

# ARIZONA STATE SENATE

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46TH LEGISLATURE  
FIRST REGULAR SESSION

## MINUTES OF COMMITTEE ON FAMILY SERVICES

**DATE:** April 3, 2003                      **TIME:** 9:00 a.m.                      **ROOM:** SHR 3

**CHAIRMAN:** Senator Anderson                      **VICE CHAIRMAN:** Senator Tibshraeny

**ANALYST:** Barbara Guenther                      **COMMITTEE SECRETARY:** Tracey Moulton

**INTERN:** Stephen Matcha                      **ASSISTANT ANALYST:** Tracey Landers

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### ATTENDANCE

### BILLS

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| <u>Committee Members</u>          | <u>Pr</u> | <u>Ab</u> | <u>Ex</u> | <u>Bill Number</u> | <u>Disposition</u> |
|-----------------------------------|-----------|-----------|-----------|--------------------|--------------------|
| Senator Brotherton                | X         |           |           | HB 2367            | DPA/SE             |
| Senator Giffords                  | X         |           |           | HB 2400            | DPA                |
| Senator Rios                      | X         |           |           |                    |                    |
| Senator Verschoor                 | X         |           |           |                    |                    |
| Senator Weiers                    | X         |           |           |                    |                    |
| Senator Tibshraeny, Vice Chairman | X         |           |           |                    |                    |
| Senator Anderson, Chairman        | X         |           |           |                    |                    |

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### GOVERNOR'S APPOINTMENTS

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Chairman Anderson called the meeting to order at 9:05 a.m., and roll call was taken.

## **APPROVAL OF MINUTES**

**Senator Anderson moved the minutes of February 27, 2003 be approved. Without objection, the minutes were approved as distributed.**

## **CONSIDERATION OF BILLS**

### **HB 2367 – block grants; procurement code exemption – DO PASS AMENDED/STRIKE- EVERYTHING**

**David Petersen, State Treasurer**, distributed a handout entitled Talking Points for HB 2367 (Attachment A). He remarked that a member of his staff would be speaking to the handout. He testified in support of the strike-everything amendment and remarked that he would have preferred to have brought the bill to the Committee earlier in the session. He stated that part of the reason the bill was introduced so late was because of “late breaking” information coming to his attention when he assumed the office of State Treasurer.

Treasurer Petersen stated that the primary goal of this legislation is to protect the Arizona taxpayer’s money. He noted that there is an amendment to the bill that addresses the issue of disclosure.

Senator Brotherton commented that this bill and strike-everything amendment would normally be heard in the Finance Committee and asked why it was being heard in the Family Services Committee.

Treasurer Petersen remarked that the bill sponsor, Representative Loreda was approached regarding the situation the Office was encountering and was agreeable to have the strike-everything amendment placed on the bill. He stated that had he known about the situation that had occurred in the Treasurer’s Office prior to his taking office, this legislation would have been introduced earlier in the session. He opined that the purpose of being able to put a strike-everything amendment on a bill is to address issues that come up and are unforeseen.

Senator Tibshraeny commented that he had some procedural concerns, notwithstanding the merits of the bill. He opined that the bill was posted wrong on the agenda, as it was mislabeled with regard to the strike-everything amendment. He stated that anyone viewing the agenda on the Internet would be misled. He remarked that it was unfortunate that the State is not held to the same standard of the open meeting law as every other jurisdiction, city and town council. In the City of Chandler, for example, he remarked that this item could not have been heard today, because it was misposted. Additionally, he agreed with Senator Brotherton’s comment that the bill was misassigned. He opined that it should have been heard in the Government Committee. He noted that Senate Staff informed him that should the bill pass out of this Committee, it would still need to be heard in the Government Committee. As Chairman, he was not sure the Committee would be meeting again.

Furthermore, Senator Tibshraeny remarked that this bill was also misposted at the last Government Committee. He explained that he told the Committee that the underlying bill needed to be passed out of the Government Committee, as there was a strike-everything amendment to the bill posted on the agenda for the Family Services Committee and that the subject of the amendment will be the same subject posted on that agenda. However, he noted that it is not the same subject that is being

discussed now. He noted that the Government Committee passed the bill out of Committee with that understanding. He stated that this is a procedural problem that he was very concerned about.

Treasurer Petersen remarked that there are two separate concepts being dealt with, but that both were germane. He commented that one concept is regarding non-compete issues and the other is with disclosure, all affecting the same section of law. He noted that he spoke with President Bennett last night and noted that the President had concerns with having the strike-everything amendment heard in another Committee.

Treasurer Petersen opined that hearing the strike-everything amendment in another Committee gives the Legislature another opportunity to review the merits of the legislation. Additionally, should the strike-everything amendment be passed out of Committee, it will still be discussed on the floor.

Senator Brotherton, referring to the handout from the Treasurer's Office, remarked that under the striker heading, the question is asked "why is this law necessary?" He noted that the explanation given is "as the shifting of public entities funds management from State money managers to private money management is the only situation where the taxpayer loses money." He asked if the Treasurer's Office manages cities and other local governmental entities funds as well as State funds. Treasurer Petersen replied that was correct, and that these entities are referred to as the Local Government Investment Pool (LGIP).

Senator Brotherton commented that he is changing his money manager with regards to his retirement and noted that people typically do this because they feel that they will benefit with another manager. He stated that although no one wants the State to lose money, he expressed concern whether it was appropriate for the State to tell these entities that they have to keep their funds with the State rather than remove those funds and potentially benefit from using another money manager.

Treasurer Petersen remarked that he agreed with Senator Brotherton and noted that there may be a very narrow application of this scenario. He stated that is not what the strike-everything amendment is attempting to do. He remarked that the entities within the LGIP do not have any obligation whatsoever to stay in the investment pool. He noted that the reason they are involved in the pool is because by pooling larger sums of money, the Treasurer's Office has an opportunity to invest and bring in greater returns for fees that are a third less than fees charged by managers in the private sector. He noted that there are several components that give the entities an incentive to join the LGIP. He remarked that the strike-everything amendment is to prevent any former employee of the State, within the first year of leaving their position, from using the resources and relationships established while in State service to solicit these specific public institutions. He noted that entities would not be prohibited from using any other investment firm to manage their funds. He stated that in most cases when this situation occurs, it is because the employee has planned for it to occur. He stated that in the situation at the Treasurer's Office, he and his current staff know that this is the case, where solicitations had been planned ahead of time and now they are going after actual businesses. He stated that it is not the intent of the Treasurer's Office to prevent former employees from earning a living.

Senator Brotherton commented that the employee that the Treasurer is referring to is Richard Petrenka and asked why the Legislature should prevent, for example, the City of Chandler, from doing business with him, if that is what the City wants to do. Treasurer Petersen commented that this legislation would not be limiting an entity, as many options would be and are available. He stated that this legislation only prohibits former employees from soliciting entities that they were in contact with

during their employment with the State. He stated that there are several former employees who have left State service that have set up a company and contacted and solicited LGIP members. He opined that this legislation would have a negative impact only on former employees attempting to solicit business from the State.

In response to Senator Anderson, **Terry Kruckmeyer, Economist, Arizona State Treasurer's Office**, stated

**Pat Hammond, Investment Deputy Treasurer, Arizona State Treasurer's Office**, explained that in the private sector, dealers often offer incentives, trips, meals and conferences to clients. He stated that the purpose of the strike-everything amendment is to provide disclosure on an annual basis for contributions or gifts received from dealers to the employees of the State that are handling money. He noted that this standard is quite common in the private sector for securities brokers, which will reduce the possibility of influence.

**Tracey Landers, Family Services Committee Assistant Research Analyst**, explained the 2-page Anderson strike-everything amendment to HB 2367 regarding a non-compete clause that prohibits an exempt State employee, whose primary duty involves substantial discretion over the management, investment or custody of public monies in excess of \$1 million from using compensation for their duties for one year after leaving State employment.

Ms. Landers explained the 3-page Anderson amendment dated 4/2/03, 3:05 p.m. requires a State employee to file a verified disclosure statement containing the source of all gifts more than \$10.00 to the Secretary of the State annually.

Ms. Landers explained the 4-line Rios amendment dated 4/2/03, 4:49 p.m. specifies that the bill becomes effective on January 2, 2004.

Ms. Landers explained the 2-line Verschoor amendment dated 4/2/03, 4:51 p.m. increases from \$1 million to \$100,000 million the amount of public funds that an employee must have discretion over to be encompassed in the non-compete clause.

Senator Brotherton asked other than Legislators, if there are other State employees that have any disclosure requirements or restrictions. Ms. Landers remarked that the current gift ban only applies to elected officials at this level of government, the Governor's Office and legislative staff. Additionally, all State employees are prohibited from receiving gifts from lobbyists.

Senator Brotherton remarked that this legislation would only affect State Treasurer employees. Ms. Landers remarked that it would also apply to Arizona State Retirement System (ASRS) employees.

Senator Brotherton asked if ASRS employees had been contacted with regard to any input they have. Treasurer Petersen remarked that they had not been contacted. He opined that this is a matter of public interest and opined that it makes no difference if any State employee agrees or not. He noted that the ASRS employees are aware of the bill and noted that they will have further opportunities to weigh in on the matter, as the bill moves through the process.

Senator Brotherton remarked that this legislation is obviously a "work in progress" in the wrong committee, although it has been noted that it needs to be heard in the Government Committee. He commented that he would be concerned if the President was giving dispensation for one bill in one

committee when there are many legislators who would enjoy another week to have their bills heard in another committee as well. He stated that the bill is not in "prime time" condition, and there is not enough time to get it there.

Senator Anderson remarked that the legislative process is such that if issues come up toward the end of a session, there are not a lot of options, as this is the last week for bills to be heard in committee. He stated that if the members believe that the bill has merit, will help taxpayers and accomplish good public policy purpose, then the process can be worked on. He noted that if the members are willing to have a special committee hearing, that can be done, or the bill could be heard in the Appropriations Committee, which is scheduled to meet once more. He opined that it is not the Committee's responsibility to try to figure out what the President is going to do with this bill, should it pass out of committee. He stated that the Committee's responsibility is to review the bill and amendments and decide if the bill is in good enough shape for it to be moved forward, if it is a policy objective that is needed or wanted by the members.

Senator Rios asked why Treasurer Petersen felt it necessary to bring this issue to the Legislature, when it could have been addressed with an Executive Order from him. Treasurer Petersen stated that this situation has never happened before. He stated that given the current time, to gain as much public confidence as the Office can, he opined that it was the right thing to do.

Senator Tibshraeny commented that without the proper posting of the agenda, no cities or town or governmental entities were able to realize that this issue was before the Committee. Consequently, there is no one present to testify on the bill that has more ramifications than what was posted on the agenda. This is the problem with having a meeting with misposted items on the agenda. He opined that the bill and amendments should not be voted on in Committee. He stated that if the President wants to give a dispensation to this issue, he can do that and a discussion regarding having a separate meeting can take place. He stated that he did not believe that full disclosure had been achieved nor were all the stakeholders notified.

Treasurer Petersen commented that this Committee meeting would not be the last opportunity for stakeholders to weigh in on the bill. Senator Tibshraeny remarked that this would be the last opportunity unless the bill is re-assigned to another Committee. Otherwise, there would be no more public testimony.

Senator Anderson opined that it is the policy of the House of Representatives that an informational hearing would be scheduled and public testimony would be heard according to the Chairman of the Committee.

Treasurer Petersen remarked that it is for this reason that the bill was separated into an amendment because the Office recognized the groundbreaking work this legislation would accomplish. He reiterated his desire to protect the State taxpayer's money. He stated that these issues are going to cost the State money. He commented that the State is facing potential lawsuits for the loss of \$131 million in illegal operations done by outside institutions, which had nothing to do with the State Treasurer's Office. He noted that there could be some real reasons why LGIP members might look for different investment money managing institutions.

Senator Tibshraeny asked how this legislation would save taxpayer's money, if the legislation does not go into affect until next year. Treasurer Petersen remarked that nine employees left the Treasurer's Office when he took over the Office. Three of these employees were top employees that

had been with the agency for many years and who had set up the LGIP from the beginning. Upon leaving the Treasurer's Office, they immediately started soliciting the cities and towns and began their own investment company. He stated that this legislation would send a strong message to those employees and the participants that if the bill is enacted, no new contracts could be obtained. It would also give the current staff at the Treasurer's Office time to build up the confidence that the local governments should have in the Office.

In response to Senator Brotherton, Treasurer Petersen remarked that he would not oppose an amendment to address the prevention of public to public employment of former employees hired by private institutions.

Treasurer Petersen stated that the intent of this legislation was to address State employees using State resources and taking State general information to use for personal gain. He noted that State resources were used in this instance. He remarked that both the Department of Public Safety (DPS) and the State Attorney General (AG) are looking into the situation. He stated that he did not know if any laws had been broken, but that there were no records in the Office when he assumed his position. He remarked that once this was discovered, he offered legislation for an audit to be conducted, but the bill did not pass out of the Appropriations Committee. He stated that in following the AG's advice, he emphasized that no one is under investigation, but DPS, the AG's Office and the Arizona Department of Administration (ADOA) are looking into the matter.

**Senator Tibshraeny moved HB 2367 be returned with a DO PASS recommendation.**

**Senator Tibshraeny moved the 2-page Anderson strike-everything amendment dated 3/18/03, 3:45 p.m. be ADOPTED (Attachment B).**

**Senator Tibshraeny moved the 3-page Anderson amendment dated 4/2/03, 3:05 p.m. to the strike-everything amendment be ADOPTED (Attachment C). The motion CARRIED by voice vote.**

**Senator Rios withdrew his 4-line amendment dated 4/2/03, 4:49 p.m. amendment without objection (Attachment D).**

**Senator Verschoor moved his 2-line amendment dated 4/2/03, 4:51 p.m. to the strike-everything amendment be ADOPTED (Attachment E). The motion CARRIED by voice vote.**

**Senator Verschoor moved the strike-everything amendment AS AMENDED be ADOPTED. The motion CARRIED by voice vote.**

**Senator Tibshraeny moved HB 2367 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-2-0 (Attachment 1).**

**HB 2400 – developmental disabilities(now: developmental disabilities; service providers) – DO PASS AMENDED**

**Stephen Matcha, Family Services Committee Intern,** explained HB 2400 decreases the monitoring requirements for contracted services to developmentally disabled (DD) people. The bill adds financial

eligibility requirements for State funded developmental disabilities programs and services and requires adult DD client's with income and resources in excess of supplemental security income (SSI) limits to pay 100% of their costs of care. This bill appears to have positive fiscal impact and a fiscal note has been requested.

Mr. Matcha explained the 5-page Anderson amendment dated 4/2/03, 2:24 p.m. makes the bill's language more logical and internally consistent in addition to integrating federal Health Insurance Portability and Accountability Act requirements into statute.

**Representative Hershberger, bill sponsor**, testified that HB 2400 is a Department of Economic Security (DES) bill and makes monitoring requirement changes, but the main portion of the bill affects State-only clients who are receiving services. He further explained that there are two types of clients receiving DD services from DES. One type is Title XIX eligible clients, who are people enrolled in the Arizona Long-Term Care System (ALTCS) and the second type is State only clients who receive 100% of State-only dollars. These clients are ineligible for ALTCS because their income exceeds limits required for that program. He stated that this bill requires that these clients demonstrate financial eligibility by putting their assets into a Medicaid qualified trust. He hypothesized that a DD client residing at the Coolidge facility, who has a large trust of assets, and has been receiving State-only services, would be required under this bill to pay 100% of their services, unless they put their assets in a Medicaid qualifying trust, which would allow State-only dollars to be used. The State would receive the interest earned on the trust.

Senator Anderson announced the individuals who registered their position on the bill (Attachment F).

**Senator Tibshraeny moved HB 2400 be returned with a DO PASS recommendation.**

**Barbara Guenther, Family Services Research Analyst**, explained the 5-page Anderson amendment, dated 4/2/03, 2:24 p.m. makes the language of the bill more consistent and adds a section that will allow health plan providers to share health information with people who have custody of DD persons.

**Senator Tibshraeny moved the 5-page Anderson amendment, dated 4/2/03, 2:24 p.m. be ADOPTED (Attachment G). The motion CARRIED by a voice vote.**

**Senator Tibshraeny moved HB 2400 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 7-0-0 (Attachment 2).**

Without objection the meeting was adjourned at 10:20 a.m.

Respectfully submitted,

Tracey Moulton  
Committee Secretary

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

Committee on Family Services  
April 3, 2003