it will not be known. In addition, we will never be free to discuss whether the AIMS test is a fair test that would be a good reflection of what anybody would expect.

In reference to Senator Huppenthal's amendment, requiring a new test be given every year, Mr. Bodney said it is a wonderful opportunity for this Body to get the State past these initial fears and to do like New York, Ohio, Texas, and other states do. When different tests are administered every year, he said, it should be made public for students and parents to see and discuss. He believes this is fair and urged the Committee for their support in passing the Lopez amendment.

Senator Wettaw said as one, who has given thousands of exams, it is a good pedagogical tool to let people see previous exams.

Having been quoted by Mr. Bodney, Senator Grace felt she had a right to explain by stating her point is the need to understand how these standards are developed. She said that is a radical difference from what she said and they are not the same thing because what good will it do if there is another test given the next year that is totally different. She did not want to see them caught up in this discussion because she thinks it is distracting them from the more important point and that is how the questions are developed in the first place, and having a new test every year is going to violate the contract the State has signed.

Chairman Gnant asked Mr. Bodney if he has seen the documents entered into by the State on McGraw Hill/CTB. If it was his belief, upon reviewing those documents, that there is no proprietary interest on the part of McGraw Hill/CTB and the questions used in the exams.

Mr. Bodney answered he has seen the documents and that it is his view that there is no protected trade secret or other proprietary interest alleged by McGraw Hill/CTB that would give rise to a lawsuit. He said there was only one bidder for the AIMS test, and it was McGraw Hill/CTB. Additionally, if this Body wants a different test every year, and if doing a different test every year will cost the State more money, he said, he believes McGraw Hill/CTB would be happy to administer a new test.

Senator Solomon welcomed Mr. Bodney. She indicated to have an interest in the public record issue in regards to this test or any test because during her years in the classroom, every time she

administered a test, it was a matter of public record. Anybody who wanted to see it could see it other than the California Achievement Test, and the Stanford 9. As she listens to Mr. Herstam, she said, she heard him say the State does not own this test either, that this is not a test that belongs to the State of Arizona, this test belongs to McGraw Hill/CTB. There are proprietary issues and she heard Mr. Bodney say that is not the case. She understands Senator Gnant's question, and is very confused because she does believe that if this is something that the State has paid for, it should be treated as a public record. If it is not, then clearly there is not an issue here. She questioned the difference in testimony, and how this issue should be resolved.

In response to Senator Solomon's inquiry, Mr. Bodney answered the State has a nonexclusive license with McGraw Hill/CTB. That is the way the agreement is structured for the use of this AIMS test. He explained the test questions do not come from McGraw Hill/CTB. Instead, they are developed by teachers, administrators, and interested persons with some background in the subject matter. McGraw Hill/CTB, he said, has made questions for Arizona and Superintendent Keegan has said those questions and this test belong to the people of Arizona. The agreement says that all provisions of Arizona law apply. Mr. Bodney read Superintendent Keegan's deposition under oath. (Attachment G)

Chairman Gnant asked Mr. Bodney to hold that point, he asked Mr. Herstam if he wanted to make a rebuttal to the question he asked Mr. Bodney about the proprietary nature of the test.

Mr. Herstam said it was his client's belief and their attorney's belief that the Lisa Keegan letter, sent to all members of the Legislature on February 28<sup>th</sup>, is accurate. He believes, she says very quickly and directly, that the test items found in AIMS are not the property of the State, and the release of these items would be in violation of Arizona's contract with McGraw Hill/CTB. (Mr. Herstam read Ms. Keegan's letter, Attachment H)

Mr. Herstam pointed out that his client is very flexible with regards to designing questions, and working with ADOE on this matter. Should there be a change in public policy from the State Board of Education from ADOE or by this Legislature, he said of course, McGraw Hill/CTB would work with the State. However, there will be dramatically increased costs. He said the original Request For Proposal (RFP) and the bid that McGraw Hill/CTB made was with the understanding the questions would be given to the State in a license form and they would remain the company's property. He explained the questions used in other states, and the confidential status is maintained in those states in some cases. If they are published here, it is going to do damage for those questions used in other states and the cost would rise. He said he would presume that is one of the reasons this bill was referred to this Committee, to analyze the cost issues that would be involved.

Senator Solomon questioned Mr. Herstam's statement that the questions used by McGraw Hill were used for tests in other states, although the public, of which she is a member, was led to understand that these were questions designed by Arizona teachers, and those associated with education in Arizona, specifically with regard to the Arizona curriculum and the standards that the students here had to meet.

Mr. Herstam replied there are basic anchor questions used here in Arizona, and Mr. Kaprosy could elaborate better on this issue with regards to the input from classroom teachers. But there are questions used by McGraw Hill/CTB that have been found successful at measuring the standards obtained by students that are used in other states. He said it was more cost effective to utilize the same questions rather than try to duplicate questions. This allowed McGraw Hill/CTB to reduce its

bid accordingly in that RFP process. He said there are some questions used in Arizona that are not used in other states, but publishing all of the questions would violate confidentiality for other states.

Senator Solomon said perhaps that is the reason for the anger of some teachers, who were part of the committee that designed the math portion of the test, expressed to her when they said some of the questions they had presented were not included in the test. Perhaps McGraw Hill/CTB decided that there were questions used in other states that best reflect the standards of the State of Arizona.

Senator Solomon questioned the conflict she heard in Superintendent Keegan's testimony. She said the Superintendent either believes these questions belong or do not belong to the State, and asked the Chair if this could be cleared up.

In response to Senator Solomon's inquiry, Mr. Herstam clarified he is quoting the letter Ms. Keegan sent to the members of the Legislature, in which CTB is in agreement with and their understanding of their contract with the State of Arizona. Having no knowledge of Superintendent Keegan's deposition under oath, he said, he believes Mr. Bodney quoted the deposition accurately.

In response to Senator Solomon, Mr. Bodney said Superintendent Keegan told this Legislature one thing on February 28<sup>th</sup>, and told McGraw Hill/CTB, in a deposition under oath on February 1<sup>st</sup>, something different. Mr. Bodney read Ms. Keegan's letter sent to the Members on February 28<sup>th</sup> and her deposition to McGraw Hill/CTB on February 1<sup>st</sup>. He stated it is incrementally more costly to do a different test every year, although they do not know how much because it has not been bid out, and McGraw Hill will be the first in the line to do the bid. Mr. Bodney questioned "is there a risk of a lawsuit?" He said he did not think so. He questioned, "is there a pending lawsuit that they are trying to circumvent with this language?" He said he thinks that is the risk to the State, and we may wind up paying for it.

Senator Solomon thanked the Chair and Mr. Bodney for their indulgence.

Chairman Gnant said that one of the things he is going to have to find out is why it takes more than ten minutes to rewrite a math question. His guess is that there is not a math question on the exam that any Member of this Committee could not rewrite in about five minutes just by changing some things around.

Senator Wettaw commented that one of the worst things is to have a test made up by Committees. He said you could rewrite the AIMS test and probably do a better job in two seconds.

Chairman Gnant said his point is, if the question on the AIMS test says you have a five foot ladder leaning against the wall, and the bottom of the ladder is three feet out from the wall, how far up the wall is it? The answer by the way is four. He said you could rewrite that by saying that five feet out from the sidewalk, you want to draw a line that matches down to the other end of the sidewalk, which is three feet wide, how long is that line going to be? He said you still have to know the principle.

Senator Wettaw said he agrees with the Chair.

Senator Bennett said that one of the witnesses drew a correlation between the three-line Lopez amendment and the Bennett amendment that will follow. He stated he has very mixed feelings on this but wants to point out that he thinks there are two issues. First, is the issue of confidentiality

when it comes to the development of a test and maintaining integrity of the items. Second, along the lines of what Senator Grace mentioned, which is building public acceptance that the test correctly measures those standards. He said the standards are public documents, and anybody could publish them as many times, as they want. He said he agrees with the Chair, that once you have a test question that has been deemed reliable and valid, you could just change oranges to apples or move your multiple choice answers into a different order and you basically have a different question. At the same time, he does not think there will be success with a high stakes graduation requirement, without getting the public buy-in that the newspapers and their representatives support.

With regard to how the other states have done it, Senator Bennett said Texas began releasing those data items after five years. One test was developed that was issued last year, he said it was the testimony of ADOE in the Education Committee that the next four examinations will be unique and at that point we will have a bank of questions. As mentioned by Senator Huppenthal in the Education Committee, and once we have had five unique tests and developed this bank of reliable and valid questions, we then need to focus on the policy of the State Board or ADOE. If that bank is locked in and held forever with confidentiality there would be failure.

With regard to refresh rates in Texas, Senator Bennett indicated they committed to a 70 percent refresh rate that even after that initial bank is developed, then new ones start to develop each year. He said it is going to be costly, but thinks it is worth it. He indicated Arizona would probably be faced with 25 to 50 percent refresh rates each year. He emphasized the State is in the very beginning of the process and that is why he is offering his amendment.

Senator Huppenthal responded that we have still not seen a long-term plan from ADOE on how they are going to resolve these issues, and since he does not have that plan, he is going to support the three-line Lopez amendment.

**The motion to ADOPT the three-line Lopez amendment CARRIED by voice vote.**

**Senator Lopez moved his two-page amendment dated 3/7/00, 10:50 a.m. be ADOPTED. (Attachment I)**

Senator Lopez explained the Attorney General's Office has entered into agreement with ADOE in the *Flores vs. Arizona*. While the judge has not made his determination on appropriations to carry out the consent agreement, an Interim Committee looked at how much it would cost to implement these programs. The committee failed to determine the cost of the implementation, therefore, the State is now left with districts having to implement the consent agreement without any funding and not knowing how much that would cost. He explained his amendment has the Auditor General put out an RFP, to someone who is familiar with bi-lingual education programs and with education in general to determine what the cost would be. He noted that the Auditor General does not have the expertise to do it themselves, and could not be accused of favoring or not favoring bi-lingual education bills. He said the estimate cost to provide this study in the comprehensive matter that it should be done is approximately \$400,000 and that he would hope his amendment is considered. If his amendment is not considered and the Legislature continues to neglect this issue, he said, what occurred in Kansas City, when their Legislature decided to not follow a judge's order, could happen here. He explained the judge imposed a property tax on the residents of Kansas City to implement programs they found were in violation of their civil rights act. He said he could not think of anything worse that could happen, and does not want the Judiciary telling the State exactly how much they should put into these programs. He said that is a job the State should live up to.

**The motion to ADOPT the two-page Lopez amendment FAILED by a division vote with 5 in favor and 6 in opposition.**

**Senator Jackson moved his four-page amendment dated 3/7/00, 2:13 p.m. be ADOPTED. (Attachment J)**

**Debbie Johnston, Senate Appropriations Analyst**, explained the four-page Jackson amendment provides school funds for tribally operated juvenile correction centers. She noted that currently, this requirement holds for counties that operate juvenile detention centers.

In response to Senator Huppenthal's question about the appropriation, Ms. Johnston indicated there is no appropriation on the amendment. However, the reimbursement is \$15 per day. She noted JLBC took a rough estimate of 50 students over the 175-day period, which estimates to \$130,000.

Senator Jackson said the Navajo Nation has established a juvenile correction center at Chinle that is currently in operation, the only part that is missing, is the education program for kids who have been incarcerated. He said this is what they want. He said there was no provision within the state government pertaining to that new facility. He noted that the public schools budget does not provide for such a thing so that is the reason for this piece of legislation.

Senator Smith said the operators of the juvenile detention center say that they are funded the same way that a juvenile is funded at any public schools. He would assume that a juvenile on the reservation receives funding when they go to school, he asked what difference would it make if they are in a school on a reservation versus the school at the Department of Juvenile Correction. They still should get funded regardless of what they are doing.

Senator Jackson said that was also his thinking, but the people who are working on the centers, say the public schools around them are not cooperating and are telling them that there is no provision in their budget for this operation

Senator Smith replied that providing a special fund for a specific group of juveniles is really unnecessary. The funding should follow the student.

Senator Solomon said she understands that funding follows the child, but as she reads the amendment it says that this is a juvenile corrections center operated by the Navajo Nation and is not part of the Department of Juvenile Corrections. She asked Senator Jackson if this is correct. Senator Jackson answered that is correct.

Senator Solomon said since the funding follows the student to the Department of Juvenile Corrections, and understanding Senator Jackson's explanation of his amendment; the funds would not follow the student because this detention center will be operated separately. Senator Jackson answered that is correct.

Senator Rios said he thinks the situation is if the juvenile is in violation of an Arizona law, then they are sent to a county detention center, and they do have a reimbursement rate such as Senator Smith had indicated. However, he believes if they are in violation of tribal law, they are housed in a tribal juvenile center, and there is no reimbursement. He thinks this is why Senator Jackson is

saying the Navajo Nation needs some resources and some help for the kids that are being detained in tribal juvenile centers.

Senator Cirillo asked if there was some clarification on this subject.

**Mr. Kaprosy, Legislative Liaison, ADOE**, returned to the podium. He said he does not necessarily stand in opposition or support of the bill, but he would like to inform the Committee there are other significant issues that surround this. He said that Senator Rios is exactly right that we are dealing with a population of students that are being incarcerated under tribal law in most cases, and not necessarily State law. He explained the facility was built and operated primarily with federal funds. He said there has been ongoing discussions between the Navajo Nation and ADOE in trying to find the resources and the appropriate funding mechanism for the education of these students. There has also been continuing discussion with the Bureau of Indian Affairs (BIA) and whether they will be responsible for the funding.

In reference to Senator Jackson's statement, Mr. Kaprosy said he is absolutely right, that under current law, there is no provision for state funding for that facility, in many cases, because of the inability to truly define who will be served in that facility.

Senator Guenther asked how long this discussion has been going on. Mr. Kaprosy replied that he was involved in that conversation shortly before Session began, and it is continuing. He does know the facility was looking into some other issues such as whether it was possible for them to charter a detention facility. Mr. Kaprosy noted ADOE and the facility on the Navajo Nation are both waiting for an answer from the BIA to see what jurisdiction and responsibilities BIA may have relating to this facility.

In response to Senator Guenther's question about ADOE having funds for this institution, Mr. Kaprosy answered ADOE does not have the funds and that ADOE is funded based solely on the formulas created in existing statute. In fact, he said just recently the Legislature had to pass a supplemental appropriation for them because they did have a shortfall in their funding.

Senator Guenther commented that as fast as the clock ticks and the world turns, it should not take that long to make a decision on whether or not it is adequate. Providing these students with an education, especially if they are having problems with behavior; will improve their opportunity to break that cycle.

Senator Cirillo asked Mr. Kaprosy if they have involved Congressman J. D. Hayworth on all these discussions, because he thinks he is the one who could intervene for the State with the BIA. Mr. Kaprosy replied that he was not aware whether those contacts have been made.

**The motion to ADOPT the four-page Jackson amendment CARRIED by voice vote.**

**Senator Bennett moved his 12-line amendment dated 3/7/00, 4:10 p.m. be ADOPTED. (Attachment K)**

Senator Bennett explained his amendment authorizes the State Board of Education to use nondisclosure agreements stating individuals may not disclose specific items on AIMS test. It also

requires ADOE to report to the Governor and the Legislature by June 30, 2000 on a long-term plan for implementing the AIMS test.

In reference to the Bennett amendment, **Mr. Phil MacDonnell, Attorney, representing the Arizona Newspapers Association**, said he opposes lines 1 through 4 and has no problem with lines 5 through 12. He said although it is technically not inconsistent with the Lopez amendment, it is really not consistent with the spirit of the earlier action. To make it clear, he said they have no problem that the test is secret prior to its administration, people should not be able to see it until after it is administered. So if there were language later inserted on the Floor that said, on line 4 to add the words "prior to the administration of the test" that would be fine. But the idea of having it in law and authorizing the department to have this nondisclosure agreement, he said he thinks it gives them approval what the department is now doing, which he thinks, is unworkable.

Senator Bennett responded that he supports letting the public talk about it, he said he also recognizes that should be accomplished through a planned procedure rather than letting individuals see the test and having them disclose individual items. He said he believes the test, or significant portions of it, should be given out to the public, and maybe the need to respect those anchor questions that were referred to by the test developer. But this is simply addressing a policy that would keep an individual from releasing these at will, when in actuality, he thinks that ADOE or the Board needs to be about the process that is described by Mr. MacDonnell and others.

**The motion to ADOPT the 12-line Bennett amendment FAILED by a division vote of 3 in favor and 6 in opposition.**

**Senator Cirillo moved H.B. 2214 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 10-1-3. (Attachment #4)**

Senator Cirillo explained his vote. He said we have heard all the discussions and those that think the country is in great shape can give a great round of applause to trial lawyers and the media. Those who think it is not can draw their own conclusions, he votes aye.

Senator Lopez explained his vote. He said he raised two issues that should be dealt with. He said he believes he will be introducing them again on the Floor, he would ask that Committee members study them a little bit more, to reflect on them, and they will find that they have merit. He asked the members if they could assist him on the Floor by passing them, he votes aye.

Those present in support of H.B. 2214 were: **Tonia Garrett, Governmental Affairs Manager, representing the Arizona Association of Counties**, with the Arzberger amendment, and **Polly Sharp, Human Services Policy Director, Inter Tribal Council of Arizona**, with the four-page Jackson amendment.

**H.B. 2216 – charter school board; technical correction (now: libraries; grants in aid) – RECONSIDERED – DO PASS**

Chairman Gnant said he mentioned earlier that he was going to hold H.B. 2216 because Senator Wettaw was not going to hear it in CANR, and now he understands that Senator Wettaw has agreed to have it withdrawn from CANR. He noted this is one of the bills that Senator Lopez suggested passed out by unanimous consent. It is the \$1 million grants-in-aid to libraries.

**Senator Cirillo moved H.B. 2216 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 11-1-2. (Attachment #5)**

Those present in support of H.B. 2216 were: **Kevin DeMenna, Lobbyist, Arizona Humanities Council;** and **Sharyn Pennington, Chair, Legislative Committee, Arizona Library Association.**

**H.B. 2230 – appropriations; named claimants (now: named claimants; appropriations) – DO PASS AMENDED**

**Debbie Johnston, Senate Appropriations Analyst,** explained H.B. 2230 appropriates approximately \$378,500 from the State General Fund and \$112,200 from other funds to the Department of Administration (ADOA) for the payment of claims made against several state institutions. Ms. Johnston noted there are two amendments to this bill.

Ms. Johnston explained the first amendment proposed by Senator Gnant addresses the \$9,000 claim against the Department of Juvenile Corrections and it switches it from other funds to the general fund. It also increases the claim against the Chiropractic Board by \$500 and it includes a technical amendment. The second amendment proposed by Senator Smith adds a \$20,000 general fund appropriation for debt incurred by the Department of Veteran Services, fiduciary division to American Express for tax preparation services performed for veterans under the fiduciary jurisdiction.

In reference to the explanation of amendments, the Chair informed the members that he or Senator Smith should be notified if they had any questions.

**Senator Cirillo moved H.B. 2230 be returned with a DO PASS recommendation.**

**Senator Cirillo moved the seven-line Gnant amendment dated 3/7/00, 1:14 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment L)**

**Senator Smith moved his seven-line amendment dated 3/7/00, 1:23 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment M)**

**Senator Cirillo moved H.B. 2230 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 12-0-2. (Attachment #6)**

**Patrice Pritzl, Executive Director, State Board of Chiropractic Examiners,** was present in support of H.B. 2230.

**The Chair RECESSED the meeting at 3:40 p.m., until the sound of the gavel.**

\* \* \* \* \*

**The Chair RECONVENED the meeting at 3:50 p.m.**

## **H.B. 2229 – appropriation of federal monies – FAILED**

**Debbie Johnston, Senate Appropriations Analyst**, explained H.B. 2229 authorizes the Legislature to appropriate noncustodial federal monies, which include block grants, federal matching monies and general revenue sharing monies. It does not include university research grants and other monies awarded to universities, the Board of Regents, or university employees, monies received by the Department of Emergency and Military Affairs (DEMA) and monies awarded directly to school districts or community colleges.

Chairman Gnant noted the following were present in opposition to H.B. 2229: **John A. Blackburn, Special Assistant, Maricopa County Attorney/Arizona Sheriffs Association; Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council; Joseph Easton, Program Manager Legislation & Policy, Arizona Criminal Justice Commission (ACJC); Eric Edwards, Legislative Liaison, Arizona Association of Chief of Police; Tonia A. Garrett, Government Affairs Manager, Arizona Association of Counties; Alberto Gutier, Director, Governor's Office of Highway Safety; Kathleen Morley, Tax & Resource Administrator, Arizona Department of Transportation; and Andy Swann, Patrolman, Association of Highway Patrolmen of Arizona.**

**Rae Bivin, Executive Director, Fiscal Accountability & Reform Efforts Committee**, was present in support of H.B. 2229, and **Bob Chapko, Budget Manager, Governor's Office of Strategic Planning & Budgeting**, was present neither in opposition nor in support of the bill.

**Senator Cirillo moved H.B. 2229 be returned with a DO PASS recommendation.**

Senator Solomon asked if someone could tell her why this bill is a good bill for the Committee to support or if one of those present in opposition could tell the Committee why it is a bad bill.

**Mike Branham, Executive Director, Arizona Criminal Justice Commission (ACJC)**, said in a very quick way, the bill is good in theory, but very bad in practice. He said as you can well imagine with the biennial budget process and the way federal grants, in particular, are administered it is very difficult to put the grant money into the hands of the people in the communities where it makes a difference.

Senator Smith stated he made a few phone calls regarding this bill and the information he received indicates it is a good bill because it is not a mandatory procedure.

**The motion FAILED by a roll call vote of 4-8-2. (Attachment #7)**

Senator Smith said it appears that he is on the opposite track when the members vote aye, he votes no, and when they vote no, he votes aye. He said he votes aye for this. He commented that he has always been the one in the right step.

Chairman Gnant said he thinks this is a good concept, but it needs more work. He said that he is willing to work on it over the summer so that they can find a way to make it actually work in practice. He needs convincing that it will work. He votes no for now.

Senator Huppenthal stated he would like to change his vote from no to aye.

**H.B. 2232 – income tax; technical correction (now: appropriation; postsecondary education financial assistance – DO PASS**

**Debbie Johnston, Senate Appropriations Analyst**, explained H.B. 2232 makes a supplemental appropriation of \$100,000 in fiscal year 2000-2001 from the State General Fund to the commission for Postsecondary Education to be directed to the Arizona Private Postsecondary Education Student Financial Assistance Program.

**Senator Cirillo moved H.B. 2232 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 11-1-2. (Attachment #8)**

Chairman Gnant noted those present in support of H.B. 2232: **Larry Gudes, Chair, Independent College and Universities of Arizona (ICUA); Don Isaacson, Legislative Counsel; Karen Kruse, Government Relations, University of Phoenix; John K. Mangum, Arizona Private School Association; and Lyn Marquis, University Relations, University of Phoenix.**

**H.B. 2520 – AHCCCS; finger imaging – DO PASS**

**Julie Szperling, Senate Assistant Research Analyst**, explained H.B. 2520 expands the Department of Economic Services (DES) finger imaging program to include certain Medicaid populations. It also requires the Arizona Health Care Cost Containment System (AHCCCS) administration to implement a point of service finger imaging program for members receiving pharmaceutical benefits. The bill also appropriates \$200,000 to the AHCCCS administration to implement the finger imaging requirements. Ms. Szperling noted there was an amendment that was adopted in the Senate Health Committee that removes the second section of the bill that requires the AHCCCS administration to implement the finger imaging program for members who receive pharmaceutical benefits.

In response to the Chair's question, Ms. Szperling clarified that this amendment was adopted in the Senate Health Committee.

The Chair noted the following were present in support of H.B. 2520: **Lynn Dunton, Assistant Director for the Policy Office, AHCCCS; Ashley Fritz, representing Sargem Morpho; John Mangum, representing the Arizona Food Marketing Alliance/Retail Grocers; Diane Ross, Assistant Director, AHCCCS; and Mike Williams, Lobbyist, representing Sargem Morpho.**

Of the names read, the Chair asked Senator Solomon whom she would like to hear from. Senator Solomon said she thinks Ms. Dunton would be the appropriate person for her to question.

With regard to the cost, Senator Solomon asked Ms. Dunton if she could tell her approximately how many more people would need finger imaging under this bill. Ms. Dunton said there would be at least 18,000 pregnant women that would fall under this bill who do not get cash assistance. Secondly, unless there is an amendment to remove the members who receive pharmaceutical benefits that number will grow quite a bit. That could be anyone in the Medically Necessary Indigent (MNI) program, etc.

Senator Solomon said she would presume Supplemental Omnibus Budget Reconciliation Act (SOBRA) moms and moms who get Federal Emergency Service (FES) would be included. Ms. Dunton said that was correct.

Senator Solomon asked Ms. Dunton if she could give her a scenario of a mom who receives federal emergency services who might be present in a hospital emergency room for delivery. Ms. Dunton explained that an application would be taken and unless there was a finger imaging system in the hospital in order for them to be eligible for the Medicaid program they would have to make a second trip to the Department of Economic Security (DES) for the image.

Senator Solomon responded that this mom is ready to deliver. Ms. Dunton replied yes, but this is a condition of eligibility so they would need finger imaging equipment either at the hospital so it can be done simultaneously or a second trip would be needed.

Senator Solomon asked about how many FES women were being talked about here. Ms. Dunton answered approximately 6,000. Senator Solomon indicated that would give us about 11,000 to 12,000 SOBRA moms.

Senator Solomon asked if the costs could be recovered from Health Care Financing Administration (HCFA). Ms. Dunton said they have asked HCFA about his bill and whether it would be approvable, and they have finally received an answer today, they will need a waiver. They are concerned that it could be a barrier to Medicaid eligibility, and would not give them a clue if it would be approvable, and without that they will not get federal dollars.

Senator Solomon said she just wants to make sure she understands; that there are about 18,000 pregnant women in the State of Arizona who may have to be finger imaged and would need to have a waiver from HCFA. However, it would appear that because HCFA is concerned about creating a barrier for women to access Medicaid a waiver might or might not be granted. Ms. Dunton said Senator Solomon's understanding is correct. Ms. Dunton clarified she had no clue as to how much this would cost, but it is a lot less than the bill that was engrossed because the pharmaceutical point of sale has been stricken, but the people who receive pharmaceutical benefits is still in section 1 of the bill. In response to her second question about whether or not there will be cost savings with this program in place, Ms. Dunton indicated that AHCCCS could not give the assurance that there will be cost savings. She said that no other state does this for the Medicaid population.

In response to Senator Solomon's inquiry, Ms. Szperling answered that there was a feasibility study conducted, and the study indicated that it would not be cost beneficial.

Senator Solomon said that the purpose of this is to make this a cost benefit to the State, and the feasibility study has shown that this would not provide a cost benefit to this State, but it may indeed keep the women from the medical care that they should have.

Ms. Szperling said she would like to clarify, in regards to application to all of AHCCCS, it would not be cost beneficial if it were applied only to the DES sections. They said that it might be cost beneficial, but there would be barriers within that and pretty much everything that Ms. Dunton mentioned.

Senator Cirillo said he was put in possession of a 1999 DES report indicating the total annual savings resulting from the finger imaging program is \$1.9 million annually. DES estimates that if the State expands the current finger imaging program there will be an additional net saving of \$850,000 per year. He asked Ms. Szperling if she recognized any of these figures.

Ms. Szperling answered that it is her understanding that the \$1.9 million cost savings is due to the cost savings of the TANF cash benefits, general assistance, and food stamp programs that currently require finger printing by DES.

Senator Cirillo questioned why the cost saving would not logically be extended to other programs, and on what basis did they not include it if it has been proven in other areas. He noted the same percentage of fraud or at least some amount of fraud might be uncovered. In response to his first question, Ms. Szperling answered that extending the cost saving to other programs and determining the percentage of fraud associated with this was not indicated in the feasibility study. In response to his second question, Ms. Szperling answered no other state has this type of finger imaging requirements applied to the entire Medicaid system and there is no scientific data to base this on.

Senator Cirillo clarified his point by stating the State has been using scientific data of the other programs that are not in this State. He said if we have a certain percentage of savings in the programs we have been using it on, why is it not reasonable to assume the same levels of savings if we extend it to other programs, is his question.

To that point, Senator Grace said she thinks one thing should be kept in mind and that is benefits under TANF or food stamps are easily given to someone else. She pointed out that it would be difficult to commit fraud by faking a prescription because a prescription is tied more to an individual than food stamps. She said that might account for a difference in what we might be able to extend to the other two programs. She questioned why someone's prescription would be taken as opposed to food stamps where they could be used to buy anything with them.

Senator Solomon said to that point, it is very unlikely that someone who is not pregnant can present themselves as being pregnant and get medical treatment. She believes there would be a whole lot less fraud involved with the SOBRA and FES moms than with food stamps, TANF and perhaps some other fraud that is easily perpetrated.

Senator Smith said he had a couple of people visit with him about finger imaging to ensure that there was elimination of fraud and with this additional amount of appropriation for finger imaging there was also an estimate of the amount of money that could be saved because of fraud. He could not recall the name of the person who gave him this information.

Approaching the podium, **Ashley Fritz, representing Sargem Morpho**, answered she was the person who spoke to Senator Smith on this issue. She indicated the project saving is \$850,000 as projected in the DES report. Ms. Fritz pointed out that report was speaking of provider sites for 28,000 additional locations and not the 750 that they were proposing for the pharmacies.

Senator Smith thanked Ms. Fritz for her clarification and said that answered his question.

**Senator Cirillo moved H.B. 2520 be returned with a DO PASS recommendation.  
The motion CARRIED by a roll call vote of 7-5-2. (Attachment #9)**

Senator Grace stated she was not fond of the legislation and has told the sponsor that she will try to resolve some of the issues. With regard to the testimony from AHCCCS, she found it very troubling because it was not available in the Senate Health Committee. For now, she said she votes aye but if that holds up it is a negative mark against the bill.

Senator Guenther stated that on behalf of pregnant women he votes no.

Senator Hamilton stated that on behalf of taxpayers he votes aye.

Senator Huppenthal stated he votes aye in hopes that he would get a better sense of the amount of time taken on the transaction because it takes time to get the finger print. He said he thinks that one of ten comes back that says the finger print needs to be taken again or if it takes up space at the pharmacy office. He would like more information on the cost benefit analysis.

Senator Solomon explained her vote. She said if HCFA denies a waiver, this will not save the taxpayers any money. It will cost the taxpayers a great deal of money, it may cost more than just the cost of the finger imaging equipment and the cost the counties are going to have to bear with regard to providing this service when the money is not forthcoming. There may be indeed any number of problems with births because moms are not going to get finger imaged. She said that on behalf of the taxpayers she votes no.

Senator Gnant said he looks forward to voting aye for this on the Floor, but for today only until it gets fixed, he votes no.

**H.B. 2563 – initiative petition; coercion; technical correction (now: county expenditure limits; disproportionate share) - HELD**

Chairman Gnant announced that he is going to hear H.B. 2563 on Friday.

There being no further business, the meeting was adjourned at 4:15 p.m.

Respectfully submitted,

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Melissa C. Upshaw, Committee Secretary

(Tapes and attachments on file with the Secretary of the Senate's Office at the Resource Center.)