

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – First Regular Session

**COMMITTEE ON JUDICIARY**

Minutes of Meeting  
Thursday, February 10, 2011  
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:03 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**

HB2304 - DPA (9-0-0-0)	HB2405 - DP (9-0-0-0)
HB2334 - Held by Chairman	HB2406 - DPA (9-0-0-0)
HB2379 - DP (9-0-0-0)	HB2470 - Held by Chairman

**CONSIDERATION OF BILLS:**

**HB2334 - private attorney retention; contingency fees - HELD BY CHAIRMAN**

Chairman Farnsworth announced that HB2334 will be held.

**HB2470 - liquefied petroleum gas; emergencies; liability - HELD BY CHAIRMAN**

Chairman Farnsworth announced that HB2470 will be held.

**HB2304 - state elections; omnibus - DO PASS AMENDED**

Magdalena Jorquez, Majority Research Analyst, reviewed the numerous changes to state election laws delineated in HB2304 (Attachment 1).

Ms. Jorquez explained that the Farnsworth 18-page amendment dated 2/9/11 makes several changes to the ballot, including the filing (Attachment 2):

- Requires that next to the name of each new party candidate, the ballot contain a three-letter abbreviation that is taken from the three words prescribed in the candidate's certificate of nomination.
- Expands the 75-foot limit on polling places to include electioneering.
- Defines *electioneering*.
- Defines *electioneering materials*.
- Provides that if an independent expenditure disclosure is written, no spoken disclosure is necessary.
- Removes the amendment to the section of the bill pertaining to contributions to independent expenditure committees.
- Allows a public official, whose final term expires less than 31 days into the immediately following year to file the final financial disclosure at the same time as the last immediately preceding year.

Ms. Jorquez stated that the Farnsworth three-line amendment dated 2/9/11 exempts a violation arising from Chapter 6, Article of Title 16 from falling under the filing officer's authority to investigate (Attachment 3).

Chairman Farnsworth related that the Farnsworth 13-line amendment dated 2/9/11 allows the Secretary of State to establish a method whereby voters may sign a nomination petition as well as a clean elections donation qualification form online (Attachment 4). It also includes a repeal date of December 31, 2014.

Amy Bjelland, State Election Director, Arizona Secretary of State's Office (SOS), answered Members' questions.

Mr. Chabin asked questions on petition circulators, whether a fee will be associated with registering and whether petition circulators will be required to be registered voters. Ms. Bjelland said that the SOS's office is asking that non-residents register with the SOS's Office, there will not be a fee and in-state residents petition circulators only have to be eligible to vote.

Mr. Chabin asked about the changes to new party nominees. Ms. Bjelland stated that currently there is a higher burden for new parties and the Secretary of State has said that he believes all parties should have the same burden. Discussion ensued on the current requirements. Mr. Chabin wondered whether this Committee should consider setting a minimum number of signatures in order to qualify for office to ensure that the candidate is serious and to demonstrate commitment to public office. Chairman Farnsworth recommended that Mr. Chabin speak to the sponsor to see if he wants to consider a Floor amendment.

Mr. Chabin brought up candidate vacancies. Ms. Bjelland said that the amendment tries to clarify that issue. She explained the procedure that occurs when a vacancy occurs after the ballots have been printed as well as before the ballots have been printed.

**Vice-Chairman Smith moved that HB2304 do pass.**

**Vice-Chairman Smith moved that the Farnsworth 18-page amendment dated 2/9/11 be adopted (Attachment 2). The motion carried.**

**Vice-Chairman Smith moved that the Farnsworth 13-line amendment dated 2/9/11 be adopted (Attachment 4).**

Chairman Farnsworth explained that the 13-line amendment allows the Secretary of State to establish petitions and make \$5 donations online. Ms. Bjelland commented that this helps online interaction with constituents for petition signing and for the \$5 donation.

Mr. Harper stated that he wants to ensure competitive bidding in the online process. Ms. Bjelland advised that bidding is not required because that can be done with the current technology.

In response to Mr. Chabin, Ms. Bjelland said the plan is that someone can sign a petition and make a contribution online as long as their identity is verified. Discussion ensued on authenticating signatures.

**Question was called on the motion that the Farnsworth 13-line amendment dated 2/9/11 be adopted (Attachment 4). The motion carried.**

**Vice-Chairman Smith moved that the Farnsworth three-line amendment dated 2/9/11 be adopted (Attachment 3).**

Ms. Bjelland stated that this amendment ensures that the Clean Elections Commission, not the Secretary of State's Office, has the authority to investigate criminal action violations.

**Question was called on the motion that the Farnsworth three-line amendment dated 2/9/11 be adopted (Attachment 3). The motion carried.**

**Vice-Chairman Smith moved that HB2304 as amended do pass.**

Vice-Chairman Smith announced the names of those who signed up in support of HB2304 but did not speak:

Karen Osborne, Elections Director, Maricopa County

Helen Purcell, Maricopa County Recorder

Jim Drake, Assistant Secretary of State, Secretary of State's Office

Heather Bernacki, Government Relations Associate, East Valley Chambers of Commerce Alliance

Brad Zinn, Co-Chairman, Vote Fraud Task Force

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Vice-Chairman announced the names of those who signed up in opposition to HB2304 but did not speak:

Buffalo Rick Galeener, representing self

Stephanie Seigla, representing self

**Question was called on the motion that HB2304 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 5).**

**HB2379 - incarceration costs; municipal court warrants - DO PASS**

Kathryn Brown, Majority Intern, stated that HB2379 stipulates that an individual arrested on a warrant issued by a municipal court may be housed in a county jail, but the city or town in which the municipal court is located bears the cost of incarceration (Attachment 6).

Mr. Ash, sponsor, asked Dana Hlavac to explain the bill.

Dana Hlavac, Deputy County Manager, Mohave County, explained that currently, if an individual is arrested by a municipal police officer and charged with a municipal offense and housed in a county jail, the municipality is responsible for paying the per diem costs. If that same individual is released and then arrested for a probation violation by a non-municipal officer and housed in the county jail, there is no provision for the per diem cost.

Chairman Farnsworth asked whether the warrant is related to the original arrest. Mr. Hlavac answered in the affirmative.

In response to Vice-Chairman Smith, Mr. Hlavac clarified that if an individual has a municipal warrant and is stopped by the sheriff outside of the city limits for another offense, current statute does not allow the municipality to be billed.

Mrs. Goodale stated that this will have an impact on the cities and she asked whether there is information available on the impact. Mr. Hlavac answered that in the past, no data has been kept; however, it is estimated that the effect is a 30 percent municipal per diem increase on the jail district.

Vice-Chairman Smith announced the names of those who signed up in support of HB2379 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2379 but did not speak:

Stephanie Seigla, representing self

**Vice-Chairman Smith moved that HB2379 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 7).**

**HB2405 - human smuggling organization; offense; penalty - DO PASS**

Kathryn Brown, Majority Intern, stated that HB2405 establishes the elements of offenses that qualify as participation in or assistance to a human smuggling organization (Attachment 8). The bill classifies participation in a human smuggling organization as a Class 2 felony and assisting a human smuggling organization as a Class 3 felony. The bill defines *human smuggling organization*.

Mr. Vogt, sponsor, advised that the purpose of HB2405 is to enhance penalties for the leaders of organized groups that are smuggling human beings into the U.S. Under current law, leaders of

these groups face the same penalty as a single defendant. This legislation takes laws being used to prosecute gangs and applies it to human smuggling.

Rebecca Baker, Legislative Liaison, Maricopa County Attorney's Office, in support of HB2405, stated that the business of human smuggling is evolving and the people who are running that business are becoming much more sophisticated. This bill targets the leaders of these kinds of organizations.

Mr. Ash asked for clarification of the level of offense. He pointed out that the language on page 5, lines 35 through 43, classifies *assisting* as a Class 4, 5 or 6 offense, and page 6, line 27, classifies *assisting* as a Class 3 felony. Ms. Baker clarified that those are two separate provisions:

- §13-2323 is a new criminal offense that creates the crime of participating or assisting a human smuggling organization.
- §13-709.06 is a special sentencing enhancement that is mirrored after penalties used in criminal street gangs.

Edward Leiter, Maricopa County Attorney's Office, in support of HB2405, answered questions by Mr. Ash on enhanced sentences and by Mrs. Tovar on the language *assisting a human smuggling organization*. Mrs. Tovar opined that the language is confusing and can be misinterpreted. Ms. Baker replied that the goal is to specifically target leaders of a human smuggling organization and noted that the organization has to be ongoing.

Chairman Farnsworth stated that everything relates to the defined language. Mr. Ash agreed that the defined term limits it; however, it may be interpreted otherwise. Mr. Chabin expressed concern on the clarity of the statute. He said he hopes that the County Attorney will be open to discussion to clarify the statute so it will not be used against people who are violating the law but are not part of a criminal organization. Mr. Vogt said he will be happy to work with the County Attorney and those who have raised concerns to tighten up the language to give law enforcement the tool they need to go after leaders of these organizations.

Mr. Ash questioned the reason for the enhancement since there are existing statutes to address that. Ms. Baker replied that criminal street gangs operate in much the same way as human smuggling organizations. The intent is to use the same approach for both. Mr. Ash said he believes this complicates things. Ms. Baker disagreed.

**Vice-Chairman Smith moved that HB2405 do pass.**

Vice-Chairman Smith announced the names of those who signed up in support of HB2405 but did not speak:

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Kimberly MacEachern, Staff Attorney Arizona Prosecuting Attorneys' Advisory Council  
Stephanie Seigla, representing self  
Daniel Seiden, Special Assistant for Legislation and Policy, Maricopa County Attorney's Office

**Question was called on the motion that HB2405 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 9).**

**HB2406 - crimes; forensic interviews; mandatory fine - DO PASS AMENDED**

Kathryn Brown, Majority Intern, said that HB2406 requires a person convicted of or adjudicated delinquent for a dangerous crime against children or sexual assault to pay a fine of \$500 in addition to any other fine or restitution imposed (Attachment 10).

Ms. Brown explained that the Vogt nine-line amendment dated 2/8/11 changes *fine* to *assessment* and adds a delayed effective date of December 31, 2011 (Attachment 11).

Mr. Vogt, sponsor, stated that the \$500 is a fixed fee for forensic interviews needed to prosecute these crimes. He encouraged Members to support this legislation.

Vice-Chairman Smith questioned the \$500 assessment.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, expressed support of HB2406. She explained that under current statute, counties are required to pay for the medical expenses required to collect evidence for the prosecution of crimes against children as well as sexual assault cases. The demand for forensic interviewers has increased over the years. Each county has its own funding mechanism to pay for these forensic interviewers; this legislation provides for a dedicated funding stream for these required interviews.

Mr. Chabin criticized charging anyone for justice. He wondered how many defendants will be able to pay the \$500 fee.

In response to Chairman Farnsworth's query on what triggers this assessment, Ms. Mayer related that it is triggered by a conviction, not an accusation.

Mr. Chabin opined that it is an illusion that these kinds of fines will pay for the investigations and prosecutions needed to keep people safe. He commented that this does nothing to solve the challenges. Chairman Farnsworth stated that the question here is whether it is reasonable for a convicted felon to pay for the forensic interview in a sexual assault or a dangerous crime against children.

Vice-Chairman Smith queried whether the person has to pay the assessment if there is no forensic interview. Ms. Mayer answered in the negative; however, she related that no cases involving sexual assault or dangerous crimes against children go forward without a forensic interview.

Vice-Chairman Smith announced the names of those who signed up in support of HB2406 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
Stephanie Seigla, representing self  
Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2406 but did not speak:

Jerry Landau, Legislative Liaison, Arizona Supreme Court, Administrative Office of the Courts

**Vice-Chairman Smith moved that HB2406 do pass.**

**Vice-Chairman Smith moved that the Vogt nine-line amendment dated 2/8/11 be adopted (Attachment 11). The motion carried.**

**Vice-Chairman Smith that HB2406 as amended do pass.**

Mr. Ash said he tends to agree with Mr. Chabin's comments. Adding another assessment seems to be an exercise in futility. The forensic interview is just part of the process of investigating the crime. He said he does not believe this will accomplish anything or be productive but will be more of an administrative hassle.

**Question was called on the motion that HB2406 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 12).**

Without objection, the meeting adjourned at 10:39 a.m.

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Joanne Bell, Committee Secretary  
February 14, 2011

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