

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

**COMMITTEE ON WATER AND ENERGY**

Minutes of Meeting  
Thursday, April 8, 2010  
House Hearing Room 5 -- 9:00 a.m.

Chairman Mason called the meeting to order at 9:31 a.m. and attendance was noted by the secretary.

**Members Present**

Mrs. Goodale  
Mr. Patterson

Mr. Quellan  
Mr. Weiers JP  
Ms. Young Wright

Mr. Stevens, Vice-Chairman  
Mrs. Mason, Chairman

**Members Absent**

Mr. Deschene (excused)

**Committee Action**

SB1201 – DP (7-0-0-1)  
SB1254 – DPA S/E (7-0-0-1)

SCR1046 – DPA (5-2-0-1)

**CONSIDERATION OF BILLS**

**SB1201 - renewable energy tax incentive revisions – DO PASS**

**Vice-Chairman Stevens moved that SB1201 do pass.**

Rene Guillen, Majority Research Analyst, explained that SB1201 makes clarifying revisions to the Arizona Renewable Energy Tax Incentive Program (Attachment 1).

Senator Barbara Leff, sponsor, explained that SB1201 is a clean-up bill to address problematic issues from SB1403 of the 2009 Legislative Session. She assured the Members that there is nothing in the bill that is new policy.

Vice-Chairman Stevens announced the names of those who signed up in support of SB1201 but did not speak:

Rob Dalager, Greater Phoenix Economic Council

Susan Charlton, Greater Phoenix Economic Council

Mark Lewis, Water Resource Institute

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Gregory Harris, Abengoa Solar  
Russell Smoldon, Salt River Project  
Greg Patterson, Arizona Competitive Power Alliance  
Michael Bidwill, Arizona Cardinals, Greater Phoenix Economic Council  
Steve Zylstra, Arizona Technology Council

**Question was called on the motion that SB1201 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 2).**

**SCR1046 - jurisdiction over intrastate waters – DO PASS AMENDED**

**Vice-Chairman Stevens moved that SCR1046 do pass.**

Rene Guillen, Majority Research Analyst, explained that SCR1046, subject to approval by the voters, amends the Arizona Constitution to state that the State of Arizona has the sole authority to define, designate, and regulate non-navigable intrastate waters within the borders of the state (Attachment 3).

Mr. Quelland asked about the Indian Nations and their treaties with the federal government. Mr. Guillen replied that the Nations are not mentioned in SCR1046 and there could be a conflict if this is approved as drafted.

**Vice-Chairman Stevens moved that the Mason four-line amendment dated 4/7/10 (Attachment 4) be adopted.**

Mr. Guillen explained that this amendment states that Arizona has the “primary right” on non-navigable intrastate waters, not the “sole right” over these waters. He added that this may address the questions about the Nations. He stated that the amendment takes away all references to navigable waters.

Chairman Mason asked about other amendments. Mr. Guillen said there is another amendment which is not in conflict with this one (Attachment 4).

Bas Aja, Arizona Cattlemen’s Association, appeared in support of SCR1046 and the Mason amendment because water is the lifeblood of Arizona. He explained that the Arizona Constitution makes no statement on intrastate waters and is silent on the Nations because Arizona recognizes their sovereignty.

Ms. Young Wright asked the reason that this bill is necessary at this time. Mr. Aja replied that the debate is about “navigability” and the concept that Arizona non-navigable waters should not be regulated by Congress via the Commerce Clause and the Clean Water Act (CWA). Discussion ensued about private land versus federal land.

Ben Grumbles, Director, Arizona Department of Environmental Quality (ADEQ), testified in opposition to SCR1046, noting that the Mason amendment improves the resolution. He stated his support for the principle of reducing the risk of federal intervention and intrusion on intrastate non-navigable waters. He expressed concern that, were this to be enacted, the Environmental Protection Agency (EPA) would have no choice but to take back the delegated

clean water program that ADEQ administers over these waters at this time. He stressed that that more discussion needs to take place about the terms used, such as “primary”, “intrastate”, and “tribal waters”.

Mr. Grumbles stated that ADEQ agrees that there should be limits to Congressional regulations, but that care must be taken.

Chairman Mason asked if ADEQ can be involved in finishing this legislation. Mr. Grumbles replied that it will be a difficult task but that he will try.

Mr. Patterson asked if there could be unintended consequences of this with regard to the Clean Water Act. Mr. Grumbles stated that if the Arizona Constitution were amended to say that the federal government has no role in Arizona waters unless “you can float a boat”, then the EPA would take back clean water permitting programs with resultant significant regulatory and funding implications. It might even put the EPA in San Francisco or Washington D.C. in the position on issuing or denying permits for discharges to surface waters because this would be contradictory to the United States Supreme Court ruling on what waters are subject to the CWA. The worst case would be that Arizona, which fought so hard in 2002 to obtain jurisdiction, would lose it to the EPA.

Senator Chuck Gray, sponsor, explained that the CWA was passed in 1972 with the phrase “navigable waters in the United States”. Currently proposed legislation removes the word “navigable” which would give the federal government control over all water in the United States. Senator Gray stated that Arizona must be proactive prior to passage of this legislation.

**Question was called on the motion that the Mason four-line amendment dated 4/7/10 (Attachment 4) be adopted. The motion carried.**

**Vice-Chairman Stevens moved that the Young Wright fourteen-line amendment dated 4/7/10 (Attachment 5) be adopted.**

Ms. Young Wright requested a roll call vote on this motion.

Mr. Guillen explained that the Young Wright amendment modifies SCR1046 to protect all waters of the state by declaring the right of all Arizonans to clean water, to protect water quality, and to direct the state to act in protecting water quality for future generations.

Mr. Aja stated that he is in favor of protecting water quality, but that this amendment is too broad to support.

Senator Gray stated that he does not support the Young Wright amendment, which goes in the opposite direction of the language of SCR1046.

**Question was called on the motion that the Young Wright fourteen-line amendment dated 4/7/10 (Attachment 5) be adopted. The motion failed by a roll call vote of 2-5-0-1 (Attachment 6).**

Norris Nordvold, Inter Tribal Council of Arizona, testified against SCR1046, stating that this language says that the state will control non-navigable intrastate waters but that current law says those non-navigable waters belong to sand and rock and gravel companies. He said that if this bill takes effect the state will control the riverbeds throughout the state and perhaps even Encanto Lake. He added that this bill is very broadly written and could affect the protections provided the Indian tribes by the federal Clean Water Act.

In response to a question, Mr. Nordvold stated that water attorneys say this bill is unconstitutional.

Steve Pawlowski, representing self, stated his opposition to SCR1046 which will limit the scope of the Clean Water Act in Arizona, raises jurisdiction questions, and will be voted on by Arizona voters who are ill-equipped to understand the implications. He added that Arizona does not have its own quality statutes in place because the state has relied on the federal Clean Water Act for guidelines. He stated that the fiscal consequences of this bill could jeopardize federal funding for state water quality protection programs.

In response to a question, Mr. Pawlowski stated that he is retired from ADEQ where he worked in the Water Quality Division and was involved in many water quality programs.

Herb Guenther, Director, Arizona Department of Water Resources (ADWR), stated that his department has been marginally involved in this issue because ADWR manages all waters within the state with no federal legislation. The only exceptions are the federal quality statutes and the Indian settlements.

In response to questions, Mr. Guenther stated that he has concerns about the implications of SCR1046 as regards the Clean Water Act. He stated that the bill should contain more information, particularly a positive statement about the right of Arizona citizens to clean and sustainable water. He stated that such a statement is missing in the Arizona Constitution and that portions of the Young Wright amendment (Attachment 5) would have been helpful.

Vice-Chairman Stevens announced the names of those who signed up in support of SCR1046 but did not speak:

Rachel Aja, ORANGE Coalition

Vice-Chairman Stevens announced the names of those who signed up in opposition to SCR1046 but did not speak:

Jim Buster, Arizona Department of Environmental Quality

Michael Fiflis, representing self

Alisa McMahan, representing self

Gini McGirr, League of Women Voters of Arizona

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Tom Dorn, San Carlos Apache Tribe

**Vice-Chairman Stevens moved that SCR1046 as amended do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 7).**

**SB1254 - job training; tax; suspension – DO PASS AMENDED S/E**  
**S/E: research; development; production; tax credit**

**Vice-Chairman Stevens moved that SB1254 do pass.**

**Vice-Chairman Stevens moved that the Mason twenty-two-page strike-everything amendment to SB1254 dated 04/06/10 (Attachment 8) be adopted.**

Rene Guillen, Majority Research Analyst, explained that the proposed strike-everything amendment to SB 1254 modifies the individual and corporate income tax credit for Research and Development (R&D) to allow a taxpayer that employs less than 150 full-time employees (FTEs) to receive a refund for the credit, with total refunds limited to \$5 million per year. Additionally, the amendment allows qualified producers of renewable energy to receive up to a \$2 million tax credit on the electricity they produce for up to ten years and limits the total amount of credits issued each year to \$20 million in any given year (Attachment 9).

Senator Barbara Leff, sponsor, explained that this bill is intended to help small businesses and that the reason the number of employees to qualify is less than 150 is to support small start-up companies.

Chairman Mason concurred that this is all about jobs and economic recovery.

Mr. Quelland asked about the refundable aspect of the tax credits. Senator Leff explained that this legislation is for Arizona companies only and that the refund will be used in Arizona and 25 percent will go to the state General Fund.

Dianne McCallister, Public Policy Partners, Sempra Energy, stated her support for the legislation and stated that it will make Arizona more of a leader in renewable energy.

Steve Zylstra, Arizona Technology Council, appeared in support of the strike-everything amendment to SB1254. He stated that he represents 520 technology companies which are base industries for Arizona's economy. There is a shortage of capital to support them however, so this bill is important and will help spawn more technology research and development.

Sean Laux, Legislative Liaison, Department of Revenue, stated his neutrality on this legislation. He listed questions the department has regarding implementation:

1. effective date
2. refund applicability
3. first come, first served
4. definitions, such as "commercially marketable"

Chairman Mason requested that these questions be addressed quickly.

Mr. Quelland asked the balance of these tax credits; Mr. Laux replied that it is \$160.7 million.

Ms. Young Wright asked how much funding will be required to accomplish the rule-making that will be required to get this tax credit information out to the public. Mr. Laux replied that it is hard to quantify at this time.

John Kaites, Semptra and Arizona Technology Council, testified in support of the strike-everything amendment to SB1254. He assured the Members that many stakeholder meetings were held last summer which included the Department of Revenue. He stated that he will be happy to accommodate these recent questions and reminded the Members that the tax credit is capped at \$5 million.

Vice-Chairman Stevens announced the names of those who signed up in support of SB1254 but did not speak:

Farrell Quinlan, State Director, National Federation of Independent Business (NFIB)

Morgan Day, Arizona Technology Council

Ronald Schott, representing self

David Dozor, Infrared Laboratories, Arizona Technology Council

Scott Hamilton, Grant Thornton, Arizona Technology Council

Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance

**Question was called on the motion that the Mason twenty-two-page strike-everything amendment to SB1254 dated 04/06/10 (Attachment 8) be adopted. The motion carried.**

**Vice-Chairman Stevens moved that SB1254 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 10).**

Without objection, the meeting adjourned at 11:17 a.m.

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Jane Dooley, Committee Secretary  
April 26, 2010

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