

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – First Regular Session

**COMMITTEE ON JUDICIARY**

Minutes of Meeting  
Thursday, March 17, 2011  
House Hearing Room 4 -- 8:00 a.m.

Chairman Farnsworth called the meeting to order at 8:10 a.m. and attendance was noted by the secretary.

**Members Present**

Mr. Ash  
Mr. Chabin  
Mrs. Goodale

Mr. Harper  
Mrs. Tovar  
Mr. Vogt

Mr. Smith D, Vice-Chairman  
Mr. Farnsworth, Chairman

**Members Absent**

Mr. Hale (excused)

**Committee Action**

SB1046 - DP (7-1-0-1)	SB1368 - HELD
SB1081 - DP (8-0-0-1)	SB1412 - DPA (6-2-0-1)
SB1088 - DP (6-2-0-1)	SB1429 - DP (7-0-0-2)
SB1155 - DP (8-0-0-1)	SB1466 - <del>DP</del> FAILED (4-4-0-1)
SB1191 - DP (8-0-0-1)	SB1472 - DP (5-3-0-1)
SB1225 - DP (8-0-0-1)	SB1473 - DP (8-0-0-1)
SB1280 - DP (8-0-0-1)	SB1482 - DP (6-2-0-1)
SB1331 - DP (6-2-0-1)	SB1484 - DPA (8-0-0-1)
SB1334 - <del>DP</del> FAILED (3-5-0-1)	SB1546 - DP (5-2-0-2)
SB1334 - DP (6-2-0-1) On Reconsideration	SCR1025 - DP (5-3-0-1)

**CONSIDERATION OF BILLS:**

**SB1368 - human smuggling organization; offense; penalty. - HELD**

Chairman Farnsworth announced that SB1368 will be held.

**SB1046 - juvenile corrections; discharge; ICE detainers - DO PASS**

Jonathon Bates, Majority Intern, Military Affairs and Public Safety Committee, stated that SB1046 requires a youth to be discharged from the jurisdiction of the Arizona Department of Juvenile Corrections (ADJC) if both of the following are satisfied (Attachment 1): the youth has

completed the minimum length of stay in a secure care facility, if any, that was assigned by the committing juvenile court, and Immigration and Customs Enforcement (ICE) enforces a detainer demanding custody of the youth for immigration proceedings.

Senator Don Shooter, sponsor, advised that the agency asked for this legislation which allows ADJC to give the youth to ICE. Under current law, ADJC is still responsible for the youth when ICE houses the youth out of state; this gives ICE the responsibility for the youth. He said it saves money because the Department does not have to house them.

Laura Dillingham, Director of Communications/Legislative Policy, Arizona Department of Juvenile Corrections (ADJC), in support of SB1046, explained the need for the bill. She advised that when there is an ICE detainer, it is not enforceable until the youth has met the court's requirements. When the juvenile is ready for release, ICE enforces the detainer, picks up the youth and asks the family to appear because the youth is scheduled for a deportation hearing. She said that an unaccompanied minor cannot be deported; however, most times the family does not appear because they are also illegal. ICE then turns the youth over to the Office of Refuge Resettlement and they are sent out of state to a safe house to await a deportation hearing because the State of Arizona does not have any safe houses. Under current law, ADJC retains jurisdiction and responsibility for the juvenile. This bill allows ADJC to discharge the youth from its custody and hand the juvenile over to the custody of ICE.

Vice-Chairman Smith announced the names of those who signed up in support of SB1046 but did not speak:

Beth Rosenberg, Lobbyist, Children's Action Alliance

Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission

Ana Maria Tomchek, Program Project Specialist II, Arizona Department of Juvenile Corrections

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1046 but did not speak:

Jaime Farrant, Policy Director, Border Action Network

**Vice-Chairman Smith moved that SB1046 do pass. The motion carried by a roll call vote of 7-1-0-1 (Attachment 2).**

### **SB1412 - early voting; revisions - DO PASS AMENDED**

Magdalena Jorquez, Majority Research Analyst, explained that SB1412 broadens the classification of ballot abuse to include certain offenses and delineates the classifications (Attachment 3):

- Requires the officer charged by law with the duty of preparing ballots at any election to ensure that the ballot return envelopes are of a type that are tamper evident when properly sealed.
- Requires the following statement to be included on the printed instructions provided to early voters:
  - Prohibits a person from possessing more than six voted early ballots of other voters for delivery to an election official or polling place.
  - Exempts a government employee in the course of official duties.

- Includes the statement that classifies as a felony the act of offering or receiving any compensation for a ballot.
- Expands the violation of a person to knowingly mark or punch an early ballot to include early voted or unvoted ballots as well as ballot envelopes.
- Broadens the classification of ballot abuse to include the following offenses:
  - To offer or provide any consideration to any other person to acquire the voted or unvoted early ballot and classifies it as a Class 4 felony.
  - Prohibits a non-governmental employee from delivering more than six early ballots to a polling site and makes it a Class 5 felony to do so.
  - Prohibits a person from possessing another person's early ballot with the intent to sell it and makes it a Class 5 felony to do so.
  - Establishes engaging in or participating in a pattern of early ballot fraud as a Class 3 felony.
- Defines pattern of early ballot fraud as meaning the person has offered or provided any consideration to three or more persons to acquire the voted or unvoted early ballot of a person.

Ms. Jorquez reviewed the provisions of the Farnsworth two-page amendment dated 3/16/11 (Attachment 4):

- Expands the provisions relating to the form of the ballot affidavit and the classification of ballot abuse to apply to all voted or unvoted ballots, not just early ballots.
- Amends the language required to be included on the affidavit form to include the notice that, unless otherwise permitted by law, a person is prohibited from possessing more than 10 voted ballots of other voters and states that it is a felony to do so.
- Make it a Class 5 felony for a person to receive or agree to receive any consideration in exchange for a voted or unvoted ballot.
- Lowers the classification of a person who offers or provides consideration to acquire voted or unvoted ballots from a Class 4 to a Class 5 felony.
- Lowers the classification of a person who engages or participates in a pattern of ballot fraud from a Class 3 to a Class 4 felony.
- Makes it a Class 5 felony for a person or entity to knowingly solicit the collection of voted or unvoted ballots by misrepresenting itself as election official, or official ballot repository.
- Makes it a Class 5 felony for a person to knowingly collect voted or unvoted ballots and not turn them in to an election official, the United States Postal Service or other entity permitted to transmit post.

Senator Don Shooter, sponsor, spoke of the great amount of voter fraud happening on the border and said this bill will address that. The Secretary of State's Office helped craft this legislation which hopefully will suppress the voter fraud that has been going on for decades along the border.

Jen Sweeney, Government Affairs Director, Arizona Association of Counties, neutral on SB1412, explained that the question arises when someone brings in more than the thresholds. She wondered whether all the ballots will be accepted or whether those excess ballots that are

more than the threshold will have to be kept for prosecution reasons because now the person will be charged with a felony. Additionally, if the person brings in 20 ballots, who will decide which ballots will be counted. She submitted that practical clarification is needed. She stated support for more penalties for voter fraud.

Mr. Harper stated his understanding that there will be no penalty for bringing in more than 10 ballots, just not at the same time. Ms. Sweeney said that is correct.

Mr. Chabin said that a person will be in violation if 26 ballots are brought in on behalf of a nursing home under this proposal. Ms. Sweeney concurred. Mr. Chabin asked whether there is any reason to believe that person has committed a crime under today's law. Ms. Sweeney answered in the negative because current law does not prohibit a person from bringing in those 26 ballots today.

Karen Osborne, Elections Director, Maricopa County, testified that SB1412 is a great approach to addressing voter fraud; however, she opposes SB1412 because of the portions of the bill concerning the threshold. Her concern relates to the role of the county.

Ken Bennett, Secretary of State, in support of SB1412, stated concern about the strict liability created by the 10-ballot limit. He shares concerns expressed by Ms. Sweeney and Ms. Osborne and said he is concerned about people who are doing the right thing for the right reasons by bringing ballots in from nursing homes and other care facilities where there might be legitimate situations for someone to be in possession of more than 10 ballots. He stated that he is comfortable supporting the bill with the amendment which provides that it is not a crime for poll workers to accept more than 10 ballots or that no action will be taken against someone who brings in more than 10 ballots, such as a postal worker.

Mr. Chabin asked whether any problems have been reported in early voting. Secretary Bennett revealed that his Office has had calls about people bringing in multiple ballots. He said it is a matter of perception and this bill is a huge step forward. Mr. Chabin commented that he is not sure this law is needed. He questioned whether there has been a problem; however, he agreed that perception is of primary importance.

Vice-Chairman Smith announced the names of those who signed up in support of SB1412 but did not speak:

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

Jose Borrajero, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1412 but did not speak:

Judy Whitehouse, representing self

Vice-Chairman Smith announced the names of those who signed up as neutral on SB1412 but did not speak:

Helen Purcell, Maricopa County Recorder, representing self

**Vice-Chairman Smith moved that SB1412 do pass.**

**Vice-Chairman Smith moved that the Farnsworth two-page amendment dated 3/16/11 be adopted (Attachment 4).**

Mrs. Tovar asked whether the amendment applies to family members. Chairman Farnsworth replied that it does not specify family members; it specifies more than 10 ballots.

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

**Vice-Chairman Smith moved that SB1412 do pass. The motion carried by a roll call vote of 6-2-0-1 (Attachment 5).**

**SB1155 - electronic; digital devices; stalking; threatening - DO PASS**

Kathryn Brown, Majority Intern, stated that SB1155 amends certain portions of the criminal statute related to public order to reflect current technology (Attachment 6). The bill:

- Expands the unlawful use of a device to terrify, intimidate, threaten, harass, or offend to include any electronic or digital device.
- Defines *electronic or digital device* as any wired or wireless communication device and multimedia storage device.
- Extends the course of conduct classified as stalking to include the use of any electronic, digital, or global positioning system device to observe a specific person or a specific person's internet or wireless activity for 12 hours or more, or on two separate occasions over a period of time.
- Makes technical and conforming changes.

Senator Linda Gray, sponsor, said the intent of SB1155 is to include current technology to deal with the crime of stalking.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, appeared in support of SB1155. The bill addresses the increased use of computers and digital phones to harass someone, and the increased levels of stalking behavior by using internet and digital device technology. This legislation gives prosecutors additional tools to deal with these increasing acts to stalk domestic violence victims.

Mr. Vogt noted that the bill provides that the internet and wireless activity be 12 hours or more, or two or more occasions, and said that a great deal of harm can be done in that time period. Ms. Mayer explained the language was discussed with the sponsor, the courts and Legislative Council to come up with language that will capture those who track someone with the intent to terrify or threaten. Chairman Farnsworth cautioned against too narrow a timeframe which might ensnare innocent people. He said the intent is to go after ongoing activity.

Vice-Chairman Smith announced the names of those who signed up in support of SB1155 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties  
Danielle Rothleutner, Case Manager, representing self

Ray Churay, Deputy Director, Maricopa County Sheriff's Office  
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council  
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office  
Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission

**Vice-Chairman Smith moved that SB1155 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 7).**

**SB1081 - minors; protective proceedings - DO PASS**

Magdalena Jorquez, Majority Research Analyst, explained that SB1081 repeals and replaces certain statutes related to guardians of incapacitated persons as follows (Attachment 8):

- Repeals the section of law governing the testamentary appointment of guardian for an incapacitated person.
- Adds a new section of law governing the appointment of guardian by will or other writing.
- Allows a parent, by will or other signed writing, to appoint a guardian for an unmarried child who the parent believes is an incapacitated person and permits the parent to take the following actions:
  - Specify desired limitations on the powers to be given to the guardian.
  - Revoke or amend the appointment before confirmation by the court.
  - Stipulates that appointments become effective only as prescribed pursuant to A.R.S. § 14-5301.01 (A) (section of law governing effectiveness of appointment).
- Allows an individual, by will or other writing, to appoint a guardian for the individual's spouse who the appointing spouse believes is an incapacitated person and permits the appointing spouse to take the following actions:
  - Specify desired limitations on the powers to be given to the guardian.
  - Revoke or amend the appointment before confirmation by the court.
  - Stipulates that appointments become effective only as prescribed pursuant to A.R.S. § 14-5301.01 (A) (section of law governing effectiveness of appointment).
- Stipulates that unless the court has confirmed the appointment, the following people may file a written objection to an appointment:
  - The incapacitated person
  - The person having care or custody of the incapacitated person, if other than the appointing parent or spouse; or
  - The closest living relative.
- Stipulates that the filing of a written objection terminates the appointment.
  - Allows an objection to be withdrawn.
  - Stipulates that if an objection is withdrawn then it has no effect.
- Clarifies that the objection does not preclude the appointment of the person selected by the appointing parent or spouse.
- Requires that notice of the objection must be given to the guardian and any other person entitled to notice of the acceptance of the appointment.
- Permits the court to treat the filing of an objection as a petition for the appointment of a temporary guardian or for the appointment of a limited or general guardian.

- Allows the court, on petition of the appointing parent or spouse and prior to the appointment becoming effective, to confirm the appointing parent's or spouse's selection of a guardian and terminate the rights of others to object under the following conditions:
  - The court finds that the appointing parent or spouse will likely become unable to care for the incapacitated within two years.
  - Stipulates that notice must be given to the guardian and any other person entitled to notice of the acceptance of the appointment.
- States that the appointment of a guardian is effective on whichever of the following circumstance occurs first:
  - On the death of the appointing parent or spouse
  - The adjudication of incapacity of the appointing parent or spouse; or
  - A written determination by a physician who has examined the appointing parent or spouse that the appointing parent or spouse is no longer able to care for the incapacitated person.
- Requires that an acceptance of appointment must be filed in order for the appointed guardian to be eligible to act.
  - Requires the filing to be filed within 30 days after the guardian's appointment becomes effective.
- Requires the guardian to take the following actions with regard to filing the acceptance of appointment :
  - File the notice of acceptance of appointment and a copy of the will with the court in the county in which the will was or could be probated; or
  - In the case of a signed writing, file the acceptance of appointment and the signed writing with the court in the county in which the incapacitated person resides or is present.
- Requires the guardian to give written notice of the acceptance of appointment to the following people:
  - The appointing parent or spouse, if living
  - The incapacitated person
  - A person having care or custody of the incapacitated person other than the appointing parent or spouse; and
  - The closest living relative.
- Requires that the notice include a statement of the right of those notified to terminate the appointment by filing a written objection, unless the appointment was previously confirmed by the court.
- Specifies that an appointed effected filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.
- Requires that, within 30 days after the filing of the will or signed writing, an appointed guardian must file a petition in the court for confirmation of the appointment, unless the appointment was previously confirmed by the court.
- Terminates the authority of the guardian on the first occurrence of the following circumstances:
  - On the appointment of a guardian by the court; or
  - The giving of written notice to the guardian of the filing of an objection.

- Clarifies that the appointment of a guardian pursuant to the section is not a determination of incapacity.
- States that the powers of a guardian who timely complies with notice and filing requirements give acts by the guardian that are of benefit to the incapacitated person and that occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of appointment.
- Empowers a person to become a guardian of an incapacitated person by a parental or spousal appointment or on appointment by the court.
  - States that the guardianship continues until it is terminated, without regard to the location of the guardian or the ward.
- Enables a party that is interested in the welfare of a minor who is at least 17.5 years of age and who is alleged to be incapacitated to take the following actions:
  - Initiate guardianship proceedings pursuant to this article; and
  - Request that the guardianship order take effect immediately on the minor's 18<sup>th</sup> birthday.
- Allows the petitioner to include with the petition a report of an evaluation of the minor by a physician, psychologist or registered nurse that meets statutory requirements.
  - Allows the petitioner to ask in the petition that the court accept this report in lieu of ordering any additional evaluation pursuant to statute, if the evaluation was conducted within six months after the date the petition was filed with the court.
  - Permits the court to grant the petitioner's request.
- Permits a party that is interested in the welfare of a minor who is at least 17.5 years of age and who is alleged to be in need of protection to take the following actions:
  - Petition the court for appointment of a conservator or request an appropriate protective order; and
  - Request that the conservatorship order or protective order take effect immediately on the minor's 18<sup>th</sup> birthday.
- Expands the list of items required to be included in the petition for the appointment of a guardian or for any other protective order to include the court and case number of any action that meets the following circumstances:
  - If a custodial order that was previously entered regarding an alleged incapacitated person in a child custody action or similar proceeding in this state or another jurisdiction; and
  - The petitioner or proposed guardian is a parent or nonparent custodian of the alleged incapacitated person.
- Permits the court, on petition and after notice of a hearing, to continue a conservatorship or other protective order beyond the minor's 18<sup>th</sup> birthday if the court determines that the order is appropriate under law.
- Expands the notice requirements in conservatorship proceedings to include proceedings to continue a conservatorship or other protective order for a minor.
- Adds an additional scenario in which the court is required to set a hearing to include the filing of a petition for continuation of a conservatorship or other protective order for a minor.
- Expands the list of orders that a person interested in the estate or affairs of a person for whom a conservator has been appointed may file in the appointing court to include a continuing of a minor's conservatorship or other protective order.

- Specifies that the court is required to terminate the conservatorship on determination that the minority or disability of the protected person has ceased, unless the court continued the minor's conservatorship or other protective order.

Amy Love, Legislative Liaison, Arizona Supreme Court, in support of the bill, advised that the goal is to allow a parent of an incapacitated person to nominate someone to care for that person. She asked Members for their support.

Vice-Chairman Smith announced the names of those who signed up in support of SB1081 but did not speak:

Beth Rosenberg, Lobbyist, Children's Action Alliance

**Vice-Chairman Smith moved that SB1081 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 9).**

### **SB1191 - juveniles; discretionary transfer; adult court - DO PASS**

Kathryn Brown, Majority Intern, reviewed the provisions of SB1191 (Attachment 10):

- Expands the list of offenses for which a jurisdictional determination is made as to whether a juvenile at least 14 years of age charged as an adult in a criminal prosecution, at the discretion of a county attorney, should be transferred to a juvenile court to include the following:
  - A Class 1 felony.
  - A Class 2 felony.
  - A Class 3 felony involving preparatory offenses, homicide, assault, kidnapping, sexual offenses, criminal trespass and burglary, criminal damage, arson, robbery, or organized crime, fraud, or terrorism.
  - A Class 3, 4, 5, or 6 felony involving a dangerous offense.
  - Any felony offense committed by a chronic felony offender.

Senator Linda Gray, sponsor, stated that SB1191 gives another option, in addition to the county attorney, to make the decision.

J. Michael Traher, representing self, in favor of SB1191, advised that when he was a trial lawyer for the Maricopa County Public Defender's Office, he exclusively represented juveniles who were tried as adults. This legislation gives the opportunity to have cases involving 14-year-old juveniles reviewed by a judge to decide by clear and convincing evidence whether it is appropriate for the juvenile to be tried as an adult in Superior Court or have the case sent back to Juvenile Court.

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office, testified against SB1191. She said this bill creates additional costs and is unnecessary. She stated that a considerable amount of time and money is needed to conduct these hearings. Her Office closely scrutinizes cases that are filed into Adult Court and there is no evidence that this discretion has been abused. She asked Members not to support this legislation. She answered questions about Adult and Juvenile Court philosophy, rehabilitation, and punishment.

Mrs. Goodale asked whether there are statistics for juveniles transferred into the Adult Probation Department who are successful, and statistics which show those who quickly violate and move into the prison system. Ms. Baker said she does not have that information but can provide it.

Jerry Landau, Legislative Liaison, Arizona Supreme Court, Arizona Judicial Council, testified in support of SB1191. He advised that he can get the information that Mrs. Goodale asked about. He noted that this statute is already in effect for sex crimes; this provides some balance in the system; it gives the ability for the court to look at the juvenile and that is why judicial discretion is important.

Vice-Chairman Smith announced the names of those who signed up in support of SB1191 but did not speak:

Beth Rosenberg, Lobbyist, Children's Action Alliance

Robin Lubitz, representing self

Ana Maria Tomchek, Program Project Specialist II, Arizona Department of Juvenile Corrections

Luis Ebratt, President, Arizona Probation Officers Association, Arizona Conference of Police and Sheriffs

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1191 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

**Vice-Chairman Smith moved that SB1191 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 11).**

### **SB1225 - forgery; human smuggling; classification - DO PASS**

Kathryn Brown, Majority Intern, stated that SB1225 classifies forgery as a Class 3 felony if the forged instrument is used in connection with the purchase, lease or renting of a dwelling used as a drop house for human smuggling (Attachment 12). The bill defines *drop house* as property that is used to facilitate smuggling.

Senator Kyrsten Sinema, sponsor, advised that this legislation seeks to create a new class of felony for individuals who engage in forgery for the purpose of operating a criminal drop house. Increasing the felony from a Class 4 to a Class 3 felony gives prosecutors greater flexibility in seeking cooperation from these individuals to identify other people who are operating criminal cartels.

Vice-Chairman Smith asked whether this bill is constitutional. Senator Sinema replied in the affirmative. The bill creates a Class 3 felony for the crime of forgery when used in connection with a drop house. Courts across the country have determined that it is reasonable and constitutional to create penalties specifically for criminal purposes.

In response to Mr. Ash, Senator Sinema answered that *drop house* is referenced in the human smuggling statute. She advised that a drop house is an entity where individuals are sequestered for a criminal commercial purpose.

Mrs. Tovar said her concern relates to the person being smuggled and she asked how this bill will affect that person. Senator Sinema clarified that this crime must have two elements: there must be forgery and the prosecution must prove that the person who is forging the document is doing it for the purpose of operating the illegal commercial enterprise. She said those two elements make it clear that this does not apply to the “smugglee” who is the victim in these situations.

Vice-Chairman Smith announced the names of those who signed up in support of 1225 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys’ Advisory Council  
Art Harding, Legislative Affairs Director, Attorney General's Office

**Vice-Chairman Smith moved that SB1225 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 13).**

**SB1429 - health care actions; liability; students - DO PASS**

Jessica Gordon, Majority Intern, Health and Human Services Committee, reviewed the provisions of SB1428 (Attachment 14):

- States that a student of an educational or training program of a certified, accredited or state approved postsecondary institution that prepares students for licensing as a health care provider:
  - Is not liable in a medical malpractice action for injury that occurs during, or as a result of, care provided while the student is in the program and under supervision of a licensed health care provider unless gross negligence is established by clear and convincing evidence.
  - Does not owe an independent duty of care to a patient if the student is participating in patient care under the supervision of a licensed health care provider.
- Specifies that the responsibility of the supervising licensed health care provider for the student’s actions is not eliminated by this section.

Vice-Chairman Smith stated his understanding that SB1429 does not remove the supervising doctor from liability if he commits malpractice, even though the students are immune. Ms. Gordon said that is correct. Chairman Farnsworth clarified that the students are not immune; he referred to the gross negligence clause.

Kelsey Lundy, Lobbyist, representing Midwestern University, spoke in support of SB1429. She related that there have been a few instances in the past where students have been named in malpractice cases. The courts have generally taken the position that students do not have a legal duty of care to a patient that a licensed health care professional has; students are simply there for their own educational purposes. This bill will clarify that a student who is in an educational setting, being supervised by a licensed health care professional, could not be held liable for actions under that health care professional.

Vice-Chairman Smith announced the names of those who signed up in support of SB1429 but did not speak:

Barbara Fanning, Legislative Liaison, Arizona Hospital and Healthcare Association  
Norman Moore, Attorney, Independent Colleges & Universities of Arizona

Steve Barclay, Lobbyist, Mayo Clinic Arizona  
Lorna Romero, Director of Government Relations, Arizona Chamber of Commerce & Industry  
Don Isaacson, Independent Colleges and Universities of Arizona  
Heather Bernacki, Government Relations Associate, Arizona Physical Therapy Association  
David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association  
Scott Shuman, Director of Risk Management, Midwestern University  
Barry Halpern, representing self  
Jaime Molera, Lobbyist, University of Arizona - Health Sciences Center

Vice-Chairman Smith announced the names of those who signed up in support of SB1429 but did not speak:

Janice Goldstein, Arizona Trial Lawyers

**Vice-Chairman Smith moved that SB1429 do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 15).**

### **SB1280 - minors; electronic cigarettes; prohibition - DO PASS**

Kathryn Brown, Majority Intern, stated that SB1280 prohibits minors from purchasing, buying or otherwise possessing electronic cigarettes (Attachment 16). The bill classifies the violation as a petty offense and defines *electronic cigarette* as a battery-powered device that can provide inhaled doses of nicotine by delivering a vaporized solution.

Art Harding, Legislative Affairs Director, Attorney General's Office, appeared in support of SB1280. He described an electronic cigarette: resembles a pen, has a battery within it and contains some nicotine. The device vaporizes the nicotine but no smoke is released into the air. The goal of this legislation is to make it illegal to sell these devices to minors.

Chairman Farnsworth queried whether the nicotine content is equivalent to a regular cigarette. Mr. Harding said he will have to check on that. He advised that some companies claim that it helps to stop someone from smoking; it is supposed to be a cigarette replacement.

Brian Hummell, Arizona Director, Government Relations, American Cancer Society, Cancer Action Network, explained the reason he is opposed to SB1280 is that electronic cigarettes have not been proven to be safe for anyone. The Food and Drug Administration (FDA) has not approved its use. There is a current court case under appeal which is trying to resolve who has authority to regulate the product. There is no regulation on the cartridges that go into these products and there is no scientific evidence on the safety of these cigarettes. In initial lab tests, the FDA found detectable levels of carcinogens and toxic chemicals, including an ingredient used in making anti-freeze.

Chairman Farnsworth noted that this legislation makes it illegal to sell these electronic cigarettes to minors. Mr. Hummell argued that they are unsafe for anyone to use.

Mr. Chabin asked if it would be better to choose another method, other than electronic cigarettes, if a minor suffers from an addiction to nicotine in the form of cigarettes. Mr. Harding said that

the intent of the Attorney General's Office is to eliminate the initial use before nicotine becomes an addiction.

Vice-Chairman Smith announced the names of those who signed up in support of SB1280 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties  
Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office  
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office  
Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1280 but did not speak:

Christian Stumpf, American Lung Association, Arizona

**Vice-Chairman Smith moved that SB1280 do pass.**

Mrs. Tovar asked whether electronic cigarettes are taxed the same as cigarettes. Mr. Chabin said that he does not believe they are because they are not a tobacco product.

**Question was called on the motion that SB1280 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 17).**

**SB1546 - eminent domain on federal property. - DO PASS**

Magdalena Jorquez, Majority Research Analyst, advised that SB1546 broadens the classification of property subject to the state's eminent domain laws by including property possessed by the U.S. government and mirrors the language contained in HB2313 which passed out of this Committee on February 17 (Attachment 18). The bill contains one provision that differs from HB2313: exempts property that consists of Indian lands owned or held by a federally-recognized Indian tribe, nation, band or community as reservation lands, allotment lands or sovereign or proprietary lands.

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1546 but did not speak:

Lorna Romero, Director of Government Relations, Arizona Chamber of Commerce & Industry  
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

**Vice-Chairman Smith moved that SB1546 do pass.**

Mr. Chabin brought up Luke Air Force Base and Davis-Monthan Air Force Base and asked whether this legislation will allow the state to condemn those bases. He noted that this bill does not contain the amendment adopted by this Committee when it passed HB2313 and asked about constitutionality. Chairman Farnsworth informed Mr. Chabin that this bill will have to be amended as HB2313 was amended.

**Question was called on the motion that SB1546 do pass. The motion carried by a roll call vote of 5-2-0-2 (Attachment 19).**

Senator Al Melvin, sponsor, distributed a card printed in the Senate, titled “Arizona Fast Facts” (Attachment 20). The card shows that Arizona has 113,635 square miles, 42 percent of which is federal land, and that is what this bill is designed to address. He advised that this legislation is modeled after a law in Utah.

### **SB1331 - polling places; political parties; organization - DO PASS**

Magdalena Jorquez, Majority Research Analyst, reviewed the provisions of SB1331 as follows (Attachment 21):

- Defines *emergency* as it relates to electioneering at any polling place facility on election day as the following:
  - An imminent threat to the health, welfare or safety of the nonelection users or occupants of the polling place facility.
- Clarifies that the Arizona Secretary of State’s Office is required to transmit the certificate of ratification to the U.S. Archivist.
- Establishes a period in which the county Board of Supervisors (BOS) is prohibited from filling a vacancy in a precinct committeeman position as the period after the primary election and before one day after the state party organizational meeting for that political party.
- Establishes the term of office of a precinct committeeman as beginning on the date the county BOS canvasses the election of the precinct committeemen and ending when the canvass of the precinct committeeman who is elected for the immediately subsequent two-year term has been completed.
- Specifies that precinct committeemen who are deemed elected as a result of cancellation of the election pursuant to statute shall be included in the makeup of a district party committee established pursuant to law.

**Vice-Chairman Smith moved that SB1331 do pass. The motion carried by a roll call vote of 6-2-0-1 (Attachment 22).**

### **SB1334 - hunting within city limits - ~~DO PASS~~ FAILED**

Kathryn Brown, Majority Intern, explained that SB1334 prohibits political subdivisions from limiting the lawful taking of wildlife during an open season, as established by the Arizona Game and Fish Commission (Attachment 23).

Vice-Chairman Smith announced the names of those who signed up in support of SB1334 but did not speak:

George Reiners, Legislative Chair, Yuma Valley Rod and Gun Club

Dave Kopp, Manager, Arizona Citizens Defense League, Inc.

Ben Alteneder, Arizona Wildlife Federation

Leonard Ordway, Assistant Director, Field Operations, Arizona Game and Fish Department

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1334 but did not speak:

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns

**Vice-Chairman Smith moved that SB1334 do pass. The motion failed by a roll call vote of 3-5-0-1 (Attachment 24).**

**SB1466 - deferred prosecution; justice court approval - ~~DO PASS FAILED~~**

Magdalena Jorquez, Majority Research Analyst, explained that SB1466 creates the following exception to the ability of the county attorney solely to decide whether to divert or defer prosecution of an offender: after a complaint is filed in a Justice of the Peace (JP) Court, the county attorney must obtain the approval of the Justice Court in order to exercise its discretion to divert or defer (Attachment 25).

Kristina Fretwell, Legislative Liaison, Maricopa County Justice Court, spoke on behalf of Lester Pearce, Presiding Justice of the Peace for Maricopa County, in support of SB1466. She explained that Justice Pearce is promoting this legislation on behalf of himself, not the bench or the Justice Court, in order to enact punishment on some of the juveniles who get deferred without his approval.

Senator Ron Gould, sponsor, explained the intent of SB1466. He said that if a prosecutor is going to defer prosecution, he must advise the Justice Court if that case is brought to the JP Court.

Vice-Chairman Smith asked if that is being done now. Senator Gould advised that the JPs brought this bill to him. Vice-Chairman Smith commented that this is codifying the law.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, spoke against SB1466. She advised that prosecutors would like to divert more individuals than the JPs would like to do. She stated her belief that this legislation is a violation of the separation of powers. She said it is within a prosecutor's discretion whether or not to dismiss a case, and it is not within the JPs' power to tell prosecutors when to dismiss a case.

In response to Chairman Farnsworth, Ms. Mayer replied that it is a violation of separation of constitutional powers. She related that the Pima County Attorney's Office operates under the authority of the executive branch within the county.

In reply to Vice-Chairman Smith, Ms. Mayer explained that the statute, as written, is solely within the discretion of the prosecution to defer. She clarified that is in conjunction with the Justice Court; it is a different issue in Superior Court.

Vice-Chairman Smith announced the names of those who signed up in support of SB1466 but did not speak:

Lester Pearce, Presiding Justice of the Peace for Maricopa County, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to SB1466 but did not speak:

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

**Vice-Chairman Smith moved that SB1466 do pass. The motion failed by a roll call vote of 4-4-0-1 (Attachment 26).**

**SB1472 - publicity pamphlets; judicial performance; comment. - DO PASS**

Kathryn Brown, Majority Intern, summarized the provisions of SB1472 as follows (Attachment 27):

- Requires the Commission to prepare and file the following information regarding the Arizona Supreme Court justices and Court of Appeals judges for publication in the SOS pamphlet, no later than 60 days prior to a regular primary election:
  - Biographical information, including length of time served on the bench and educational background; and
  - A listing of published decisions in which the justice or judge declared a statute unconstitutional along with the provision of the constitution used.
- Allows an individual to file an argument advocating or opposing the retention of a justice or appellate court judge on the ballot with the SOS no later than 53 days prior to the regular primary election.
- Requires the individual filing the argument to provide the following:
  - The original notarized signature of each person sponsoring the argument.
  - If sponsored by an organization, the notarized signature of two executive officers or the political committee's chairman or treasurer.
  - Identification, including the address of a residence or post office and a telephone number, which will remain unpublished.
- Permits the justice or judge to review any statements filed in support or opposition to his or her retention and to file a statement in response.
- Requires the arguments to be published electronically with the information provided by the Commission.
- Specifies the order in which the arguments are to be placed for publishing.
- Mandates that the person filing the argument deposit an amount, to be determined by the SOS, at the time of filing, to offset a portion of the cost of publication.
- Stipulates that an attorney is not subject to professional discipline for filing a statement.
- States the Legislature's intent to provide voters with more information on justices and appellate court judges than is normally available through the retention elections process.

Senator Ron Gould, sponsor, stated that SB1472 provides more information for voters. He maintained that most voters want more information about judges.

Peter Dunn, Arizona Judges Association, in opposition to SB1472, stated that there is information about judges in the publicity pamphlet, so Section B on page 2 is unnecessary. In addition, he questioned the language in Section F on page 3 relating to an attorney not being subject to discipline regardless of what he says about a judge. He mentioned the separation of powers issue because an attorney's discipline resides within the judicial branch.

Vice-Chairman Smith asked Mr. Dunn if he agrees that the public does not know enough about appeal judges. Mr. Dunn disagreed. He said he is not sure that additional information will be helpful or needed. He advised that everyone who has had a case in front of a court of appeals judge is given a questionnaire with questions about the judge's temperament, his legal ability, etc. He noted that the results of those questionnaires are generally in the 90 percent approval range.

Cathi Herrod, President, Center for Arizona Policy, testified in support of SB1472. She related that people are always asking for more information about judges. She stated that Section B provides more information to the voters and easier access to judges' Opinions, and that brings transparency to the process. On the discipline issue, she said she believes attorneys should have the freedom to say what they wish. She opined that this provision will have a chilling effect on an attorney filing a statement.

Mr. Chabin noted that current information is available with respect to how judges conduct themselves in a constitutional manner and whether a judge was fair in that process. He opined that some organizations could attempt to politicize the judicial system itself. Ms. Herrod disagreed. She reiterated that the goal is to get more information; the point is to create an open forum. Discussion ensued on politicizing the process. Chairman Farnsworth commented that he does not believe this creates more of a political issue than what currently exists. This just creates the ability to make more information available to the public. Mr. Chabin again stated that he sees no need for this bill.

Mr. Ash asked whether people call the Center for Arizona Policy to get more information about propositions. Ms. Herrod replied in the affirmative.

Mr. Ash wondered how to verify that people who write in about a judge's decisions are not doing it to slander the judge in reaction to losing a case. He also questioned the accuracy of the Opinions made by these individuals and he submitted that this can be an opportunity for mischief.

In reply to Mrs. Tovar's query about charges, Mrs. Herrod said she understands it depends on the cost to print the pamphlet. She will look into that.

Mrs. Tovar wondered whether the Secretary of State's Office or any other organization will review the 300-word statement to ensure that personal information will be prohibited. Senator Gould said the bill does not address that issue. He said he shares the concern that personal information should not be disclosed to the public.

Senator Gould pointed out that judges will be able to file a rebuttal to any statement in reply to complaints made by the public. Mr. Ash questioned whether the judge will be charged for that rebuttal. Senator Gould said he is supportive of an amendment that provides that a judge does not have to pay the cost of rebuttal.

**Vice-Chairman Smith moved that SB1472 do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 28).**

### **SB1473 - early voting sites; electioneering - DO PASS**

Magdalena Jorquez, Majority Research Analyst, advised that SB1473 expands the scenarios by which a polling place facility must allow electioneering outside of the 75-foot zone to include early voting sites during the early voting period (Attachment 29).

Senator Ron Gould, sponsor, stated that this bill clarifies that when an early voting site is in operation, it is election date at that site. Current statute is vague on early voting sites.

Vice-Chairman Smith announced the names of those who signed up in support of SB1473 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

**Vice-Chairman Smith moved that SB1473 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 30).**

### **SB1482 - appellate judges; judicial performance reviews - DO PASS**

Kathryn Brown, Majority Intern, said that SB1482 requires the Commission on Judicial Performance Review to prepare and publish on its website a list of decisions that an appellate judge made, including the official citations and electronic copies of the decision, no later than 60 days prior to the primary election for the judge's retention (Attachment 31).

Mr. Ash queried whether these decisions are currently available. Ms. Brown replied that if they are public, they can be accessed.

Senator Ron Gould, sponsor, said this is another transparency issue for the voters. He advised that the information is available in various places; this legislation puts the information in one place and makes it easier to access for those voters who are interested in doing due diligence.

Cathi Herrod, President, Center for Arizona Policy, testified in favor of SB1482. She said this is another attempt to get more information out to voters by making decisions available on-line.

Vice-Chairman Smith announced the names of those who signed up in support of 1482 but did not speak:

Jerry Landau, Legislative Liaison, Arizona Supreme Court, Arizona Judicial Council

Vice-Chairman Smith announced the names of those who signed up as neutral on SB1482 but did not speak:

Peter Dunn, Arizona Judges Association

**Vice-Chairman Smith moved that SB1482 do pass. The motion carried by a roll call vote of 6-2-0-1 (Attachment 32).**

## **SB1484 - terrorism; radiological agent; infectious substances - DO PASS AMENDED**

Kathryn Brown, Majority Intern, advised that SB1484 expands the terrorism statute to include unlawful acts involving infectious biological substances or radiological agents (Attachment 33). She reviewed the provisions of the bill:

- Classifies the following as acts of terrorism:
  - Possessing an infectious biological substance or radiological agent, with the intent to injure another person;
  - Destroying, damaging, or attempting to destroy or damage any facility, equipment, or material involved in the sale, production, storage or distribution of an infectious biological substance or a radiological agent with the intent to injure another through the substance or agent's release;
  - Manufacturing, selling, giving, distributing, or using an infectious biological substance or a radiological agent with the intent to injure another person;
  - Maliciously and intentionally causing injury to another person via an infectious biological substance or a radiological agent;
  - Giving or sending to another person or place in a public or private place a simulated infectious biological substance or a radiological agent with the intent to terrify, intimidate, threaten, or harass. The placing or sending of a simulated infectious biological substance or radiological agent without written notice attached to the substance or agent in a conspicuous place that the substance or device has been rendered inert and is possessed for a curio or relic collection, display, or other similar purpose is prima facie evidence of an intent to terrify, intimidate, threaten, or harass.
  - Transporting any radiological isotope or agent for the purpose of committing another act in violation of the section;
  - Adulterate or misbrand any radiological isotope;
  - Manufacturing, holding, selling, or offering to sell any radiological isotope that is adulterated or misbranded;
  - Altering, mutilating, destructing, obliterating, or removing any part of the labeling of a radiological isotope; or
  - Any other act relating to a radiological isotope if the act is done when the article is possessed, transferred, transported, or held for sale and results in the article being adulterated or misbranded.
- States that possession of any infectious biological substance or a radiological agent, unless satisfactorily explained, may give rise to an inference that the person who is in possession of the substance or agent is aware of the risk that the substance or agent may be used to commit an act in violation of the terrorism statute.
- Defines *infectious biological substance* as any bacteria, virus, fungus, protozoa, prion, toxin or material found in nature that is capable of causing death or serious physical injury. Infectious biological substance does not include human immunodeficiency virus, syphilis, or hepatitis.
- Defines *radiological agent* as any substance that is able to release radiation at levels that are capable of causing death or serious bodily injury or at any level if used with the intent to terrify, intimidate, threaten, or harass.

Ms. Brown explained that the Farnsworth two-line amendment dated 3/16/11 makes a technical correction (Attachment 34).

Senator Ron Gould, sponsor, said that grant money was made available for explosive detection equipment and biological detection equipment; however, it was discovered that it is not illegal to be in possession of these kinds of substances that could be used for terrorism. He said he was asked to amend the statute because if the detectors actually detected someone with these kinds of material, there was no probable cause to contact the person to find out their intent.

Ray Churay, Legislative Liaison, Maricopa County Sheriff's Office, spoke in support of SB1484. He advised that the police legal advisor discovered all of the statutes that addressed radiological and biological material are in the regulatory statutes and not in the criminal statutes. This legislation updates the Arizona terrorism statutes to include the threats that exist today.

Mr. Harper asked why the proposal does not address chemical agents. Mr. Churay answered that chemicals and explosives have already been placed in the criminal statutes.

Mr. Smith questioned whether Sheriff Arpaio supports this bill. Mr. Churay answered in the affirmative.

Vice-Chairman Smith announced the names of those who signed up in support of SB1484 but did not speak:

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

James Mann, Arizona Fraternal Order of Police

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

John Thomas, Arizona Association of Chiefs of Police

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Mary Marshall, PIO/Legislative Liaison, Arizona Criminal Justice Commission

Art Harding, Legislative Affairs Director, Attorney General's Office

Brian Livingston, Executive Director, Arizona Police Association

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

**Vice-Chairman Smith moved that SB1484 do pass.**

**Vice-Chairman Smith moved that the Farnsworth two-line amendment dated 3/16/11 be adopted (Attachment 34). The motion carried.**

**Vice-Chairman Smith moved that SB1484 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 35).**

### **SCR1025 - public funds; political candidates; ban - DO PASS**

George Khalaf, Majority Staff Intern, explained that SCR1025 prohibits the state or its political subdivisions from using public funds for political campaigns (Attachment 36). He outlined the provisions of the bill as follows:

- Prohibits the state and its political subdivisions from spending public funds to provide campaign support to candidates running for public office.
- Prohibits the state and its political subdivisions from providing any tax credits or deductions that allow public funds to support candidates running for public office.

- Stipulates that no taxes, fees or surcharges can be assessed if they are used to support a candidate running for public office.
- Requires any public funds that were designated for political campaign use to be deposited in the state General Fund.
- Defines *public funds* as any monies received by the state or its political subdivisions from taxes, fees, penalties, surcharges, payments or receipts of any kind.

Michael Valder, retired attorney, representing self, testified against SCR1025. He related that he was the founding President of the Clean Elections Institute. His objection to this bill is because it is designed to eliminate the Clean Elections system; however, he said that Clean Elections is not mentioned anywhere in the bill. He opined that this is a top priority of the Arizona Chamber of Commerce and Industry because the special interest group does not get to select all the candidates. He wondered why the Legislature should refer this question to the ballot when it is a special interest group that wants to eliminate the Clean Elections system. He advised that 80 percent of the public supports the Clean Elections system. He related that the U.S. Supreme Court will be hearing the argument on matching funds in the next few weeks, and he suggested that this bill be held.

Mr. Harper raised the following issues: some legislative candidates are running for office that have no chance of winning, and other legislative candidates in a one-party dominated district are taking money that could be better used in the General Fund. Additionally, Clean Elections wastes a lot of money on advertising, spending money year-round, not just during the election season.

Vice-Chairman Smith assumed the Chair.

Mr. Valder stated that if matching funds are thrown out by the Supreme Court, additional funds can be provided by the Small Donor System which will allow candidates to raise money in competitive districts by getting contributions up to \$100 which will be matched out of the Clean Elections Fund. He said there is a way to make elections competitive with public funds.

Mr. Chabin commented that the Clean Elections system levels the playing field and creates a political discourse that may not otherwise be heard. Mr. Valder agreed. He submitted that Clean Elections is a worthwhile system and was designed to address “dirty money” in politics.

Mr. Chabin said he does not like raising money from lobbyists and special interest groups in order to do some of his legislative work, such as visiting constituents. He stated that Clean Elections makes him feel a lot better about his work and he thanked Mr. Valder for his participation in the past and his advocacy today.

Chairman Farnsworth resumed the Chair.

Steve Voeller, President, Arizona Free Enterprise Club, testified that he opposes the Clean Elections system and supports SCR1025. He said he does not believe the state should be in the business of subsidizing political speech. Additionally, the system does not work. Proponents of the system say that it works because of the many people who have participated; however, he cautioned Members against measuring its success by how many people participate. The Clean

Elections Act was intended to reduce the influence of interest groups or businesses, but that has not been the case. He stated that there is still political influence and there always will be. He opined that if the Act were not called Clean Elections, this system would never have passed in 1998. Many people thought they were voting for a system that stopped mudslinging, negative campaigning or junk mail. This legislation will allow voters to have a final say on this system.

Jonathan Paton, representing self, stated support for SCR1025. He advised that when he ran for the State Legislature in 1998, the Clean Elections Act was on the ballot. Proponents of the Act said that this system would increase free speech, increase participation and eliminate the influence of “big money” and lobbyists in Arizona politics. Today, however; voter participation has gone down, the Supreme Court is going to hear arguments in a few weeks about how this Act is a violation of the First Amendment, and finally, this has not eliminated “big money” and lobbyists in Arizona politics. He submitted that Clean Elections has failed miserably.

Vice-Chairman Smith announced the names of those who signed up in support of SCR1025 but did not speak:

Farrell Quinlan, State Director, National Federation of Independent Business

Lorna Romero, Director of Government Relations, Arizona Chamber of Commerce & Industry

Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance

Marcus Osborn, Manager of Government and Public Affairs, Arizona Chamber of Commerce,  
Arizona Manufacturers Council

Shawna Bolick, author/researcher, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to SCR1025 but did not speak:

Rebekah Friend, Lobbyist, Arizona AFL-CIO

Gini McGirr, Legislative Chair, League of Women Voters of Arizona

Judy Whitehouse, representing self

Jeffrey Heimer, representing self

Barbara Klein, First Vice President, League of Women Voters of Arizona

Dr. Bonnie Saunders, President, League of Women Voters of Arizona

Molly McGovern, SEIU Arizona

Mike Williams, Clean Elections

Eric Ehst, National Organization for Women

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

Todd Lang, Executive Director, Citizens Clean Elections Commission

**Vice-Chairman Smith moved that SCR1025 do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 37).**

**SB1088 - technical correction; trapping license(now: health care system; violation) - DO PASS**

Magdalena Jorquez, Majority Research Analyst, summarized the provisions of SB1088 as follows (Attachment 38):

- Adds the following acts as violations of the civil rights protected by Article XXVII, Section 2 of the Arizona Constitution:

- A knowing attempt by any governmental official to directly or indirectly compel any person, employer or health care provider to participate in any health care system against their will;
  - A knowing attempt, by threat or imposition of penalties or fines by any government official to prevent any person or employer from paying directly for lawful health services.
  - A knowing attempt, by threat or imposition of penalties or fines by any government official to prevent any health care provider from accepting direct payment for lawful health care services.
  - Any knowing attempt by any government official to enforce prohibitions on the purchase or sale of health insurance in private health care systems that is otherwise authorized by the laws of this state.
- Classifies a violation of this section as a Class 1 misdemeanor.
  - Clarifies that the section does not prohibit care provided pursuant to Article XXVII, Section 2 of the Arizona Constitution or any other statutes enacted by the legislature relating to workers' compensation.
  - Defines the following terms:
    - *Compel* as including the threatening of the imposition of penalties or fines;
    - *Direct payment or paying directly* as payment for lawful health care services without a public or private third party, other than the employer, paying for any part of the service;
    - *Health Care System* as any public or private entity whose function or purpose is to manage, process, enroll in or pay for all or part of health care services or health care data or information for its participants;
    - *Lawful health care services* as any health-related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or rule that may be provided by persons or businesses otherwise permitted to offer the service or treatment.
    - *Penalties or fines* as any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government, established, created or controlled agency that is used to punish or discourage the exercise of protected rights.

Senator Sylvia Allen, sponsor, stated that SB1088 is a companion bill to SB1214, interstate compact; health care. She explained that “an interstate compact is a contractual agreement between states that is similar to a treaty. It binds states contractually and the obligation created by a compact is protected from impairment by the contract clause of the Constitution.” Arizona voters passed the Health Care Freedom Act in November which makes the 14 mandates of the Federal Health Care Reform Act illegal within the compacting states. When the Health Care Freedom Act was passed, it did not include a criminal component.

Senator Allen stated that the Obama Health Care Act caused great debate by the American public. She advised that 26 states have nullified that by going to court objecting to the Act, stating that it is unconstitutional by requiring people to have insurance and then fining them for not having insurance. She submitted that the federal government overreached by passing that Act.

**Vice-Chairman Smith moved that SB1088 do pass.**

Mrs. Tovar asked whether this will require Proposition 105 language. Chairman Farnsworth said the Rules Attorneys will be consulted on that.

**Question was called on the motion that SB1088 do pass. The motion carried by a roll call vote of 6-2-0-1 (Attachment 39).**

**SB1334 - hunting within city limits - DO PASS (On Reconsideration)**

**Having voted on the prevailing side of SB1334, inasmuch as the Committee was unable to hear the sponsor speak to the Members, Mr. Ash moved that the Judiciary Committee reconsider its action of today where SB1334 failed to pass and that the measure be reconsidered immediately. The motion carried.**

Senator Frank Antenori, sponsor, thanked Members for the opportunity to speak on SB1334. He explained that this bill was maligned by the media which created a lot of misconceptions. This proposal was brought to him by several hunting groups that have been hunting in areas of this state for many years. When the lines on the map were changed by municipalities in order to annex land, the areas they had been hunting in were declared illegal. Previously the land was unincorporated and undeveloped. This bill will now allow hunters to hunt in downtown cities. Arizona Game and Fish has designated municipal hunting areas that basically surround the metro Flagstaff area, the metro Phoenix area and the metro Tucson area. Under this legislation, hunters will be allowed to hunt with a bow and arrow, an air rifle, pistol or low-velocity rifle. It is currently illegal, and will remain illegal, to discharge a high-powered rifle in a metro area. Additionally, it is still illegal under this legislation, to point and fire a firearm into the air. This legislation requires that a person be in the act of physically taking game, be in a designated area that is approved by the Game and Fish Department where the taking of game is legal, and be in possession of a hunting license. He pointed out that it is illegal to be on State Trust Land and target shoot or just randomly shoot. This legislation will prevent the arbitrary prohibition of hunting by municipalities who have now made it standard practice that as soon as they annex land, they immediately declare the land to be off-limit to hunting, even if that land is undeveloped, vacant, rural and open, and without any risk to the public. Game and Fish will designate the hunting areas in conjunction with the cities.

Mr. Chabin expressed concern about pre-emption of local authority and the additional layer of bureaucracy (Game and Fish Department) to determine the designation of the land for hunting. He said he believes it is better to let local jurisdictions determine the safety of their own communities. Senator Antenori submitted that hunting laws should be uniform within the state. He disagreed that the bill adds another layer of bureaucracy and said that Game and Fish works with the cities to establish the hunting criteria.

Mr. Chabin said he does not see any reason to pre-empt local authority. Senator Antenori stated that uniform standards protect the public. He related that Game and Fish helped draft the language; the National Rifle Association also worked on the bill. He said he believes this is a fair bill that protects cities and allows them input on hunting areas without infringing on the rights of the public and hunters. He asserted that it is a fair compromise.

**Vice-Chairman Smith moved that SB1334 do pass. The motion carried by a roll call vote of 6-2-0-1 (Attachment 40).**

Without objection, the meeting adjourned at 11:57 a.m.

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Joanne Bell, Committee Secretary  
March 31, 2011

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