

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, January 27, 2010
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:05 a.m. and attendance was noted by the secretary.

Members Present

Mr. Ash	Mr. Hale	Mr. Vogt
Mr. Chabin	Mr. Harper	Mr. Smith D, Vice-Chairman
Mrs. Goodale	Mrs. Tovar	Mr. Farnsworth, Chairman

Members Absent

None

Committee Action

HB2141 – Not Heard in Primary Committee	HB2354 – DPA (8-1-0-0)
HB2335 – DPA (9-0-0-0)	HB2355 – DP (9-0-0-0)
HB2351 – DP (8-1-0-0)	HB2363 – Held at Request of Sponsor
HB2352 – DP (9-0-0-0)	HB2369 – DP (8-0-0-1)

CONSIDERATION OF BILLS:

HB2141 – county alignment; local initiative – NOT HEARD IN PRIMARY COMMITTEE

Chairman Farnsworth announced that HB2141 will not be heard because it was not withdrawn from the primary Committee.

HB2363 – financial institution records; disclosure; notice – HELD AT REQUEST OF SPONSOR

Chairman Farnsworth announced that HB2363 is held at the request of the sponsor.

HB2335 – presidential ballot; president; vice-president – DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, stated that HB2335 modifies the manner in which voters will vote for presidential electors by deleting the requirement that their names be listed (Attachment 1). The bill requires the heading of the column containing the names of the

candidates for the Office of President to read *President* and *Vice President*. In addition, the bill requires an arrow on a ballot to point to the name of the vice-presidential candidate immediately below that of the presidential candidate.

Ms. Jorquez explained that the Harper seven-line amendment to HB2335 dated 1/26/11 is a technical amendment that reinserts the requirement that the names of the presidential electors be grouped and printed together on the ballot (Attachment 2).

Mr. Chabin asked whether this bill relates to the election of members of the electoral college. Ms. Jorquez answered that this bill does not change that process. Chairman Farnsworth stated that the current ballot shows the President's name; this amendment adds the name of the running mate.

Mr. Harper, sponsor, advised that Arizona is one of only two states that lists the presidential electors rather than the name of the vice-presidential running mate. This adds the name of the Vice President on the ballot. He said he is committed to doing this before the 2012 election.

In reply to Mr. Ash's query, Chairman Farnsworth said he is not aware if the Secretary of State has taken a position on the legislation.

Jen Sweeney, Government Affairs Director, Arizona Association of Counties, in support of HB2335, advised that the language is acceptable to the Association. She related that she has spoken to the sponsor about an amendment. Page 1, lines 38, references *ARROW* and she pointed out that not all counties use an arrow. The Association would like to change that language to indicate a mark next to the candidate's name, and to also insert that language on page 4.

Mr. Harper said he will offer an amendment on the Floor.

Vice-Chairman Smith moved that HB2335 do pass.

Vice-Chairman Smith moved that the Harper seven-line amendment dated 1/26/11 be adopted (Attachment 2). The motion carried.

Vice-Chairman Smith moved that HB2335 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 3).

HB2355 – court surcharges – DO PASS

Magdalena Jorquez, Majority Research Analyst, advised that HB2355 clarifies that surcharges apply to the base fine and not in addition to any other surcharge (Attachment 4). The bill also conforms all terminology currently referring to a penalty assessment as a surcharge.

Chairman Farnsworth noted that this is a technical change.

Vice-Chairman Smith moved that HB2355 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 5).

HB2369 – DUI; work release – DO PASS

Kathryn Brown, Majority Intern, said that HB2369 requires courts to allow first- and second-time driving-under-the-influence (DUI) offenders to continue their employment or schooling while serving out their jail sentences (Attachment 6). The bill permits a court to deny work release if it finds good cause and places the findings on record.

Vice-Chairman Smith, sponsor, stated that this proposal is important because it allows the opportunity for people to continue working unless the judge finds good cause to not grant the request.

Vice-Chairman Smith moved that HB2369 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 7).

HB2354 – grand jury proceedings; electronic recording – DO PASS AMENDED

Kathryn Brown, Majority Intern, stated that HB2354 provides the presiding judge of the superior court the ability to employ an electronic recording system to record grand jury proceedings in lieu of a court reporter (Attachment 8). Additionally, the bill removes the requirement that court reporters file transcriptions with the clerk of the superior court within 20 days, permits the prosecutor or defense to request a transcript of the grand jury proceedings, and requires the operator of the electronic recording system to abide by the same rules as the court reporter regarding disclosure of sworn testimony.

Ms. Brown explained that the Farnsworth four-line amendment to HB2354 dated 1/26/11 requires the grand jury proceedings to be transcribed no later than 20 days after the state or the defendant requests the transcription (Attachment 9).

In response to Mr. Chabin's query, Chairman Farnsworth explained that currently the transcription is required within 20 days; this tries to conform what is now being done. Many times no one requests a transcript, but if a request is made, the transcript has to be provided within 20 days. Mr. Chabin asked if the 20-day requirement is after the request or after the hearing. Chairman Farnsworth clarified that it is 20 days after the request.

Jerry Landau, Government Affairs Director, Arizona Supreme Court, reviewed the provisions of the bill and said that because of budget constraints, Maricopa County is reviewing costs. He advised that in 2010, Maricopa County spent an average of \$753,000 on grand jury transcripts and personnel costs. Currently, all grand jury proceedings are transcribed. This bill provides that the proceeding will be transcribed only if requested by the prosecutor or the defense. He said he believes that all Maricopa County courtrooms are wired for electronic recording.

Norman Davis, Presiding Judge, Maricopa County Superior Court, testified that the courts recognize that this is a painful bill for court reporters; however, it also recognizes that the future is in technology. The bill will reduce the reliance on court reporters somewhat and save the County approximately \$500,000 a year. He explained that grand jury proceedings are recorded electronically in 24 states, the District of Columbia and the federal system. He noted that most of the other court proceedings in Maricopa County have been recorded electronically for ten

years; this is a proven technology and there seldom have been flaws. He said that it is important that the bill be discretionary to address concerns of smaller jurisdictions.

Vice-Chairman Smith queried whether the plan is to terminate the court reporters. Judge Davis replied that there are no plans to terminate court reporters. The bill would reduce reliance on outside contracted court reporters.

Mr. Ash expressed concern about the accuracy of the transcription from an electronic or video recording.

Mr. Hale brought up the confidentiality issue of those who monitor the equipment. Judge Davis stated that the courts would ensure that confidentiality would not be breeched. Mr. Hale also related his concern about breakdown of equipment and technical problems. Judge Davis said he does not believe that is a risk because of backup systems.

In reply to Vice-Chairman Smith, Judge Davis explained that the only change in grand jury proceedings is that if a transcript is desired, there would have to be a request made to receive the transcript.

Mr. Chabin asked whether the Rules need to be in effect before the change is made. Judge Davis replied that the courts do not move forward until Rules are changed. He explained the procedure to establish Rules. Mr. Chabin asked whether the Rules will apply statewide or at the discretion of the Presiding Judge. Judge Davis answered that they apply statewide.

In reply to Mr. Chabin's query about the amendment, Judge Davis stated that the amendment makes sense.

John MacDonald, representing Arizona Court Reporters Association, testified in opposition to HB2354. He advised that the Association is receptive to the idea that transcripts should be required when needed and not produced if not needed; however, it has concerns about grand jury transcripts. Because of the sensitive nature of those proceedings, the Association believes that court reporters are essential to ensure the most accurate record possible. The Association understands that the budget is tight but questions the amount of \$500,000 that will be saved unless the courts intend to terminate court reporters. He maintained that recording grand jury proceedings should take priority. In addition, confidentiality is a question that should be addressed because certain portions of the court system need to be protected. He reiterated that it is essential for court reporters to be in grand jury proceedings for the most accurate record possible.

Debate ensued between Chairman Farnsworth and Mr. MacDonald on the need for transcripts in grand jury proceedings. Confidentiality, security, accuracy, technology and quality of equipment were also discussed.

Kevin DeMenna, AVTronics, in support of HB2354, advised that AVTronics is a major provider of electronic equipment. He stated that it is important to recognize that every courtroom in Maricopa County is wired for electronic recording. The real issue is the quality of the recording. He believes it is important for a judge to have discretion whether to allow electronic recording in a courtroom.

Vice-Chairman Smith announced the names of those who signed up in support of HB2354 but did not speak:

Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission
Richard Bohan, Legislative Liaison, Maricopa County Board of Supervisors

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2354 but did not speak:

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

Vice-Chairman Smith moved that HB2354 do pass.

Vice-Chairman Smith moved that the Farnsworth four-line amendment dated 1/26/11 to HB2354 be adopted (Attachment 9). The motion carried.

Vice-Chairman Smith moved that HB2354 as amended do pass. The motion carried by a roll call vote of 8-1-0-0 (Attachment 10).

HB2352 – court commissioner; qualifications – DO PASS

Magdalena Jorquez, Majority Research Analyst, stated that HB2352 removes the requirement that court commissioners complete three years of active practice before appointment (Attachment 11).

Chairman Farnsworth explained that the genesis of the bill is that there are judges with experience that are prohibited from being appointed commissioners because they have served on the bench and technically have not been practicing law. This bill recognizes that those judges have the experience, capacity and education and that they should be utilized if needed.

Norman Davis, Presiding Judge, Maricopa County Superior Court, spoke in favor of HB2352. He asserted that the requirements for a judge should mirror the requirements of a commissioner. He said it is a cost-savings measure to bring back retired judges for short periods of time to handle some of the hearings instead of requesting more judicial officers.

Mr. Ash said he wants to ensure that this law will apply to a Member of the Legislature who has not been actively practicing law. Judge Davis concurred. Chairman Farnsworth stated that the State Bar does recognize that there is some overlap with legislative service and practicing law.

Mr. Hale asked whether he would be eligible, being a member of the New Mexico Bar but not the Arizona Bar. Judge Davis replied that this would remove the three-year requirement but would keep all the other requirements.

Vice-Chairman Smith announced the names of those who signed up in support of HB2352 but did not speak:

Jerry Landau, Government Affairs Director, Arizona Supreme Court
Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission
Richard Bohan, Legislative Liaison, Maricopa County Board of Supervisors
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Vice-Chairman Ash moved that HB2352 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 12).

HB2351 – failure; return rented vehicle; classification – DO PASS

Kathryn Brown, Majority Intern, said that HB2351 classifies the failure to return a rented or leased motor vehicle as a Class 5 felony (Attachment 13).

Kelsey Lundy, representing Enterprise Holdings, Inc., in support of HB2351, stated that this bill increases the penalty for failure to return a rental car from a Class 1 misdemeanor to a Class 5 felony. She advised that because this is currently classified as a Class 1 misdemeanor, it is difficult getting a police report filed for auto theft. It is also difficult to get stolen vehicles put on the National Crime Information Summary Network, a national database.

Vice-Chairman Smith asked the reason for changing the penalty from a Class 1 misdemeanor to a Class 5 felony. Ms. Lundy answered that a Class 6 felony will be moved back to a Class 1 misdemeanor while a Class 5 felony will retain its felony status. Vice-Chairman Smith queried whether the rental contract will have a provision noting the penalty change to a Class 5 felony. Ms. Lundy replied in the affirmative. She explained that Enterprise waits two weeks trying to recover the vehicle before reporting the car as stolen.

In reply to Mr. Chabin, Ms. Lundy reported that current law clearly states that the property is considered “failed to be returned” if it is not physically returned within 72 hours. Current statute does not address rental vehicles; it only refers to rental property. This bill adds failure to return a rental vehicle.

Mr. Hale asked whether a rental company does a background check before it leases a vehicle. Ms. Lundy replied that a valid driver license and a credit card is all that is needed.

Vice-Chairman Smith announced the names of those who signed up in support of HB2351 but did not speak:

Kevin DeMenna, representing Avis, Budget and Hertz Car Rentals

Ryan DeMenna, Associate, representing Avis, Budget and Hertz Car Rentals

Vice-Chairman Smith moved that HB2351 do pass. The motion carried by a roll call vote of 8-1-0-0 (Attachment 14).

Without objection, the meeting adjourned at 10:53 a.m.

Joanne Bell, Committee Secretary
January 31, 2011

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