

ARIZONA STATE SENATE

46TH LEGISLATURE FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: April 2, 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 2018	DP
Senator Bee	X			HB 2208	DPA
Senator Binder	X			HB 2304	FAILED
Senator Brotherton	X			HB 2313	FAILED
Senator Jarrett	X			HB 2316	FAILED
Senator Miranda	X			HB 2321	NOT HEARD
Senator Rios	X			HB 2333	DPA
Senator Verschoor, Vice Chairman	X			HB 2410	DP
Senator Weiers, Chairman	X			HB 2436	DP
				HB 2493	HELD
				HCR 2018	FAILED
				HCR 2024	DP

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Paul Arthur Bullis	Member, Department of Gaming	HELD
Marion Weinzweig	Member, Commission on Judicial Conduct	HELD
Kathleen Pushor	Executive Director, Arizona State Lottery Commission	HELD
Leo Victor Valdez	Member, Arizona State Lottery Commission	HELD
Elizabeth A. Kohlhepp	Member, Psychiatric Security Review Board	HELD
Lorna Gale Cheifetz	Member, Psychiatric Security Review Board	HELD

Chairman Weiers turned over the chairmanship to Senator Verschoor and he called the meeting to order at 8:48 a.m., and attendance was taken.

APPROVAL OF MINUTES

Senator Verschoor moved the minutes of March 26, 2003 be approved. Without objection, the minutes were approved as distributed.

CONSIDERATION OF BILLS

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. She also explained the Verschoor two-line amendment dated 4/1/03 at 11:24 a.m.

Representative Yarbrough, sponsor of the bill, remarked that this amendment would make the statute applicable only to personal residences and recreational properties such as summer cabins. It is designed to take away the complaint that the bill would also have applied to business and investment properties.

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

Senator Weiers moved HB 2304 be returned with a DO PASS recommendation.

Senator Weiers moved the Verschoor two-line amendment dated 4/1/03, 11:24 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment B)

Senator Weiers moved HB 2304 be returned with an AS AMENDED, DO PASS recommendation. The motion FAILED with a roll call vote of 4-5-0. (Attachment 1)

HB 2208 – retaliatory crimes – DO PASS AMENDED

Michelle Morales, Judiciary Committee Research Intern, explained that HB 2208 adds retaliation as an aggravating factor for purposes of sentencing and also increases the criminal penalty for threatening or intimidating when it is committed in retaliation for reporting criminal activity or being involved with certain crime reporting organizations. She also explained the Brotherton two-line amendment dated 3/31/03 at 8:25 a.m.

Representative Gullet, sponsor of the bill, stated that she brought this bill forward on behalf of the Maricopa County Attorney Rick Romley and former City Council member Phil Gordon. This bill attempts to insure that if someone retaliates against a victim for reporting a crime or against someone involved in a community organization working to ensure their neighborhoods are better and safer, they can be punished under the aggravating circumstance sentencing laws. The bill started out as a neighborhood bill; however, during testimony in the House of Representatives, it was realized that its application should be statewide.

Phil Gordon, Former City of Phoenix Councilman, asked for the Committee's support on this bill.

Donna Neill, Director, Neighborhood Activists Inter-Linked Empowerment Movement, (NAILEM), indicated that this bill is important to communities to allow law enforcement and the courts to address retaliation crimes.

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

Senator Weiers moved HB 2208 be returned with a DO PASS recommendation.

Senator Brotherton moved his two-line amendment dated 3/31/03, 8:25 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment C)

Senator Weiers moved HB 2208 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-1-2. (Attachment 2)

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

HB 2493 – abortion; informed consent – HELD

HB 2018 – conciliation services; revenue enhancement – DO PASS

Ms. Morales explained that HB 2018 adds litigants in maternity or paternity cases to those parties who must pay a filing fee of \$65.

Todd Adkins, Legislative Intern, Administrative Office of the Courts, noted that this bill seeks to ensure that users of an important government program actually pay for the cost to provide the program. Most of the funding in the conciliation court comes from the \$65 filing fee in cases involving divorce, separation, and annulment. However, mediation services are also provided for parents involved in maternity or paternity cases, which currently are not paid for. This bill would remedy that situation.

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

Senator Weiers moved HB 2018 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-3. (Attachment 3)

HB 2313 – contractor liability – FAILED

Nadine Sapien, Government Committee Research Analyst, explained HB 2313 provides for several liability in situations involving an independent contractor hired by a city or town. She also explained the Brotherton four-line amendment dated 4/1/03 at 3:30 p.m.

Senator Verschoor questioned if the contractor and the city would share the liability or if the cities are free of any liability. Ms. Sapien replied that the percent of liability would be shared among the responsible parties. The court will decide the percentage of fault and damages, which will be allocated according to that percentage.

Senator Brotherton indicated that currently the municipality is 100% liable for some nondelegable duties. In many cases, the municipalities enter into an indemnification agreement with contractors, and if a lawsuit is filed, the municipalities can go back to the contractor to be reimbursed. However, this bill would eliminate that process and the courts would divide the fault between the municipality and the contractor. He pointed out that his amendment is introduced to protect the public and to ensure that a municipality hires a contractor that has adequate insurance coverage.

Yvonne Hunter, Pinnacle West Capital Corporation/Arizona Public Service, testified in opposition to the bill, stating that this bill is not needed. Under current law, if a contractor fails to act according to its contract, they will be held liable; if a city breaches its duty, it will be held liable. The city can protect itself by including an indemnification provision in its contract to ensure adequate coverage. Under this bill, once a contractor assumes a contract for a city, it takes on the full responsibility the city has. This bill does not apply to counties, the State, or private entities. She pointed out that private entities by law have undelegable duties that they undertake on a regular basis.

In response to Senator Weiers, Ms. Hunter replied that the worst thing that would happen if the bill passes, is that cities and towns will have increased costs of doing business with contractors and will be limited to what contractors they can use. Only contractors that can show financial ability will be able to enter into a contract because the cost will be extremely high to assume the liability of a city. She emphasized that when a city has an obligation to perform a task and delegates that obligation to a contractor and the contractor performs improperly, under this bill, the city could indicate that the contractor assumed the full responsibility of the city's obligation.

Kevin Demenna, Lobbyist, City of Phoenix, explained that the City would like the statute to reflect that a contractor is responsible for its own behavior. In a September 2000 lawsuit, the court determined that the contractors were treated as employees of the city. He stressed that this bill will be an increase in costs, specifically for insurance and indemnification to businesses. Small and minority businesses will have a greater difficulty than larger corporations in meeting the increased costs. This bill will provide a common sense system, relying on proportional liability. Without this bill, the City will have to plan on being 100% responsible for any wrongdoing.

Ms. Hunter noted that APS and the City of Phoenix are in negotiations regarding an indemnification provision. She emphasized that APS believes that the current statute offers the protection that both parties need to enter into a contract. Furthermore, they feel it is bad public policy for a bill to be introduced that would take the responsibilities away from the cities.

In response to Senator Brotherton, Ms. Hunter replied that APS routinely has an indemnity clause in agreements they sign with independent contractors. Each party can negotiate what provisions are included in the contract.

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

Senator Weiers moved HB 2313 be returned with a DO PASS recommendation.

Senator Brotherton moved his four-line amendment dated 4/1/03, 3:30 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment D)

Senator Brotherton moved the following verbal amendment to the amendment:

Page 1, line 2, strike "WAS" insert "HAS"

The motion CARRIED by voice vote.

Senator Brotherton moved his four-line amendment, AS AMENDED, be ADOPTED. The motion CARRIED by voice vote.

Senator Weiers moved HB 2313 be returned with an AS AMENDED, DO PASS recommendation. The motion FAILED with a roll call vote of 2-5-2. (Attachment 4)

HB 2436 – municipal ballot measures; required signatures – DO PASS

Ms. Collins explained that HB 2436 allows a city or town to increase the number of signatures needed to place a referendum on the ballot.

Representative Arnold, sponsor of the bill, pointed out that currently it takes very few signatures to place a referendum on a ballot, noting a city that only required six signatures to add a referendum to the ballot.

Kevin Adam, Legislative Coordinator, League of Arizona Cities and Towns, testified that this bill is a legislative priority for their organization this year. He indicated that they do not want to take away the ability of citizens placing a referendum on a ballot. He suggested that this is a problem that affects smaller cities, noting that this bill only impacts cities with a population of 100,000 or less. The bill also allows for an extended period of time to collect a larger percentage of signatures.

In response to Senator Brotherton, Mr. Adam replied that the outcome of referendums have been mixed, with many referendums being turned down. He pointed out that regardless of whether the people vote for or against the referendum, there is a cost to put it on the ballot. He suggested that there should be adequate public interest before blocking a city council's action.

In response to Senator Verschoor, Mr. Adam stated that it is more cumbersome to gather signatures in large communities considering the time constraints.

Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (ACLU), testified in opposition to the bill, commenting that she feels this is an antidemocratic and unconstitutional bill. She pointed out that the 14th amendment gives citizens the right to seek regress against their government for grievances. She stated that she feels one of the problems in the country is not enough people vote and it is ill-advised to create barriers to the ballot process.

Thomas Hessler, Mayor, City of Sierra Vista and League of Arizona Cities and Towns, distributed a handout (Attachment E) and testified in support of the bill. He suggested that it is important to determine the "right" number of signatures required for a referendum to be placed on a ballot. He pointed out that the total cost of a referendum is forced on the taxpayers.

Senator Verschoor asked if a requirement of 1,600 signatures would prohibit anything from being referred to the ballot. Mr. Hessler replied that he does not agree. He indicated that there are other recourses to address unfavorable actions such as recall or court action. He stated that he feels it should be a little difficult to refer something to the ballot.

in response to Senator Brotherton, Mr. Hessler replied that if the bill passes, each city would have to change their charter or adopt an ordinance. Mr. Adam added that the ordinance adjusting the

signature requirement would not be effective until it went through the referendum process and the public voted on it.

In response to Senator Verschoor, Mr. Adam replied that an individual would have 45 days to collect 1,600 signatures. Senator Rios stated that he feels that raising the signature requirement from 289 to 1,600 is prohibitive, adding barriers to voter participation.

In response to Senator Brotherton, Mr. Adam indicated that he believes there would have to be a justification for an emergency measure.

Senator Weiers mentioned that having a requirement to collect four times the signatures to put a referendum on the ballot, than it takes to put a candidate on the ballot, does not seem equitable.

Sandy Bahr, Conservation Director, Grand Canyon Chapter/Sierra Club, stressed that citizens' ability to introduce a referendum at the local level is already severely restricted. She pointed out that there are no special elections, rather the referendum would go on the next general election ballot. She noted that the 45 days is not automatic; instead, a written request must be submitted to have 45 days to collect signatures. Many referendums are thrown out because of a technicality. She suggested that there may be some equal protection issues with this bill, because different standards are being implemented for different size communities. She urged the Committee to reject the bill.

Anne Surra, Vice Mayor, City of Apache Junction, testified in support of the bill, addressing the number of signatures required to put a candidate on the ballot. People should be encouraged to run for an elected office. She related a story regarding a capital facilities plan that was worked on for several years and passed by the City Council. An individual collected the required signatures to place a referendum regarding this issue on the ballot; however, there were technical concerns that kept it from the ballot. Because the petition had the required number of signatures, the individual tied up the City in court for two years, which cost them time, energy, and dollars.

Susan Culp, Assistant Director, Arizona League of Conservation Voters, testified in opposition to the bill, stating that by changing the calculation for required signatures will make it more difficult for citizens to bring issues to a vote. She suggested that this is an unnecessary bill, pointing out that the city in question only had three referendums on the ballot in five years. She asked that the Committee not make it more difficult for people to be heard.

Lisa Coletto-Cohen, Council Member, Town of Queen Creek, testified in support of the bill. She explained that Queen Creek has a population of approximately 6,500 and the required number of signatures required to place a referendum on the ballot is 37, which is one-half of 1% of the population. Passing this bill would increase the required number of signatures to 200. This would not be unreasonable if the majority of the residents wanted to vote on an issue.

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

**Senator Weiers moved HB 2436 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 6-3-0. (Attachment 5)**

HB 2410 – service animals; rights of disabled – DO PASS

Ms. Morales explained that HB 2410 eliminates the requirement that a person using a guide dog or service dog may be required to show the dog's laminated identification card before the animal is permitted onto a given premises.

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

**Senator Aguirre moved HB 2410 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 8-0-1. (Attachment 6)**

HCR 2024 – voter approved expenditures; limitation – DO PASS

Ms. Collins explained that HCR 2024 allows the Legislature to reduce, for a fiscal year, an appropriation created for a specific purpose by an initiative or referendum if the monies approved for the purpose are insufficient. She also explained two amendments: 1) Brotherton two-line amendment dated 3/25/03 at 12:32 p.m. and 2) Weiers two-line amendment dated 4/1/03 at 10:39 a.m.

Representative Konopnicki, sponsor of the bill, indicated that this legislation would allow the Legislature to make good business decisions based solely on the actual revenue received.

Eric Ehst, Arizona Advocacy Network, testified in opposition to the bill, noting that HCR 2024 is an attempt to allow the Legislature to circumvent the intent of Proposition 105, the Voter Protection Act. This proposition states that when the people pass an initiative or referendum, it means that they really want the program to exist and be funded. Once an initiative or referendum is passed, the voters who passed it lose all control over the funding sources. Because the originally designated funding source disappears does not mean that the program is no longer important or that the voters would approve of not funding that program. Most onerous in this bill is that it not only allows the Legislature to reduce funding during a down cycle in the economy if the revenues dip, but it makes that reduced funding a new baseline for the program. When the revenues recover, the program does not recover with it. The Legislature under any circumstance has the option of finding an alternative funding source for the program. Or, if the Legislature determines the program is no longer needed or is too large of a drain on the State's resources, it has the constitutionally conferred power by a simple majority vote to refer the program back to the ballot for repeal or modification. He emphasized that the passage of this measure would further restrict the Legislature.

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

Senator Weiers moved HCR 2024 be returned with a DO PASS recommendation.

**Senator Brotherton moved his two-line amendment dated 3/25/03, 12:32 p.m.
be ADOPTED. The motion FAILED by voice vote. (Attachment F)**

**Senator Weiers moved his two-line amendment dated 4/1/03, 10:39 a.m.
be ADOPTED. The motion FAILED by voice vote. (Attachment G)**

**Senator Weiers moved HCR 2024 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 5-4-0. (Attachment 7)**

HB 2333 – service of process; municipal courts – DO PASS AMENDED

David Lujan, Judiciary Committee Research Analyst, explained that HB 2333 allows unarmed police aides and traffic investigators to serve any process originating out of the municipal court in the municipality in which they are employed. He also explained two amendments: 1) Weiers 14-line amendment dated 4/1/03 at 4:02 p.m. and 2) Weiers 16-line amendment dated 4/1/03 at 3:33 p.m. (Attachment H).

Senator Weiers withdrew his 16-line amendment. He remarked that he does not like the idea of photo radar but does like red light cameras. He related a story of an individual who was caught on photo radar and the city mailed a ticket through the regular mail process. He referred to a statement on the ticket: "When you sign this complaint and return it to the court within 30 days of the date mailed, you will waive personal service. However, if you fail to sign the summons, a process server will personally serve you and if so you will be charged for personal service regardless of the outcome of the complaint." He stressed only in America can a person be charged if they are innocent. He noted that if something is sent by regular mail, a person could be on vacation or have moved, and would automatically be found guilty if the person did not respond within the timeframe.

Steve Kemp, City Attorney, City of Peoria, explained that the purpose of the bill deals with a problem that exists in all municipal courts. Many individuals come to court and when the judge pulls up their name, they find other citations that have been issued. However, the court has no jurisdiction over these citations, because the individual has never been served. At that time, the judge calls the police department to have a peace officer pulled off the street to serve the citation. This bill will allow the use of unarmed police aides who, by law, can serve certain types of citations. These police aides would only serve an individual on court premises and while court is in session. He stressed that this would be a more efficient use of the court's time.

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

Senator Weiers moved HB 2333 be returned with a DO PASS recommendation.

Senator Weiers moved his 14-line amendment dated 4/1/03, 4:02 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment I)

Senator Weiers moved HB 2333 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 9-0-0. (Attachment 8)

HB 2316 – secure and verifiable identification – FAILED

Mr. Lujan explained that HB 2316 prohibits law enforcement or other government agencies, commissions, boards or districts from accepting identification documents unless a state or federal authority issues them.

Representative Graf, sponsor of the bill, indicated that some of the arguments against this bill are that it is racist and sending the wrong message. This bill simply states that a foreign identification card issued by one's own government is not good enough to satisfy the requirement of identification. He pointed out that law enforcement is exempt in this bill.

In response to Senator Brotherton, Representative Graf replied that identification is not required to have the water turned on at a house. He added that a foreign identification card does not qualify for proper identification.

Senator Binder wondered what services would be impacted by the use of these cards. Representative Graf replied that some of the services would be libraries, busses, or access to licenses and permits. Different communities have different requirements. If the only identification a person has is the foreign identification card, they are here illegally. He noted that he does not support public services being used by people who have violated the law to gain entrance into this country.

Senator Binder pointed out that the foreign identification card has 22 barcodes on it and suggested that it would be difficult to make a fraudulent card. She added that it does not give the bearer any immigration status or benefits, does not promote amnesty, does not allow a person to obtain a social security number, cannot be used as a work permit, and does not give access to welfare or health programs. She also noted that the banks encourage individuals with a foreign identification card to open accounts.

Representative Graf indicated that the Mexican consulate is lobbying the cities to accept their identification cards for access to public services.

Senator Rios mentioned that in the bill, it states that the only documents that can be accepted for identification are those issued by a state or federal authority. He questioned how the tribes fit into this issue, because they are neither a state nor federal entity; however, they issue tribal enrollment cards. He wondered if those cards would not be accepted. Representative Graf replied that he is not familiar with the tribal cards and would be willing to discuss that further with Senator Rios.

Senator Rios stated that according to federal statistics, there are approximately nine million undocumented people in the United States. He wondered what the State should do with them. Representative Graf responded that he is not opposed to a guest/worker program nor is he discouraging legal immigration. He stressed, however, if a person is in the country illegally, he feels they should be deported.

Senator Mirada added that he would like to work with Senator Rios and Representative Graf to implement a program for immigrants to protect their rights while working in this country. He mentioned that numerous businesses lure these people to the United States. Many immigrants risk their lives to enter the country seeking these jobs and then have to fight poverty, low wages and prejudice.

Kathy McKee, representing herself, stated that this country has a crisis with fraudulent identification cards and this bill would add to the situation. She explained that many people have multiple cards with multiple names. She suggested that people would misinterpret the state or federal identification card as indicating that the bearer has a right to be in this country. She indicated that 100% of the people who have a foreign identification card are illegal.

Richard White, East Valley Interfaith, testified in opposition to the bill, noting that the foreign government identification card only indicates that a person is a citizen of another country residing in Arizona. It is a difficult card to obtain, with 30% of the people applying for the card not meeting the criteria, one of which is an original birth certificate.

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

**Senator Weiers moved HB 2316 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 4-5-0. (Attachment 9)**

HCR 2018 – ballot measures; resubmittal – FAILED

Ms. Collins explained that HCR 2018 resubmits approved initiatives that have a fiscal impact to the State of \$10 million or more, to the voters every eight years.

Representative Johnson, sponsor of the bill, explained that this bill would allow voters to review and reapprove ballot measures that were previously passed. She noted that approximately two-thirds of the State's budget is statutorily committed. Since that is such a huge percent of the budget, it makes sense to have the voters periodically review programs and spending.

Eric Ehst, Arizona Advocacy Network, testified that this measure places an unnecessary burden on the voters, creates long and confusing ballots and creates an expense to the taxpayers. This measure only applies to the citizen's initiatives and not those referred to the ballot by the Legislature, which creates two classes of voter-approved measures. Any voter-passed program that is determined to be no longer needed or is too large a drain on the State's treasury can be referred back to the ballot by the Legislature. The Legislature has a responsibility to return any measure to the voters and they do not have to wait eight years.

**Senator Weiers moved HCR 2018 be returned with a DO PASS recommendation.
The motion FAILED with a roll call vote of 4-4-1. (Attachment 10)**

HB 2321 – concealed weapons; petty offense – NOT HEARD

There being no further business, the meeting was adjourned at 11:48 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.)