

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

COMMITTEE ON RULES

Minutes of Meeting
Monday, March 1, 2010
House Hearing Room 4 – 1:00 p.m.

Chairman Nichols called the meeting to order at 1:11 p.m. and attendance was noted by the secretary.

Members Present

Mr. Adams
Ms. Garcia M
Mr. McComish

Mr. Miranda B
Mr. Tobin

Mr. Yarbrough, Vice-Chairman
Mr. Nichols, Chairman

Members Absent

Mr. Brown (excused)

Committee Action

HB2156 and HB2724 - HELD

HB2019 – C&P as amended (6-1-0-1)

HB2210 – C&P as amended (5-2-0-1)

HB2451 – DISCUSSED & HELD

HB2653 – C&P as amended (7-0-0-1)

HB2676 – C&P as amended (5-2-0-1)

HB2395 – C&P (5-2-0-1)

HB2496 – C&P (5-2-0-1)

HB2632 – C&P (5-2-0-1)

HB2002, HB2003, HB2057, HB2123, HB2133, HB2135, HB2162, HB2172, HB2196, HB2238, HB2242, HB2255, HB2296, HB2370, HB2377, HB2389, HB2434, HB2437, HB2444, HB2469, HB2473, HB2545, HB2574, HB2579, HB2586, HB2605, HB2606, HB2611, HB2625, HB2626, HB2627, HB2629, HB2641, HB2665, HB2678, HB2698, HB2699, HB2700, HB2721, HB2729, HB2738, HB2760, HB2766, HB2774, HB2787, HCM2009, HCM2014, HCR2008 and HCR2057 – C&P (7-0-0-1)

Chairman Nichols announced that HB2156 and HB2724 will be held.

Vice-Chairman Yarbrough moved that HB2019 is constitutional and in proper form.

Vice-Chairman Yarbrough moved that the Rules amendment to HB2019 (Attachment 1) be adopted.

Tim Fleming, Rules Counsel, stated that the Rules amendment makes a curative change to resolve an inconsistency with adopted rules and practices of the House, and with the amendment it is the opinion of Rules Counsel that this measure is constitutional and in proper form. He added that the bill deals with excusing Members from voting.

Question was called on the motion that the Rules amendment to HB2019 (Attachment 1) be adopted. The motion carried.

Vice-Chairman Yarbrough moved that HB2019 as amended is constitutional and in proper form. The motion carried by a roll call vote of 6-1-0-1 (Attachment 2).

Vice-Chairman Yarbrough moved that HB2210 is constitutional and in proper form.

Vice-Chairman Yarbrough moved that the Rules amendment to HB2210 (Attachment 3) be adopted.

Tim Fleming, Rules Counsel, stated that the Rules amendment makes a curative change to resolve an anti-abrogation clause conflict, and with the amendment it is the opinion of Rules Counsel that this measure is constitutional and in proper form.

Question was called on the motion that the Rules amendment to HB2210 (Attachment 3) be adopted. The motion carried.

Vice-Chairman Yarbrough moved that HB2210 as amended is constitutional and in proper form.

Ms. Garcia asked the definition of “gross negligence.” Mr. Fleming explained that this bill deals with bedbugs and landlord/tenant responsibilities; he explained that “gross negligence” is more than “ordinary negligence” and relates to duty of care and reasonableness of action.

Mr. Miranda inquired if this ability to recover damages being limited to “gross negligence” has been seen in other industries. Mr. Fleming replied in the affirmative, explaining that the Legislature can regulate a cause of action, but cannot cut off someone’s ability to go to court in the first place.

Question was called on the motion that HB2210 as amended is constitutional and in proper form. The motion carried by a roll call vote of 5-2-0-1 (Attachment 4).

Vice-Chairman Yarbrough moved that HB2451 is constitutional and in proper form.

Vice-Chairman Yarbrough moved that the Rules amendment to HB2451 (Attachment 5) be adopted.

Tim Fleming, Rules Counsel, stated that the Rules amendment makes a curative change to resolve an Article 15, Section 3 separation of powers conflict with regard to the Arizona Corporation Commission, and with the amendment it is the opinion of Rules Counsel that this measure is constitutional and in proper form.

Mr. Miranda asked for clarification if Mr. Fleming believes this bill is unconstitutional without the amendment. Mr. Fleming answered in the affirmative, adding that the bill addresses charges for hookup to public services and the authorities of the Corporation Commission.

Chairman Nichols announced that HB2451 will be held for further review.

Mr. Miranda commented that HB2451 would be an unenforceable law because no House Concurrent Resolution exists. Mr. Fleming concurred, stating that conditional enactments like that are sometimes seen.

Vice-Chairman Yarbrough withdrew his motion that the Rules amendment to HB2451 (Attachment 5) be adopted.

Vice-Chairman Yarbrough withdrew his motion that HB2451 is constitutional and in proper form.

Vice-Chairman Yarbrough moved that HB2653 is constitutional and in proper form.

Vice-Chairman Yarbrough moved that the Rules amendment to HB2653 (Attachment 6) be adopted.

Tim Fleming, Rules Counsel, stated that the Rules amendment conforms language for consistency and changes internal references to conform to preferred drafting style, and with the amendment it is the opinion of Rules Counsel that this measure is constitutional and in proper form.

Question was called on the motion that the Rules amendment to HB2653 (Attachment 6) be adopted. The motion carried.

Vice-Chairman Yarbrough moved that HB2653 as amended is constitutional and in proper form. The motion carried by a roll call vote of 7-0-0-1 (Attachment 7).

Vice-Chairman Yarbrough moved that HB2676 is constitutional and in proper form.

Vice-Chairman Yarbrough moved that the Rules amendment to HB2676 (Attachment 8) be adopted.

Tim Fleming, Rules Counsel, stated that the Rules amendment corrects a separation of powers problem involving Legislators serving on boards, commissions and authorities, and with the amendment it is the opinion of Rules Counsel that this measure is constitutional and in proper form. He added that the amendment makes the Legislators non-voting, ex-officio members.

Question was called on the motion that the Rules amendment to HB2676 (Attachment 8) be adopted. The motion carried.

Vice-Chairman Yarbrough moved that HB2676 as amended is constitutional and in proper form.

Mr. Miranda asked if there is any ongoing federal litigation that could impact this legislation. Mr. Fleming replied that he is not aware of any but that he will research the issue.

Ms. Garcia asked if this goes against the State Land Department's ability to get the highest and best use of the land for its beneficiaries. Mr. Fleming replied that he cannot tell that it does, but that he will research further.

Mr. Tobin clarified that this does not impact any of the authorities already within the Land Department. Mr. Fleming concurred, stating that HB2676 does not change how the Department works, it only speaks to the speed of preliminary approval for energy parks.

Question was called on the motion that HB2676 as amended is constitutional and in proper form. The motion carried by a roll call vote of 5-2-0-1 (Attachment 9).

Vice-Chairman Yarbrough moved that HB2395 is constitutional and in proper form.

Tim Fleming, Rules Counsel, stated that this bill is the school payroll deduction union dues measure and it is the opinion of Rules Counsel that this measure is constitutional and in proper form.

Ms. Garcia asked about an Idaho case which was similar. Mr. Fleming replied that it focused on the idea of accommodating expression.

Question was called on the motion that HB2395 is constitutional and in proper form. The motion carried by a roll call vote of 5-2-0-1 (Attachment 10).

Vice-Chairman Yarbrough moved that HB2496 is constitutional and in proper form.

Tim Fleming, Rules Counsel, stated that HB2496 is another school tuition credit contribution measure and is subject to issues pending in federal courts, but that it is the opinion of Rules Counsel that this measure is constitutional and in proper form.

Mr. Miranda asked if this is about the status of credit. Mr. Fleming answered in the affirmative.

Mr. Miranda then asked the status of current federal litigation.

Don Jansen, Rules Counsel, informed the Members that there have been no updates since his testimony in last week's meeting when he reported that the 9th Circuit decision that there may be a violation of the anti-establishment clause of the First Amendment has been appealed to the United States Supreme Court. It is not yet known if the Supreme Court will hear the case.

Question was called on the motion that HB2496 is constitutional and in proper form. The motion carried by a roll call vote of 5-2-0-1 (Attachment 11).

Vice-Chairman Yarbrough moved that HB2632 is constitutional and in proper form.

Tim Fleming, Rules Counsel, stated that it is the opinion of Rules Counsel that this measure is constitutional and in proper form. He explained that this measure is the immigration; law enforcement; safe neighborhoods legislation which presents many issues that have been seen over the last several years. This is a supremacy preemption issue, in that it is the federal government's jurisdiction to regulate in the area of immigration. HB2632 contains many issues, some of which are severable, but some are new and the outcome cannot be predicted. He stated that some provisions are constitutional but some may be challenged.

Ms. Garcia asked about the title of the bill and a possible Rule 22 concern. Mr. Fleming replied that this rule says that reference titles should not contain argumentative verbiage. He stated that this does not seem to be a concern.

Mr. Miranda stated that he finds this bill to be problematic. He asked about the potential for racial profiling, and the fact that immigration legislation is the province of the federal government. He stated that this appears to be comprehensive legislation. Mr. Fleming replied that there are many issues within HB2632, but that it is not comprehensive legislation and that each provision can be looked at separately.

Mr. Miranda asked if the provision that it is unlawful to transport an illegal alien would apply to public transportation. Mr. Fleming replied that the concern is if this would apply to someone such as a bus driver. Speaker Adams stated that the issue is that the transport must be in the commission of a crime.

Mr. Miranda asked if this legislation will exclude any public transportation. Mr. Fleming replied that it would depend on whether a crime is being committed.

Question was called on the motion that HB2632 is constitutional and in proper form. The motion carried by a roll call vote of 5-2-0-1 (Attachment 12).

Vice-Chairman Yarbrough moved that HB2002, HB2003, HB2057, HB2123, HB2133, HB2135, HB2162, HB2172, HB2196, HB2238, HB2242, HB2255, HB2296, HB2370, HB2377, HB2389, HB2434, HB2437, HB2444, HB2469, HB2473, HB2545, HB2574, HB2579, HB2586, HB2605, HB2606, HB2611, HB2625, HB2626, HB2627, HB2629, HB2641, HB2665, HB2678, HB2698, HB2699, HB2700, HB2721, HB2729, HB2738, HB2760, HB2766, HB2774, HB2787, HCM2009, HCM2014, HCR2008 and HCR2057 are constitutional and in proper form.

Tim Fleming, Rules Counsel, stated that it is the opinion of Rules Counsel that these measures are constitutional and in proper form. He commented on:

- HB2162 – This is a strike-everything bill with some definitions and format issues which can be resolved on the Floor. Chairman Nichols commented that there will be a Floor amendment to fill in the blanks.
- HB2625 – This is dependent upon Arizona’s “economic solvency” and perhaps a better word or definition could be used.
- HCM2014 – This deals with nuclear energy and, again, there are form issues and there will be a Floor amendment to fill in the blanks.

Question was called on the motion that HB2002, HB2003, HB2057, HB2123, HB2133, HB2135, HB2162, HB2172, HB2196, HB2238, HB2242, HB2255, HB2296, HB2370, HB2377, HB2389, HB2434, HB2437, HB2444, HB2469, HB2473, HB2545, HB2574, HB2579, HB2586, HB2605, HB2606, HB2611, HB2625, HB2626, HB2627, HB2629, HB2641, HB2665, HB2678, HB2698, HB2699, HB2700, HB2721, HB2729, HB2738, HB2760, HB2766, HB2774, HB2787, HCM2009, HCM2014, HCR2008 and HCR2057 are constitutional and in proper form. The motion carried by a roll call vote of 7-0-0-1 (Attachment 13).

Without objection, the meeting adjourned at 2:14 p.m.

Jane Dooley, Committee Secretary
March 11, 2010

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