

ARIZONA STATE SENATE

45TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: April 23, 2002 **TIME:** 1:30 p.m. **ROOM:** SHR 1

CHAIRMAN: Senator Richardson **VICE CHAIRMAN:** Senator Bee

ANALYST: Sheryl Rabin **COMMITTEE SECRETARY:** Tracey Moulton

INTERN: Lisa Hird **ASST. ANALYST :** Lace Collins

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre			X	HB 2486	FAILED
Senator Bundgaard	X			HB 2620	DPA
Senator Burns	X			HB 2639	FAILED
Senator Cumiskey	X				
Senator Rios	X				
Senator Smith	X				
Senator Bee, Vice Chairman	X				
Senator Richardson, Chairman	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Tape 1, Side A

Chairman Richardson called the meeting to order at 1:45 p.m. and attendance was noted. For additional attendees, see Sign-in Sheet (Attachment A).

CONSIDERATION OF BILLS

HB 2620 - purchaser dwellings; opportunity to repair- DO PASS AMENDED

Carolyn Atwater, Research Assistant Analyst, explained HB 2620 outlines a purchaser's procedure for notice to seller of alleged defects and provides the seller an opportunity to repair the alleged defects before the filing of a civil purchaser dwelling action. The bill specifies that a purchaser shall give written notice of defects to a seller of a single or multi-family unit at least 120 days before filing a dwelling action. Within 90 days after receiving notice, the seller shall provide a good faith written response or offer to repair or replace to the purchaser. Within 30 days of that offer, the purchaser shall either accept the seller's offer or provide any basis for rejection of the offer.

Ms. Atwater explained the three-page Richardson amendment dated 4/22/02, 11:40 a.m. distinguishes between multi-unit dwelling actions, where the actions shall be stayed for 90 days unless good cause is shown and dwelling actions where the action may be stayed. The amendment allows the purchaser to amend their action to include subsequently discovered alleged defects and provides for the successful party to recover attorney's fees and costs. The amendment also requires builders to notify the first buyer of a home about his or her right to file a written complaint with the Registrar of Contractors within 2 years of purchase.

Ms. Atwater explained the one-page Bundgaard amendment dated 4/15/02, 11:39 a.m. to the Richardson amendment eliminates the rebuttal presumptions and instead allows failure to act in good faith to be admitted into evidence if the dwelling or multi-dwelling action proceeds to trial.

Ms. Atwater remarked that these two amendments were prepared subsequent to and will be offered instead of the two-page Smith amendment dated 4/15/02, 8:30 a.m. (Attachment B) and the four-page Richardson amendment dated 4/22/02, 9:04 a.m. (Attachment C).

Ms. Atwater explained the three-line Richardson amendment dated 4/15/02, 11:10 a.m. (Attachment D) is a technical correction and is included in the three-page amendment.

Representative Nelson, bill sponsor, testified that the firm that he had been a partner in had been subject to a lawsuit in the past and the process that exists is not fair. He expressed his appreciation of all the work that has been done with the creation of the amendments and opined that the bill as amended will address any concerns that exist.

Senator Richardson expressed her appreciation of the groups of individuals that worked on the bill and the amendments.

Senator Richardson announced the following individuals testified in support of the bill: **Kevin O'Malley, Attorney, Home Builders Association of Central Arizona; Tom Farley, Arizona Association of Realtors; Jeff Sandquist, Home Builders Association of Central Arizona; Mike Goldwater, Director, Registrar of Contractors; Travis Bunch, Government Affairs,**

Independent Insurance Agents and Brokers of Arizona; Scott Higginson, Del Webb Corporation & Pulte Homes and Jay Kaprosy, Greater Phoenix Chamber of Commerce.

Senator Richardson announced **Eric Sachrison, Attorney, Duke, Gerstel and Shearer and Pat Haruff, representing herself**, were present and neutral toward the bill.

Senator Bee moved HB 2620 be returned with a DO PASS recommendation.

Senator Bee moved the three-page Richardson amendment dated 4/22/02, 11:40 a.m. be ADOPTED (Attachment E).

Senator Bee moved the one-page Bundgaard amendment dated 4/22/02, 11:39 a.m. to the Richardson amendment be ADOPTED (Attachment F). The motion CARRIED by voice vote.

Senator Bee moved the Richardson amendment, AS AMENDED, be ADOPTED. The motion CARRIED by voice vote.

Senator Bee moved HB 2620 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 1).

HB 2639 - critical incident stress management; confidentiality(now: law enforcement employees; paid leave) - FAILED

Lisa Hird, Research Intern, explained when calculating overtime for employees, the Department of Public Safety (DPS) already considers some paid leave time as hours worked. Without statutory authority, DPS may not be able to continue this practice. HB 2639 establishes that paid leave may be considered hours worked for the purpose of calculating overtime compensation for certain law enforcement activities.

Senator Richardson announced that without objection, the Committee would consider the six-line Richardson amendment dated 4/23/02, 10:40 a.m.

Ms. Hird explained the six-line Richardson amendment dated 4/23/02, 10:40 a.m. stipulates that employers have the discretion to count paid leave as worked hours. Furthermore, the amendment excludes security personnel in correctional institutions maintained by the State, a county or city from being affected by this legislation.

Andy Swann, President, Associated Highway Patrolmen of Arizona, testified in support of the bill and remarked that the issues that this bill will address for DPS center around a couple of concepts. He stated that the current policy of the agency allows for certain paid leave to be calculated as time worked for the purposes of overtime, in certain conditions. Those conditions are if an employee has vacation time that is scheduled 15 days in advance and if the employee is called into work during their vacation, they can be compensated by being paid at a time and a half or overtime rate and hours worked in specially funded or grant overtime details, which is paid at overtime rates. He explained that one of the benefits of this policy to the agency is that it can control certain paid leave balances.

Mr. Swann stated that the agency is not asking for anything new or that is not currently in practice. He stated that the interpretation of the statute has changed, which is what led to this legislation. He noted that the bill is permissive and does not mandate that any agency has to change its policies.

Senator Burns asked if Mr. Swann was aware of any other state employee that gets paid time and a half while they are on paid leave. Mr. Swann noted that he was not aware of any.

Senator Burns stated that she was not aware of this policy and now the Committee is being asked to codify it in statute. She asked why this group of people is treated differently than other state employees. Mr. Swann stated that a law enforcement presence is necessary in these work assignments. In order to have officers to work these details, it has been the policy of the agency to pay the officers the amount that the federal government is paying out the grant, in overtime pay.

Senator Richardson announced the following individuals were present in support of the bill: **Samuel Wooldridge, Legislative Liaison Arizona Police Association; Don Isaacson, Arizona Fraternal Order of Police (FOP); Doug Cash, Legislative Committee Chairman, FOP; Ed Wren, Legislative Counsel, Associated Highway Patrolmen of Arizona; Jack Lane, Lieutenant, DPS and Eric Edwards, Arizona Association of Chiefs of Police and Phoenix Police Department.**

Senator Bee moved HB 2639 be returned with a DO PASS recommendation.

Senator Bee moved the six-line Richardson amendment dated 4/23/02, 10:40 a.m. be ADOPTED (Attachment G). The motion CARRIED by voice vote.

Senator Bee moved HB 2639 be returned with an AS AMENDED, DO PASS recommendation. The motion FAILED with a roll call vote of 3-4-1 (Attachment 2).

HB 2486 - permits to carry concealed weapons – FAILED

Sheryl Rabin, Research Analyst, explained HB 2486 requires DPS to compile a list of states that allow a person to legally carry a concealed weapon without a permit or license and allows residents of those states to carry a concealed weapon in Arizona if certain conditions are met. The bill also allows political subdivisions to regulate or prohibit firearms possession on community college district property.

Ms. Rabin explained the amendment adopted by the Education Committee eliminates the provision of the bill regarding the regulation of firearms on community college property and requires DPS to allow persons with permits from other states to carry their concealed weapons in Arizona if the specified requirements are met. The amendment exempts federal and state peace officers and retired police officers with at least 10 years of service from two requirements; the initial fingerprinting requirement and the requirement of completing a refresher firearm safety training program upon application for a renewal permit. The amendment eliminates the requirement that a resident from another state must have taken a firearm safety training program to be able to carry a concealed weapon while in Arizona.

Jack Lane, Lieutenant, Legislative Liaison, DPS, testified in opposition to the bill and to the amendment passed in the Education Committee. He commented that the amendment eliminates the minimum training as required for Arizona residents. He noted that the National Rifle Association (NRA) of America endorses training as one of leading reasons for reducing the number of deaths by firearms. He stated the NRA's basic class of handgun and personal protection totals 22 hours. He opined that it is important to hold out-of-state residents to the same standard as in-state residents. Additionally, the elimination of fingerprinting requirements for current and retired police officers is a problem, as unfortunately, officers and retired officers are sometimes arrested out-of-state and DPS would not be notified of these arrests. With the elimination of training requirements and proficiency requirements, there is no way to know if those officers should be carrying a concealed weapon.

Mr. Lane remarked that there are only 7-10 states that do not issue concealed weapon permits, which means that because there is no computer database, identifying correct permits versus fraudulent permits would not be possible. He stated that there is a language problem with the bill regarding standards that other states must meet for their residents to carry concealed weapons, but it does not require those residents to come to Arizona and meet those standards. This language would need to be addressed in an amendment.

Mr. Lane stated the bill with or without the Education Committee amendment creates a tremendous burden on law enforcement and creates an unequal treatment of Arizona residents, making it harder for them to meet the requirements for concealed weapons than it is for out-of-state residents. The training issue is one of the biggest concerns of law enforcement as is the ability to be able to distinguish valid versus invalid permits.

Darren LaSorte, Legislative Liaison, NRA of America, testified in support of the bill as amended by the Education Committee, specifically regarding the reciprocity provision. In 1996, Arizona passed a reciprocity provision that allowed the DPS Director to determine which states have substantially similar laws. He noted at that time, it was unknown how people with out-of-state concealed weapon permits would act. He commented that it is now known that there are over 5 million law abiding permit holders. He posed the question, "Why aren't concealed weapon permits treated like out-of-state driver licenses?" He opined that given the success that other states have had, Arizona should give permit holders full faith and credit. This bill, as amended, is moving toward this goal.

Mr. LaSorte commented that the NRA has offered training to over three-quarters of a million citizens every year. He noted that many states require training and some do not. He stated that there is no correlation between those states that require training versus the states that do not have training requirements and any safety issues related to training.

In response to Senator Richardson, Mr. LaSorte remarked that there are 33 "shall issue" states, where an individual does not have to show cause to carry a concealed weapon and there are 11 states that are permissive. California and New Jersey are such states and it is very difficult to get a concealed weapon permit in either state. He stated that he was not sure if he had data readily available regarding the correlation between the training in permissive states and mandatory states. He stated that he would be happy to supply the Committee with that data. He noted that in the 33 "shall issue" states approximately one half of the states do not require any training at all.

Mr. LaSorte commented that renewal of concealed weapon permits in some states are treated the same as automatic driver licenses and opined that this could be applied anywhere.

Samuel Wooldridge, Legislative Liaison, Arizona Police Association, testified in opposition to the bill and remarked that Mr. Lane already stated much of his testimony.

Mr. Wooldridge commented that the Association was opposed to the original bill and the addition of the Education Committee amendment makes that opposition more strong. He stated the Association is not against out-of-state visitors with concealed weapon permits who pass the State's requirements.

Mr. Wooldridge remarked that there were several law enforcement officers present that could testify as to their first hand experiences with inexperienced people with firearms, concealed or not. He stated that inexperienced gun handlers do not handle the weapon as well as experienced people do. He stated in 1939, the Supreme Court said that the second amendment does not prevent a State from using reasonable controls to regulate firearms. He stated that current laws require that a person be familiar with the legal issues relating to the use of deadly force; weapons care and maintenance; mental conditioning on the use of deadly force; safe handling and storage of weapons; marksmanship and judgmental shooting. The Association opines that these are all critical to carrying a weapon, specifically to concealed weapons.

Mr. Wooldridge commented that as a retired Phoenix Police Officer, he does not believe that he has the right to continue to have a concealed weapon permit without demonstrating that he has current training and knowledge enough to correctly handle a weapon. He urged the Committee to oppose the bill.

Committee members discussed whether the Committee should continue to hear testimony on both the bill and the Education Committee amendment or whether testimony should be restricted to addressing the bill that was before the Committee.

Gary Christensen, representing himself, testified in support of the bill and noted that he is opposed to prohibiting law-abiding citizens from carrying concealed weapons on community college property with proper permits. He stated that he generally supports reciprocity and the wider recognition of other state's concealed weapon permits, which is consistent with the US Constitution. The current system of reciprocity by DPS is flawed and fails to address key components of the other systems. Utah recently cancelled their reciprocity agreement with Arizona, reducing the list. He remarked that there is no legal provision to even leave a weapon in a vehicle and there is no on-site storage custody provision. He urged the Committee to support the bill.

Senator Richardson announced the following individuals were present in opposition to the bill: **Gerry Anderson, Executive Director, HALT-Gun Violence; Max Dine, M.D., representing himself; Doug Cash, Legislative Committee Chairman, FOP; Eric Edwards, Arizona Association of Chiefs of Police and Phoenix Police Department; Pat Mathews, League of Women Voters of Arizona; Andy Swann, Associated Highway Patrolmen of Arizona and Jim Sawyer, Executive Director, Arizona Sheriff's Association.**

**Senator Bee moved HB 2486 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 3-3-2 (Attachment 3).**

Without objection, the meeting was adjourned at 3:05 p.m.

Respectfully submitted,

Tracey Moulton
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)