

ARIZONA STATE SENATE

46TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: March 26, 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

Committee Members

	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			HB 2106	DP
Senator Bee	X			HB 2319	DPA/SE
Senator Binder	X			HB 2332	DISCUSSION/HELD
Senator Brotherton	X			HB 2378	DP
Senator Jarrett	X			HB 2407	DPA
Senator Miranda	X			HB 2482	DP
Senator Rios	X			HB 2507	DP
Senator Verschoor, Vice Chairman	X			HB 2520	DPA
Senator Weiers, Chairman	X			HCR 2009	FAILED
				HCR 2024	HELD

GOVERNOR'S APPOINTMENTS

Name

Position

Recommendation

Chairman Weiers called the meeting to order at 8:44 a.m., turned over the chairmanship to Senator Verschoor, and attendance was taken.

APPROVAL OF MINUTES

**Senator Verschoor moved the minutes of March 19, 2003 be approved.
Without objection, the minutes were approved as distributed.**

CONSIDERATION OF BILLS

HCR 2009 - tax increase by initiative; vote – FAILED

Lace Collins, Judiciary Committee Research Assistant Analyst, explained that HCR 2009 requires a two-thirds affirmative vote from qualified voters voting on a measure for initiatives and referendums that increase State revenues. She also explained the Brotherton 24-line amendment dated 3/25/03 at 1:25 p.m.

Representative Biggs, sponsor of the bill, testified that he does not support the Brotherton amendment.

Senator Brotherton asked why a two-thirds vote could not be used for a tax reduction initiative. Representative Biggs replied that this referendum is consistent with Proposition 108.

Senator Weiers read from an email he received that states if the Legislature votes yes on this referendum, it would impose their standards on the public – “what about majority rules.” He suggested that if this referendum does pass out of the Legislature and goes to the vote of the people, it would be the majority of the voters that would determine the two-thirds vote. He indicated that he does not understand why anyone would object to the referendum going to the vote of the people.

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association, testified in opposition to the referendum, noting that she feels it is bad government and erodes the voice of the people. The idea of majority rules is a concept that is favored throughout the country. The Center for the Study of Democracy found that the rule that provides the most protection for the minority is majority rules, where all voters are treated equally. A system other than majority rules favors a minority group, giving them a higher status than the simple majority of the vote. The presence of a cyclical-type of majority protects any tyranny of majority. This referendum puts severe constraints on the legislators and voters as far as a tool that can be used to take care of issues. Citizens should be able to make a decision as to whether to raise taxes by a simple majority. She suggested that if the referendum passes, the Legislature should also consider imposing the two-thirds vote on the election of elected officials.

Senator Weiers indicated that this measure would safeguard the public’s ability to keep their own money.

Senator Brotherton stated that he believes the voters have already rejected a two-thirds majority vote on a previous bill. Ms. Palmer added that when any initiative requires a two-thirds vote in order to increase taxes, it would empower a small group of the minority to block the passage of the initiative.

Senator Miranda suggested that it should take two-thirds of the majority to vote this referendum out of Committee.

Donald Begalke, Arizona Voter, testified that he feels this referendum is un-American, noting that the founding fathers did a good job of establishing the country and its principles. One of those principles is majority rules. This referendum does not meet the American standard of the majority rule; 50% plus one. He said that he considers Proposition 108 a “slap in the face” to the Legislature, quoting from the Legislative Council’s argument opposing the proposition: “requiring a two-thirds vote would reduce the likelihood of meaningful tax reform or equalization among taxpayers.” He urged the Committee to unanimously vote against HCR 2009 because it is a bad resolution and should not be on the ballot.

Sandy Bahr, Conservation Director, Sierra Club/Grand Canyon Chapter, testified in opposition to the referendum, explaining that they are not opposed to putting measures on the ballot, but they are opposed to putting every measure before the people. She emphasized that the voters did reject the two-thirds vote on the wildlife bill and she feels the voters will reject this referendum as well. However, it should not go to the voters because there is a cost to ballot measures. She noted that the tobacco tax bill would not have passed using the two-thirds majority rule. She indicated that she feels Proposition 108 has been a problem, hearing much discussion about how to get around its requirements. She mentioned that perhaps Proposition 108 should go back to the voters.

Doug Kilgore, Government Relations Consultant, Arizona Education Association (AEA), testified that the vast majority of the members of AEA would oppose this referendum for a number of reasons. If this initiative had been in effect in the 2000 elections, Proposition 301 would not have passed and classrooms would be more underfunded than they currently are. He pointed out that 53% of the voters agreed to a six-tenths of a percent sales tax to put money directly into the classroom. He reiterated what other speakers have already said that majority rule has served the people very well. He suggested that this referendum is based on an assumption that taxes are evil. He added that taxes are a necessity to support needed and useful programs that the majority of the citizens believe will help the common good. He concluded that this referendum could potentially take away one of the tools to solve the budget deficit.

Eric Ehst, Arizona Advocacy Network, pointed out that this measure is one of a series of bills this session designed to restrict the citizens historical right to initiatives and referendums under the Arizona Constitution and would establish an unreasonable standard. Historically, few ballot initiatives have passed with a two-thirds majority vote, including Proposition 301, the clean elections act and Proposition 202. This measure not only affects tax increases, it affects any ballot initiative that imposes new fees that increase revenues in Arizona. It would prevent passage of low-cost measures that are funded through user fees. By forcing a two-thirds majority vote on ballot propositions that increase revenues, existing funding sources would be required to fund new programs. This would further restrict the Legislature’s ability to use existing revenues. If this referendum passes, coupled with HCR 2022 that requires citizen initiatives provide a new funding source, it would prevent the passage of any initiative as small as \$100,000 or less. The Legislature is currently restricted in its ability to impose new taxes, because of Proposition 108, which requires a two-thirds majority vote in the Legislature, forcing revenue increases to be referred to the ballot. HCR 2009 would take away this option for increasing revenues that the Legislature could not pass. There is no precedent in Arizona law for a super majority requirement for any citizen vote. This overturns the time-honored American electoral tradition where majority rules. It allows a minority of voters to determine the future of Arizona.

Diana Marquez, representing herself, testified that as a strong proponent of direct democracy, and indicated that she has two major concerns regarding HCR 2009. Her primary concern requiring a two-thirds vote on initiatives to increase revenues is that it could lower voter participation, which is already quite low. The Legislature should encourage more voter participation. Another concern is that HCR 2009 makes it increasingly difficult for the public to increase revenues for needed social programs that the Legislature has failed to pass. She urged the members to vote in opposition to the referendum because the citizens of Arizona do not need another hurdle in order for their voices to be heard.

Bart Turner, Executive Director, League of Women Voters of Arizona, testified in opposition to HCR 2009. This measure runs contrary to the democratic principle of “one man, one vote.” By having a super majority requirement, a no vote against a measure would actually count as two votes. For every yes vote needed to pass a measure, a no vote counts as two votes against it. This referendum would also encourage initiative drafters to not include the funding mechanism for implementation, addressing only the implementation of a new policy. He referred to an extensive study conducted by the National Conference of State Legislatures, noting one of their recent recommendations: “States should require that any initiative measure that imposes a special vote requirement for passage for future measures must itself be adopted by the same special vote requirement.”

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

Senator Weiers moved HCR 2009 be returned with a DO PASS recommendation.

Senator Brotherton moved his 24-line amendment dated 3/25/03, 1:25 p.m. be ADOPTED. The motion FAILED by voice vote. (Attachment B)

Senator Brotherton moved for a two-thirds vote of the Committee to pass HCR 2009. The motion FAILED by voice vote.

Senator Weiers moved HCR 2009 be returned with a DO PASS recommendation. The motion FAILED with a roll call vote of 4-5-0. (Attachment 1)

HB 2106 – interstate compact for juveniles – DO PASS

Michelle Morales, Judiciary Committee Research Intern, explained that HB 2106 updates the existing Interstate Compact (Compact) for juveniles including a national Interstate Commission (Commission) and a State Council to track and manage the interstate movement of juveniles.

Representative Tully, sponsor of the bill, commented that this bill attempts to provide a better tracking system for juveniles who move out of state.

Louis Goodman, Legal Division Director, Arizona Department of Juvenile Corrections, pointed out that this bill is supported by many organizations, including: 1) National District Attorneys Association; 2) National Association of Counties; 3) National Institute of Corrections; 4) National Centers for Victims of Crimes; 5) Child Welfare League of America; and 6) National Council of Juvenile and Family Court Judges. The interstate compact is an agreement by which states communicate on a variety of issues: 1) governs returning runaways that cross state lines; 2) supervision of juveniles on probation and parole when families move, or a youth is placed with a family member in another state; 3) return of juveniles who escape from an institute or abscond from probation or parole; or 4) return of juveniles pending a court appearance. The current compact was

adopted in 1955, and covered approximately 200 youth at the time. Today, there are over 20,000 juveniles moving across state lines. The existing compact has not work and has been amended three times. This bill is an effort to adopt a new compact with a process to keep it current. He emphasized that the first 35 states to adopt the compact will be part of the committee that adopts the rules by which the compact would be enforced.

**Senator Bee moved HB 2106 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 7-0-2. (Attachment 2)**

HB 2319 - liquor; restaurant licensees; firearms – DO PASS AMENDED/STRIKE EVERYTHING

David Lujan, Judiciary Committee Research Analyst, explained the Weiers strike-everything amendment to HB 2319 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.

Gerry Anderson, Executive Director, HALT Gun Violence, referred to a study by John Lott, noting the report indicates that expanded gun use, ownership, and concealed weapons carriers reduced crime. She suggested that there have been new studies that indicate the information was incorrect and the methods of gathering the data were faulty. There is no credible research to determine those assumptions are true. She stated that her organization supports the cities and towns making decisions regarding background checks. She urged the Committee to vote against this bill.

Representative Graf, sponsor of the bill, pointed out that this bill is not about gun use or abuse. Tucson wants to use zoning regulations to regulate gun shows and the private sale of firearms.

Landis Aden, Legislative Liaison, Arizona State Rifle and Pistol Association, testified in support of the bill. He reminded everyone that all federal and State laws apply to a gun show. He noted that there is a pervasive appearance of law enforcement (federal, State, and local) at any gun show. Tucson has been trying to stop gun shows in general and this is the latest attempt of doing so. A private citizen cannot access the background check system. This is more than a second amendment issue, it is also a commerce and free enterprise issue.

Eric Edwards, Arizona Association of Chiefs of Police and Phoenix Police Department, testified in opposition to the bill. He said that he feels cities, towns, and counties should have the authority to regulate property that they own.

In response to Senator Brotherton, Mr. Edwards replied that they feel this bill would take away a city's ability to say "no" to a gun show.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU), stated that they support reasonable ownership and use of guns. This bill is narrowly tailored and would impact properties owned by the city. The right to own a gun is not unconditional in either the United States or Arizona Constitution.

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

Senator Weiers moved HB 2319 be returned with a DO PASS recommendation.

Senator Weiers moved his five-page, strike-everything amendment dated 03/24/03, 10:13 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment C)

Senator Weiers moved HB 2319 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-3-0. (Attachment 3)

HB 2407 - civil actions by victims; limitation – DO PASS AMENDED

Mr. Lujan explained that HB 2407 tolls the statute of limitations for civil causes of action arising from criminal conduct from the time of indictment or complaint on the criminal conduct until a dismissal or acquittal of criminal charges against the defendant. If the defendant is convicted of criminal conduct against the victim, the statute of limitations starts running at the time of conviction. He also explained the Verschoor two-page amendment dated 3/24/03 at 1:55 p.m.

In response to Senator Weiers, Mr. Lujan replied that the victims rights bill addresses personal injury actions. In that bill, the statute of limitations was tolled until a person reaches 18 years of age or is of unsound mind. HB 2407 deals with a criminal conviction where the statute of limitation is tolled while the proceedings go through the legal process. Senator Weiers added that the criminal will be responsible for the financial liability.

Representative Nichols, sponsor of the bill, indicated that the intent of the bill is to close an existing loophole in statute. By closing the loophole, it will be ensuring successful criminal prosecution while preserving the civil rights of victims who cooperate with criminal prosecution until two years after the final resolution of the criminal matter. Both the criminal and civil system can work together. The criminal system protects society, while the civil system protects victims' rights.

Keith Perkins, Attorney, Never Again Foundation, pointed out that the Foundation focuses all their time in representing victims of crime. A few years ago, the Legislature passed ARS 13-807 that states once a person is criminally convicted, they cannot deny that conviction in a subsequent civil action brought by the victim. The problem is that the convicted criminals still found a loophole to get around that law, because it never addressed how the two statutes of limitations are going to work together. He suggested that they do not want victims to file civil actions while cooperating with the criminal prosecution because it could potentially impede the criminal prosecution.

In response to Senator Brotherton, Mr. Perkins replied that there are only three people who can bear the cost of crime, the perpetrator, the victim, or all the rest of society. This bill is attempting to put the financial accountability on the person who commits the crime. Victims want justice and when the criminal system works, often there is a plea bargain. In a civil case, the victims get to tell their side of the story.

Representative Johnson, representing herself, testified in support of the bill. She commented that this is an important bill that affects her family.

Representative Laughter, cosponsor of the bill, explained that she feels this is the most important bill the Legislature will hear this session. The significant issue of this legislation is justice and allowing a victim a way to overcome their victimization.

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

Senator Weiers moved HB 2407 be returned with a DO PASS recommendation.

Senator Weiers moved the Verschoor two-page amendment dated 3/24/03, 1:55 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment D)

Senator Weiers moved HB 2407 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 9-0-0. (Attachment 4)

HB 2520 - jury service – DO PASS AMENDED

Ms. Morales explained that HB 2520 makes various changes to jury service statutes and establishes the Lengthy Trial Fund for purposes of compensating jurors who serve more than ten days of jury service. She also explained the Jarrett two-page amendment dated 3/25/03 at 2:57 p.m.

Representative Graf, sponsor of the bill, maintained that this bill will benefit citizens who would like to exercise their civil responsibilities and also benefits the business community.

John Mangum, Arizona Food Marketing Alliance, Arizona Association of Realtors, Conoco Phillips, Kraft Foods, and Philip Morris, testified that all of the business clients he represents support this bill. The primary concern that the business community has is the adverse selection that takes place currently with jury trials. When there is a long complex case, it is very burdensome for the average person to participate because they are only paid \$12 a day. Most companies do not pay supplemental payments. People who are responsible for the support of their families are usually excused from jury service. This bill will help remedy that concern by paying up to \$300 a day as reimbursement for jury duty and lost wages.

Senator Binder asked about restricting people from having to travel a long distance to serve on a jury. Mr. Mangum replied that the objective of this bill is to encourage more people to serve. Mileage payments are made to jurors and traveling a long distance is not an excuse for not performing jury duty. Senator Binder added that traveling a long distance can be a hardship. Although mileage would be paid for, there still would be hotel costs. Mr. Mangum explained that this bill applies to Superior and Justice Court jury service. This bill does not affect federal jury service.

In response to Senator Brotherton, Mr. Mangum replied that this bill does not apply to grand juries. There was some discussion regarding grand juries; however, it was determined to only address trial juries to keep the costs down. In 2000, approximately 350 jurors would have been affected by this bill.

Senator Rios noted that the funding for this bill would come from court fees and wondered what those would be. Mr. Mangum replied that the fees would be between \$5 and \$9 for a civil complaint. If a complaint did not require a lot of court resources such as an order of protection, no fees would be assessed.

In response to Senator Brotherton, Mr. Mangum replied that although he cannot predict what a company will do, there is a possibility that companies who currently pay employees while on jury duty would cease to do so if this bill goes into law. However, this includes a very small percent of companies. This bill is trying to help the vast majority of people.

Tonia Tunnell, Arizona Association of Counties, confirmed that this bill would not assess additional fees on an order of protection. Last year, approximately 30 trials lasted more than ten days. Under this bill, all jurors would be paid a minimum of \$40 a day regardless of whether they are employed.

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

Senator Weiers moved HB 2520 be returned with a DO PASS recommendation.

Senator Jarrett moved her two-page amendment dated 3/25/03, 2:57 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment E)

Senator Weiers moved HB 2520 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 9-0-0. (Attachment 5)

HB 2332 - utility franchise; expenditures – DISCUSSION/HELD

Mr. Lujan explained the strike-everything amendment to HB 2332 prohibits sex offenders from living in the same residential structure or within 1,320 feet of another sex offender. He also explained the Brotherton nine-line amendment dated 3/25/03 at 1:48 p.m. (Attachment F)

David Sands, Legislative Officer, Administrative Office of the Courts, indicated that the original bill in the House of Representatives addressed all sex offenders which was determined to be unconstitutional; therefore, the bill was withdrawn. This bill focuses only sex offenders on probation. He suggested that the bill will not solve the problem, because there are over 13,000 registered sex offenders in Arizona, with only 2,200 on probation. Only those sex offenders who will be placed on probation after the passage of the bill would be affected. The bill would not move current sex offenders out of the neighborhood.

Senator Weiers brought up that group homes of sex offenders are showing up in many neighborhoods, which is not good or safe for the community.

In response to Senator Brotherton's questions, Mr. Sands pointed out the impossible burden placed on probation departments. It will be difficult to determine if a sex offender already lives in an area. Although there are 13,000 registered sex offenders, only 1,700 are currently on the Department of Public Services (DPS) website. He also mentioned that the bill does not pertain to homeless shelters. Another problem with the bill is the potential liability if the probation department places a sex offender in an area where there already is one living. This could potentially cost the State if a lawsuit was filed.

John Wayne Gonzales, City of Phoenix, testified in support of the strike-everything amendment. He explained that there are approximately 2,500 sex offenders currently in the city, with approximately 276 in the west area. The reason this bill only targets people on probation is because it would be unconstitutional to target those who have completed their time. Presently, the probation department can tell a person on supervised probation where they can or cannot live. One of the exceptions in the bill covers juveniles.

In response to Senator Brotherton, Mr. Gonzales replied that the City of Phoenix is opposed to the amendment. The earlier version of the bill had language that would protect the State, county, and probation officer if a civil lawsuit was involved.

Senator Brotherton next talked about when a sex offender might have to move and the concern that many of them may end up in the central Phoenix area. Mr. Gonzales stated that under the conditions of supervised probation, the probation officer tries to place them in an appropriate area. He emphasized that the primary reason to have a sex offender move from a specific area is because there are children in that area. The homeless shelters were exempted from the bill because the sex offenders may need a place to stay.

Senator Binder moved HB 2332 be returned with a DO PASS recommendation.

Senator Binder moved the Weiers two-page, strike-everything amendment dated 03/24/03, 1:55 p.m. be ADOPTED. Division was called. The Chairman asked for a show of hands. The motion FAILED by a division of 3-6. (Attachment G)

Without objection, Senator Weiers moved to hold the bill.

HB 2378 - legislator vacancy; appointment process – DO PASS

Ms. Morales explained that HB 2378 modifies the process by which legislative vacancies are filled by directing the precinct committeemen to elect the person to fill the vacancy, as opposed to the former responsibility of nominating three qualified electors. She also explained the Rios two-page amendment dated 3/26/03 at 8:12 a.m.

In response to Senator Weiers, Senator Rios replied that the people in the rural counties are content with the current process.

Representative Gray, sponsor of the bill, stated that this bill is about district representation, noting that a precinct committeeman is elected by the people in the district. He noted that he is opposed to the amendment, because the issue is addressed in the bill. Any district with a small number of committeemen would revert back to the current process. He noted that there is bipartisan support for the bill.

Rusty Bowers, representing himself, testified in support of the bill.

Tonia Tunnell, Government Affairs Manager, Arizona Association of Counties, testified that they are neutral on the bill. The election officials have worked very closely with Representative Gray to draft this bill.

Senator Verschoor noted that having worked as a precinct committeemen, he supports this bill.

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

Senator Weiers moved HB 2378 be returned with a DO PASS recommendation.

Senator Rios moved his two-page amendment dated 3/26/03, 8:12 a.m. be ADOPTED. Division was called. The Chairman asked for a show of hands. The motion FAILED by a division of 3-5. (Attachment H)

The motion CARRIED with a roll call vote of 7-2-0. (Attachment 6)

HB 2507 - wildfires; fire bans; criminal penalties – DO PASS

Ms. Collins explained that HB 2507 creates the crime of burning wildlands and prescribes varying penalties.

**Senator Weiers moved HB 2507 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 9-0-0. (Attachment 7)**

HB 2482 - victims' rights; neighborhood associations – DO PASS

Ms. Morales explained that HB 2482 adds graffiti and discharging a firearm at an occupied structure to those crimes that allow a neighborhood association to invoke victims' rights.

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

**Senator Weiers moved HB 2482 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 7-1-1. (Attachment 8)**

HCR 2024 - voter approved expenditures; limitation – HELD

There being no further business, the meeting was adjourned at 11:30 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.)