

CORRECTED

ARIZONA STATE SENATE

46TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION

DATE: February 11, 2003 **TIME:** 1:30 p.m. **ROOM:** SHR 1

CHAIRMAN: Senator Binder **VICE CHAIRMAN:** Senator Jarrett

ANALYST: Kerri Morey
Sean Laux **COMMITTEE SECRETARY:** Debee Kennedy

INTERN: Summer Woodson **ASSISTANT ANALYST:** Tracey Landers

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Allen	X			SB 1007	DISCUSSION/HELD
Senator Arzberger	X			SB 1050	DP
Senator Blendu	X			SB 1094	DP
Senator Brown	X			SB 1108	HELD
Senator Cannell	X			SB 1183	DP
Senator Jarrett, Vice Chairman	X			SB 1206	DPA
Senator Binder, Chairman	X			SB 1216	HELD
				SB 1220	DPA
				SB 1283	DP
				SB 1320	DPA
				SCR 1012	DP

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Herbert R. Guenther	Director, Department of Water Resources	CONFIRMATION

Chairman Binder called the meeting to order at 1:37 p.m., and roll call was taken.

EXECUTIVE NOMINATIONS

Herbert R. Guenther, Director, Department of Water Resources – RECOMMEND CONFIRMATION

Mr. Guenther stated that he is very pleased to have the opportunity to serve in the Napolitano administration.

Senator Binder commented that the State is very fortunate to have Mr. Guenther as the Director of this department.

In response to Senator Allen, Mr. Guenther pointed out that the department has very qualified and dedicated staff and he commends them for their work. He commented that the State of Arizona leads the west in water by taking the lead, resolving problems and compromising. Mr. Guenther noted that one of his first priorities is to maintain and re-establish the prominence in the western world. He also would like to continue to bring the Indian water rights settlements to closure. Mr. Guenther further noted that they are prepared to deal with the drought and homeland security as it relates to water supplies.

In response to Senator Blendu, Mr. Guenther commented that his first challenge is to keep quality people in the department and he will be encouraging them to stay with the department.

A memorandum from Wayne Taylor, Jr., Chairman, The Hopi Tribe, was distributed to the Committee recommending the confirmation of Mr. Guenther (Attachment A).

Senator Jarrett moved the Natural Resources and Transportation Committee recommend to the full Senate the CONFIRMATION of Herbert R. Guenther to be Director of the Department of Water Resources. The motion CARRIED by a roll call vote 7-0-0 (Attachment 1).

APPROVAL OF MINUTES

Chairman Binder moved the minutes of February 4, 2003 be approved. Without objection, the minutes were approved as distributed.

CONSIDERATION OF BILLS

Senator Binder announced that the following bills would be held:

SB 1108 – vehicle load restrictions; violations; assessments – HELD

SB 1216 –vehicle restraint violations; enforcement – HELD

SB 1220 – military license plates; disabled plates – DO PASS AMENDED

Tracey Landers, Assistant Research Analyst, testified that the bill allows honored military license plates to be combined with the international symbol of access for no additional charge. Currently, the Motor Vehicle Division (MVD) considers the combination of honored military license plates and international symbol of access to be a personalized plate and charges an additional \$25 fee. MVD estimates the costs for programming, changing the forms and redesigning the license plates to be approximately \$53,640. Ms. Landers explained the Binder two-line amendment dated February 10, 2003 at 10:08 a.m.

Senator Waring, sponsor of the bill, explained that there is no place to put a disabled symbol on the bottom of a medal of honor plate, so veterans have to buy personalized license plates and were charged an extra \$25 for the handicapped symbol.

Tom Smith, representing himself, stated that the present situation is unfair and this is a very necessary bill.

Patrick Chorpenning, Director, Arizona Department of Veteran Services, testified in support of the bill. Mr. Chorpenning stated that the veteran's plate costs \$25 annually which goes to the veterans donation fund and an annual \$5 renewal fee that stays with the Arizona Department of Transportation (ADOT). An additional \$25 per year is charged for the handicapped symbol. This bill corrects that problem.

M. Byron Norrell, Jr., Department of Arizona Finance Officer, representing himself, testified in support of the bill. Mr. Norrell feels that the additional \$25 for the symbol is discriminating.

Dominic Di Giovanni, National Service Officer, Military Order of the Purple Heart, testified in support of the bill. Dr. Giovanni stated that all of the honored plates should be exempt from any additional costs.

Daniel Conway, President, Arizona Council of Military Officers Association, testified in support of the bill. Mr. Conway stated that the MVD was interpreting the legislation relative to the emblem as only applicable to "special plates." The honored military license plates were not considered to be "special plates." This bill will clarify that the special military license plates are also "special plates."

Senator Blendu moved SB 1220 be returned with a DO PASS recommendation.

Senator Blendu moved the two-line Binder amendment dated 2/10/03 at 10:08 a.m. be ADOPTED (Attachment B). The motion CARRIED by a voice vote.

Senator Blendu moved SB 1220 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 7-0-0 (Attachment 2).

SB 1050 – credits; refunds; license plates – DO PASS

Sean Laux, Research Analyst, explained that the bill authorizes MVD to issue refunds of previously paid fees on sold vehicles if the fees are in excess of \$25 and the vehicle owner submits an affidavit stating that the owner is unable to drive due to health or age concerns, and will not register another vehicle in the State. MVD is required to maintain a record of that fixed credit amount for three years and the bill allows vehicle owners to use that credit to register any vehicle owned, or acquired by the owner within that three-year period. The bill states that the credit is zero if not used within three years. It also specifies that the credit for unexpired fees and taxes will decrement until the owner surrenders the license plates to MVD or an authorized third party or submits an affidavit of license plate destruction. The bill also specifies that if a vehicle owner registers a vehicle in another state, the owner is not entitled to a credit or refund. MVD anticipates a fiscal impact of \$755,200 to the state highway fund to implement this legislation.

Senator Leff, sponsor of the bill, stated that the problem is when you are not replacing a car and MVD submits a credit for the amount left on your vehicle license tag. That credit decreases until you are able to use it for another car to be registered. This bill states that the credit amount will not decrease. Currently, the law states that if you are entitled to a refund of \$350 or more, you can get a refund from MVD.

In response to Senator Blendu, Senator Leff reiterated that under current law, a person gets a credit from MVD; however, the credit decrements every month.

Jacque Allgood, Administrative Services Officer, ADOT, explained that the costs to implement this program are due to the antiquated computer system.

Senator Jarrett moved SB 1050 be returned with a DO PASS recommendation.

Senator Binder stated that SB 1183 would be explained before voting on SB 1050.

SB 1183 – refund; license plates; transfer – DO PASS

Mr. Laux stated that this bill allows vehicle owners, who sell their vehicles and do not purchase another within 30 days, to obtain a refund of the previously paid vehicle registration fees and taxes greater than \$25. This bill differs from SB 1050 in that it does not alter the current decrementing system on the plate and fee to owner and just allows anyone who does not replace a vehicle within 30 days to apply to the department for a refund. Mr. Laux stated that there was no fiscal note prepared.

Kevin Biesty, Legislative Liaison, ADOT, pointed out that prior to this law, nobody received any credits or refunds of any kind. Under the new system, when you transfer plates to a new car, a credit is allowed to be transferred to the new car. He explained that most people receive something back on their plates. This program cost \$1.2 million to implement. The department was only appropriated \$900,000. Mr. Biesty feels that the system should remain the same. Mr. Biesty recommended a fiscal note from the Joint Legislative Budget Committee (JLBC).

Senator Arzberger noted that if it is a tax, it should be given to the taxpayer.

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In response to Senator Allen, Mr. Biesty reiterated to the Committee to leave the system as it is. He further noted that the department has won awards for this program.

Ms. Allgood clarified that the costs noted for refunds are not a cost to the division, but what are on the system now if everyone asked for a refund.

The motion CARRIED by a roll call vote of 4-3-0 (Attachment 3).

Senator Mitchell, sponsor of SB 1183, explained that the owner of the vehicle has the choice of either getting their money back or getting a credit. He further explained that it costs less than \$15 to process a refund. This bill will add the option of credit or cash. If it is over \$350, they may receive the cash.

**Senator Jarrett moved SB 1183 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 5-1-1 (Attachment 4).**

SB 1320 – special plates; welfare; protection; animals – DO PASS AMENDED

Summer Woodson, Research Intern, explained that this bill requires ADOT to issue special license plates for the welfare and protection of animals if a non-profit entity that promotes animal well being pays implementation costs. The bill also establishes a welfare and protection of animals fund and a Committee to grant fund monies to non-profit entities that promote the welfare and protection of animals. Ms. Woodson explained the Binder 19-line amendment dated February 10, 2003 at 3:18 p.m.

In response to Senator Jarrett, Ms. Woodson noted that an earlier bill was vetoed by the Governor noting that the State License Plate Commission was not fit for liability reasons.

In response to Senator Allen, Senator Binder noted that this bill will encourage entities to bring down the animal population and this bill provides monies to make sure that more animals are spayed and neutered. She further noted that the \$32,000 implementation fee will be paid by private donations to the Arizona Humane Societies.

Duane Adams, Director of Operations, Arizona Humane Society, testified in support of this bill. Mr. Adams stated that this bill will make an animal friendly license plate and the monies will be allocated from the \$17 per plate to establish a fund and committee to grant the funds to animal agencies and organizations. This will allow smaller communities to receive grants for spayed and neutering.

In response to Senator Blendu, Mr. Adams stated that there needs to be legislative approval for the plate and the monies have to be funded and distributed.

In response to Senator Allen, **Kerri Morey, Research Analyst**, explained that the bill requires the \$32,000 donation be made before enactment and creation of the fund and license plate.

In response to Senator Jarrett, Mr. Adams pointed out that a five-member committee will administer this program that will meet once a year. The members are also volunteers.

Julie Bank, Maricopa County Animal Care and Control, testified in support of the bill. Ms. Bank emphasized that Animal Care and Control in Maricopa County receives 500 to 700 calls a day from citizens looking for help with their pets. She further stated that Animal Care and Control has a "Big Fix" program which is their spayed/neutered efforts and is completely funded by donations. They fix approximately 200 animals on these "Big Fix" days. They generally have to turn away approximately 500 people on these days.

In response to Senator Allen, Ms. Bank stated that the "Big Fix" days are done quarterly and they also have a second part of the program available for low-income people by appointment only. She further stated that Animal Care and Control works with the media to get the word out about their program and it is also spread by word of mouth.

Senator Jarrett moved SB 1320 be returned with a DO PASS recommendation.

Senator Jarrett moved the Binder 19-line amendment, dated 2/10/03, 3:18 p.m. be ADOPTED (Attachment C). The motion CARRIED by a voice vote.

Senator Jarrett moved SB 1320 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 7-0-0 (Attachment 5).

SCR 1012 – military base preservation initiative – DO PASS

Ms. Woodson explained that if approved by the voters, this Senate Concurrent Resolution will allow the State Land Department to exchange State trust lands with other public lands if the exchange conserves open space.

Senator Allen asked if this resolution is the same one that the voters have turned down three times. Senator Blendu stated no it is not, but it is the exact bill that was passed last year and was voted down on the ballot. He further stated that without this bill, every military base in the State is in jeopardy.

Senator Blendu moved SCR 1012 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 7-0-0 (Attachment 6).

Senator Binder noted that a gentleman was present in opposition to the bill and she would take testimony only.

Donald Begalke, representing himself, testified in opposition to the bill. Mr. Begalke stated that preserving military bases is a federal issue and not a State issue. Mr. Begalke feels that the language of the bill has nothing to do with U.S. military bases and the title does not match the language. Mr. Begalke also questioned how much this will cost taxpayers.

Senator Blender responded that the bill is a State issue because the federal government established monuments on our State land and we are surrounded by government lands and there is no mechanism to swap lands. The land is supposed to be held in trust and used for education, parks and recreation and the State has not been compensated for these lands. It is a State issue because they confiscated State land. This bill will allow the State Land Department to go to the farmers around the bases and bargain with them. Arizona will then own the land around the air force base and lease it back to the farmers. The monies will go into education, parks and recreation. These exchanges will be done in public hearings.

Senator Allen concurred that the bill as presented does not make it clear for the voters.

Mr. Begalke reiterated that the language needs to be specific and only related to the military bases.

Senator Blendu responded that the language came from the Land Department, the cities and counties and all of the military bases and has been worked on for years.

Senator Binder noted that **Sandy Baehr, Sierra Club**, was present and in opposition to the bill.

SB 1206 – disability parking; dismissal of complaint – DO PASS AMENDED

Mr. Laux testified that the bill dismisses a civil traffic violation for a person illegally parked in a specially designated parking space for physically disabled persons if that person can produce evidence that the person has a validly issued disabled removable windshield placard. Mr. Laux explained the Cannell two-line amendment dated February 6, 2003 at 8:51 a.m.

In response to Senator Blendu, Senator Cannell stated that the people who collect the fines are just following State laws and they have no choice. If there is no placard, they cannot dismiss the fine. This bill will give courts the ability to dismiss a fine for someone who has a good explanation why their placard was not visible.

Senator Jarrett moved SB 1206 be returned with a DO PASS recommendation.

Senator Jarrett moved the Cannell two-line amendment, dated 2/06/03, 8:51 a.m. be ADOPTED (Attachment D). The motion CARRIED by a voice vote.

Senator Jarrett moved SB 1206 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 7-0-0 (Attachment 7).

SB 1094 – hybrid vehicles; HOV lanes – DO PASS

Mr. Laux testified that the bill authorizes hybrid vehicles to use high occupancy vehicle (HOV) lanes at any time regardless of the number of occupants in the vehicle and eliminates the requirement that ADOT request permission from the federal government for use of the HOV lanes by hybrid vehicles.

In response to Senator Jarrett, Mr. Laux explained that current law, provided that certain things happen, allows hybrid vehicles to receive the alternative fuel vehicle license plate and thus be eligible to drive in the HOV lane.

Senator Mead, sponsor of the bill, explained that as a public policy, encouraging people to use vehicles that average around 70 to 80 miles to a gallon is good. Mr. Mead further stated that he is working on a floor amendment that in the event the State would lose any federal monies, the program would be stopped.

In response to Senator Allen, Senator Mead clarified that there are two makers of these cars. He further commented that you must go through the federal government.

Jim Buster, Legislative Liaison, ADEQ, testified in support of the bill. Mr. Buster confirmed that at the current time these vehicles are prohibited from using the HOV lanes because of the current Environmental Protection Agency (EPA) definition of an inherently low emission vehicle (ILEV). The hybrid vehicles emit the same as the current ILEV's. Mr. Buster thought that the hybrid vehicles could possibly be reclassified as ILEV.

Mr. Biesty commented that this bill came out in 2001 and stated that ADOT would have to request approval from the Federal Highway Administration (FHWA), who owns the lanes. Approval was requested and it was denied stating that they do not qualify under federal statute to use these lanes. They do not meet the ILEV standard that the EPA set out. Currently, federal guidelines and the ruling from FHWA prohibits these hybrid vehicles from using the HOV lanes.

In response to Senator Allen, Mr. Biesty pointed out that the EPA does not have authority over FHWA. He further stated that certain vehicles, such as alternative fuels, compressed natural gas and propane single-use vehicles can qualify as ILEV. Hybrids have a gasoline engine but get great gas mileage. Mr. Biesty further commented that the EPA can certify that the hybrids meet the ILEV standards and then they will qualify to use the HOV lanes.

In response to Senator Blendu, Mr. Biesty stated that the original bill states upon approval of the federal government. The bill now states that it will be allowed.

Cecil Glovier, representing himself, testified in support of the bill. Mr. Glovier stated that the hybrids run cleaner and emit less pollutants than the other alternate vehicles that the State currently allows in the HOV lane. Also, the Internal Revenue Service (IRS) gives a tax credit for the purchase of a hybrid vehicle.

Senator Binder announced the individuals who registered their position on the bill (Attachment E).

**Senator Jarrett moved SB 1094 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 7-0-0 (Attachment 8).**

SB 1283 – watercraft; boating while intoxicated – DO PASS

Mr. Laux explained that the bill increases the classification of the penalty for a person suspected of operating a watercraft under the influence (OUI) that refuses to take a requested drug or alcohol test from a petty offense to a class 2 misdemeanor. The bill also increases the fine for a person convicted of this offense from a maximum of \$300 to a maximum of \$750 and requires a law enforcement

agency that arrests a person suspected of OUI and refuses to take a requested alcohol or drug test, to inform that person that he or she is subject to the class 2 misdemeanor.

Senator Cannell, sponsor of the bill, stated that people who drive boats are not licensed. This bill will try to control drunken driving in boats. The bill also makes it less advantageous to refuse to take an alcohol or drug test when driving a boat.

Senator Binder announced the individuals who registered their position on the bill (Attachment E).

**Senator Cannell moved SB 1283 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 6-0-1 (Attachment 9).**

Senator Binder noted that **Susan Culp, representing Arizona League of Conservation Voters**, was present in opposition to SCR 1012 and in support of SB 1094.

SB 1007 – excessive speeding; accident; assessment – DISCUSSION/HELD

Mr. Laux explained that the strike-everything amendment to SB 1007 eliminates the word “certified” from the legend to be printed on breath test records placed on computer storage and specifies that electronic duplicates are deemed authenticated pursuant to rules 901 (b)(10) and 902 (10) of the Arizona Rules of Evidence (Attachment F).

Don Taylor, Assistant Phoenix City Prosecutor, Phoenix City Prosecutor’s Office, testified in support of the strike-everything amendment. Mr. Taylor stated that the bill allows law enforcement to take advantage of emerging technology instead of paper records. It will all be done electronically. Mr. Taylor confirmed that the Arizona Rules of Evidence allows the Legislature to devise statutes that permit the authentication of documents. Mr. Taylor further clarified that the bill will provide a resource savings to law enforcement by making the process more efficient.

In response to Senator Binder, Mr. Taylor stated that since there are implementation costs, it is a voluntary program.

In response to Senator Blendu, Mr. Taylor pointed out that this program of record keeping is identical to the MVD program presently being used.

David Derickson, Liaison, Arizona Attorneys for Criminal Justice, testified in opposition to the bill. Mr. Derickson stated that he was a judge and is concerned that the documents in question are used to establish whether or not the machine being used on people accused of intoxication are accurate. They are not always accurate. He further pointed out that there is already a statute in place for bringing in the documents and the language states that it is a certified duplicate of documents contained at the agency. This bill will take out the word “certified.” Mr. Derickson feels that the language should not be changed and subsection C should be taken out of the bill.

Eric Edwards, Police Chief’s Association and Phoenix Police Department, stated that currently this statute is not being used. There have been no challenges as it has not been used for admissibility or authentication for the documents. Mr. Edwards noted that the handwritten record is sent to the City Clerk’s office to get the certification. This certification does not do anything to state

that the information in the computer or on the document is true. It simply states that it is a duplicate and is not an authentication. This bill will allow all of this to be done by computer.

In response to Senator Blendu, Mr. Edwards confirmed that this will be a resource savings to the agencies and will allow prosecutors immediate access to records.

Mr. Edwards confirmed that they would like to leave subsection C in the bill as it will decrease the amount of litigation.

Senator Binder announced that the bill would be held. She further announced that the presentation by Greg Houtz, Deputy Counsel for the Arizona Department of Water Resources, regarding Indian water rights settlements would be rescheduled.

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

Respectfully submitted,

Debbie Kennedy
Committee Secretary

(Corrections made by Holly Anderson, Committee Secretary Coordinator)

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