

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Minutes of Meeting
Monday, March 21, 2011
House Hearing Room 4 -- 2:00 p.m.

Chairman Pratt called the meeting to order at 2:50 p.m. and attendance was noted by the secretary.

Members Present

Mrs. Barton	Mr. Patterson	Mr. Wheeler
Ms. Fann	Miss Reeve	Mrs. Brophy McGee, Vice-Chairman
Mrs. Judd	Mr. Saldate	Mr. Pratt, Chairman

Members Absent

None

Committee Action

SB1517 - DPA S/E (5-3-0-1)
SCR1024 - DP (5-3-0-1)

SCR1033 - DPA (5-3-0-1)

CONSIDERATION OF BILLS

SCR1033 - best available control technology; generation – DO PASS AMENDED

Vice-Chairman Brophy McGee moved that SCR1033 do pass.

M.J. Bildner, Majority Assistant Research Analyst, explained that SCR1033 urges the Arizona Department of Environmental Quality (ADEQ) to consider Arizona's needs for new electric power generation using *Best Available Control Technologies* when issuing federal air quality permits (Attachment 1). He stated that, as mandated by the federal Clean Air Act of 1963, new major stationary sources of air pollution and major modifications to existing sources must obtain air quality control permits before starting construction. Permits for structures that emit air pollutants in attainment areas are called Prevention of Significant Deterioration (PSD) permits.

SCR1033 urges the ADEQ, when issuing PSD permits for conventional coal-fired electric generating units, to act expeditiously in accordance with Arizona's need to develop new electric generation. It also stipulates that ADEQ should consider the use of commercially available control technologies that are efficient, economically practicable and designed to be compatible with carbon sequestration systems.

Vice-Chairman Brophy McGee moved that the Pratt 11-line amendment dated 3/18/11 (Attachment 2) be adopted.

Mr. Bildner explained that the Pratt 11-line amendment dated 3/18/11 (Attachment 2) makes technical and clarifying changes.

Senator Sylvia Allen, sponsor, addressed the Committee to explain that SCR1033 makes a statement about the importance of coal generation of electricity in Arizona. She stated that she supports the Pratt amendment.

Tom Dorn, Peabody Energy and American Coalition for Clean Coal Electricity, testified in support of SCR1033, stressing its emphasis on technologies that are being developed for commercial application.

Vice-Chairman Brophy McGee announced the names of those who signed up in support of SCR1033 but did not speak:

Heather Bernacki, American Coalition for Clean Coal Electricity
Robert Lynch, Irrigation and Electrical Districts Association

Vice-Chairman Brophy McGee announced the names of those who signed up in opposition to SCR1033 but did not speak:

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

Question was called on the motion that the Pratt 11-line amendment dated 3/18/11 (Attachment 2) be adopted. The motion carried.

Vice-Chairman Brophy McGee moved that SCR1033 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 3).

SCR1024 - intrastate water resources; state sovereignty – DO PASS

Vice-Chairman Brophy McGee moved that SCR1024 do pass.

Amy Asta, Majority Research Staff Intern, explained that SCR1024 indicates the Legislature's support of continued state sovereignty and states' rights to regulate intrastate water resources without imposition by the federal government and acknowledges the Legislature's concern for the potential impact of federal regulation on tribal waters and the use of these waters (Attachment 4).

Vice-Chairman Brophy McGee announced the names of those who signed up in support of SCR1024 but did not speak:

Ron Doba, Northern Arizona Municipal Water Users Association
Robert Lynch, Irrigation and Electrical Districts Association

Vice-Chairman Brophy McGee announced the names of those who signed up in opposition to SCR1024 but did not speak:

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

Question was called on the motion that SCR1024 do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 5).

SB1517 - animal abuse; reporting – DO PASS AMENDED S/E
S/E: transmission lines; environmental compatibility certificates

Vice-Chairman Brophy McGee moved that SB1517 do pass.

Vice-Chairman Brophy McGee moved that the Pratt three-page strike-everything amendment dated 3/17/11 (Attachment 6) be adopted.

Mr. Patterson made a substitute motion that SB1517 be held.

Ms. Fann asked the reason for the substitute motion. Mr. Patterson explained his concern that the strike-everything amendment has only been available for review since Friday, March 17, there is high interest on the part of constituents, and that passage is being rushed without adequate time to determine what the legislation does. He stated that it is in the public interest to hold the bill at this time.

Diana Clay, Deputy Research Staff Director, stated that today is the last day that the Energy and Natural Resources Committee will meet to hear bills. She added that the amendment was posted in compliance with the deadline.

Vice-Chairman Brophy McGee stated that if the bill is held today, it will not be heard until the next Legislative Session. Mr. Patterson reiterated that it is difficult to evaluate this legislation in the time allotted.

Question was called on the substitute motion that SB1517 be held. The motion failed by a roll call vote of 4-4-0-1 (Attachment 7).

Ms. Clay explained that the proposed strike-everything amendment to SB1517 provides direction with regard to the application process for the construction of a transmission line and issuance of the certificate of environmental compatibility (Attachment 8). A.R.S. 40-360.01 outlines the Arizona Corporation Commission's (ACC) duty to establish an Arizona Power Plant and Transmission Line Siting Committee (Committee). The Committee may approve or deny an application, or impose reasonable conditions on the issuance of the certificate of environmental compatibility.

She outlined the provisions of the legislation as follows:

- Stipulates the application fee related to a new proposed or existing plant site or transmission line site is paid to the ACC for deposit into the Utility Siting Fund.
- Specifies the hearing officer is one who is retained to conduct proceedings related to the application.
- Authorizes payment of the cost of studies and consultant fees utilized by the ACC, as well as the Committee.

- Permits a person to file an application for a certificate when the person plans to construct a transmission line in Arizona that has been the subject of a National Environmental Policy Act (NEPA) process resulting in a final impact statement being issued.
- Requires the ACC to determine whether to refer the application to the chairman of the Committee within 90 days after the application is placed on the docket. Permits the ACC to hold hearings and require the applicant to provide proper public notice of the time/place.
 - If the ACC refers the application, directs the Committee to process the application according to current law with respect to the hearing and applicable procedures.
 - If the ACC retains the application, requires them to approve, approve with conditions, or deny the application within 180 days after being placed on the docket.
 - Requires the ACC to consider the statutory factors in making its decision, and balance the need for an adequate, economical and reliable supply of electric power with the need to minimize the effect on the environment and ecology. Permits the ACC to hold hearings, take evidence, refer any part of the application to the Committee for study/recommendation to the ACC, accept public comment and provide proper notice.
- Directs the ACC to approve a route for the transmission line that is consistent with the preferred alternative identified in the final impact statement, except the Committee may impose reasonable conditions.
- Stipulates that if the ACC fails to approve or deny the application in the allotted timeframe, then the applicant may proceed as provided by current law.
- Grants a certificate of environmental compatibility for at least 15 years, which is eligible for renewal and is transferrable.

Without objection, Vice-Chairman Brophy McGee moved that the Pratt three-page strike-everything amendment dated 3/17/11 (Attachment 6) to SB1517 be amended as follows:

Page 3, line 7, change “COMMITTEE” to “COMMISSION”.

Ms. Clay explained that the verbal amendment is purely technical to conform language to the other changes in the strike-everything amendment to SB1517.

Question was called on the motion that the Pratt three-page strike-everything amendment dated 3/17/11 (Attachment 6) to SB1517 be amended as follows:

Page 3, line 7, change “COMMITTEE” to “COMMISSION”.

The motion carried.

Vice-Chairman Brophy McGee moved that the Pratt three-page strike-everything amendment dated 3/17/11 (Attachment 6) as amended be adopted.

The motion carried.

Stan Barnes, Southwestern Power Group, spoke in favor of the strike-everything amendment to SB1517, stating that it will give the ACC discretionary ability to conduct the line siting process by holding hearings, taking evidence, adding stipulations, and such, even returning applicants to the traditional process. SB1517 is a regulatory reform measure that addresses duplication in federal and state applicant evaluation.

Mr. Patterson asked what problem will be solved by this legislation. Mr. Barnes indicated that duplication of regulatory effort when the NEPA process has already been completed is the problem. Mr. Barnes stressed that the federal environmental impact statement is a robust document; nothing is being given up by the State of Arizona, as the ACC can redirect the applicant to the traditional process.

Mr. Patterson asked if the State would give up the requirement for mandatory public hearings by the Committee because those hearings are optional in this legislation. Mr. Barnes concurred, but clarified that the wording of this legislation is “may” rather than “shall” and that the ACC would hold hearings based on the evidence in the NEPA process.

Mr. Wheeler inquired who makes up the line siting committee. Mr. Barnes explained that there are eleven members, half from state agencies and half from the public, appointed by the ACC; he described the activities of the Committee and the actions of the ACC in regard to the Committee, which can include “spiking” a Committee ruling.

Mr. Wheeler stated his concern that political purposes could prevail and risk could be placed in the public sector.

Mrs. Judd asked how the ACC will determine if the community is unanimous in its approval of a line siting application. Mr. Barnes replied that ACC members will be aware, as they evaluate the record and the environmental impact statement, if the applicant’s record is deep and thorough enough that the community has had its say; if not, the ACC will move it through the traditional process.

Miss Reeve clarified that SB1517 will not remove the local, public comment process. Mr. Barnes concurred.

Mrs. Barton inquired if the public comment process becomes optional rather than mandatory. Mr. Barnes explained that technically the ACC could just take an application and vote it; he added that he would support a change to “shall” in the legislation which would require public comment, although the ACC can be trusted to have public hearings. Discussion ensued about the ACC looking after the public interest and if the language in the legislation should require more public meetings.

Tom Wray, Southwestern Power Group, stated his support for the legislation, reiterating that the ACC has to hold public meetings. He added that very few transmission projects will be affected by SB1517. He described the economic savings associated with allowing the ACC to avoid a duplicative process.

Chester Phillips, Cascabel Working Group, described his organization as a citizens’ group in the Benson area on the lower San Pedro River, which has several proposals for transmission lines to go through private properties. He stated that he opposes this legislation, which is the result not of a duplication issue, but of the fact that private investors are inconvenienced by the time required for a thorough review of siting applications. He stated that the NEPA process will not protect Arizonans’ interests. He urged the ACC and the Legislature to protect local citizens’ interests.

Mr. Phillips addressed Members' questions:

- The proposed transmission projects are vast and several public meetings might be required for a thorough review.
- The Cascabel Working Group has a couple of hundred active participants, uses contributions, and represents Benson, Redington and Winkelman Natural Resource Conservation Districts, the citizens of Cascabel, and conservation.
- He would like to make the NEPA review more collaborative so that sites can be agreed upon.
- He described the differences between the state line siting process and the federal Bureau of Land Management process.

William Dunn, Redington and Winkelman Natural Resource Conservation Districts, appeared in opposition to the section of the strike-everything amendment to SB1517 which increases federal authority. He explained that the NEPA process is not transparent, adding that he would rather have the ACC handle line siting in Arizona.

He addressed Members' questions:

- The Bureau of Land Management decides where the line will be sited, and then the State Land Department approves or disapproves.
- A change from "may" to "shall" will not change anything as the holding of meetings does not affect the approval authority.
- Section F is the most problematic provision in the legislation.

Vice-Chairman Brophy McGee moved that the Patterson two-line amendment dated 3/18/11 (Attachment 9) to the Pratt three-page strike-everything amendment dated 3/17/11 (Attachment 6) be adopted.

Mr. Patterson explained that the amendment changes "MAY" to "SHALL" in the provision that the ACC holds hearings.

Question was called on the motion that the Patterson two-line amendment date 3/18/11 (Attachment 9) to the Pratt three-page strike-everything amendment dated 3/17/11 (Attachment 6) be adopted. The motion failed.

Mr. Patterson asked to make a substitute motion to hold the bill. Chairman Pratt determined that the substitute motion has been previously heard and voted down.

Vice-Chairman Brophy McGee moved that SB1517 as amended do pass.

Discussion ensued to clarify the motions for the Members.

Chairman Pratt announced the names of those who signed up in support of SB1517 but did not speak:

Simone Westbrook-Hall, The Nature Conservancy

Greg Patterson, Arizona Competitive Power Alliance

Chairman Pratt announced the names of those who signed up in opposition to SB1517 but did not speak:

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter
Stefanie Smallhouse, Arizona Natural Resource Conservation Districts

Chairman Pratt announced the names of those who signed up as neutral on SB1517 but did not speak:

Nick Simonetta, Central Arizona Irrigation and Drainage District
Russell Smoldon, Salt River Project

Question was called on the motion that SB1517 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 10).

Without objection, the meeting adjourned at 4:38 p.m.

Jane Dooley, Committee Secretary
April 7, 2011

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