

ARIZONA STATE SENATE

46TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: March 19, 2003 **TIME:** 8:30 a.m. **ROOM:** SHR 1

CHAIRMAN: Senator Weiers **VICE CHAIRMAN:** Senator Verschoor

ANALYST: David Lujan **INTERN:** Michelle Morales

ASSISTANT ANALYST: Lace Collins **COMMITTEE SECRETARY:** Carol Dager

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 2205	DP
Senator Bee	X			HB 2279	DPA
Senator Binder	X			HB 2304	FAILED
Senator Brotherton	X			HB 2313	HELD
Senator Jarrett	X			HB 2318	FAILED
Senator Miranda	X			HB 2353	DPA
Senator Rios	X			HCR 2017	FAILED
Senator Verschoor, Vice Chairman	X				
Senator Weiers, Chairman	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Chairman Weiers called the meeting to order at 8:45 a.m., and attendance was taken.

APPROVAL OF MINUTES

**Senator Weiers moved the minutes of March 12, 2003 be approved.
Without objection, the minutes were approved as distributed.**

CONSIDERATION OF BILLS

Senator Weiers announced that he would be holding the following bill:

HB 2313 – contractor liability – HELD

HB 2279 – elections; school resources – DO PASS AMENDED

David Lujan, Judiciary Committee Research Analyst, explained that HB 2279 prescribes penalties for a person who violates the prohibition on the use of school district or charter school resources to influence elections and permits the Attorney General or a county attorney to attempt to recover public monies by issuing orders of compliance and imposing penalties. He also explained the Weiers five-line amendment dated 3/17/03 at 9:58 a.m.

Representative Gray, sponsor of the bill, indicated that current law states that school districts shall not use its personnel, equipment, materials, buildings, or other resources for the purpose of influencing the outcome of elections. HB 2279 would change the words “school districts” to “individuals.” She pointed out that the Arizona School Boards Association (ASBA) has distributed a memo stating: 1) there is a lack of clarity as to what is or is not a violation; 2) neither the Attorney General (AG) nor the county attorneys have issued authoritative guidelines nor is there any clear agreement between the AG, county attorneys, or school district attorneys about what activities are or are not prohibited; and 3) until the AG has issued guidelines that define what activities are prohibited by this statute, there should be no civil penalties. Representative Gray stressed that she strongly disagrees with those statements.

Representative Gray referred to a handout (Attachment A) that represents reelection post cards for two incumbent school board members. These cards were distributed to the school administrators, teachers, and staff mailboxes with the purpose of circulating petitions. This card was printed with school resources and distributed inside a school facility. This is an example of using school resources to affect the outcome of an election.

Representative Gray noted that complaints of violations of this law have greatly increased, because this is a law without any consequences. She emphasized that this bill would put a consequence on this law. She next discussed a large color brochure mailed to voters prior to an election that cost approximately \$33,000 to produce and distribute that appears to influence the outcome of the election. She suggested that the monies could better be spent in the classroom.

In response to Senator Binder, Representative Gray replied that in override and bond elections the school district is allowed to distribute an information report. However, in that report, they cannot ask the people to vote for the override or bond.

In response to Senator Brotherton, Representative Gray responded that there is a current investigation being conducted regarding the color brochures.

Senator Brotherton suggested that all the ramifications of a bill are not always considered. He noted his concern about a legislator using a school facility to speak to a group of people about various issues and wondered if that would be a violation of the bill.

Jill Kennedy, County Attorney, Maricopa County Attorneys Office, stated that she feels the ambiguity has been addressed in the AG's opinion regarding the substance of this bill and of the law that has been in place since 1996 without consequence. She referred to Senator Brotherton's question regarding using a school building for meetings or for speaking, noting that there is a separate law, ARS 15-1105, that governs such conduct. It stipulates that if a school is going to use their facility for campaign purposes, the school must charge for the use of the building.

Senator Brotherton suggested that if this bill passes, the AG will have to render a new opinion because of the changes to the current statute. Ms. Kennedy replied that she does not believe a new opinion would be necessary. The current AG opinion is very specific.

Ms. Kennedy explained that there is an election every quarter, and with each of those elections, there are complaints. The AG opinion provides guidance to address these complaints. Each year a ten-page flyer is distributed with the "dos and don'ts" of school elections and applies to all aspects of campaigning using school resources.

In response to Senator Brotherton, Ms Kennedy said there are several sections of this law that already apply to individual conduct, because it is people who act on behalf of the school district. This is not intended to penalize the school district, but the individuals who have misused the school district resources. She pointed out that there is another set of laws that govern individuals who also commit campaign finance violations.

Ms. Kennedy stated that the change in the law allows the county attorneys to proceed against an individual who has misused school resources.

Senator Weiers announced the individuals who registered their position on the bill (Attachment B).

Senator Verschoor moved HB 2279 be returned with a DO PASS recommendation.

Senator Verschoor moved the Weiers five-line amendment dated 3/17/03, 9:58 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment C)

Senator Verschoor moved HB 2279 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-2-1. (Attachment 1)

HCR 2017 – initiatives; filing date – FAILED

Ms. Morales explained that HCR 2017 changes the date by which initiative petitions have to be filed with the Secretary of State from four months before the date of the election to seven months prior to the election. This measure is subject to voter approval at the next general election. She also explained the Verschoor six-line amendment dated 3/17/03 at 4:20 p.m.

Representative Quelland, sponsor of the bill, stated that he is an historian, noting that the progressive movement is at the heart of the initiative process. The Arizona Constitution was written in 1910 and although it has been amended frequently, its core features are very much a product of the distinctive progressive era in which it was written. When it was adopted, the Arizona Constitution was the most radical in the nation and today it still offers a real contrast to the United States Constitution.

Representative Quelland explained that a successful constitutional initiative must survive two separate stages, petition and ballot. The petition stage begins with the drafting of the initiative. Any registered voter can write a constitutional amendment on a petition form supplied by the Secretary of State. This is entirely a "people process;" the government provides no legal or editorial assistance. The petition is then circulated among registered voters. An initiator needs to collect supporting signatures equal to a percentage of the state's last vote for Governor.

Representative Quelland commented that he brought forth this bill because he feels the current process shortchanges a certain part of the electorate. The vast majority of constitutional initiatives die during the petition-circulating phase. Supporters simply fail to collect enough valid signatures to put it on the ballot. Even if they get past this hurdle, passage is not assured. From 1912 to 1998, 57 constitutional initiatives appeared on the ballot. Of those, only 25 or 53% of the initiatives were approved by the voters. Nonetheless, many of the initiatives have been noteworthy.

Representative Quelland brought up that there are only four months from the time an initiative is filed at the Secretary of State's Office and an election. He suggested that is not enough time to garner opposition to any initiative.

Eric Ehst, Arizona Advocacy Network, testified that HCR 2017 is only the first of a group of bills from the House of Representatives, which are an all-out assault on the initiative process and an attempt to restrict citizen access to the constitutionally guaranteed right of initiative. He noted that the sponsor of the bill extolled the successes of the initiative process and then suggested that the process should be more difficult. Changing the filing date for initiatives from four months before an election to seven months before an election places an unreasonable burden on the citizens who are collecting petition signatures. This measure is technically unnecessary; four months is plenty of time to verify signatures.

Mr. Ehst pointed out that this measure moves the filing deadline for initiatives two months ahead of the filing deadline for candidate signatures and prior to sine die for the Legislature. This means an initiative might be filed before the Legislature has a chance to solve that problem through the legislative process. A problem could be on the ballot to correct something that no longer exists. This will lead to ballot confusion and possibly unintended consequences.

Senator Weiers mentioned that there is an opportunity to pull an initiative off the ballot before it goes to print. He also noted that there is a year to gather signatures.

Mr. Ehst added that HCR 2017 is trying to fix a problem that does not exist. Passing the bill would make it more difficult to file initiatives. He urged the members to vote against the bill.

Donald Begalke, representing himself, testified that he visited with several Representatives to understand how HCR 2017 was developed. He pointed out that out of the 14 propositions on the 2002 ballot, only five were by petition, eight were from the Legislature, and one was from a commission. All petitions were filed timely, the Secretary of State's Office reviewed them timely, and the signatures were verified timely. Individual voter expertise on candidates and issues vary extensively and the self-education is obtained from publications, Internet, media, attending meetings, and other sources. He suggested that if this bill passes, voters would be denied participation in the initiative process either as a petition circulator or as a petition signer. Springtime voter registration is a boost to the Republican and Democratic parties. With the change of the filing date, it would restrict and deny voters the opportunity to circulate or sign petitions. He respectfully requested that the members vote against HCR 2017.

Senator Weiers clarified that this bill would actually go to the voters to determine what they want. Mr. Begalke replied that he feels it is unnecessary to put this on the ballot.

Sandy Bahr, Conservation Director, Sierra Club, Grand Canyon Chapter, maintained that after being on the losing end on an initiative that they worked very hard on for many years, four months is plenty of time to mount a campaign against a measure. She stressed that having better informed voters is a worthy goal; however, she does not feel this bill would accomplish that task. She urged the members to reject this bill.

Senator Weiers announced the individuals who registered their position on the bill (Attachment B).

Senator Verschoor moved HCR 2017 be returned with a DO PASS recommendation.

Senator Verschoor moved his six-line amendment dated 3/17/03, 4:20 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment D)

Senator Verschoor moved HCR 2017 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 4-4-1. (Attachment 2)

HB 2318 – firearms regulated by state; violation – FAILED

Dallas Gold, Research Assistant Analyst, explained that HB 2318 prohibits political subdivisions of the state from regulating the transfer of firearms or ammunition as well as the sale or transfer of firearms on property it owns, leases or operates in a manner inconsistent with state law.

Representative Graf, sponsor of the bill, noted that they are working on preemptive language that was put into statute a few years ago. In leasing the Tucson Convention Center for a gun show, the City of Tucson has found a way to regulate private gun sales to force background checks.

Senator Binder suggested this bill is about private property rights. If the City of Tucson chooses not to have a certain type of show on their property, they should have the right to make that decision. Representative Graf pointed out that they currently do have that right; they are trying to enforce some rules into their lease that violates state law.

Gerry Anderson, Executive Director, HALT Gun Violence, testified in opposition to the bill, noting that preemption came about several years ago because a group of citizens did not like the City of Tucson having a regulation restricting a person from carrying a concealed weapon in parks. An individual was arrested under this regulation, which was challenged in the courts, where they lost. In frustration, they came to the Legislature, asking that all gun laws be set at the State level. The City of Tucson has a stipulation in their contracts that if someone wants to hold a gun show on property owned or leased by the City, a background check must be required on all gun sales. This again was challenged in the courts, and the courts have upheld that the City of Tucson has this right.

In response to Senator Weiers, Ms. Anderson explained that the promoter filed a case contesting the city's ability to regulate gun sales. The trial court ruled against the promoter finding there was no controversy to resolve. The promoter then filed a second case with the Pima County Superior Court, claiming state law preempted the city's action. The trial court ruled in the promoter's favor, preventing the city from enforcing the background check requirement. The city appealed the judgment to the Court of Appeals, which concluded that the Legislature did not clearly intend to preempt the city from requiring background checks on prospective firearm purchasers.

Darren Lasorte, Legislative Liaison, National Rifle Association of America (NRA), suggested that the Court of Appeals has rewritten the preemption statute that the Legislature passed. The preemption statute is very clear: "Cities and counties shall not pass a rule or ordinance pertaining to the sale of firearms." In light of this law, Tucson wants to regulate private transfers at gun shows. The Court of Appeals indicated that it was not clear that the State wanted to preempt the regulation of the sale of firearms, even though the State statute says it very clearly. The court went around the preemption statute and said that the use permit is a transfer of property, which is regulated by local jurisdiction. The City of Tucson has withdrawn the ordinance, realizing it could not be implemented. Mr. Lasorte indicated that with this bill they want to ensure that the intent of the law is followed.

Senator Weiers asked for clarification if the requirement in the City of Tucson contracts no longer exist. Mr. Lasorte replied that the requirement did exist for approximately a year; however, it was never implemented. He noted that the NRA wants to solidify the preemption law that was passed in 2000.

Eric Edwards, Arizona Association of Chiefs of Police and Phoenix Police Department, testified in opposition of the bill. He noted that cities are allowed to regulate the use of land and structures including a business relating to firearms. He indicated that they do see it as a private property right, and if a city chooses to ban gun shows, they should have the right to do so. He commented that he does not believe the State should be able to take away a city's right.

In response to Senator Brotherton, Mr. Edwards replied that under current statute, a city could ban a gun show.

Senator Weiers announced the individuals who registered their position on the bill (Attachment B).

Senator Verschoor moved HB 2318 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 4-4-1. (Attachment 3)

HB 2353 – firearms; concealed weapons permits – DO PASS AMENDED

Mr. Lujan explained that HB 2353 requires the Arizona Department of Public Safety (DPS) to enter into reciprocal agreements with other states that require Arizona recognition prior to recognizing an Arizona-issued concealed weapons permit. He also explained the Aguirre two-page amendment dated 3/18/03 at 3:50 p.m.

Representative Chuck Gray, sponsor of the bill, pointed out that currently there are six states that Arizona has entered into a reciprocity agreement whereby Arizona recognizes their concealed weapons permit and they recognize Arizona's. However, there are 33 states that have concealed weapons laws. He indicated that Arizonans would like to have their concealed weapons permit honored while traveling through other states. Also, people who have a concealed weapons permit in another state and travel through Arizona would like to have their permit honored.

Representative Gray suggested that the amendment would require all states to pass the same concealed weapons permit law that Arizona has. Senator Aguirre replied that the amendment is a work in progress.

Samuel Wooldridge, Legislative Liaison, Arizona Police Association, testified that they are not against concealed carry permits, indicating that the rules that require training, proficiency, and knowledge of weapons, which protects the public. He noted their concerns with the bill, specifically, that people with permits from other states may not meet Arizona's standards. He stated that they do

support the tenets of the amendment, feeling that it is a good compromise. He pointed out that they could support the bill with the adoption of the Aguirre amendment.

Don Taylor, Assistant City Prosecutor, Phoenix City Prosecutor's Office, noted that they do not have a position on the reciprocity issue; however, they are concerned with the potential unintended consequences to prosecuting all concealed carry violations. The nature of the Class 1 misdemeanor that currently exists under ARS 13-3102 for carrying concealed without a permit requires the State not only to prove that the weapon was concealed but also to prove the nonexistence of a permit. With DPS controlling Arizona permits, there would not be an issue of proving the nonexistence of a permit. However, the language of the bill would result in courts interpreting that the State be required to prove the nonexistence of any out-of-state permits, which is something they could not do. He indicated that he has visited with Mr. Lasorte and is confident they can work out those issues to the satisfaction of all parties.

Gary Christensen, representing himself, explained that he is a concealed weapons permit holder, a competitive shooter, and a certified range officer. He stated that it is the permit holder's obligation and responsibility to review the concealed weapons laws in whatever state they may be traveling in. These laws are readily available in books and posted on the Internet. He pointed out that he travels extensively, noting that criminals often prey on visitors. Many areas are remote, where the ability to call on law enforcement in an emergency can be limited or constrained by response times. He maintained that many out-of-state visitors have valid permits, which should be recognized in Arizona. He indicated that liberalized concealed carry laws reduced murders by 8.5%, rapes by 5%, and aggravated assaults by 5%. He added that only one case out of 6 million permit holders has committed a crime.

Darren Lasorte, Legislative Liaison, NRA, stated that he looks forward to continuing to work with Senator Aguirre on the amendment. He noted that there are 67 million concealed weapons permit holders in the country with a revocation rate of a fraction of 1%. It is amazing how successful this law has been. Regardless of the standards, one consistent thing is that concealed weapons holders are trustworthy and law-abiding. The one thing that is disturbing about the current reciprocity statutes is the phrase "substantially similar standards." DPS has a limited view of which states laws are substantially similar standards.

Senator Weiers announced the individuals who registered their position on the bill (Attachment B).

Senator Verschoor moved HB 2353 be returned with a DO PASS recommendation.

Senator Verschoor moved the Aguirre two-page amendment dated 3/18/03, 3:50 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment E)

Senator Verschoor moved HB 2353 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-1. (Attachment 4)

HB 2304 – dissolution of marriage; real property – FAILED

Lace Collins, Judiciary Committee Research Assistant Analyst, explained that HB 2304 requires the court to discount the value of a community property by eight percent in divorce or legal separation proceedings.

Representative Yarbrough, sponsor of the bill, distributed a handout (Attachment F) and pointed out that the purpose of the bill is to bring predictability and consistency to the process of dividing real property in family law cases. When predictability is achieved, the potential for settlement is

substantially enhanced. Presently, judges have discretion on this issue and will typically discount the real property by 6% to 10%. However, a variation of 4% is frequently substantial enough to cause a case to go to trial which otherwise would be settled. This bill is gender neutral, applied the same regardless of which spouse receives the property. Eight percent is an arbitrary middle ground, which considers real estate commissions, title insurance, escrow fees, and other closing costs. The State Bar of Arizona has raised some reservations; specifically, judges should retain absolute discretion or there should be a rebuttal presumption rather than a statutory provision.

In response to Senator Brotherton, Representative Yarbrough replied that the Domestic Relations Committee did not review the bill.

Steve Wolfson, Family Law Section, State Bar of Arizona, testified that they oppose the bill because: 1) it unnecessarily removes the discretion of the Court; 2) It is contrary to the "equitable" standard for the division of property in a dissolution; 3) it ignores circumstances which must be considered by the Court in the sale of real property; and 4) it does not distinguish between residential property, commercial property or raw land, all of which have different costs of sale. He noted that the purpose of the bill is laudable but the flat rule prevents the court from looking at the situations that they previously reviewed.

In response to Senator Weiers, Mr. Wolfson replied that information was provided to the members of the State Bar of Arizona regarding the Bar's position on this bill. With no opposition to the information or their position, it is assumed that the members support the Bar's position.

Senator Weiers announced the individuals who registered their position on the bill (Attachment B).

**Senator Verschoor moved HB 2304 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 4-5-0. (Attachment 5)**

HB 2205 – psychiatric security review board; continuation – DO PASS

Michelle Morales, Judiciary Committee Research Intern, explained that HB 2205 continues the Psychiatric Security Review Board (Board) for ten years.

Senator Weiers announced the individuals who registered their position on the bill (Attachment B).

**Senator Verschoor moved HB 2205 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 6-3-0. (Attachment 6)**

There being no further business, the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Carol Dager
Committee Secretary

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