

ARIZONA STATE SENATE

46TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON GOVERNMENT

DATE: February 25, 2003

TIME: 1:30 p.m.

ROOM: SHR 3

CHAIRMAN: Senator Tibshraeny

VICE CHAIRMAN: Senator Hellon

ANALYST: Nadine Sapien

**COMMITTEE
SECRETARY:** Nancy L. DeMichele

**ASSISTANT
ANALYST:** Dallas Gold

INTERN: Matt D'Anna

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Cheuvront	X			SB 1122	DPA/SE
Senator Garcia	X			SB 1182	DPA
Senator Harper	X			SB 1218	DPA/SE
Senator Jackson	X			SB 1227	HELD
Senator Mead	X			SCR 1009	DP
Senator Mitchell	X			SCR 1020	HELD
Senator Waring	X			SCR 1021	DP
Senator Hellon, Vice Chair	X			SCR 1022	DP
Senator Tibshraeny, Chair	X			SCR 1024	HELD
				SB 1318	DPA
				SB 1151	FAILED

GOVERNOR'S APPOINTMENTS

Name

Position

Recommendation

Chairman Tibshraeny called the meeting to order at 1:35 p.m. and roll call was taken.

APPROVAL OF MINUTES

Senator Tibshraeny announced, without objection, the minutes of the meeting of February 18, 2003, are approved as distributed.

CONSIDERATION OF BILLS

SB 1227 – telecommunications; DOA; request for proposals – HELD

Senator Tibshraeny announced that SB 1227 will be held at the request of the sponsor.

SB 1122 – Phoenix civic plaza; revenue sharing – DO PASS AMENDED/STRIKE EVERYTHING

Nadine Sapien, Government Research Analyst, explained a strike-everything amendment is proposed to SB 1122 that allows a community within ten miles of a national park or monument with a population of at least 500 to seek approval for incorporation. In response to Senator Hellon, Ms. Sapien stated that currently a community would be required to have a population of 1,500 for incorporation.

Senator Harper commented that there is a small town next to the Grand Canyon Airport that wishes to incorporate in order to purchase the Grand Canyon Airport, which is the purpose of this measure.

Susie Stevens, Red Feather Properties, Town of Tusayan, testified in support of the strike-everything amendment to SB 1122. She stated this measure would allow Tusayan to incorporate based on a variety of factors that makes the Town unique.

Jason Rose, President, Red Feather Properties, representing the Town of Tusayan, testified in support of the strike-everything amendment to SB 1122. He commented on the reasons for the bill. He said that the Grand Canyon is a major tourist attraction, and Tusayan is located one mile south of the South Rim boundary. He said currently Tusayan is governed as a special district, which means it has some of the highest property taxes in the State. He said Tusayan would like to use the local sales tax to improve the Town. Mr. Rose said the second reason is the Grand Canyon Airport, and Senator Burns is interested in having the State taken out of the business of running that airport. He said the incorporation would allow the State to have a local option in addition to the federal option to continue to operate the airport. Mr. Rose said this would not create proliferation, since there are only two areas that would be considered for incorporation in the State, one being Tusayan and the other is Spring Valley. He pointed out that if Tusayan became incorporated, it would only comprise .000134% of Arizona's incorporated population, which is hardly an impact on State-shared revenues. He said the Arizona League of Cities and Towns does not oppose the bill, nor does the Arizona Tax Research Association (ATRA). He pointed out that Tusayan has generated millions of dollars every year to the State, and believes it would be fair to allow the Town to incorporate by imposing a local sales tax. He said this would not reopen the question of urban incorporations, but is a completely separate issue. He commented that three individuals representing over 90% of the business and property owners in Tusayan support the incorporation. He urged the Committee to support this measure. In response to Senator Hellon, a newly-incorporated Tusayan or some other non-profit entity would have until June 30, 2004 to devise a plan to acquire the Grand Canyon Airport.

Otherwise, he said the State would cease to operate the Airport, which would be detrimental to the area.

Pete Shearer, representing himself, testified in support of the strike-everything amendment to SB 1122. He said he has lived in the community for thirty years. He commented that because of the limitation in the amount of land owned, the population most likely will not reach the requirement for incorporation. He commented that an incorporation would allow Tusayan to provide for some of the needs in the area to improve the quality of life for the residents.

Senator Tibshraeny announced the individuals who registered their position on the bill (Attachment A).

Senator Hellon moved SB 1122 be returned with a DO PASS recommendation.

Senator Hellon moved the 3-page Waring strike-everything amendment dated 2/20/03 at 2:34 p.m. be ADOPTED (Attachment B). The motion CARRIED by a voice vote.

Senator Hellon moved SB 1122 be returned with an AS AMENDED, DO PASS recommendation.

Senator Hellon explained her vote. She said she is not totally convinced on this issue, although she appreciates the testimony. She believes it would entail a significant policy change, and said she will vote “no.”

Senator Tibshraeny explained his vote. He stated he will vote “aye” at this time, but is interested in reviewing the companion bill to ensure the reasons for this bill are being met.

The motion CARRIED by a roll call vote of 8-1-0 (Attachment 1).

SB 1182 – access to information technology – DO PASS AMENDED

Dallas Gold, Assistant Government Research Analyst, explained SB 1182 requires State government and agencies to provide alternative methods of access to information technology (IT) by July 1, 2004 for people with disabilities. He explained the 5-line Mitchell amendment dated 2/24/03 at 10:15 a.m. changes the definition of a “covered entity” to the State and any department, agency, commission of the State government, as well as the judiciary and the Legislature.

In response to Senator Harper, Mr. Gold stated that a fiscal note was conducted on this bill last year. He said the Mitchell amendment would change it somewhat. However, based on a Government IT Agency (GITA) estimate, the fiscal amount ranges from \$568,000 to \$6.9 million.

Senator Mitchell stated he is surprised at that figure because this measure is not retroactive, but only pertains to the future. He said when equipment wears out and needs to be replaced, the equipment will be retrofitted. He indicated that to place that cost as the proposed intent in this measure is an injustice because the purpose is to only replace worn equipment and not to retrofit everything.

Senator Mitchell moved SB 1182 be returned with a DO PASS recommendation.

Senator Mitchell moved the 5-line Mitchell amendment dated 2/24/03 at 10:15 a.m. be ADOPTED (Attachment C).

Edward Myers, Attorney, Arizona Technology Access Program (ATAP) of Northern Arizona, testified in support of SB 1182. He stated ATAP is a federally-funded program designed to promote the use of technology for persons of disabilities. He said this bill mirrors that of the federal government under Section 508 of the Rehabilitation Act. He addressed the issue of cost and said that this bill does not increase costs to Arizona because the measure is intended only for purchases after July 1, 2004. He said in 2002 Congress passed legislation allowing state governments to purchase from the federal government's list of IT. He said many other states have concluded that there is no fiscal impact when passing similar legislation. Mr. Myers stated that the American Disabilities Act does not cover this particular issue, but only addresses individual accommodations.

Senator Tibshraeny announced the individuals who registered their position on the bill (Attachment A).

In response to Senator Garcia, Mr. Gold read the JLBC fiscal note from last year.

Mike Gardner, Microsoft, testified in opposition to SB 1182. He said his client is very supportive of the overall concept and is not concerned with the cost, but with the language in the bill that may have some unintended consequences. He said his client likes the federal approach, which establishes a process whereby the procurement office conducts market research to find the best product that is most compatible with mandated standards.

Senator Mitchell asked whether an amendment could be drafted that would make this measure acceptable. Mr. Gardner responded he is more than willing to work on an amendment to mirror it like the federal program, which would be in the best interest for all citizens in the State. In response to Senator Mitchell, Mr. Gardner explained Microsoft's concerns. Mr. Myers said he would be happy to work on an amendment with Mr. Gardner.

Donna Kruck, Arizona Bridge to Independent Living, testified in support of SB 1182. She stated she is hopeful that something could be worked out because one never knows when someone will become disabled. She said it makes sense to have the products amenable to accessibility for the future, which saves money in the long run. She stated she looks forward to passage of this bill as written with the amendment.

The motion CARRIED by a voice vote.

Senator Mitchell moved SB 1182 be returned with an AS AMENDED, DO PASS recommendation.

Senator Harper explained his vote. He said he is unconvinced that there is not a huge difference in the cost of the equipment. He said he will vote "no."

Senator Waring explained his vote. He said while he would like to support the bill, he agrees with the comments of Senator Harper regarding the costs in this very difficult budget year. He said he regretfully will vote "no."

Senator Hellon explained her vote. She stated it appears there is a willingness to work on this measure. She said while she would like to accommodate those individuals who use this technology,

she also wants to ensure that businesses are not damaged. She said she will vote “aye” with the expectation that efforts will be made to work together to have this issue re-evaluated on the floor.

Senator Tibshraeny explained his vote. He stated he would like to see Senator Mitchell have the two parties work together on a floor amendment. He said he will continue to compile information on the financial aspect because there is a huge range that was provided. He said he will vote “aye” to move the bill out of Committee.

The motion CARRIED by a roll call vote of 7-2-0 (Attachment 2).

SB 1218 – public lighting; light standards – DO PASS AMENDED/STRIKE EVERYTHING

Ms. Sapien explained SB 1218 is a strike-everything amendment that requires all new buildings, structures, facilities and areas constructed by the State or a city with a population over 50,000 and major renovations of those entities to include efficient and effective lighting systems. The measure also requires all outdoor light fixtures of a new construction renovation to be fully shielded. She said the measure exempts college sports facilities, municipal recreation areas, Arizona Department of Transportation (ADOT) freeway projects, and the State Capitol complex from the full shielding requirements. In response to Senator Tibshraeny, Ms. Sapien stated this measure does not include the private sector.

Senator Giffords, bill sponsor, explained there has been over \$100 million in investments for Arizona’s observatories during the past several years. She said much of those investments were geared toward keeping the “night skies” as dark as possible. She thanked the many entities that worked with her to craft a bill, which is believed to be non-controversial.

In response to Senator Tibshraeny, Senator Giffords stated that the League of Arizona Cities and Towns is neutral. She said she has not heard any negative feedback on this proposed measure.

In response to Senator Harper, Senator Giffords stated that sports facilities were not included because those entities already have partial shielding. In addition, the fully-shielded lights are very expensive. She noted that those facilities are also dark by midnight, which is the time when astronomers generally use their telescopes. She stated this measure also does not apply to street lighting.

Senator Tibshraeny announced the individuals who registered their position on the bill (Attachment A).

Senator Hellon moved SB 1218 be returned with a DO PASS recommendation.

Senator Hellon moved the 3-page Mitchell strike-everything amendment dated 2/21/03 at 2:15 p.m. be ADOPTED (Attachment D). The motion CARRIED by a voice vote.

Senator Hellon moved SB 1218 be returned with an AS AMENDED, DO PASS recommendation.

Senator Tibshraeny explained his vote. He stated he will vote “aye,” and wants to be sure between now and the time the bill goes to the floor that there are no unfunded mandates that may have been overlooked.

The motion CARRIED by a roll call vote of 8-1-0 (Attachment 3).

SCR 1009 – Sun City West; silver anniversary – DO PASS

Matt D’Anna, Government Research Intern, explained SCR 1009 recognizes the 25th anniversary of the Sun City West community, and extends congratulations for the community’s continued success.

**Senator Harper moved SCR 1009 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 9-0-0 (Attachment 4).**

SCR 1020 – lieutenant governor – HELD

Senator Tibshraeny announced SCR 1020 will be held at the request of the sponsor.

SCR 1021 – missile defense – DO PASS

Mr. D’Anna explained SCR 1021 declares legislative support for a national missile defense system, and requests that the President of the United States and Congress fund the plan beyond 2005.

Senator Waring moved SCR 1021 be returned with a DO PASS recommendation.

Senator Chevront explained his vote. He stated that at a time when the State is experiencing a huge budget deficit, he has yet to see that the “Star Wars Program” is working or is cost effective. He said he does not believe the program would have stopped the 9/11 tragedy or anything in dealing with terrorists. He said he believes it is a waste of resources, and he will vote “no.”

Senator Harper explained his vote. He stated that he believes with the current world situation, this is a good program. He said he will vote “aye.”

Senator Tibshraeny announced the individuals who registered their position on the bill (Attachment A).

The motion CARRIED by a roll call vote of 8-1-0 (Attachment 5).

SCR 1022 – rescind calls for constitutional convention – DO PASS

Mr. D’Anna explained SCR 1022 rescinds, repeals and cancels any previous calls for a United States Constitutional Convention made by this State. He said the measure also urges other states with calls for a Constitutional Convention to rescind those applications.

Ronald Bruchhauser, testified in support of SCR 1022. He provided voting information on the background of this measure. He remarked that this bill was first introduced in 1994, and has been brought forward several times since that time. He said the effect of this bill will be to rescind the previous calls for a Constitutional Convention, as six other states have done to date. He said this measure will prevent having the entire Constitution opened for discussion and revision based on a call for a Constitutional Convention. He pointed out that it would be very dangerous to have a Constitutional Convention because there is no statutory or Constitutional limits regarding the issues that could be considered at a Constitutional Convention.

Senator Verschoor, bill sponsor, explained the problem with the calls that exist is that some issues have been very close to convening a Constitutional Convention. He said those calls do not expire and this measure would rescind any outstanding calls.

Mike Williams testified in support of SCR 1022. He provided some personal background regarding his work and travels in this country and the freedoms we all enjoy. He said there is a process currently in place to repair the Constitution, if necessary, and a Constitutional Convention is not the answer.

James Pinkerman, testified in support of SCR 1022. He said he is a member of the Mesa Constitution Celebration Committee, which helps to preserve the Constitution. He commented he loves his country, and believes a Constitutional Convention is a bad idea.

Senator Mitchell clarified the reasons and importance of this measure.

Senator Hellon moved SCR 1022 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 9-0-0 (Attachment 6).

SCR 1024 – salary; governor; legislature; teacher pay – HELD

Senator Tibshraeny announced SCR 1024 will be held at the request of Senator Martin.

SB 1318 – homeowners’ associations; actions; meetings – DO PASS AMENDED

Ms. Sapien explained SB 1318 allows homeowners association (HOA) members to challenge the validity of the action of the board of directors and requires all meetings of the HOA and the board to be held in the State. She explained the 3-line Hellon amendment dated 2/24/03 at 2:59 p.m. exempts timeshare associations from the in-State requirement.

Senator Hellon explained HOA legislation has been difficult because of the many issues involved. She said this legislation is simple and straightforward, and she explained the issues involved in this bill.

George Staropoli, testified in support of SB 1318. He stated that the amendment is the result of a court case in Tucson where a homeowner sued an HOA board, and he provided background information on that case. He also commented on the open meetings issue. He said the approach taken on this bill is the correct approach, and urged the Committee to support SB 1318.

Pat Haruff, CHORE, testified in support of SB 1318. She stated this is a very important bill and thanked Senator Hellon for bringing it forward. She said attempts were made last year with Senator Gerard’s SB 1342 legislation. She explained the current requirements necessary for a homeowner to sue an HOA, which basically is a class action lawsuit. She indicated this is a good start and the open meeting issue is another item for future legislation.

Senator Tibshraeny announced the individuals who registered their position on the bill (Attachment A).

Senator Hellon moved SB 1318 be returned with a DO PASS recommendation.

Senator Hellon moved the 3-line Hellon amendment dated 2/24/03 at 2:59 p.m. be ADOPTED (Attachment E). The motion CARRIED by a voice vote.

Senator Hellon moved SB 1318 be returned with an AS AMENDED, DO PASS recommendation.

The motion CARRIED by a roll call vote of 9-0-0 (Attachment 7).

SB 1151 – homeowners’ associations; condominiums; amendments – FAILED

Ms. Sapien explained SB 1151 establishes an internal appeals process for HOA members to appeal monetary penalties and provides for the selection of an appeals committee. She highlighted some of the other items provided in the bill as follows:

- It requires all HOA meetings to be held in the State and requires the meetings to be open for discussion of litigation and matters relating to the enforcement of HOA documents.
- It prohibits HOAs from increasing assessments more than 20% higher than the preceding year without approval of the majority of the votes of a quorum.
- It allows for budget adoption unless it is rejected by a majority of all the HOA members.
- It allows HOA members to inspect and copy HOA records after five business days’ notice.
- It allows an HOA member to challenge actions of an HOA board.
- It provides for methods of removal of a board member.

Ms. Sapien explained the seven Waring amendments being proposed for SB 1151.

Senator Jarrett, bill sponsor, provided background information on SB 1151. She said this measure is an attempt to have a basic government program that could be followed by the HOA and its management entities in order for the homeowners to be apprised of the HOA issues. She indicated this bill will not solve all the problems, but is a beginning. She outlined the various issues that have raised concerns in the past. She said amendments may have to be brought forward as the process continues in the future.

Spencer Kamps, Deputy Director, Homebuilders Association of Central Arizona, testified as neutral to SB 1151. He said there are a couple of issues that he continues to discuss with Senator Jarrett, such as reserves and open meetings laws in terms of exemption for declarance.

Jeff Sandquist, Attorney, Steptoe and Johnson, on behalf of Arizona Association of Community Managers (Association), testified in opposition to SB 1151. He said the Association was formed as the result of HOA legislation brought forward in the past several years. He said the Association comprises management companies that manage HOAs, which could be a resource on this issue. He commented that the Waring #1 amendment is technical, but deals with ratification of an HOA budget. He said discussions are continuing on that issue, and he outlined suggestions for consideration. Mr. Sandquist also outlined some other issues of concern regarding the bill including planned communities, open meeting provisions, availability and copying of records of an HOA, the declarant issue; and the court preference.

In response to Senator Mead, Mr. Sandquist clarified the voting issue of the HOA members. In response to Senator Tibshraeny, Mr. Sandquist stated that the Association opposes the bill; however, supports all seven amendments in concept. He stated the Waring #1 amendment is basically technical, but the underlying problem in that amendment still exists as outlined.

George Staropoli, testified in opposition to SB 1151. He stated that with all due respect, the good intentions will not be accomplished with this bill. He said bills such as this one heavily favor HOA Boards and this bill would represent the State protecting those Boards. He cited a recent decision rendered by the Arizona Appeals Court in a zoning ordinance case. He indicated this is not a good bill and cited certain examples, such as the process of removal of Directors from a Board, the raising of annual dues, assessment of penalties or fines, and return of surplus of monies. He said this bill is too broad and definitely favors HOA management.

Pat Haruff, testified as neutral to SB 1151. She stated she registered in opposition in error. She said two issues are of concern:

- The open meeting law
- Member's access to records

Ms. Haruff stated she has suggestions for revising those issues, which will be submitted at the appropriate time. She said there are items in the bill that are troubling, and she welcomes the opportunity to work to resolve the issues of concern.

Roland Kelly, testified as neutral to SB 1151. He said there are many problems that need to be resolved, and many homeowners do not realize or fully understand all the issues.

Jack LaSota, Land Title Association of Arizona, testified on behalf of **Lee Miller of Land Title** who could not be present at this meeting. He stated his organization supports the Waring #2 amendment, and believes it accomplishes two goals.

- It restores an existing statutory penalty that encourages HOA managers to provide information promptly to escrow agents regarding unpaid dues or assessments when a unit is being sold.
- It requires that HOAs record a document with the County Recorder's Office identifying the name and telephone number of those individuals who can act for the HOA.

Justin Steltenpohl, Attorney, Squires Sanders and Dempsey, representing part of the American Resort Developers Association, testified in opposition to SB 1151. He said this measure is similar to SB 1318, and he noted that timeshares are a part of the condominium and planned communities acts with respect to HOAs. He commented that certain provisions in this bill would present an undue hardship such as meetings held within the State and the maintaining of all records in Arizona. He pointed out that many timeshare organizations have headquarters in other states and to require them to have records in states where properties are located would increase costs. He said the budgetary process is another concern because timeshare properties sometimes consist of thousands of members, which would impose a considerable hardship. He said Senator Jarrett has no opposition to his suggested amendments. He said if a floor amendment is allowed regarding his concerns, he would withdraw his opposition to the bill.

Kevin Demenna, Community Associations Institute (CAI), testified as neutral to SB 1151. He said CAI is an Arizona chapter of a national non-profit organization. He said the Arizona chapter includes hundreds of HOAs and thousands of homeowners. He pointed out that the HOA area of law is very complex. He commented that CAI has no objections to Waring amendments #2 through #7; however, amendment #1 has profound ramifications and he would urge setting that amendment aside for now. He noted that HB 2307 passed yesterday in the Arizona House of Representatives, and that legislation along with SB 1151 will represent a substantial rewriting of the law on this issue. Mr. Demenna stated that SB 1151 with some minor adjustments could be a very good piece of legislation; however, those issues could become serious if left unaddressed. He commented that HOA

advocates have spoken; however, a stakeholders group is needed to work out the issues. He emphasized the importance of having legislation do what is intended by that legislation.

Joseph Haggerty, testified in opposition to SB 1151. He stated that CAI claims it is the voice of the homeowner, but in reality it is the voice of the industry. He said in his opinion CAI is responsible for the majority of problems within HOAs, and he is opposed to the bill as currently written.

Senator Tibshraeny announced the individuals who registered their position on the bill (Attachment A).

Senator Hellon moved SB 1511 be returned with a DO PASS recommendation.

Senator Waring moved the 11-line Waring #7 amendment dated 2/24/03 at 2:35 p.m. be ADOPTED (Attachment F). The motion CARRIED by a voice vote. A division was called and the motion CARRIED by a division.

Senator Waring moved the 17-line Waring #6 amendment dated 2/24/03 at 2:34 p.m. be ADOPTED (Attachment G). The motion CARRIED by a voice vote.

Senator Waring moved the 16-line Waring #5 amendment dated 2/24/03 at 2:32 p.m. be ADOPTED (Attachment H). The motion CARRIED by a voice vote.

Senator Waring moved the 3-line Waring #4 amendment dated 2/24/03 at 2:36 p.m. be ADOPTED (Attachment I). The motion CARRIED by a voice vote.

Senator Waring moved the 25-line Waring #3 amendment dated 2/24/03 at 2:37 p.m. be ADOPTED (Attachment J). The motion CARRIED by a voice vote.

Senator Waring moved the 29-line Waring #2 amendment dated 2/24/03 at 3:02 p.m. be ADOPTED (Attachment K). The motion CARRIED by a voice vote.

Ms. Sapien explained the #2 amendment has a drafting error, and a motion would be required to correct the language.

Senator Hellon moved a verbal amendment to the Waring #2 amendment. On page 1, line 19, strike the word "condominium" and insert the words "planned community" and on line 23 strike the word "condominium" and insert the word "planned". The motion CARRIED by a voice vote.

Senator Waring moved the 29-line Waring #2 amendment dated 2/24/03 at 3:02 p.m. AS AMENDED be ADOPTED. The motion CARRIED by a voice vote.

Senator Waring moved the 3-line Waring #1 amendment dated 2/24/03 at 3:00 p.m. be ADOPTED (Attachment L). The motion CARRIED by a voice vote. A division was called and the motion CARRIED by a division.

Senator Hellon moved SB 1151 be returned with an AS AMENDED, DO PASS recommendation.

Senator Jackson explained his vote. He stated he would like to see a more compromised makeup of this bill, and said he will vote "aye."

Senator Tibshraeny explained his vote. He stated that SB 1318, which was approved earlier, is part of the way to address these issues in smaller portions. He believes this bill has too many parts and needs a lot of work including timeshares and other issues with stakeholders. He suggested perhaps a stakeholder meeting would be in order to resolve the issues. He said HB 2307 will be heard in the Senate to address the issues in that bill. He said he will vote "no."

The motion FAILED by a roll call vote of 2-7-0 (Attachment 8).

There being no further business, the meeting adjourned at 3:35 p.m.

Respectfully submitted,

Nancy L. DeMichele
Committee Secretary

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