

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON APPROPRIATIONS

Minutes of Meeting
Wednesday, March 16, 2011
House Hearing Room 1 -- 2:00 p.m.

Chairman Kavanagh called the meeting to order at 3:17 p.m. and attendance was noted by the secretary.

Members Present

Ms. Alston	Mr. Jones	Mrs. Ugenti
Mr. Campbell	Mrs. McLain	Mr. Williams
Mr. Fillmore	Mr. Olson	Mr. Court, Vice-Chairman
Mr. Forese	Mrs. Tovar	Mr. Kavanagh, Chairman
Mr. Heinz		

Members Absent

None

Committee Action

SB1135 - DP (12-0-0-1)

SB1406 - DPA (7-5-0-1)

CONSIDERATION OF BILLS

SB1135 - nuclear emergency appropriation and assessment - DO PASS

Amber Morin, Majority Intern, explained that SB1135 is an emergency measure that appropriates \$1,812,420 in Fiscal Year (FY) 2011-12 and \$1,782,028 in FY 2012-13 from the state General Fund to the Nuclear Emergency Management Fund (NEMF). The bill also levies an assessment against each consortium of public service corporations and municipal corporations operating a commercial nuclear generation station in an amount equal to that appropriated to the NEMF, plus any interest (Attachment 1).

Vice-Chairman Court announced the names of those who signed up in support of SB1135 but did not speak:

Russell Smoldon, Lobbyist, Salt River Project
Andrew Carlson, Legislative Liaison, Department of Emergency & Military Affairs
Ed Flinn, Director of Joint Programs, Department of Emergency & Military Affairs
George Diaz, Senior Public Affairs Representative, Arizona Public Service
Yvonne Hunter, Pinnacle West Capital Corporation/Arizona Public Service

Aubrey Godwin, Director, Radiation Regulatory Agency
Dave Crozier, Sr., Emergency Planner/Consultant, Arizona Public Service/Palo Verde Nuclear

Vice-Chairman Court moved that SB1135 do pass. The motion carried by a roll call vote of 12-0-0-1 (Attachment 2).

SB1406 - interstate compact; border fence - DO PASS AMENDED

Vice-Chairman Court moved that SB1406 do pass.

Chris Stapley, Majority Assistant Research Analyst, explained that SB1406 allows the Governor to enter into an interstate compact to create a border fence along the Arizona-Mexico border located on private property (Attachment 3). The amendment to SB1406 contains the following provisions (Attachment 4):

- Allows the state, if the state does not enter into an interstate compact, to construct and maintain a secure fence along the Arizona-Mexico border on private property if the landowner consents, according to the same applicable provisions as the compact.
- Establishes the Joint Arizona-Mexico Border Security Fence Committee (Committee) to administer and manage the construction and maintenance of the border fence.
- Establishes the Border Security Fund which is to be administered by the State Treasurer and is subject to legislative appropriation.

In response to a question, he indicated that there are no funds appropriated in the bill. When asked if the private funds could be swept, he related that Mr. Fillmore has a bill moving through the process that prohibits sweeping of future donated monies from private sources; if the state appropriates monies, only those monies could potentially be swept.

Mr. Campbell asked if other states are considering this type of measure and if there are provisions for specific types of property on which the fence will be built. Mr. Stapley said he will have to look into other states' interest. The bill states that the compact must include the option of constructing and maintaining a secure fence on state or federal land, but permission will have to be obtained from the federal government to build on federal land; the bill is silent regarding tribal land.

In response to questions, Mr. Stapley advised that the amendment eliminates the provision allowing states to elect not to use state monies, but with the amendment it is permissible to use state monies. The amendment does not indicate that there must be representation from both political parties on the Joint Arizona-Mexico Border Security Fence Committee.

Mr. Fillmore moved that the Fillmore two-page amendment to SB1406 dated 3/16/11 (Attachment 4) be adopted.

Mr. Jones expressed concern about whether it is permissible under current law to use state funds to build structures on private land and state trust land. Mr. Fillmore responded that Members of the Committee will deal with administrative issues. Chairman Kavanaugh stated that there is a border fence along large swaths of California, much of it on private land, so there is a legal mechanism through which this can be done.

Mr. Jones noted that a Border Security Committee was created last year to review border security issues such as fencing; it appears that the Committee established in the amendment has basically the same membership and the purpose is broad enough that there will be overlap with the Border Security Committee, which is getting ready to hold hearings.

In response to a question, Chairman Kavanagh clarified that the bill with the amendment states that the fence will be constructed on private or public land, which will be the entire border. Mr. Campbell noted that there is 75 miles along the border that is reservation land of the Tohono O'odham Nation. Chairman Kavanagh stated that there has been no response from the Tohono O'odham Nation.

Senator Steve Smith, sponsor, noted that there is a tremendous amount of fiscal and social impact to the state as the result of illegal aliens and border crossing cases. This bill attempts to do what the federal government and the state have not done, which is to begin construction of a fence along the border. With the amendment, a website will be launched primarily to raise private donations that will be placed into the Fund that will be established to be managed by the State Treasurer's Office. Inmate labor will be used to construct the fence at the rate of 50 cents per hour. He said it is clear in the bill that the interstate compact is an option. He wants to begin initially in Arizona, and if other states want to join, they may, but the problem is that half of the illegals that enter the country do so in the Tucson sector, which is where he plans initially to begin construction. The Border Patrol estimates that 250,000 people were detained last year, but for every one that is caught, two or three go free, so another 500,000 to 750,000 are not caught.

Mr. Heinz asked how the bill as amended will dovetail with maintenance or upkeep of existing fences and future comprehensive immigration reforms that he hopes the federal government will implement. Senator Smith replied that the legislation only addresses new projects.

Mr. Heinz asked about oversight in relation to quality control, safety, etc. Senator Smith replied that the Committee will oversee the fund.

Mr. Heinz noted that there are many areas along the border where the terrain is too rough to construct a standard fence. Senator Smith replied that he spoke with members of the Border Patrol who agree there are areas of rough terrain along the border; however, there is a 60-foot easement that runs along the entire southern border that is being explored. If it is difficult to build a fence in an area, it is difficult to cross there, but if the more open areas can be closed down, perhaps Border Patrol can funnel people to one area by horseback. His goal is to have a fence all along the border.

In response to a question, Senator Smith related that the intention is to begin construction of the fence as soon as possible after initial donations are received. He hopes to at least be able to purchase supplies and materials and use inexpensive inmate labor. He noted that Sheriff Paul Babeu was in the Yuma sector when a triple-layered fence was built, which has a 96 percent success rate. There have been successes in Douglas as well, so those two models can be considered.

Mr. Jones commented that he is familiar with the Yuma sector and its incredible success. A triple-layered fence was built where urban centers are located on both sides of the border. There

is a large area that does not have a triple-layered fence because there is ground-based radar, which makes it possible to see into Mexico and track illegals that cross the border. Different kinds of bollards are also used that do not permit vehicles, but there are issues of endangered migratory species that cross the border, most of which are handled by the International Boundaries and Border Commission. Senator Smith responded that members of the Border Patrol are supportive of the bill. He understands that ground-based radar is very important, but just about everyone he has talked to, mainly Border Patrol, wants a fence because it is a clear impediment. He added that he recommends ground sensors as well, so if there is a large movement of illegals or a large vehicle, the Border Patrol will be alerted and have ample time to react.

Senator Smith advised Mrs. Tovar that there are about 370 miles along the border. He does not know exactly how many miles are currently fenced, but there are hundreds of miles of no fencing, which this bill is meant to address.

Chairman Kavanagh stated that when Border Patrol and others talk about border fencing, vehicle barriers are included, which does not keep people out; they are only trip hazards. Yuma and California demonstrate that effective fencing works well.

Senator Smith remarked that when the Director of Homeland Security and other government officials visit the “fence on the border,” they normally go to populated urban areas where there is a fence; Border Patrol says that not many illegals cross in the urban areas, but in the areas in between.

Mrs. Tovar asked the estimated cost per mile to build the fence. Senator Smith stated that current estimates are extremely high mainly because of labor for which the bill includes optional resources. Neither the Joint Legislative Budget Committee (JLBC) nor Legislative Council has done research on the cost of raw materials, but using inmate labor will save enormously on cost.

Chairman Kavanagh stated that he spoke with a constituent who indicated that the fencing around prisons, which tends to be about 18 to 20 feet high chain link with razor ribbon on the top and in between, costs about \$1 million per mile, which he opined is fairly inexpensive and would be very useful in high traffic areas. Senator Smith reiterated that with inmate labor, the cost will decrease drastically to about one third of that number. It will depend on the type of fencing also, which has yet to be established.

Mr. Campbell asked what happens if the Fund runs out of money for maintenance and a property owner, public or private, is stuck with a fence that could fall apart. Senator Smith noted that the amendment states the monies will be used for construction and maintenance of the fence, so money will be retained for maintenance. He opined that patching a fence pales in comparison to the fiscal and social impact to the state of illegal crossings.

Mr. Campbell asked why politicians on the Committee that is established by the bill are being placed in charge of securing the border instead of experts who deal with border issues every day. Senator Smith replied that the Committee is somewhat modeled after the Border Security Committee already in place, of which he is Vice-Chairman; expert testimony is given at every meeting, but the legislators dictate how the money is best used. Three non-legislative Members

are also appointed by the Governor to the Committee established in the amendment, for which the Committee Members could strongly recommend the appointment of experts.

Mrs. McLain recognized that the compact is optional, but asked if a compact is entered into that will only deal with the Arizona border whether other states will be expected to support that, or if the intent is to enter into a compact to build a fence along the entire southern border. Senator Smith replied that the bill stipulates the Arizona-Mexico border, but it does not say only border states can enter into the compact. Mississippi, for example, is very interested even though it is not a border state.

Chairman Kavanagh noted that a compact requires Congressional approval so the states that enter into the compact will not have to comply with certain federal laws that could make it difficult to construct such a fence. Senator Smith agreed, noting that if for some reason the federal government decides to take action against the state for building the fence, the compact, in many ways, will supersede that.

Mr. Jones stated that construction of the fence in the Yuma sector was done by the Army Corps of Engineers with National Guard units that were periodically assigned to the area, so the labor was fairly inexpensive, although more than 50 cents per hour. He asked how the funds will be protected from being swept. Senator Smith answered that the amendment stipulates that the monies in the Fund are subject to legislative appropriation and exempt from lapsing of appropriations, which he believes will protect the Fund.

Mike Huckins, Majority Research Analyst, stated that under current language, even though funding will be provided by donations, the monies will be susceptible to legislative sweeps; however, if Mr. Fillmore's bill passes, those funds will be required to be kept separately and prohibited from sweeping, unless legislation is passed to allow it.

Chairman Kavanagh pointed out that there was one situation in which donated money was swept, which was returned.

Mr. Jones questioned the differentiation between donated monies for a fence versus donated monies to various funds within the Arizona Department of Agriculture for public health issues from private individuals through a volunteer assessment, which has been swept by the Legislature.

Question was called on the motion that the Fillmore two-page amendment to SB1406 dated 3/16/11 (Attachment 4) be adopted. The motion carried.

Jaime Farrant, Policy Director, Border Action Network, opposed SB1406. He said there has been talk about raising private funds to build this fence along the border, but that is not written in statute, so the Governor or Legislature could appropriate hundreds of millions of dollars which will probably be needed to build the fence. This sends a message to people of Arizona that education does not matter as much as building this fence. Also, the fence as proposed will only be built on private land if landowners consent. If landowners do not consent, there will be a fence with gaps all across the border at a cost of millions of dollars, and donors could sue Arizona for failure to complete the fence. Additionally, he is concerned about the political

makeup of the Committee and the fact that it does not include people from Mexico when the fence impacts both countries.

Mr. Forese asked if Arizona has a problem with drug trafficking, weapons trafficking and human smuggling. Mr. Farrant answered that he does not investigate those cases, so he will leave the answer to law enforcement. He added that it appears that crossings and violent crime statistics in the border region have decreased.

Mr. Forese asked what action Mr. Farrant advocates. Mr. Farrant stated that the Border Action Network and the Southern Border Communities Coalition have been working with the federal government for several years advocating for solutions to better secure the border. For example, one of the concerns the Coalition raised is more oversight and accountability to Border Patrol to ensure that whatever is being done is effective in improving border security. Another recommendation is to improve the ports of entry along the border because of the drastic impact on trade. People are afraid of being stopped because of their color or race.

Chairman Kavanagh asked if the Border Action Network is concerned by the fact that the Border Patrol is not apprehending all illegal crossers. Mr. Farrant replied that he would like to see a system in place where the number of illegal crossings is reduced and people who want to enter the U.S. legally to work and be with their families can do so. If that system is in place, people who do not use that system are probably criminal elements and should be apprehended, prosecuted and convicted.

Mr. Fillmore noted that Mr. Farrant expressed concern about exclusion of people from Mexico on the Committee and asked if Mexico is concerned with the sovereignty or security of the U.S. Mr. Farrant answered that he cannot speak on behalf of the government of Mexico.

Mr. Fillmore asked what kind of fence Mr. Farrant would recommend. Mr. Farrant stated that he is speaking in opposition to the bill. He would have to discuss the type of fence with Border Action Network membership so he cannot answer at this time.

Vice-Chairman Court announced the names of those who signed up in opposition to SB1406 but did not speak:

Bettina Bickel, representing self

Kay Martin, Chaplain, representing self

Vice-Chairman Court announced the names of those who signed up in support of SB1406 but did not speak:

Jose Borrajero, representing self

Vice-Chairman Court moved that SB1406 as amended do pass. The motion carried by a roll call vote of 7-5-0-1 (Attachment 5).

Without objection, the meeting adjourned at 4:20 p.m.

Linda Taylor, Committee Secretary
April 4, 2011

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