

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

COMMITTEE ON MILITARY AFFAIRS AND PUBLIC SAFETY

Minutes of Meeting
Wednesday, January 27, 2010
House Hearing Room 3 -- 9:00 a.m.

Chairman Weiers called the meeting to order at 9:01 a.m. and the secretary called the roll.

Members Present

Mr. Crump
Ms. Fleming
Mrs. McGuire

Mr. Patterson
Mr. Seel
Mr. Stevens

Mr. Gowan, Vice-Chairman
Mr. Weiers JP, Chairman

Members Absent

None

Committee Action

HB2296 – DPA (8-0-0-0)
HB2348 – DP (8-0-0-0)
HB2383 – DP (5-3-0-0)

HB2444 – Discussed and Held
HCR2035 – DP (8-0-0-0)

Chairman Weiers asked everyone in attendance to stand for a moment of silence to honor Specialist Robert J. Donevski, U.S. Army, who was killed by gunfire in Afghanistan on January 16, 2010.

CONSIDERATION OF BILLS:

HCR2035 – supporting honor and remember flag – DO PASS

Vice-Chairman Gowan moved that HCR2035 do pass.

Nicholas Calderon, Majority Intern, related that HCR2035 expresses the Legislature's support for the enactment of federal legislation that designates the Honor and Remember Flag (Attachment 1). The bill encourages all Arizona citizens to honor and remember members of the U.S. Armed Forces who have died while serving in the line of duty.

Representative Frank Antenori, sponsor, advised that he was approached by a mother of a serviceman who was killed in Iraq. There is a nationwide effort to enact a second flag for Gold Star mothers in honor of servicemen killed in action in this and previous conflicts. Help is

needed from states to encourage the federal government to enact legislation. Currently the only flag that is allowed to be flown under the American flag is the prisoner-of-war (POW)/missing in action (MIA) flag. This Resolution would allow the Honor and Remember flag, in lieu of the POW/MIA flag, to be flown under the American flag on certain days. He reminded Members that only two flags are allowed to be flown on the flagpole.

Mr. Seel questioned whether the state has to wait for federal approval to fly this flag. Representative Antenori replied that the state would not be allowed to fly this flag under the American flag until the federal government authorizes it to be flown on the same flagpole. It can be flown separately on a separate flagpole under the Arizona flag but not under the American flag. Chairman Weiers clarified that a federal flag cannot be flown under a state flag. Representative Antenori said the purpose of this legislation is to allow it to be flown under the American flag.

Ms. Fleming queried whether both flags can be flown at the same time. Representative Antenori replied in the negative. Currently federal law specifies that it is an “either/or” situation.

Vice-Chairman Gowan announced the names of those who signed up in support of HCR2035 but did not speak:

Bryan Ginter, representing self

Question was called on the motion that HCR2035 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 2).

HB2348 – veterans; disability benefits – DO PASS

Vice-Chairman Gowan moved that HB2348 do pass.

Thomas Adkins, Majority Research Analyst, stated that HB2348 specifies that federal disability benefits awarded to veterans for service-connected disabilities cannot be awarded to anyone else aside from required child support and alimony (Attachment 3). The bill prohibits a court, in making a disposition of property or determining or modifying spousal maintenance, from considering any federal disability benefits award.

Representative Frank Antenori, sponsor, related that this concept was brought to him by a constituent who became disabled while on active duty. When going through a divorce, the judge divided the veteran’s military disability benefits as community property. The Veterans Administration and other agencies connected with the Department of Defense have encouraged states not to allow judges to split disability payments as community property. California recently passed legislation to prohibit courts from doing this and this legislation mirrors the California legislation. Federal disability benefits are considered compensation to individuals for injuries sustained while defending their country. It is something that should belong to the veteran as personal property and should be excluded from any community property division when a judge considers the community assets in a divorce action.

Mark Beres, representing self, testified in support of HB2348. He referred to an eight-page letter he sent to Members of the Committee on this issue (Attachment 4). He revealed that he served

in the Air Force and the Navy as a test pilot and received numerous wounds in combat, making him disabled and eligible to receive military disability benefits. Subsequently, in his divorce proceeding, the judge divided his disability pay, while citing state law that the state sanctioned the division of veterans' disability pay. He said he started researching this issue because he found that federal law is clear about prohibiting the division of disability benefits. He stated that this proposal reinforces the federal protections down to state law and gives the judiciary formal guidance on this issue. He asked Members to support this legislation.

Ms. Fleming commented that this is a bipartisan bill that does the right thing for veterans.

Vice-Chairman Gowan announced the names of those who signed up in support of HB2348 but did not speak:

Bryan Ginter, representing self

Linda Brown, representing self

Question was called on the motion that HB2348 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 5).

HB2296 – peace officer; spouse; insurance payment. – DO PASS AMENDED

Vice-Chairman Gowan moved that HB2296 do pass.

Nicholas Calderon, Majority Intern, said that HB2296 allows the surviving spouse of a certified peace officer who is killed in the line of duty to receive payments for health insurance premiums for six months after the death of the officer (Attachment 6).

Vice-Chairman Gowan moved that the Weiers nine-line amendment dated 1/26/10 to HB2296 be adopted (Attachment 7).

Mr. Calderon explained that the nine-line amendment replaces the term “certified peace officer” with “law enforcement officer” and makes the bill applicable to detention and corrections officers (Attachment 7).

Mr. Seel expressed support of this bill.

Lieutenant Lynn Ideus, Liaison Officer, Arizona Department of Public Safety (DPS), spoke in support of HB2296. He maintained that it is a small price to pay to continue insurance for a surviving spouse when an officer loses his life in protecting the public. He introduced Angela Harrolle, wife of DPS officer Bruce Harrolle, killed in the line of duty.

Angela Harrolle, representing self, in support of HB2296, advised that she lost her husband in a helicopter accident while he was attempting a mountain rescue in Sedona in 2009. She related that she was notified that his health insurance benefits would stop at the end of the pay period, which occurred even before the funeral took place. She asked Members for their support of this legislation to help other families who may find themselves in a similar situation.

Mrs. McGuire expressed support of anything that can be done to help promote benefits, especially health insurance, for families in their time of need.

Vice-Chairman Gowan announced the names of those who signed up in support of HB2296 but did not speak:

Chuck Foy, Executive Director, Arizona Correctional Peace Officers Association

Jimmy Chavez, President, Arizona Highway Patrol Association

Bryan Ginter, representing self

James Mann, Arizona Fraternal Order of Police

Question was called on the motion that the Weiers nine-line amendment dated 1/26/10 to HB2296 be adopted (Attachment 7). The motion carried.

Vice-Chairman Gowan moved that HB2296 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 8).

HB2383 - national guard mobilization; border – DO PASS

Vice-Chairman Gowan moved that HB2383 do pass.

Nicholas Calderon, Majority Intern, explained that HB2383 requires the Governor to mobilize the Arizona National Guard (ANG) if there is a declared state of emergency due to unauthorized international border crossings and a related increase in crime (Attachment 9).

Vice-Chairman Gowan assumed the Chair.

Mr. Seel, sponsor, advised that front-line officers of the Border Patrol appreciate any effort the state or citizens take in terms of observing and reporting along the border. With the increase in crime related to illegal trafficking of drugs or human smuggling, he said that it becomes apparent that the National Guard will have to be mobilized to protect the citizens of this state. He urged Members to support this legislation.

Mrs. McGuire questioned the cost the state would bear if this is implemented. Mr. Seel said that he cannot answer that until a state of emergency is declared and the scope of the emergency is declared. Mrs. McGuire asked whether it would be possible to request a fiscal note on this. Mr. Seel related that a scenario would have to be created in order to ask for a fiscal note. He mentioned that this would obviously have a fiscal impact.

Mr. Patterson maintained that tough immigration reform is needed. The state is feeling the burden from a failure by the federal government to enforce immigration laws. He opined that this bill may be unnecessary because the Governor already has the authority to mobilize the Arizona National Guard. Mr. Seel concurred that the Governor has the ability to call the National Guard in case of an emergency; however, this is still an issue. The underlying reason for the bill is because it is still an issue, and also due to budgetary concerns which are affected by illegal crossings.

Discussion ensued on cost savings had the borders been protected and using the National Guard as military police. In response to Mr. Stevens, Mr. Seel reported that some estimates show that \$800 million could have been saved by effectively protecting the border. He mentioned the shift in the focus of the Arizona National Guard's duties.

Mr. Patterson noted that the Pima County Sheriff's Department has a border enforcement task force working directly with the Border Patrol. He expressed concern about leaving language out of the bill relating to coordination with local officials and law enforcement in border counties because deputies know the border regions. He said he would feel better about including language in the bill, at least about consulting with local law enforcement. Mr. Seel brought up Operation Jump Start which spells out coordination with local law enforcement.

Ed Flinn, Director of Joint Programs, Department of Emergency and Military Affairs (DEMA), testified that the Department is neutral on HB2383. In response to Mr. Patterson regarding coordination with local law enforcement, he said that DEMA does not have a specific plan; the Guard would be a support to local authority along the border. Currently the Guard has emergency management plans for national disasters; however, this would be outside that scope. The Guard prefers to support civilian local authorities.

Mr. Patterson brought up the letter from Andrew Carlson on behalf of Adjutant General Hugo Salazar of the National Guard (Attachment 10) regarding the Guard's operating budget and the cost to deploy the Guard to the border. He queried whether efforts have been made to have the federal government defray the costs. Vice-Chairman Gowan commented that the state has been trying to get the federal government to pay costs incurred with respect to the border for a long time. He said that if they will not pay, it is good to have a back-up plan. Mr. Flinn related that if the Governor calls an emergency, the state is obligated to pay 100 percent of the cost.

Mr. Patterson asked about maintaining an all-volunteer force and the effect this could have on the ability to maintain an effective National Guard. Mr. Flynn said the concern is about pay and is explained in the Carlson letter.

Ms. Fleming asked about coordination of the Guard with the Tohono O'Odham Nation since the Tribe shares the border region with Arizona. Mr. Flynn said he does not have that information.

Vice-Chairman Gowan announced the names of those who signed up in opposition to HB2383 but did not speak:

Seth Apfel, representing self
Bryan Ginter, representing self
Leslie Carlson, representing self
Christopher Fleischman, representing self
Jennifer Allen, Executive Director, Border Action Network

Vice-Chairman Gowan announced the names of those who signed up as neutral on HB2383 but did not speak:

Andrew Carlson, Government Affairs Representative, Department of Emergency and Military Affairs (DEMA)

Question was called on the motion that HB2383 do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 11).

HB2444 – department of liquor; transfer; DPS – DISCUSSED AND HELD

Chairman Weiers advised that HB2444 will be discussed and held.

Vice-Chairman Gowan moved that HB2444 do pass.

Thomas Adkins, Majority Research Analyst, advised that HB2444 repeals the Department of Liquor Licenses and Control (DLLC) and transfers the State Liquor Board to the Department of Public Safety (DPS) (Attachment 12).

Jerry Oliver, Director, Arizona Department of Liquor Licensing and Control (DLLC), testified in opposition to HB2444. He advised that the Department provides specific regulatory, auditing, enforcement and other services that will be significantly diluted if the Department of Public Safety takes over the DLLC functions. In spite of deep budgetary cuts to the Department, the agency remains extremely efficient in its duties in relation to the liquor laws. A handout was distributed (Attachment 13). The primary functions of DPS are to protect human life and property, to ensure safety on the highways and to support other criminal justice agencies. He said he believes that if the Department is placed under DPS, liquor enforcement would not be the number one priority for that agency as it currently is for DLLC. He related that DLLC renews more than 11,000 licenses each year and conducts audits of restaurants, hotels, airlines, boats, etc. He addressed the rumors that DLLC has not been efficient in meeting its mission and its objectives. He pointed out that the Department has had a 30 percent reduction in staff as well as a 31 percent reduction in budget since FY2007, and acknowledged that improvements can be made to make the Department better, although many improvements have been accomplished with diminished staff and resources.

In response to Mr. Seel's comment that the Auditor General's Office reported deficiencies, Mr. Oliver related that DLLC already addressed deficiencies relating to the computer system, discretion of investigators and notifying each licensee being investigated. He said the Department is in agreement with the Auditor General's report on infractions and is addressing those infractions.

Chairman Weiers noted that the Department has only nine officers and asked whether they are only addressing complaints. Mr. Oliver replied in the affirmative. Because of the limited number of officers, the focus is on investigating complaints that are made. With over 11,000 liquor establishments, officers have to be selective to be effective. He explained that 30 to 40 percent of contacts are repeat offenders and he will be happy to supply information on that.

Ms. Fleming wondered whether DPS is concerned about the number of licenses that DLLC issues. She pointed out that is a concern of cities and towns. Mr. Oliver revealed that the agency does not have a say about the licenses that are given out. The State Liquor Board makes those decisions. DLLC makes sure that information received from law enforcement is presented to the Board to assist the Board in making licensing decisions.

Ms. Fleming stated that the closure of the Southern Arizona office is a concern and asked whether there is any possibility of it being opened again. Mr. Oliver replied that the Department does not have resources for offices in locations other than in Maricopa County.

In response to Mr. Seel, Mr. Oliver advised that the Department has completely revised its guidelines.

Chairman Weiers commented on the lack of officers to make the job effective. Mr. Oliver stated that if the Department had more than the current 32 employees, it could staff offices in Tucson and Flagstaff.

In reply to Chairman Weiers, Mr. Oliver said that the Department receives \$10 million a year through licensing; its current annual budget is \$2.6 million.

Vice-Chairman Gowan announced the names of those who signed up in support of HB2444 but did not speak:

Bryan Ginter, representing self

Vice-Chairman Gowan announced the names of those who signed up as neutral on HB2444 but did not speak:

Lynn Ideus, Arizona Department of Public Safety (DPS)

Vice-Chairman Gowan announced the names of those who signed up in opposition to HB2444 but did not speak:

Gregory Harris, representing Southern Wine and Spirits

Susie Stevens, representing Alliance Beverage Distributing

Myron Musfeldt, Deputy Director, Southern Wine & Spirits

Pearlette Ramos, Assistant Director of Administration, Arizona Department of Liquor Licenses and Control

Wendy Briggs, representing Diageo

Ramon Garcia, representing self

Steve Barclay, representing Beer and Wine Distributors of Arizona, in opposition to HB2444, testified that in 1970, the Department had an investigative staff of 30, with a ratio of one investigator to 181 licensed establishments, and all 5,632 licensed establishments received a routine liquor inspection once every two years. Currently, the Department has nine investigators for 11,200 licensed establishments, with a ratio of one to 1,120. He does not think the answer is moving this agency to DPS because the focus will not be on liquor regulation but on other issues important to DPS. He maintained that DLLC does a remarkable job, given its limited resources.

Mr. Patterson asked whether industry would be willing to support an assessment to help fund better enforcement. Mr. Barclay answered that this industry has repeatedly funded special assessments. The question is whether a special assessment would stay with the Department and not revert back to the General Fund. He mentioned that funds have been swept in the past. He said that industry would like assurances that no more funds will be swept.

Steve Chucri, President, Arizona Restaurant Association, in opposition to HB2444, said he concurs with comments made by Mr. Barclay and the Director. He noted that the Director and the staff of DLLC worked very well with industry in the past.

Representative M. Laurin Hendrix advised that the Committee of Reference found that the Department was not able to fulfill its function. Major concerns raised were inefficiency, inadequacies and multiple deficiencies over the years, and it is not believed that money will solve the problem. In addition, no guidelines exist to correct violations and some licensees are visited multiple times a year while other establishments have not been visited in years.

Don Isaacson, representing Arizona Licensed Beverage Association, spoke in opposition to HB2444. He mentioned the Department's lack of resources and advised that funds have been swept from the Department for years. He reiterated comments previously made that the Department of Public Safety has other priorities and this issue will not receive the attention that it deserves. He said that industry believes the Department is trying to do the best it can with the resources it has.

Mike Williams, representing Distilled Spirits Council of US, testified that the Council is opposed to HB2444 and thinks this proposal is moving in the wrong direction. He spoke about the Department's lack of funding and said that DPS is not as familiar as the Department with all the nuances involved with liquor regulation.

William Weigele, President, The Arizona Licensed Beverage Association, testified in opposition to HB2444. He stated that through the actions of DLLC, industry has a very good training mechanism and has set high standards for the entire retail industry. If the agency is moved, industry would not get the attention in that area that it received in the past.

Chairman Weiers said that some Members believe that industry would like the number of inspections to stay low and asked whether that is an issue. Mr. Weigele replied in the negative.

Chairman Weiers encouraged stakeholders to meet to try to come up with a resolution that would be palatable to all parties. He stated that his number one concern is officer safety.

The motion that HB2444 do pass was withdrawn.

Without objection, the meeting adjourned at 11:38 a.m.

Joanne Bell, Committee Secretary
February 1, 2010

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