

# ARIZONA STATE SENATE

## 47TH LEGISLATURE SECOND REGULAR SESSION

### MINUTES OF COMMITTEE ON JUDICIARY

**DATE:** March 27, 2006                      **TIME:** 1:30 P.M.                      **ROOM:** SHR1

**CHAIRMAN:** Senator Huppenthal                      **VICE CHAIRMAN:** Senator Martin

**ANALYST:** Jennifer Eugster                      **INTERN:** Damion LeeNatali

**ASSISTANT ANALYST:** Leah Birk                      **COMMITTEE SECRETARY:** Shelley Ponce

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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 Aguirre	X			HB 2083	DP
Senator Brotherton	X			HB 2490	DPA
Senator Gould	X			HB 2559	DPA
Senator C. Gray	X			HB 2582	DPA
Senator Harper	X			HB 2649	DPA
Senator Miranda	X			HCR 2002	DPA/SE
Senator Martin, Vice Chairman	X				
Senator Huppenthal, Chairman	X				

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#### GOVERNOR'S APPOINTMENTS

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<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Bernice Tunney	Member, Commission on Appellate Court Appointments	CONFIRMATION
Stanley W. Levine	Member, Commission on Appellate Court Appointments	CONFIRMATION
Jesus Arturo Macias	Member, Arizona State Lottery Commission	CONFIRMATION
Dean Scott Miller	Member, Commission on Trial Court Appointments, Maricopa County	CONFIRMATION
Jennifer Hunter	Member, Commission on Trial Court Appointments, Maricopa County	CONFIRMATION
Elizabeth Dorame Bushell	Member, Commission on Trial Court Appointments, Pima County	CONFIRMATION

Chairman Huppenthal called the meeting to order at 1:31 p.m., and attendance was taken.

## **APPROVAL OF MINUTES**

**Senator Huppenthal moved the minutes of March 20, 2006 be approved. Without objection, the minutes were approved as distributed.**

## **CONSIDERATION OF BILLS**

### **HCR 2002 – eminent domain; presumption – DO PASS AMENDED/STRIKE EVERYTHING**

**Carolyn Atwater, Appropriations Committee Analyst,** explained the 2 page Huppenthal strike everything amendment dated 03/07/06 at 10:25 a.m. (Attachment A).

**Senator Martin moved HCR 2002 be returned with a DO PASS recommendation.**

**Senator Martin moved the 2 page Huppenthal strike everything amendment dated 03/07/06 at 10:25 a.m. be ADOPTED. The motion CARRIED by voice vote.**

**Senator Gould moved HCR 2002 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 4-3-1 (Attachment 1).**

In explanation of his vote, Senator Brotherton stated, "Seems like, at least from my standpoint, how we have currently been dealing with the budget for the last eight years that I have been a Legislator is working adequately. I am concerned about the fact that any emergency, any contingency that might come up could not be dealt with. We have seen how devastating natural disasters can be if we look at the Gulf states and I think that there are times when there may be a need to have some sort of deficit, certainly in an emergency situation and I do not see a need for this bill and I do see some potential problems from unforeseen circumstances in the future, so I vote "no."

In explanation of his vote, Senator Martin stated, "We tried this with another .....similar but from a different direction earlier this year and I think it is always a little disingenuous to talk about, well we may have some emergency some day, somewhere and this will prevent us from acting. That is what we have crisis funds that are what we have other funds set aside for, rainy day funds and such. Besides those would be one time spending and I do not think we have to worry about a major natural disaster happening every single year. What we do have are major ongoing expenditures that are created each year without a permanent revenue stream to support them. Using a cash carry forward to pay for a permanent expenditure is a really bad idea. I think this is great, I think it is sad that we have to say it all over again because I think this is what the voters meant the first time around, but obviously we are going to have to do it again and in language just right so it cannot be weaseled out of and I vote "aye."

In explanation of his vote, Senator Huppenthal stated, "I think the issue that Senator Brotherton brings up is the exact reason I am bringing this forward, it is just a matter of time and business cycles before the Legislature walks in and they are anywhere from a billion to 3 billion short and they ....the whole system is going to lock up. What this will do, and we are going to have to talk to the lawyers a little bit more as we go to the floor, would be allowing them to present a balanced budget and give them all the tools that they need, to in a crisis situation to make the stated stays functioning and I vote "aye."

**HB 2559 – juvenile hearings; jury trials – DO PASS AMENDED**

**Damion Lee Natali, Judiciary Committee Research Intern**, explained HB 2559 and the following amendments:

17 line Huppenthal amendment dated 03/24/06 at 4:31 p.m. (Attachment B)

9 line Huppenthal amendment dated 03/24/06 at 4:30 p.m. (Attachment C)

5 line Huppenthal amendment dated 03/24/06 at 4:40 p.m. (Attachment D) to the 17 line Huppenthal amendment

Senator Huppenthal announced those who registered their position on the bill (Attachment E).

**Jerry Landau, Legislative Liaison, Arizona Supreme Court, Administrative Office of the Courts**, testified in opposition to HB 2559.

**Beth Rosenberg, Lobbyist, Children's Action Alliance**, testified in opposition to HB 2559.

**Senator Martin moved HB 2559 be returned with a DO PASS recommendation.**

**Senator Martin moved the 17 line Huppenthal amendment dated 03/24/06 at 4:31 p.m. be ADOPTED.**

**Senator Martin moved the 5 line Huppenthal amendment dated 03/24/06 at 4:40 p.m. to the Huppenthal 17 line amendment be ADOPTED. The motion CARRIED by voice vote.**

**Representative Anderson, bill sponsor**, answered questions posed by the Committee.

**Senator Martin moved the 17 line Huppenthal amendment dated 03/24/06 at 4:31 p.m. be ADOPTED, AS AMENDED. The motion CARRIED by voice vote.**

**Senator Martin moved the 9 line Huppenthal amendment dated 03/24/06 at 4:30 p.m. be ADOPTED. The motion CARRIED by voice vote.**

**Senator Martin moved HB 2559 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-3-0 (Attachment 2).**

In explanation of his vote, Senator Brotherton stated “I was involved, I was one of the representatives of our caucus during that special session on CPS. I am aware of what all occurred there. I do have some concerns about how this is kind of fluxing, this bill, and at this point in time I am going to vote “no.” I want to see, I guess, what the product is going to be when we get it out to Committee of the Whole, but at this point I am a “no.”

In explanation of his vote, Senator Chuck Gray, stated “I support the bill wholeheartedly, I am not sure I support the appropriation, but I just want to make that clear, but with that I vote “aye.”

In explanation of his vote, Senator Harper stated “I do not know why every bill, every program has to have money attached to it. All these have their own funds, I am sure they could have found a way to do this without tying on another appropriation. The money does not belong to us, it belongs to the citizens of Arizona and we need to stop spending it, but I will vote “aye.”

In explanation of his vote, Senator Huppenthal stated, "My perception of the CPS system is that it has just spun completely out of control. The number of children we are pulling out and I do have to admit I have not seen the data for about the last six months, but that is still fairly recent. We had well over two thousand children in, essentially group homes, infants in group homes. All the research that I read indicates that the absolutely worse place for these children to be, the University of Chicago recently did a study where they followed 36 thousand cases through the CPS system and they looked at the marginal child in the system to say were these children better off being pulled out of homes or being left in homes. The children pulled out of homes, these are the ones we are supposedly protecting, if they were female they were over 150% more likely to become pregnant as teenagers. If they were male they were over 300% more likely to be adjudicated in courts. We have advertised this system as a system that protects kids, in all the studies I have been seeing indicate that maybe you can protect kids, do a much better job of protecting kids if you are pulling far fewer of them out of homes. Our system has spun way out of control and gone to much higher pull rates than we have experienced historically. I am glad to vote "aye" and I appreciate Representative Anderson's work on this, but some how we have to get this forest fire under control. I vote "aye."

## **EXECUTIVE NOMINATIONS**

### **Stanley Levine – Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION**

**Stanley Levine** gave an overview of his resume and answered questions posed by the members.

**Senator Gould** moved the **Committee on Judiciary** recommend to the full **Senate** the **CONFIRMATION** of **Stanley Levine** as a **Member of the Commission On Appellate Court Appointments**. The motion **CARRIED** by a roll call vote of **8-0-0** (Attachment 3).

## **CONSIDERATION OF BILLS**

### **HB 2582 – immigration enforcement mission; council; appropriations (now: immigration enforcement; security council) – DO PASS AMENDED**

**Jennifer Eugster, Judiciary Committee Analyst**, explained HB 2582 and the 24 line Huppenthal amendment dated 03/17/06 at 4:39 p.m. (Attachment F).

**Representative Pearce, bill sponsor**, further explained HB 2582.

Senator Huppenthal announced those who registered their position on the bill (Attachment E).

**Seth Apfel, Volunteer, American Civil Liberties Union – Arizona**, testified in opposition to HB 2582.

**Margaret Snider, Arizona Interfaith Network**, registered in opposition to HB 2582 and deferred to Saul Solis.

**Saul Solis, Arizona Interfaith Network**, testified in opposition to HB 2582.

**Charles Ratliff, Arizona Interfaith Network**, testified in opposition to HB 2582.

**Senator Gould moved HB 2582 be returned with a DO PASS recommendation.**

**Senator Gould moved the 24 line Huppenthal amendment dated 03/17/06 at 4:39 p.m. be ADOPTED. The motion CARRIED by voice vote.**

**Senator Gould moved HB 2582 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 4-3-1 (Attachment 4).**

In explanation of her vote, Senator Aguirre stated "I wish this was the answer to illegal immigration or to any of the immigration concerns that we have here in this state. You saw this weekend how there was 20 to 30 thousand people marching in the streets of Phoenix. I am sure people would love to think the police could have rounded them all up and taken them back Mexico. Obviously that is not going to happen and I do not know who Mr. Pearce is trying to protect me from when he says protect our citizens. Granted I think the police are doing their job when it comes to crime, investigating crime, and putting those immigrants or people who are breaking the law in this state behind bars and sending them back to Mexico, but who are you protecting me from? People who are making up beds in hotels and are working in the fields, in our farms? I am not certain if I need protection from those individuals. I think what we do need is the Federal government to step up to the plate and make a stronger statement in so far as how we can get the folks here that want to live in our country and really believe in the rights of being a citizen. They want to be citizens, they want to work here legally, and we need to make more efforts in that direction and I think it is time that we start, instead of making these laws here that I do not believe our police enforcement officers want to impose, it will create some problems, Representative Pearce. It will create problems when it comes to victims. Illegal immigrants are victims also, or if your family is being victimized and say an illegal is your witness, do you think that person is going to want to come forward and testify on behalf of your family if they know they are going to be criminalized for doing so? You are sending a real chilling effect with this piece of legislation. You know, I think we all believe, Democrat, Republican, white, Hispanic, I am a native Arizonan, we all believe there is an issue that we need to address. We need to join hands and go to the Federal government and ask them to help us with this issue, not make these kinds of laws that send chilling effects through our communities and create division and do nothing to remedy the issue, so I vote "no."

In explanation of his vote, Senator Miranda stated "Racial profiling does exist, if this is going to lessen the burden on the police to keep from doing that then I think that this legislation is wrong. I will just tell a story very quickly. I was 18 almost 19 years old going down the street driving my Mom's car taking something to my brother's house and two police officers stopped me and I do not know what I did wrong and all they did was ask me for my I.D. and kind of said where were you going, where do you go to school at, at that time I was going to Arizona State and they asked me if I went to South Mountain High School. I said no I go to ASU, then they never really answered why they stopped me and then to their embarrassment when they found out that I did absolutely nothing wrong, there was nothing that they could probably make up that I did wrong and the fact that I, you know, that I was a student trying to get an education in college, they just said here and gave my I.D. back. They never really said they were sorry for stopping me or anything like that. I think to reiterate what Senator Aguirre said, you know, we are going to hinder law enforcement. We are going to keep them from doing their job as investigators in crimes because what is going to happen is people will be reluctant to come forward and be witnesses and testify and things like that so, you know that is why law enforcement does not want to do it. That is why, you know, they refuse to support legislation like this. I just think this is piecemeal legislation. We all need to work together and we all need to get a federal

program, with federal concrete policy that deals with immigration with guest worker programs and also the abilities to get legalization here in this country, so I vote “no.”

In explanation of his vote, Senator Brotherton stated “I too have some concerns about the racial profiling issue, more so because of putting in the qualified immunity, which I think is going to make the police less accountable. I think it is true that it is not going to have an impact on the federal law but it is certainly going to have an impact on any state law violations, which may be the ones that are more likely to be brought. I do not think we should be doing anything that makes law enforcement less accountable with regard to this especially when, as Representative, a Senator for minority majority district it is going to be, I think it is going to impact my district disproportionately, potentially from the stand point of the enforcement with regard to that. I also have some concerns with regard to how this is going to work with regard to interfacing with the federal government and lastly I am not convinced that some of these humanitarian aid programs that have been going on that have been, I think at least, allowed to go on by various political subdivisions of the state would not be adversely affected by that. I can not see a reason why we would want to do anything that would diminish the ability to deliver humanitarian aid, things like water and things like that and I have some concerns about how that may interface with this so, I vote “no.”

In explanation of his vote, Senator Huppenthal stated “The, I mean if you look back over hundreds of years of history in the United States, every time we have experienced surges of immigration, illegal immigration on the level of what we are experiencing now, it has just created enormous tension within among all citizens and it is rightfully so. All you have to do is look at Eastern Europe to find out what happens when one culture moves into another culture without being assimilated. There are just enormous problems associated with it and the percentage of immigrants who are still speaking their native language is at an all time high here in Arizona and the tensions that we see are just literally everywhere. The things that I look for is commitment on the part of the new people to come in and become Americans and when I see whole areas of cities in which everybody is speaking Spanish, in which the Mexican flag is flying, when I see people marching down the street in a protest and they are flying the Mexican flag and not the American flag, I am thinking to myself, I know what this is, it is an invasion of people that believe they have the right to keep their own culture, to not become Americans, they are not interested in being citizens. It is essentially an invasion and it is very dangerous. When you see those Eastern block areas, the Balkans, it has produced absolutely murderous situations and so I have looked at leaders on the other side to make that absolute commitment to be assimilated I am not seeing it and I think the responses that we have had are appropriate. We need to discourage immigration in every way that we can until we see that absolute progress in assimilation and I think that Representative Pearce’s bill is exactly appropriate. We have limited resources and what he has done is put together a system of saying, hey the federal government, you know the cavalry is not coming. If we are going to do it we have got to do it ourselves and I think his approach is responsible and I vote “aye.”

## **EXECUTIVE NOMINATIONS**

### **Bernice Tunney – Member, Commission on Appellate Court Appointments – RECOMMEND CONFIRMATION**

**Bernice Tunney** gave an overview of her resume and answered questions posed by the members.

Senator Gould moved the Committee on Judiciary recommend to the full Senate the CONFIRMATION of Bernice Tunney as a Member of the Commission On Appellate Court Appointments. The motion CARRIED by a roll call vote of 7-0-1 (Attachment 5).

**Jesus Macias – Member, Arizona State Lottery Commission – RECOMMEND CONFIRMATION**

Jesus Macias gave an overview of his resume and answered questions posed by the members.

Senator Gould moved the Committee on Judiciary recommend to the full Senate the CONFIRMATION of Jesus Macias as a Member of the Arizona State Lottery Commission. The motion CARRIED by a roll call vote of 6-1-1 (Attachment 6).

**Jennifer Hunter – Member, Commission on Trial Court Appointments, Maricopa County – RECOMMEND CONFIRMATION**

Jennifer Hunter gave an overview of her resume and answered questions posed by the members.

Senator Gould moved the Committee on Judiciary recommend to the full Senate the CONFIRMATION of Jennifer Hunter as a Member of the Commission on Trial Court Appointments, Maricopa County. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 7).

**Dean Miller – Member, Commission on Trial Court Appointments, Maricopa County – RECOMMEND CONFIRMATION**

Dean Miller gave an overview of his resume and answered questions posed by the members.

Senator Gould moved the Committee on Judiciary recommend to the full Senate the CONFIRMATION of Dean Miller as a Member of the Commission On Trial Court Appointments, Maricopa County. The motion CARRIED by a roll call vote of 7-0-1 (Attachment 8).

**Elizabeth Bushell – Member, Commission on Trial Court Appointments, Pima County – RECOMMEND CONFIRMATION**

Elizabeth Bushell gave an overview of her resume and answered questions posed by the members.

Senator Gould moved the Committee on Judiciary recommend to the full Senate the CONFIRMATION of Elizabeth Bushell as a Member of the Commission on Trial Court Appointment, Pima County. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 9).

**CONSIDERATION OF BILLS**

**HB 2490 – sex offenders; annual community notification (now: sexually oriented business; location; penalty) – DO PASS AMENDED**

Jennifer Eugster, Judiciary Committee Analyst, explained HB 2490 and the 10 line Huppenthal amendment dated 03/24/06 at 4:54 p.m. (Attachment G).

**Representative Knaperek, bill sponsor**, further explained HB 2490.

**Peter Gentala, Legal Counsel, The Center for Arizona Policy**, distributed a package (Attachment H) and testified in support of HB 2490.

**Darlene R. Justus, President, North Tempe Neighborhood Association (NTNA)**, testified in support of HB 2490.

Senator Huppenthal announced those who registered their position on the bill (Attachment E).

**Senator Gould moved HB 2490 be returned with a DO PASS recommendation.**

**Senator Gould moved the 10 line Huppenthal amendment dated 03/24/06 at 4:54 p.m. be ADOPTED. The motion CARRIED by voice vote.**

**Senator Gould moved HB 2490 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 10).**

**HB 2083 – corporation commission employees; annual leave (now: hit and run; mitigating; aggravating) – DO PASS**

**Damion LeeNatali, Judiciary Committee Research Intern**, explained HB 2083.

**Edwin Cook, Executive Director, Arizona Prosecuting Attorneys' Advisory Council**, registered as neutral and voiced some concerns about the bill.

**Senator Martin moved HB 2083 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 11).**

**HB 2649 – firearms; possession; storage – DO PASS AMENDED**

**Leah Birk, Judiciary Committee Assistant Analyst**, explained HB 2649 and the 5 line C. Gray amendment dated 03/24/06 at 4:25 p.m. (Attachment I).

**Representative Murphy, bill sponsor**, further explained HB 2649.

Senator Huppenthal announced those who registered their position on the bill (Attachment E).

**Senator Gould moved HB 2649 be returned with a DO PASS recommendation.**

**Senator Gray moved the 5 line C. Gray amendment dated 03/24/06 at 4:25 p.m. be ADOPTED. The motion CARRIED by voice vote.**

**Senator Martin moved HB 2649 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 5-1-2 (Attachment 12).**

In explanation of his vote, Senator Brotherton stated “I did have some questions but I think they have been answered. I do wish to look at this further with regard to that, also the issue the cities must be

against it for the preemption issue and so I would like to discuss that with the cities, but mostly Phoenix I am involved with in my district so I am going to vote “no” for the time being.”

There being no further business, the meeting was adjourned at 4:01 p.m.

Respectfully submitted,

Shelley Ponce  
Committee Secretary

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