

ARIZONA HOUSE OF REPRESENTATIVES
Forty-ninth Legislature – Second Regular Session

COMMITTEE ON COMMERCE

Minutes of Meeting
Wednesday, January 27, 2010
House Hearing Room 5 -- 9:00 a.m.

Chairman Reagan called the meeting to order at 9:13 a.m. and attendance was noted by the secretary.

Members Present

Ms. Cajero Bedford
Mr. Crandall
Mr. Konopnicki

Mr. Meza
Mr. Pratt

Mr. Hendrix, Vice-Chairman
Ms. Reagan, Chairman

Members Absent

Mr. Campbell CH (excused)

Committee Action

HB2210 – DPA (5-0-0-3)
HB2228 – HELD BY SPONSOR
HB2243 – DP (7-0-0-1)
HB2246 – DPA (4-2-0-2)

HB2260 – DPA (6-1-0-1)
HB2309 – DPA (7-0-0-1)
HB2371 – HELD BY SPONSOR
HB2473 – HELD BY SPONSOR

CONSIDERATION OF BILLS

HB2228 - elevator safety; third-party inspectors – HELD BY SPONSOR

Chairman Reagan announced that HB2228 will be held at the request of the sponsor.

HB2371 - home inspections – HELD BY SPONSOR

Chairman Reagan announced that HB2371 will be held at the request of the sponsor.

HB2473 - manufactured housing; escrow account – HELD BY SPONSOR

Chairman Reagan announced that HB2473 will be held at the request of the sponsor.

HB2309 - foreclosure consultants.. – DO PASS AMENDED

Vice-Chairman Hendrix moved that HB2309 do pass.

Diana O’Dell, House Deputy Research Staff Director, explained that HB2309 adds regulations for foreclosure consultants and provides for full disclosure to the homeowner. It also establishes a Class 1 misdemeanor for fraud or deceit by foreclosure consultants (Attachment 1).

Vice-Chairman Hendrix moved that the Hendrix four-line amendment dated 1/21/10 (Attachment 2) be adopted.

Ms. O’Dell explained that the amendment clarifies the holder of the debt or lien and increases the award to the homeowner for punitive damages.

Vice-Chairman Hendrix stated that he is sponsoring the bill at the request of the Attorney General’s Office.

Jennifer Boucek, Legislative Liaison, Attorney General's Office, testified in favor of the bill, explaining that it is intended to address complaints about unlicensed and unregulated foreclosure consultants who are preying on homeowners facing foreclosure and trying to get loan modifications to get out of the predicament. These consultants state that they will help, but charge up-front fees of \$3,000 to \$4,000 and then do not achieve results. This bill will prevent these up-front fees. Almost all other states have similar laws.

Ms. Cajero Bedford asked how consumers will know that this good legislation is in effect. Ms. Boucek explained that the Attorney General’s Office will monitor for advertisements to solicit consumers and other Arizona groups are watching for this type of fraud.

Vice-Chairman Hendrix announced the names of those who signed up in support of HB2309 but did not speak:

Andrew Loubert, President - Arizona Housing Counseling Collaborative
Austin De Bey, Government Affairs, Arizona Credit Union League
Bryan Ginter, representing self
Stacey Langford, Arizona Bankers Association
Linda Brown, JD, representing self
Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale

Vice-Chairman Hendrix announced the names of those who signed up as neutral on HB2309 but did not speak:

Tom Farley, Lobbyist, Arizona Associations of Realtors
Meghaen Duger, Arizona Associations of Realtors

Question was called on the motion that the Hendrix four-line amendment dated 1/21/10 (Attachment 2) be adopted. The motion carried.

Vice-Chairman Hendrix moved that HB2309 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 3).

HB2260 - regulatory rule making – DO PASS AMENDED

Vice-Chairman Hendrix moved that HB2260 do pass.

Diana O’Dell, House Deputy Research Staff Director, explained that HB2260 revises the rulemaking process by expanding the use of summary rulemaking, authorizing a general permit and broadening the role of the Governor’s Office of Strategic Planning and Budgeting (OSPB) (Attachment 4).

Vice-Chairman Hendrix moved that the Pratt two-line amendment dated 1/26/10 (Attachment 5) be adopted.

Ms. O’Dell explained that the amendment stipulates that the impact statement will also calculate the benefits in addition to the cost.

Representative Andy Tobin, sponsor, addressed the Committee to explain that this bill extends last year’s moratorium on rulemaking. He added that the Governor’s Office and the business community do support this.

Mr. Crandall stated that this bill is broadly written and he is concerned about the risk of unintended consequences. Mr. Tobin concurred; he explained that a thorough review is being done first and that there is quite a bit of cleanup yet to be done on this legislation.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturer's Council, addressed the Committee in support of HB2260, adding that he will check with the agencies since this is a system reform. He has some concern about the section that deals with moving the economic impact analysis from the Joint Legislative Budget Committee (JLBC) to OSPB. He sees this as adding more tools to the state agencies’ toolbox to eliminate outdated or ineffective rules, as well as learning how Arizona’s rules stack up against those of other states. And, he stated, using general permits will streamline processes.

Mr. Konopnicki asked why the shift from JLBC to OSPB is necessary. Mr. Osborn explained that state agencies now do their own economic analyses, but do not have economists and tend to overstate the benefits and underestimate the costs. He added that OSPB will be a third party, comprised of experts to do the analyses.

Discussion ensued on timeframes and staffing requirements.

Rebecca Hecksel, Governor's Office, addressed the Committee to support the legislation. She stated that the Governor is in favor of regulatory reform and will work with stakeholders to iron out the language. She supports the rule moratorium.

Vice-Chairman Hendrix announced the names of those who signed up in support of HB2260 but did not speak:

Courtney Gilstrap Levinus, Central Arizona Chambers
Allison Bell, Arizona Chamber of Commerce & Industry
Bryan Ginter, representing self

Michelle Bolton, Public Affairs, Greater Phoenix Chamber of Commerce
Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance
Farrell Quinlan, National Federation of Independent Business - Arizona
Rip Wilson, TTX Company

Vice-Chairman Hendrix announced the names of those who signed up in opposition to HB2260 but did not speak:

Alisa McMahon, representing self
Michael Fiflis, representing self
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Vice-Chairman Hendrix announced the names of those who signed up as neutral on HB2260 but did not speak:

Seth Apfel, representing self

Question was called on the motion that the Pratt two-line amendment dated 1/26/10 (Attachment 5) be adopted. The motion carried.

Vice-Chairman Hendrix moved that HB2260 as amended do pass. The motion carried by a roll call vote of 6-1-0-1 (Attachment 6).

HB2246 - regulation of fireworks – DO PASS AMENDED

Vice-Chairman Hendrix moved that HB2246 do pass.

Brooke Olguin, Assistant Research Analyst, explained that HB2246 permits the sale of consumer fireworks by a retail establishment to persons at least 16 years old, unless prohibited by a governing body of a city or town (Attachment 7).

Vice-Chairman Hendrix moved that the Reagan two-line amendment dated 1/26/10 (Attachment 8) be adopted.

Ms. Olguin stated that the amendment clarifies that the civil penalty may be imposed for each incident of prohibited use.

Representative Andy Biggs, sponsor, explained the background of the bill, which was heard last year, and explained that the added language further clarifies the types of fireworks covered. He supports the amendment.

Mr. Konopnicki stated that the counties do not support the current bill, but that there is a fix being worked on.

Discussion ensued about the purpose, logic, and consequences of this bill. Also discussed was the possibility of increasing the age from 16 to 18.

Mike Williams, United States Fire Safety Council, stated his support for HB2246, explaining that Arizona is the only state that outlaws fireworks, which are not as dangerous as other childhood

toys and behaviors. He added that fireworks are banned on public, state-owned land due to the wildfire danger.

Chairman Reagan asked if this bill could be applied to Pima and Maricopa counties only. Mr. Williams replied that rural counties could prohibit firework use.

Elizabeth Hegedus-Berthold, County Supervisors, spoke against HB2246 due to concern about fire safety, particularly in the rural counties. She suggested that perhaps seasonal regulations could be considered.

Mr. Crandall asked why New Mexico allows fireworks and Arizona does not. Ms. Hegedus-Berthold replied that the counties' stance is to have the ability to regulate their use during high fire season.

Mr. Konopnicki reminded the Members that the bark beetle infestation in Arizona, unlike New Mexico, left many forests with standing dead trees that are quite vulnerable to fire.

Barbara Koffron, Fire Marshal, City of Phoenix Fire Department, stated her opposition to HB2246 on many levels, including that there are no restrictions on the sale of fireworks, only their use. Also the bill requires enforcement by the State Fire Marshal's Office which has been gutted by the recent budget cuts. In addition, there are no zoning or storage requirements.

Chairman Reagan announced the names of those who signed up in support of HB2246 but did not speak:

Linda Brown, JD, representing self
Buffalo Rick Galeener, representing self

Chairman Reagan announced the names of those who signed up in opposition to HB2246 but did not speak:

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association
Bryan Ginter, representing self
Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Question was called on the motion that the Reagan two-line amendment dated 1/26/10 (Attachment 8) be adopted. The motion carried.

Mr. Crandall moved that HB2246 as amended do pass. The motion carried by a roll call vote of 4-2-0-2 (Attachment 9).

HB2210 - landlord tenant obligations; pest control – DO PASS AMENDED

Mr. Crandall moved that HB2210 do pass.

Jason Horton, House Majority Intern, explained that HB2210 establishes that an infestation of bedbugs is a public health threat substantial enough to impose a statewide mitigation method, as well as outlines the obligations of the landlord, tenants, and the Department of Health Services as they pertain to bedbugs (Attachment 10).

Chairman Reagan stated that an amendment was prepared after the deadline and asked that, without Committee objection, the amendment be considered. There was no objection.

Mr. Crandall moved that the Reagan two-page amendment dated 1/26/10 (Attachment 11) be adopted.

Mr. Horton stated that the amendment deals with landlords' liability for pest control expenses and clarifies timeframes to treat the infestation.

Chairman Reagan clarified that the amendment places more responsibilities on the landlords.

Courtney Gilstrap Levinus, Arizona Multihousing Association, addressed the Committee to support HB2210. She discussed bedbug infestations, which were all but eradicated by DDT in the 1950s, but are now showing up again due to the change in chemicals and international travel. The multihousing industry acknowledges the need for regulation due to public health concerns; education of the community and legislation is now needed. She stated that bedbugs are difficult to treat, and that the resident/tenant must be involved in treatment and maintenance.

Ms. Levinus distributed information on some of the issues surrounding this legislation (Attachment 12).

Adam Greco, Arizona Multihousing Association, in support of the bill, stressed the importance of notification by residents because bedbug infestation is easier to treat in the early stages.

Ms. Levinus addressed Members' questions regarding how residents will know of the requirement to inform landlords and how they can know that their rental unit has bedbugs.

Dave Burns, Burns Pest Elimination, described his experience dealing with bedbug infestations. He stated his support for HB2210, which he described as cutting-edge legislation.

Ellen Katz, William E. Morris Institute for Justice, appeared in opposition to HB2210 and distributed information for the Members (Attachments 13 and 14). Among her concerns about the legislation are:

- it places too much responsibility on the tenant
- bedbugs have not yet been determined to be a public health issue
- there is no other instance where a tenant has to act on a suspicion and then be liable for remediation
- there is no reason for a heightened requirement which could result in a tenant's responsibility to pay for all treatment
- there is no affirmative duty for a landlord to inspect property between tenants
- it allows a landlord to use a tenant's security deposit for costs

She asked the Members to hold or defeat this bill and stressed the importance of being fair to tenants as well as landlords.

Ms. Levinus clarified that if a landlord does not inspect property between tenancies, he or she is liable.

Duane Huffman, Chief Legislative Liaison, Arizona Department of Health Services, stated that his Department is neutral on HB2210. The Arizona Department of Health Services does not track bedbugs. There has been an ongoing national debate on the public health impact of this pest, which spreads no known viruses or diseases; the Department does not view this as a public health issue at this time.

Vice-Chairman Hendrix announced the names of those who signed up in support of HB2210 but did not speak:

Lisa Gervase, Gervase Law Firm, PLLC

Linda Brown, JD, representing self

Vice-Chairman Hendrix announced the names of those who signed up in opposition to HB2210 but did not speak:

Bryan Ginter, representing self

Ms. Cajero Bedford inquired if the presence of cockroaches affects a rental agreement. Ms. Levinus replied that there are no statutes specifically on other pests. Discussion ensued regarding the changes with regard to bedbugs, which define specific procedures for tenant involvement.

Ms. Katz clarified that the purpose of this bill is to have a separate provision for bedbugs, which could be read as exclusive to other rights and benefits afforded tenants and landlords.

Chairman Reagan stressed that work will continue on the bill, as there is no intention to affect the Landlord Tenant Act.

Question was called on the motion that the Reagan two-page amendment dated 1/26/10 (Attachment 11) be adopted. The motion carried.

Vice-Chairman Hendrix moved that HB2210 as amended do pass. The motion carried by a roll call vote of 5-0-0-3 (Attachment 15).

HB2243 - research tax credit; transferable; refundable – DO PASS

Vice-Chairman Hendrix moved that HB2243 do pass.

Jennifer Anderson, House Research Analyst, explained that HB2243 modifies the individual and corporate income tax credit for Research and Development (R&D) to allow a taxpayer that employs fewer than 150 full-time employees (FTEs) to receive a refund for the credit or to transfer the credit to another taxpayer (Attachment 16).

Ms. Cajero Bedford asked if a fiscal note had been prepared. Ms. Anderson replied that it has been requested from JLBC, but has not been prepared yet. Chairman Reagan explained that it is hoped that the fiscal note will show the bill to be revenue-neutral or revenue-positive for Arizona and that the state has budgeted for the anticipated cost of the R&D credits.

Steven Zylstra, Arizona Technology Council, addressed the Committee to support HB2243. He stressed the importance of R&D for jobs creation, explaining that there is a shortage of new capital in Arizona for startup technology companies. This is a venture capital formation bill, designed to aid startup companies and to create an environment in Arizona for base industries that create wealth.

Howard Stewart, AGM Container Controls, spoke in support of the legislation, explaining that R&D tax credits encourage small companies to take on risk and new employees, and also enable Arizona to retain and attract new businesses.

Ms. Cajero Bedford asked the tax credit dollar amount. Mr. Stewart stated that the amount for his company, over seven years, has been \$243,000.

John Kaites, Arizona Technology Council, spoke in favor of HB2243. He added that the tax credit caps will not be changed, but this bill will allow the credits to be utilized by Arizona's small companies.

Mr. Zylstra explained that \$243,000 in credit likely translates into \$2 million in R&D investment.

Vice-Chairman Hendrix announced the names of those who signed up in support of HB2243 but did not speak:

Bob Rosenberg, eSATS
Theodore Kraver, Arizona Technology Council
Bryan Ginter, representing self
Christopher Smith, Arizona Technology Council
Joseph Abate, AT&T
John Cummerford, Greenberg & Traurig, Arizona Technology Council
Susan Shultz, Board Institute, Inc., Arizona Technology Council
Joanne Bradley, Namescape Corp., Arizona Technology Council
Pat Stone, Flypaper Studio, Arizona Technology Council
David Beachamp, Bryan Cave LLP, Arizona Technology Council
Rod Lenniger, Zog Media, Arizona Technology Council
Joseph Ferro, Fox Communications, Arizona Technology Council
Justin Williams, Arizona Technology Council
Michael Keeling, Data Site Consortium, Arizona Technology Council
Todd Bankofier, Fairmont Capital Group, Arizona Technology Council
Bret Zahn, LifeLock, Arizona Technology Council
Chuck Vermillion, OneNeck IT Services, Arizona Technology Council
Gene Holmquist, Ensynch, Arizona Technology Council
Quinn Williams, Greenberg Traurig, Arizona Technology Council
Charles Jirauch, Global Southwest Capital LLC, Arizona Technology Council
David Dozor, Infrared Laboratories, Arizona Technology Council
Fred Coon, Stewart, Cooper & Coon, Arizona Technology Council
Ronald Schott, President, Car-Ron Ventures, LLC, Arizona Technology Council
Scott Hamilton, Grant Thornton LLP, Arizona Technology Council
Sean Monaghan, Phoenix Energy Products, Arizona Technology Council

Question was called on the motion that HB2243 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 17).

Without objection, the meeting adjourned at 11:13 a.m.

Jane Dooley, Committee Secretary
February 3, 2010

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)