

ARIZONA STATE SENATE

46TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON GOVERNMENT

DATE: March 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			HB 2034	DPA
Senator Garcia	X			HB 2214	DP
Senator Harper	X			HB 2215	DP
Senator Jackson	X			HB 2305	DP
Senator Mead	X			HB 2308	WITHDRAWN
Senator Mitchell	X			HB 2324	DPA
Senator Waring	X			HB 2390	DP
Senator Hellon, Vice Chair	X			HB 2504	DP
Senator Tibshraeny, Chair	X			HCM 2005	DPA
				HCR 2004	DPA

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Wanda F. Moore	Member, State Personnel Board	CONFIRMATION

Chairman Tibshraeny called the meeting to order at 1:38 p.m., and roll call was taken.

APPROVAL OF MINUTES

Senator Tibshraeny announced, without objection, the minutes of the meetings of March 11 and 18, 2003, are approved as distributed.

EXECUTIVE NOMINATION

Wanda Moore – Member, State Personnel Board – CONFIRMATION

Wanda Moore introduced herself and said she would be happy to answer any questions.

Senator Hellon moved that the Committee on Government recommend to the full Senate the CONFIRMATION of Wanda Moore as Member of the State Personnel Board. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 1).

CONSIDERATION OF BILLS

HB 2308 – eminent domain – WITHDRAWN

Senator Tibshraeny announced HB 2308 would not be heard.

HB 2504 – homeowners' associations; vehicle restrictions – DO PASS

Nadine Sapien, Government Research Analyst, explained HB 2504 requires a homeowner's association (HOA) to allow a resident to park an emergency service vehicle of 2,500 pounds or less on a street or driveway in a planned community, if that vehicle is necessary for emergency deployment for repair or maintenance of a natural gas pipeline.

Richard Marmor, Chairman, Legal/Legislative Committee, Arizona Mini Storage Association, and on behalf of Maryland Square HOA, testified in opposition to HB 2504. He stated the bill on its face seems reasonable; however, he believes that there are aspects in application that are not being considered. He distributed a handout (Attachment A) showing a parked vehicle at the complex where he resides. He explained that the parking of service vehicles presents problems for residents and difficulty when emergency vehicles need to quickly respond to units in the complex. He said this measure will benefit a small number of individuals, but at the same time will endanger or compromise the lives of many individuals. Mr. Marmor pointed out that the ability to take the service vehicles home is a fairly new procedure. He suggested that the residents who drive those service vehicles could park the vehicles in the street at the complex and walk a few feet to their unit.

Senator Mitchell commented that the individuals who drive and park those vehicles would have the same problems as all the other residents. Secondly, he said he believes there is nothing to prevent having fire lanes to prevent parking in certain areas. Mr. Marmor responded that in this instance there is only a limited amount of common space and the size of the vehicle presents a parking problem in the common area.

Senator Harper suggested trimming the bushes or cutting back the grassy area to allow the vehicles more parking space and better visibility.

Penny Allee Taylor, Specialist/Government Affairs, Southwest Gas Corporation (SWG), testified in support of HB 2504. She said SWG originated the bill as the result of some incidences in Southern Arizona where employees could not park their emergency vehicles, which is a part of their employment. She explained that the Arizona Corporation Commission (ACC) and the Federal Energy Regulatory Commission (FERC) requires SWG to have employees drive the service vehicles home in order to have immediate response to emergency situations that occur during non-business hours. She said some HOA complexes do not have driveways and that is why certain language was inserted in the bill. She explained that measures were taken by SWG to modify the vehicles to enable those vehicles to be parked in certain areas; however, there are problems with the vehicles parking in the smaller HOA complexes. She pointed out that in certain areas, particularly in southern Arizona, time is of the essence because of the miles of separation to respond to natural gas problems or other emergencies. She commented that the service vehicles are subject to a rotational basis and SWG cooperates with neighborhoods to have them in places that are safe and appropriate. She said SWG employees have been ticketed for illegal parking in some instances that have not been manageable. Ms. Taylor indicated that some HOAs provide parking areas nearby the complex, which has worked fine. However, some HOAs are spread over a wider area, which presents problems in emergency situations. She said that SWG does not wish to impose on HOAs and its residents; however, safety and response time is very critical in these situations.

Senator Hellon commented on the safety of children in those areas, who may be injured because of the lack of visibility around the vehicles. Ms. Taylor responded that cones are placed on both sides of the vehicle when it is placed in service, whether or not it is being used at that time. She said generally service vehicles are taken home by employees at the end of the day after children have returned home from school and the trucks have left those areas prior to the children going to school in the morning. In response to Senator Hellon, Ms. Taylor said it is possible that those vehicles would also be parked in those areas on weekends.

Senator Hellon asked whether the HOA or utility company would be responsible if an injury accident occurred involving the vehicles. Ms. Taylor replied she is not an attorney and would expect all parties to be involved in that instance. Senator Harper commented that having access for emergency vehicles to respond to a gas leak emergency in a timely manner is a benefit to the safety of children wherever a gas leak takes place. Ms. Taylor said the less amount of time involved in responding to a gas leak, the better the chances are of limiting a major incident.

Senator Mitchell referred to the liability issue and said the same liability issue would occur in areas that are not HOA areas, and the same responsibility would apply.

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

Senator Chevront moved HB 2504 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 7-1-1 (Attachment 2).

HB 2214 – veterans’ services department; fiduciary duties – DO PASS

Lace Collins, Finance and Judiciary Assistant Research Analyst, explained HB 2214 authorizes the Arizona Department of Veterans’ Services (ADVS) to act in all fiduciary matters for a veteran or their families. She said the measure also allows ADVS priority over other public and private fiduciaries when a conservator or guardian is appointed by the court to a person who is a veteran.

Representative Hanson, bill sponsor, stated this measure will allow ADVS to act as fiduciary for disabled veterans or their families when the need arises.

Pat Chorpenning, Director, ADVS, testified in support of HB 2214. He stated this bill is clean-up legislation because the responsibilities of ADVS are clearly defined in law regarding fiduciary issues. He explained that in 1999 and 2000, ADVS required each member to become a certified private fiduciary. He said this measure will allow the fiduciary issues to be placed in Title 41. He indicated that the other part of the bill would allow ADVS to have priority over other public and private fiduciaries in veteran matters as explained earlier.

Senator Waring asked if any costs would be associated with this measure. Mr. Chorpenning responded that 50% of the funding for ADVS is derived from the State general fund and 50% is derived from fees charged for being guardians or conservators. He said this measure will allow a base to be built to the point where ADVS would be self-funding. He indicated he has written a letter to both the Senate and House of Representatives stating that this measure will not cause ADVS to request additional general fund appropriations.

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

Senator Chevront moved HB 2214 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 8-0-1 (Attachment 3).

HB 2215 – county powers; medical clinics – DO PASS

Brandy Martin, Health Research Assistant Analyst, explained HB 2215 removes the requirement that county medical clinics be located in a medically-underserved area and stipulates the type of clinic a county may operate.

Representative Hanson, bill sponsor, explained HB 2215 is the result of problems encountered by Maricopa County regarding medical clinics.

Rory Hays, Lobbyist, Maricopa County, testified in support of HB 2215. She stated that currently Title 11 limits the ability to locate medical clinics in underserved areas, and problems occur when boundaries and demographics change. Secondly, underserved areas designated by the Department of Health Services (DHS) are not as site specific as would be desired, and she cited an example. She said this measure would allow the County to maintain its medical clinics and make choices that are convenient for the people served. In response to Senator Jackson's concerns, Ms. Hays stated that she believes Maricopa County is the only county operating primary care clinics currently. She said this bill would not negatively affect the other counties, and will allow more cost savings, effectiveness and flexibility. She emphasized that this measure will not change the mission of Maricopa County or that of any other county regarding public health care.

Senator Harper asked whether the language in this bill would allow the opening of medical clinics in the City of Phoenix, for example, rather than in an underserved area such as Wickenburg. Ms. Hays responded she believes the reverse would be true. She said she is not sure whether Wickenburg is underserved, but this bill would allow flexibility if an area is considered to be underserved.

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

Senator Harper moved HB 2215 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 7-0-2 (Attachment 4).

HB 2305 – state employee health insurance – DO PASS

Ms. Sapien explained HB 2305 exempts the self-insurance program from the rulemaking process. She said the measure also eliminates the monthly limitation on the State's contribution for State employee health insurance and makes the Health Insurance Trust Fund irrevocable.

Senator Hellon moved HB 2305 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 9-0-0 (Attachment 5).

HB 2324 – state buildings; energy conservation standards – DO PASS AMENDED

Dallas Gold, Assistant Government Research Analyst, explained HB 2324 requires State agencies, universities and community colleges to reduce energy use in public buildings they administer by 10% by July 1, 2008 and 15% by July 1, 2011. He explained the 4-line Mead amendment dated 3/24/03 at 11:08 a.m. removes the requirement for a chancellor or president of a community college district to lower the energy usage in its buildings on the specified dates and also removes two political subdivisions.

Representative Graf, bill sponsor, stated some of the language is the result of a study committee last year dealing with energy efficiency and renewable energy resources. He said this bill would encourage energy efficiency measures to be used by the various agencies, universities and community colleges. He indicated a report was issued by the Southwest Energy Efficiency Program indicating that extreme energy savings could be implemented with relatively simple measures. He said measures are currently in place, and this would allow a reduction of energy consumption resulting in cost savings to the State. He said discussions have taken place with interested parties, and he believes these measures are attainable for the State.

Senator Mitchell commented that the fact sheet indicates there would be no anticipated fiscal impact to the State; however, he said the installation of energy saving measures would cost money. Representative Graf responded some of those items will cost money; however, some measures are already in place. He explained the procedure of performance contracting regarding the implementation of energy-saving measures. In response to Senator Mitchell regarding the percentages, Representative Graf explained that the program would be handled by the Energy Office of the Arizona Department of Commerce (DOC) with respect to compliance. In response to Senator Hellon, Representative Graf stated that the baseline year for energy consumption has been established as 2001.

Amanda Ormond, Principal, Arizona Clean Energy and Efficiency Coalition, testified in support of HB 2324. She said she formerly was associated with the Energy Office of DOC, and she explained the projects implemented. She commented that because of the State's current financial problems, it makes sense to use performance contracting for financing. She said in the long run, it will be a savings for the State. She stated that the bill is designed to allow agencies and universities to have flexibility. She said she does not have a position of support or opposition to the amendment, but she believes it could help the community colleges to look more closely at energy efficiency.

In response to Senator Harper regarding possible bonding, Ms. Ormond stated that performance contracting is preferred because it does not require that a community college or any State agency have up-front financing. She said she does not have the specific answer regarding bonding.

Kristen Boilini, Arizona Community Colleges Association (Association), testified in opposition to HB 2324, and in support of the Mead amendment. She distributed handouts (Attachments C and D), and explained the issues and reasons why community colleges should be removed from the bill. She said that since community colleges are not State buildings, this measure is an unfunded mandate. She commented that this measure would require expenditures in capital and new equipment at a time when budgets are being reduced in order to be in compliance with the mandate. Ms. Boilini stated that although there are no financial penalties in the bill, the Energy Office will be sending a report to the Legislature that will indicate whether or not the entities and buildings are in compliance. She said if community colleges are reported to not be in statutory compliance, it will result in a penalty.

Ms. Boilini explained another concern is that the bill does not provide any protection for community college districts that have already gone through the process and achieved savings. She said the measure penalizes those institutions because the more savings achieved in energy, the less return on investment. She said another concern pertains to the small and rural community college districts because of financial problems and other issues and challenges. She indicated that although the fact sheet indicates there will not be a fiscal impact anticipated to the State general fund, there would be an impact anticipated for the community college general fund. Mr. Boilini stated the Association would like to be excluded from the bill, but supports the Mead amendment.

Senator Chevront commented that many of the energy savings measures are common sense, such as turning off the lights when not in use and other energy conservation measures. He stated that although community colleges are considered to be political subdivisions, many of those institutions were created with State funds and many are still funded with maintenance dollars. He said for those reasons, he believes the State should be asking the community colleges to be energy efficient. Ms. Boilini responded that Senator Chevront is correct and community colleges should be energy efficient. She referred to the handout (Attachment D) and explained the challenges faced by community colleges and the accomplishments made by those institutions. She said community colleges would not be opposed to having a goal in legislation that energy savings would be achieved. However, this bill contains a 10% mandate and the report being generated would list those community colleges that may be out of compliance.

Chad Douwstra, Maricopa Community Colleges, testified in opposition to HB 2324. He stated that Maricopa Community Colleges is the largest community college institution in the State. He explained that in 1994 a bond was passed that raised \$7 million for use on energy conservation projects, and the work was completed in 1998. He pointed out that since that time all their new buildings have incorporated energy conservation features and savings have been realized. He noted that at the same time over 1.5 million square feet have been added to the Maricopa County districts without much more energy costs for power due to the voluntary steps taken by the districts. He said with the 10% or 15% mandate, as outlined in this measure, the districts would have to spend an enormous amount of money. He said Maricopa Community Colleges support the Mead amendment.

Senator Chevront reiterated the steps that could be taken to conserve energy, such as turning off the lights when not in use. Mr. Douwstra referred to the bond funding and commented that over \$2.5 million on lighting costs savings was paid back in approximately two years. He said it would be very costly for community colleges to be in compliance under this legislation.

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

Senator Hellon moved HB 2324 be returned with a DO PASS recommendation.

Senator Mead moved the 4-line Mead amendment dated 3/24/03 at 11:08 a.m. be ADOPTED (Attachment E). The motion CARRIED by a voice vote.

Senator Hellon moved HB 2324 be returned with an AS AMENDED, DO PASS recommendation.

Senator Harper explained his vote. He said he supports the bill, but opposes the amendment. He commented that community colleges should not be exempt from the regulations, if other areas of government were not exempt. He said he will vote "aye" on the bill.

The motion CARRIED by a roll call vote of 9-0-0 (Attachment 6).

HB 2390 – emergency response commission; duties – DO PASS

Matt D’Anna, Government Research Intern, explained HB 2390 allows the Arizona State Emergency Response Commission (AZSERC) to enter into contracts with the federal government, Indian tribes and other states. He said currently AZSERC is only permitted to enter into contracts with the State.

Representative Landrum Taylor, bill sponsor, stated HB 2390 is a necessary measure for the Division of Emergency Management because that office is responsible for ensuring that all jurisdictions are aware of the roles necessary in cases of various emergencies. She said currently efforts are being made to work with the tribes and some federal agencies to coordinate efforts for various events. She remarked that this bill would allow AZSERC to enter into intergovernmental agreements (IGAs) to coordinate safety efforts.

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

Senator Hellon moved HB 2390 be returned with a DO PASS recommendation. The motion CARRIED by a roll call vote of 9-0-0 (Attachment 7).

HCM 2005 – tribal eligibility; state cemetery grants – DO PASS AMENDED

Mr. D’Anna explained HCM 2005 requests that the United States Congress amend the 1980 Cemetery Grant Program to include Native American governments allowing Arizona tribes to establish a Native American Veterans Cemetery in Northern Arizona. He explained the 3-line Jackson amendment dated 3/24/03 at 2:23 p.m. makes technical changes to the bill.

Senator Harper asked whether Native Americans could handle this issue themselves, since they are a sovereign nation. Mr. D’Anna replied that in order to create a veterans' cemetery, the Native Americans would need to amend federal legislation to receive any federal funding. He said that under the Cemetery Grants Program, the federal government reimburses states for the cost of a cemetery.

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

Senator Hellon moved HCM 2005 be returned with a DO PASS recommendation.

Representative Jackson, Jr., bill sponsor, stated that there is a great need for this measure in Northern Arizona. He explained that the Navajo Nation alone comprises approximately 16,000 individuals currently serving in the military. He indicated there is a cemetery in Northern Arizona for veterans, but it is currently full. Therefore, it poses a burden for those families because veterans now have to be buried in the Phoenix veterans' cemetery. He asked for support of HCM 2005.

Senator Hellon moved HCM 2005 be returned with a DO PASS recommendation.

Senator Hellon moved the 3-line Jackson amendment dated 3/24/03 at 2:23 p.m. be ADOPTED (Attachment F). The motion CARRIED by a voice vote.

Senator Hellon moved HCM 2005 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 9-0-0 (Attachment 8).

HCR 2004 – lieutenant governor – DO PASS AMENDED

Ms. Sapien explained HCR 2004 is subject to voter approval and renames the Secretary of State as Lieutenant Governor. She explained the 5-line Mitchell amendment dated 3/24/03 at 10:30 a.m. delays the implementation of this change until January 1, 2007.

Senator Tibshraeny announced that **Representative Huppenthal, bill sponsor**, also supports the amendment; however, he is not able to be present at this time.

Frank Schmuck, Captain, Arizona Needs A Lieutenant Governor, testified in support of HCR 2004. He distributed a handout (Attachment G), and outlined the reasons why Arizona should rename the position of Secretary of State to Lieutenant Governor. He said a significant amount of research has been conducted with other states, and said the change would benefit the people of Arizona. He indicated there would be no cost to the State to make this change because all the literature with the name of Secretary of State would be phased out prior to initiating new literature. He urged passage of the bill and the Mitchell amendment.

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

Senator Hellon moved HCR 2004 be returned with a DO PASS recommendation.

Senator Mitchell moved the 5-line Mitchell amendment dated 3/24/03 at 10:30 a.m. be ADOPTED (Attachment H). The motion CARRIED by a voice vote.

Senator Hellon moved HCR 2004 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 7-1-1 (Attachment 9).

HB 2034 – municipal formation; technical correction (now: homeowner’s association; dwelling actions) – DO PASS AMENDED

Ms. Sapien, explained HB 2034 requires an affirmative vote of a majority of the members of a homeowners association (HOA) entitled to cast a vote, excluding the votes in Title 3 cast by the developer, to authorize the HOA to file an HOA dwelling action. She said the measure also allows the condo or townhome owner to bring a dwelling action to recover damages sustained as a result of a defect to the condo or townhome, if the prevailing vote is in favor of the action but does not constitute a majority of the membership. Ms. Sapien explained that two amendments are being offered:

- The 2-line Chevront amendment dated 3/24/03 at 3:03 p.m. eliminates the requirement that the votes in favor of the dwelling actually exceed the votes in opposition to provide a condo or townhome owner’s standing in court.
- Ms. Sapien noted that the 4-line Harper amendment dated 3/25/03 at 12:42 p.m. is a late amendment. She said the amendment eliminates the requirement that a majority of the membership vote in favor of the measure. She indicated that only a simple majority of those voting would be required to file a dwelling action. She said the amendment also removes the language regarding the townhome or condo owner filing an action because it would not be relevant. Ms. Sapien commented that the amendment would make it easier for an HOA to sue a developer for construction defects.

Ms. Sapien stated that the two amendments conflict.

Senator Chevront stated he would withdraw his amendment dated 3/24/03 at 3:03 p.m. (Attachment I).

Senator Harper explained the reasons for his amendment, and said he believes it is a good compromise. He said the issue is to allow the members of the HOA to decide whether or not they wish to initiate a lawsuit.

In response to Senator Mead, Ms. Sapien explained current law regarding an HOA lawsuit. She said that current statute does not require a vote of the HOA for the board to file a court action. However, it does require disclosure to all members regarding information on the action. She said a meeting of the membership and the board is also held, and the board would then authorize the filing of the action.

Kevin Demenna, Community Associations Institute (CAI), testified in opposition to HB 2034. He stated CAI represents approximately 250 HOAs in Arizona or 300,000 residents. He questioned what problem is being fixed by this measure. He said this is not about lawsuit abuse, but rather about limiting the homeowner’s right to sue. The following points are highlights of his testimony:

- All covenants, conditions and restrictions (CCRs) in the State are amendable and can be changed.
- The number of defect lawsuits has risen. Despite the increase in construction, the rate, quality and the experience of labor are the issues. Defects not only apply to new construction, but existing units as well. The lawsuit should not provide a “lottery,” but rather should entitle the damaged party to recover the cost to repair the defect and costs of the lawsuit.

- The distinction between planned communities and townhomes and condos is important. A planned community consists of common areas such as roads, clubhouse and pool. A condo or townhome consists of the ownership of the air space. The HOA owns everything else, such as plumbing, air conditioning, walls, and roofs.
- He said the lawsuit does not stigmatize the development, but rather it is the inability to resolve the defects that stigmatize the development.
- The existing law is approximately six months old, which provides builders and developers a ninety-day right to cure the problem prior to a lawsuit. The law also requires that every resident be notified, in writing, of the intent to file a lawsuit.

Mr. Demenna inquired that if the right to sue was granted, how would one's interest be prorated, such as when a fire occurs in a common wall. He referred to the Harper amendment and said HOAs are based on the model of government we know as a republic. He said people are elected to make decisions, which works for HOAs. He urged the Committee to defeat this legislation.

Senator Chevront wanted to know the mechanism for changing the CCRs. Mr. Demenna responded the voting thresholds vary; however, a two-thirds vote is the number he hears most often or possibly 51%. Mr. Demenna pointed out that a resident owning a townhome or condo under CCRs generally accepted in Arizona, does not own the common areas. However, a majority vote would still be required in order for an HOA to sue for any defect in the common areas.

Michael Delmonte, testified in opposition to HB 2034 and the amendment. He stated that he lives in a 126-unit condo complex in south Chandler. He commented on the experiences and current litigation regarding his particular condo project. He said most of the defects were serious problems that occurred throughout the complex, and the HOA could not fix them due to the significant cost. He indicated that a temporary fix was done in some instances prior to any settlement being realized. Mr. Delmonte commented that homeowners and HOAs do not like to litigate; however, litigation is necessary when the major reconstruction is costly. He said since many of the homeowners are not in their homes year-round, they depend on the HOA boards to resolve any problems. In response to Senator Chevront, Mr. Delmonte said the defect litigation could affect the resale of the condos. On the other hand, he said some homeowners had problems selling their units because of defects that had not been fixed. Senator Chevront said that the stigmatization of a lawsuit makes it more difficult to sell the unit; therefore, it is even more important to have input from as many homeowners as possible because it will affect all the units in the HOA. Mr. Delmonte said the repairs had to be made and the HOA board made the decision to repair the defects as part of its operating expenses. In response to Senator Chevront, Mr. Delmonte said he does not believe there were any insurance claims filed.

Senator Mead commented he received a call from an individual in his district who belongs to an HOA consisting of 10,000 members. He said five apartment owners control 20% of the voting membership, which is a problem.

Gretchen Jacobs, Arizona Senior Citizens Forum, Inc (Forum), testified in opposition to HB 2034. She stated the Forum is an organization that represents over 70,000 people in Arizona. She said she came here today to oppose the bill and was not aware of the amendment until the meeting started, but commended Senator Harper for his amendment. She said people move into an HOA because they do not wish to deal with certain problems. She indicated the insurance industry has no position on this bill and does not believe the insurance aspect should be considered. She said currently the Forum opposes the bill and she will need to look further at the Harper amendment before taking a formal position.

Spencer Kamps, Deputy Director, Homebuilders Association of Central Arizona, testified in support of HB 2034 and the Harper amendment. He said he does not believe anyone disagrees that the goal is to fix the problems. However, this measure deals with the consequences of litigation, which results in a long time span to resolve the problems. Further, he commented that typically approximately 40% of settlement funds go to the attorneys or experts in the situation, and are not necessarily used for home repairs. Mr. Kamps said if the board of an HOA votes to sue, there are major consequences to the homeowners. He said the entire property is stigmatized whether or not a defect is present in a particular unit. He indicated a situation occurred where an HOA took out a loan to fund litigation. He said a study was conducted in California and realtors have experienced these types of situations where property values decrease in developments under litigation. Mr. Kamps stated that last year a “notice to repair” bill passed that allowed an HOA or other entity with five or more homes to go directly to court and sue.

Mr. Kamps suggested that certain measures can be taken. He said an HOA can work with the builder, and if a resolution is not possible, an alternative dispute resolution can be pursued before a lawsuit is filed. He said the voting participants are able to do anything that the HOA documents allow under law or under those specific documents, which consist of proxies or mail-in ballots. He said the Harper amendment will clearly allow the majority of the participants to have the opportunity to file a lawsuit. Mr. Kamps stated that most of the CCRs require voting thresholds already under existing law. He emphasized that when a lawsuit is filed, the assets of the HOA are at risk. Therefore, a consensus from the homeowners should be required in order to take that step. He outlined the options available to the HOA if the threshold is not met to file a lawsuit. He said an insurance claim could be filed to make the repair, and the insurance company could sue the builder for recovery. He said the other option is to pay for the repair from HOA funds, which would require a new assessment to the homeowners to vote on whether to pay for the repair.

Representative Hubbs, stated she is also an attorney and has taken a number of homeowner classes. She said she has also been president of an HOA of 30,000 members. She said she originally believed the Harper amendment would be okay; however, she has heard from several large HOAs that oppose the amendment. She indicated that even though there is a law, there is no remedy. She said Sun City West is experiencing turmoil regarding this issue based on votes because of the difficulty in assembling people. She asked Senator Harper to withdraw his amendment to allow more time to rewrite the law during the summer. She said she is also speaking against the bill. She said this subject has been researched and discussed, and the homeowners would rather trust the HOA board to take care of any problems.

Wendy Briggs, Attorney, Steptoe and Johnson, representing the American Insurance Association (Association), testified in support of HB 2034. She stated the Association is a large organization of property and casualty insurers, and they would like to see this legislation reduce the number of construction defect lawsuits.

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

Tom Farley, Arizona Association of Realtors (AAR), testified in support of HB 2034. He stated when an HOA decides to file a lawsuit, all properties in the HOA become stigmatized. He said since the disclosure of a lawsuit is required, a property’s value in that HOA is diminished even without any defects. He explained that this bill allows the members of the HOA a voice in how the HOA goes forward in a construction defect lawsuit, and AAR encourages support of the bill. In response to

Senator Tibshraeny, Mr. Farley stated that a lawsuit also diminishes the value of a single-family home in a residential HOA development. A controversy arose as to whether an individual homeowner with a property defect has the right to file a lawsuit without the HOA. Mr. Farley stated the homeowner would have a remedy in this instance, which is the ability to sue. He said that, conversely, the HOA does not protect the homeowner's property without a defect in the case of a lawsuit. Mr. Farley referred to a condo or townhome situation, and said every member within that HOA is an interest owner in the common areas and those members have the right to sue. Senator Mead stated that he is under the impression from Mr. Demenna that a homeowner does not have the right to sue because the common area is not owned by the individual homeowner. Mr. Farley said that he was provided that information by AAR's general counsel. Senator Harper explained that his amendment strips out the townhomes and condos from the bill, therefore, those units would not be addressed.

Mr. Demenna commented that both cases may be correct because under current Arizona law a homeowner owns the air space in a condo or townhome development. However, the homeowner does not have the standing, which is the purpose of the HOA. He said he believes the bill attempts to grant this standing to an individual that presently only owns the air space. He said as he testified earlier, he does not believe a homeowner could sue. If an attempt is made by the homeowner to sue, the Non-Profit Act and the Condominium Act under Arizona law would have to be amended. He said he believes that is the point that Mr. Farley was making.

In response to Senator Jackson, Mr. Farley stated that Flagstaff is included in the Northern Arizona Association of Realtors, which is one of the local AAR associations. Senator Jackson said he believes the realtors in that area oppose the bill. Mr. Farley said he has not received that type of communication from the Northern Arizona Association of Realtors, and pointed out that AAR has jurisdiction over issues at the Legislature.

Senator Mead commented that even though the Harper amendment eliminates lines 27 through 32 of the bill, condo owners do not have standing under common law in Arizona. He said he disagrees with Mr. Farley that those homeowners have the right to bring a suit for common ground.

Senator Chevront moved HB 2034 be returned with a DO PASS recommendation.

Senator Tibshraeny explained the Harper amendment is a late amendment. He said he will allow the amendment without objection.

Senator Harper moved the 4-line Harper amendment dated 3/25/03 at 12:42 p.m. be ADOPTED (Attachment J). The motion CARRIED by a voice vote.

Senator Chevront moved HB 2034 be returned with an AS AMENDED, DO PASS recommendation.

Senator Chevront explained his vote. He stated it is important that homeowners have proper recourse as well as the ability to deal with their problems at the same time. He said it is also important to address the issue of having property stigmatized because the minority of individuals in the HOA would want to initiate a lawsuit, which could potentially be frivolous. He said the bill with the Harper amendment brings a satisfactory medium and allows the ability to address the concerns of the different HOAs as well as those of the homeowners who would be stigmatized as a result of a lawsuit that they may not necessarily support. He said he will vote "aye."

Senator Harper explained his vote. He stated that part of the Legislature's agenda is to work toward tort reform. He said that citizens' voices should be heard, and that is why it should go to a vote of the people. He indicated the vote should not require 50 plus one of the eligible voters, rather only 51% of the voters who cast a vote. He said he will vote "aye."

Senator Jackson explained his vote. He said he does not have an HOA where he lives. He said he represents the City of Flagstaff, and he received calls to oppose the bill. He said he will vote "no."

Senator Mead explained his vote. He stated he appreciates Representative Hubbs' testimony, and believes the issue needs more work. He said even with the Harper amendment there are too many scenarios where people could be precluded from having their day in court to fix a defect, which is a dangerous precedent. He said he will vote "no."

Senator Tibshraeny explained his vote. He stated he has some concerns with this bill, and believes it is bad public policy. He said it implies that contracts and personal responsibility do not mean anything. He indicated the bill is against consumer rights and against the responsibility of a contract an individual signs within an HOA. He commented the bill sends the wrong message and he believes it is bad public policy. He said he will vote "no."

The motion CARRIED by a roll call vote of 5-4-0 (Attachment 10).

There being no further business, the meeting adjourned at 4:22 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.)