

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

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 11, 2010
House Hearing Room 4 -- 9:00 a.m.

Chairman Driggs called the meeting to order at 9:06 a.m. and attendance was noted by the secretary.

Members Present

Mrs. Barto	Mr. Montenegro	Mr. Ash, Vice-Chairman
Mr. Konopnicki	Ms. Sinema	Mr. Driggs, Chairman
Mr. Miranda B	Mrs. Tovar	

Members Absent

None

Committee Action

HB2141 – DP (8-0-0-0)	HB2477 – DP (8-0-0-0)
HB2236 – DP (8-0-0-0)	HB2533 – DP FAILED (4-4-0-0)
HB2334 – DPA S/E (7-0-0-1)	HB2575 – DP (8-0-0-0)
HB2342 – Held at Request of Sponsor	HB2608 – DP (8-0-0-0)
HB2425 – DP (8-0-0-0)	HB2629 – DP (8-0-0-0)
HB2437 – DPA S/E (8-0-0-0)	

CONSIDERATION OF BILLS:

HB2342 – municipal elections; recount threshold – HELD AT REQUEST OF SPONSOR

Chairman Driggs announced that HB2342 will be held at the request of the sponsor.

**HB2334 – costs; superior court; document preparation – DO PASS AMENDED S/E
S/E: document preparation; superior court costs**

Vice-Chairman Ash moved that HB2334 do pass.

Vice-Chairman Ash moved that the Ash nine-line strike-everything amendment dated 2/9/10 to HB2334 be adopted (Attachment 1).

Stacy Weltsch, Majority Research Analyst, explained that the strike-everything amendment to HB2334 (Attachment 1) allows a court to award the cost of document preparation by a certified legal document preparer to the prevailing party in a legal action (Attachment 2).

Question was called on the motion that the Ash nine-line strike-everything amendment dated 2/9/10 to HB2334 be adopted (Attachment 1). The motion carried.

Vice-Chairman Ash moved that HB2334 as amended do pass.

Lori Lustig, representing Arizona Association of Independent Paralegals, in support of the strike-everything amendment to HB2334, stated the bill is discretionary in that the court can award the cost of document preparation to the prevailing party. In addition, the legislation specifies that the party seeking recovery will file a sworn affidavit of the document preparation costs with the court.

Allen Merrill, representing self, in favor of the strike-everything amendment to HB2334, advised that he is a certified legal document preparer. He related that many people seek the services of document preparers because they cannot afford an attorney, and if they win their case, they need their money back. Currently the court determines that it is fair that attorney fees are reimbursed; however, that has not been the case for document preparers.

Pedro Simpson, Attorney, representing self, testified in support of this legislation. He said that it has been his experience over the years that there are too many litigants who cannot afford an attorney and not enough attorneys are inclined to provide this service at a reduced cost. This bill will provide a reasonable alternative by allowing document preparers to seek the cost of document preparation and it gives litigants the opportunity to access the courts that they otherwise might not be able to.

Vice-Chairman Ash announced the names of those who signed up in support of HB2334 but did not speak:

Cherie Koch, representing self

Greg Paul, representing self

Vice-Chairman Ash announced the names of those who signed up in opposition to HB2334 but did not speak:

Bryan Ginter, representing self

Question was called on the motion that HB2334 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 3).

HB2425 – vulnerable adults; attorney fees – DO PASS

Vice-Chairman Ash moved that HB2425 do pass.

Stacy Weltsch, Majority Research Analyst, explained that HB2425 limits the amount of attorney fees a court may award in a civil action involving a vulnerable adult from two times the amount of compensatory damages to the total amount of compensatory damages (Attachment 4).

Chairman Driggs, sponsor, advised that HB2425 was previously heard in the Health Committee and passed unanimously. The bill attempts to eliminate the system where attorney fees are double that of compensatory damages and are taken out of compensatory damages.

David Cohen, representing Arizona Health Care Association, testified in support of HB2425. He related that the Adult Protective Services Act was amended to allow vulnerable and incapacitated adults to bring civil causes of action for abuse, neglect or exploitation. Because it was difficult to get lawyers to take these types of cases, enhanced remedies were made available to entice these types of lawsuits to be filed, resulting in excessive settlements and attorney fees. In 2005, the law was changed from unlimited attorney fees to double the amount of compensatory damages. This bill will cap attorney fees to one times the compensatory damage if the plaintiff prevails and will not take attorney fees from the recovery fees.

Vice-Chairman Ash announced the names of those who signed up in support of HB2425 but did not speak:

Richard Park, representing self
Ellen Cote, Administrator, Park Avenue Health and Rehabilitation Center
David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association
Don Isaacson, representing Aging Services of Arizona
Kathleen Pagels, Executive Director, Arizona Health Care Association
Linda Doescher, Office Manager, representing self
Larry Litman, representing self
George Jacobson, Executive Director, Apache Junction Health Center
Cleo Long, Office Manager, Maryland Gardens Care Center
Stan Szptek, representing self
Karla Averill, Director of Assisted Living, Arizona Health Care Association
Patrick Hobbs, Healthcare Administrator, Osborn Health and Rehabilitation/Bandera Healthcare
Cindy Leach, Vice President, Operations, representing self
Sean Mockbee, Administrator, representing self
Michael Dalton, President, Bandera Healthcare, Arizona's Nursing Homes
Jim Guschl, Executive Director, representing self
Matt Church, Administrator, representing self
Eli Robbins, Administrator, representing self
Brian Newberry, Executive Director, North Mountain Medical & Rehabilitation Center
Krysten Sweet, Arizona Health Care Association
Kevin B. DeMenna, representing Bridgeway Health Solutions
Ryan DeMenna, Associate, Bridgeway Health Solutions
Robert Eagar, Arizona Healthcare Association
Doug Haney, Desert Sky Health and Rehabilitation
Damien Rapp, Administrator, representing self
Nigel Santiago, Park Avenue Health and Rehabilitation
Kathleen Langford, Administrator, representing self
Richard Lasota, representing self
Theresa Berrigan, Copper Village

Lynne Davis, Mission Palms of Mesa, representing self
Shirley Grant, RN, representing self
Tom Ballard, Business Development Manager, representing self
Tyler Hoopes, Administrator of Skilled Nursing, Highland Manor Health and Rehabilitation
Ken Kidder, Administrator, representing self
Tammy Lake, CNA, National Healthcare Assistants
Janna Day, Lobbyist, Arizona Assisted Living Federation of America
Mitch Menlove, Arizona Healthcare Association

Vice-Chairman Ash announced the names of those who signed up in opposition to HB2425 but did not speak:

Peri Jude Radecic, Director of Public Advocacy, Arizona Center for Disability Law
Bryan Ginter, representing self

Question was called on the motion that HB2425 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 5).

HB2437 – restitution; economic loss definition – DO PASS AMENDED S/E
S/E: guardianship of foreign citizens

Vice-Chairman Ash moved that HB2437 do pass.

Vice-Chairman Ash moved that the Driggs 17-line strike-everything amendment dated 2/5/10 to HB2437 be adopted (Attachment 6).

Stacy Weltsch, Majority Research Analyst, explained that the Driggs 17-line strike-everything amendment dated 2/5/10 to HB2437 (Attachment 6) allows the court to appoint an adult as the guardian of a foreign citizen if the foreign citizen is less than 21 years old and has a temporary visa issued by the United States or is a legal permanent resident (Attachment 7).

Chairman Driggs, sponsor, advised that he is hosting a foreign high school student. When he petitioned the Juvenile Court to be a temporary guardian, he was told he would also have to agree to apply for a green card on the student's behalf. Current statute requires that the parent has to be deceased in order for someone to apply for a child's green card. He said that if a minor child is a legal permanent resident, there is no reason why an individual should be prohibited from being a guardian.

Question was called on the motion that the Driggs 17-line strike-everything amendment dated 2/5/10 to HB2437 be adopted (Attachment 6). The motion carried.

Vice-Chairman Ash moved that HB2437 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 8).

HB2477 – civil actions; public employee; definition – DO PASS

Vice-Chairman Ash moved that HB2477 do pass.

Blake Edwards, Majority Intern, stated that HB2477 adds a *leased employee* to the list of public employees authorized to perform any act or service on behalf of a state entity (Attachment 9).

Mr. Konopnicki, sponsor, explained that HB2477 makes clarifying changes to the statute relating to leased employees. He advised that an amendment will be offered on the Floor.

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns, in support of HB2477, advised that this legislation came from the Municipal Risk Pool. He said that employees classified as “return-to-work employees” or *leased employees* were not covered under the immunity statutes. He related that an amendment will be drafted that defines *leased employee*.

Vice-Chairman Ash announced the names of those who signed up in support of HB2477 but did not speak:

Bryan Ginter, representing self

David Johnson, Intergovernmental Affairs Analyst, Town of Buckeye

Question was called on the motion that HB2477 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 10).

HB2533 – legislative vacancies – DO PASS-FAILED

Vice-Chairman Ash moved that HB2533 do pass.

Blake Edwards, Majority Intern, stated that HB2533 changes the requirements for appointing candidates to fill legislative vacancies (Attachment 11). The bill removes the stipulation that allows only the precinct committeemen (PCs) who reside in the same county as a vacated legislative seat to nominate candidates to fill that vacated legislative seat and eliminates the requirement that the persons nominated to fill a vacancy reside in the same county as the person who previously held the position.

Representative David Gowan, sponsor, pointed out that several counties can be in a legislative district. Currently if a legislator resigns, only precinct committeemen who reside in the same county can nominate candidates to fill that seat. HB2533 changes that requirement to allow PCs who reside in the district to nominate candidates, and the county supervisors who choose the candidate to fill the vacated legislative seat to be from that district instead of from the county in which the vacancy occurs. He said his intent is to ensure that the entire district has a voice in the appointment.

Ms. Sinema said she cannot see why the county supervisors will choose someone outside of their county. She said she is unsure whether this legislation will solve the problem.

Mr. Konopnicki concurred with Ms. Sinema’s comment. He said he understands the problem because of the situation that occurred in his district. He pointed out that his district includes seven counties and is the largest geographical district in the state.

Representative Gowan submitted that with this proposal, all counties in a district will have a voice in the process; now they have no voice in choosing who will fill a legislative vacancy.

Mr. Konopnicki raised some issues that might impact the situation, such as constituency base, proxies, etc. Representative Gowan reiterated that the entire district needs to be involved. Mr. Konopnicki contended that this is a very complicated issue and said he does not believe this bill will address the problem.

Mr. Miranda said his concern is whether this is a step in the right direction.

Representative Gowan asserted that this proposal starts the process of giving a voice to all PCs. Mr. Miranda stated support of increasing the voice of all PCs.

Mr. Konopnicki maintained that this proposal has major problems and creates far more problems than it solves. The issues he previously raised are real ones, based on the situation in his district when Senator Jake Flake passed away and his legislative seat had to be filled.

Persons in opposition to HB2533 who did not speak:
Bryan Ginter, representing self

Question was called on the motion that HB2533 do pass. The motion failed by a roll call vote of 4-4-0-0 (Attachment 12).

Mr. Konopnicki commented that no one spoke to him about this legislation, nor did they talk to the rural counties or county supervisors. This is a major change to the system; it may have unintended consequences and should be thoroughly discussed. He stated that the key point is that people who lived through a similar situation were not consulted.

HB2608 – constables; jurisdiction – DO PASS

Vice-Chairman Ash moved that HB2608 do pass.

Blake Edwards, Majority Intern, stated that HB2608 allows constables to execute, serve and return processes and notices as directed by the court in adjoining precincts which lie across county lines (Attachment 13).

Chairman Driggs, sponsor, said this legislation gives constables the ability to cross jurisdictions where it makes sense and it makes the system more efficient.

Anjali Abraham, Associate Government Affairs Director, Arizona Association of Counties, testified in support of HB2608. This bill was heard last year and passed unanimously but was stalled in the Senate. Currently when a constable gets paperwork from the justice court, he cannot cross county lines because of the way the statutes are written, which results in a waste of time, money, and resources. She said she does not know of any opposition to the bill.

Vice-Chairman Ash announced the names of those who signed up in support of HB2608 but did not speak:

Ryan Reinhold, Constable, Navajo County, Precinct Six
Bryan Ginter, representing self

Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Phil Hazlett, Constable, Arizona Constables Association

Question was called on the motion that HB2608 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 14).

HB2141 - aggravated assault; park rangers – DO PASS

Vice-Chairman Ash moved that HB2141 do pass.

Blake Edwards, Majority Intern, stated that HB2141 classifies an assault by an individual on a state or municipal park ranger as a Class 6 felony for aggravated assault (Attachment 15).

Mr. Montenegro, sponsor, said he is bringing this bill forward to help park rangers who are asked to do a police officer's job in parks and need this protection.

Rob Dalager, City of Phoenix, in support of HB2141, related that some people, by virtue of their employment, are deserving of special attention when it comes to being protected from assault. It is felt that park rangers, even though they are not law enforcement officers, should be added to that list because of their responsibilities. He expressed hope that Members will support HB2141.

Vice-Chairman Ash asked whether park rangers are always in uniform when they are working. Mr. Dalager replied in the affirmative.

Dennis Oshaughnessy, Park Ranger, City of Phoenix Parks Department, in support of HB2141, recounted his assault on the night of January 1996, at Squaw Peak Park while he was doing maintenance work. He stopped a vehicle and was writing a citation when he noticed a quart-size bottle of beer, a liquor bottle, an axe and a clear envelope containing a white substance within the car. He was struck on the head and shot twice before the vehicle exited the park.

Mr. Konopnick asked how this bill will help park rangers. Mr. Oshaughnessy answered that the increased penalty in this bill could act as a deterrent.

Vice-Chairman Ash queried whether people mistake him for a police officer because of his uniform and badge. Mr. Oshaughnessy replied in the affirmative.

Mrs. Barto questioned whether this will apply to volunteer park rangers as well. Mr. Dalager said he does not believe it will. Mrs. Barto said that may be something to consider because they are also in danger. Ms. Sinema commented that in Phoenix, volunteers are called *stewards* but they do repairs and do not wear uniforms. Mrs. Barto revealed that the City of Scottsdale has volunteers.

Kathryn Reichert, Deputy Director, Phoenix Parks & Recreation, testified in support of HB2141. She stated that Phoenix has a program for volunteers.

Vice-Chairman Ash asked whether stewards are in uniform. Ms. Reichert said they wear bright yellow shirts.

Mr. Montenegro said he would be willing to add volunteers to the list of covered people.

Vice-Chairman Ash announced the names of those who signed up in support of HB2141 but did not speak:

Brian Livingston, Executive Director, Arizona Police Association

Jay Ziemann, Assistant Director, Arizona State Parks

Scott Roberts, Park Ranger, City of Phoenix Parks Department

Stephanie Prybyl, Intergovernmental Relations Coordinator, League of Arizona Cities and Towns

Paul Ahler, Executive Director, Arizona Prosecuting Attorneys Council

Vice-Chairman Ash announced the names of those who signed up as neutral on HB2141 but did not speak:

Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale

Question was called on the motion that HB2141 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 16).

HB2575 – state grand juries; jurisdiction. – DO PASS

Vice-Chairman Ash moved that HB2575 do pass.

Stacy Weltsch, Majority Research Analyst, stated that HB2575 requires the state grand jury to investigate and return indictments for offenses relating to child or vulnerable adult abuse if the offense was committed in a Medicaid-funded facility or in conjunction with dangerous or narcotic drug offenses (Attachment 17).

Greg Stanton, Director of Legislative Affairs, Attorney General’s Office (AG), in support of HB2575, stated that this is a commonsense bill. The AG’s investigators who look into Medicaid-funded facilities often come in contact with patient abuse and he said it makes sense that the state grand jury, for efficiency purposes, deal with all of that at a single time instead of working with other jurisdictions. He stated that this is a law enforcement efficiency-type bill.

Vice-Chairman Ash announced the names of those who signed up in support of HB2575 but did not speak:

Robin Quinn, representing self

Paul Ahler, Executive Director, Arizona Prosecuting Attorney’s Council

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney’s Office

Question was called on the motion that HB2575 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 18).

HB2236 – theft by extortion; tax liens – DO PASS

Vice-Chairman Ash moved that HB2236 do pass.

Blake Edwards, Majority Intern, said that HB2236 classifies threatening to take or withhold action regarding a claim of easement or right of access to a servient estate under certain circumstances as theft by extortion (Attachment 19). The bill states that a person commits theft by extortion by knowingly obtaining or seeking to obtain property or services by means of a threat to take or withhold action regarding an alleged claim of easement or other right of access to a servient estate if:

- the claimant's interest in the dominant estate is the result of a tax lien, and
- the fair market value of the dominant estate is equal to or less than the amount paid by the claimant for the purchase of the tax lien or foreclosure, including taxes paid after the lien purchase and any costs and attorney fees paid in connection with the lien foreclosure.

Mr. Konopnicki asked what problem this bill is trying to solve.

Representative John Kavanagh, sponsor, explained that there are small, odd-shaped pieces of property throughout the state; some are owned by government agencies, utilities, or left over from developments that cannot be built on. The problem is these properties that have little or no value are contiguous to someone else's property, and some may be in the middle of other people's property. When the owners of these tiny pieces of property stop paying taxes on them, they go up for auction. Some of the new owners are unscrupulous and can do harm to the people who own the property next to them because a fence or a garage may be on the property line and they try to extort money on the threat that they will take legal action if the person does not purchase that worthless piece of property at a greatly inflated amount.

Question was called on the motion that HB2236 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 20).

HB2629 – misconduct involving weapons; retired officers – DO PASS

Vice-Chairman Ash moved that HB2629 do pass.

Daniel Gonzalez-Plumhoff, Assistant Majority Research Analyst, Appropriations Committee, reviewed the provisions of HB2629 which allow medically retired law enforcement officers who meet certain criteria to carry a concealed deadly weapon without a concealed carry weapons permit (CCW) (Attachment 21).

Brian Livingston, Executive Director, Arizona Police Association, testified in support of HB2629. He pointed out what he believes is an inequity in statute which specifies that a law enforcement officer injured in the line of duty must serve at least ten years to be exempt from the permit requirements, and said that many officers are permanently injured prior to that time period. Out of respect for those officers, he asked Members to approve this legislation to allow them to carry their weapon in a lawful context.

Vice-Chairman Ash announced the names of those who signed up in support of HB2629 but did not speak:

Levi Bolton, Vice President, Phoenix Law Enforcement Association

Chuck Foy, Executive Director, Arizona Correctional Peace Officers Association

James Mann, Arizona Fraternal Order of Police

Mike Williams, representing Arizona Police Association and Phoenix Law Enforcement
Ray Churay, Deputy Director, Maricopa County Sheriff's Office
John Thomas, representing Arizona Association of Chiefs of Police
John Ortolano, Arizona Fraternal Order of Police

Question was called on the motion that HB2629 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 22).

Without objection, the meeting adjourned at 10:44 a.m.

Joanne Bell, Committee Secretary
February 19, 2010

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