

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 2, 2012
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:08 a.m. and attendance was noted by the secretary.

Members Present

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

Members Absent

None

Committee Action

HB2319 - DP (9-0-0-0)	HB2479 - DP (9-0-0-0)
HB2371 - DP (6-3-0-0)	HB2544 - DP (9-0-0-0)
HB2373 - DP (7-2-0-0)	HB2549 - DPA (8-0-0-1)
HB2374 - DP (8-0-0-1)	HB2558 - DP (8-0-0-1)
HB2379 - DPA (8-0-0-1)	

CONSIDERATION OF BILLS:

HB2379 - comprehensive election law amendments - DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, reviewed the multiple changes to the laws governing electors and elections (Attachment 1):

- registration rolls
- presidential preference elections (PPE)
- filling vacancy caused by death/incapacity v. voluntary withdrawal
- polling place procedures
- recognition of new parties
- campaign finance reports
- ballot abuse
- legal counsel

Ms. Jorquez explained that the Farnsworth five-page amendment dated 2/1/12 makes the following revisions (Attachment 2):

- reinserts the March 1st voter registration report in which the counties are required to count each voter
- adds the nomination petition requirements to the PPE's nomination process
- requires the county to file nomination petitions signed by 1,000 qualified electors who are qualified to vote for the candidate
- in lieu of the new nomination petition requirement, allows nomination to the PPE of candidates who either have been qualified for matching federal campaign funds or have been qualified to appear on the PPE ballot in at least 20 other states
- changes the dates for the Governor's proclamation, changing the date of the PPE as well as candidate filing dates and party recognition dates
- adds a clarification to the committee registration section relating to the \$500 threshold exemption statement committees
- establishes four additional campaign finance filing requirements for statewide legislative special elections

Ms. Jorquez explained the decision of the 9th Circuit Court of Appeals case, *Arizona Right to Life Political Action Committee v. Bayless*, in response to Mr. Harper's query referencing language on page 27 of the bill, section 16-917, relating to corporations, limited liability companies and labor organizations providing copies of the independent expenditure report.

Ken Bennett, Arizona Secretary of State, in support of HB2379, offered to answer questions on why changes are being proposed to the laws governing electors and elections. He advised that these changes are technical and conforming. He noted that the policy changes on presidential preference elections requiring some signatures on the ballot may be controversial; other changes are technical and conforming.

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

Helen Purcell, Maricopa County Recorder

Karen Osborne, Maricopa County Elections Director

Trey Williams, Legislative Liaison, Arizona Association of Counties

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

Amy Chan, State Election Director, Arizona Secretary of State's Office

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2379 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2379 do pass.

Vice-Chairman Smith moved that the Farnsworth five-page amendment dated 2/1/12 be adopted (Attachment 2). The motion carried.

Vice-Chairman Smith moved that HB2379 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 3).

HB2373 - sentencing; first, second degree murder - DO PASS

MJ Bildner, Majority Assistant Research Analyst, reviewed the provisions of HB2373 which modify the sentencing statutes relating to death penalty and life sentences (Attachment 4). The bill also makes technical and conforming changes.

Bill Montgomery, Maricopa County Attorney, in support of HB2373, advised that HB2373 addresses the right to a speedy trial or disposition, and prompt and final conclusion of the case after the conviction and sentence. This bill honors that right by removing an avenue for release of a murderer, and shields surviving family members from reliving the horror of losing a loved one and having to revisit that loss years later. The bill does not preclude a 25-year-to-life sentence if the defendant was under 18 years of age or if the conviction was the result of a felony murder charge. He said this bill is focused; its aim is justice and its goal is to fulfill a constitutional right. He answered questions about increasing the 25-year sentence to 29 years, the enhanced sentence for killing an unborn child, and input by victims on sentencing recommendations.

Donna Hamm, Executive Director, Middle Ground Prison Reform, spoke in opposition to all of the provisions of HB2373 which eliminate the 25-year-to-life sentence as an option for the court and provides for no exceptions. She noted that the 25-year-to-life sentence is a flat-time sentence that is served day for day; there is no exception for earned release credits, no eligibility for commutation of sentence, and no possibility for any type of early release. She advised that many people who have been released after a 25-year sentence have the lowest recidivism rate and continue to atone for their crimes in a constructive and positive way in the community. Middle Ground also opposes any increase in the sentencing range for second degree murder which also carries a flat-time sentence. She stated that Arizona has one of the harshest sentencing codes in the country and she does not see any reason to increase the already harsh and stringent penalties.

John Gillis, Division Chief, Victim Services Division, Maricopa County Attorney's Office, testified in support of HB2373. He spoke of the impact that sentencing has on crime victims and the community. Many victims fear for their lives when violent offenders are released after serving their sentence for murder. He stated that victims want finality to the endless hearings and proceedings; they are retraumatized every time there is a legal proceeding where the offender is being considered for release. This legislation is an opportunity to ensure that victims do not have to relive their traumas over and over. He answered questions on notification of victims when offenders are released.

Vice-Chairman Smith announced the names of those who signed up in support of HB2373 but did not speak:

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Ray Churay, Deputy Director, Maricopa County Sheriff's Office
Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Art Harding, Legislative Affairs Director, Attorney General's Office

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2373 but did not speak:

Seth Apfel, representing self

Caroline Isaacs, Program Director, American Friends Service Committee
Vice-Chairman Smith announced the names of those who signed up as neutral on HB2373 but did not speak

Beth Rosenberg, Lobbyist, Children's Action Alliance

Mr. Ash asked the Chairman, as sponsor, whether any members of the defense bar were consulted on the drafting of this bill. Chairman Farnsworth replied in the negative; he does not know whether the County Attorney's Office worked with anyone.

Vice-Chairman Smith moved that HB2373 do pass. The motion carried by a roll call vote of 7-2-0-0 (Attachment 5).

HB2374 - deferred prosecution program; conditions - DO PASS

MJ Bildner, Majority Assistant Research Analyst, stated that HB2374 broadens the county attorney's ability to defer prosecution and narrows the offenses that would prohibit a deferred prosecution (Attachment 6).

Bill Montgomery, Maricopa County Attorney, in favor of HB2374, advised that this bill attempts to address an inconsistency in how offenders are dealt with for drug use. The bill allows prosecutors the flexibility to offer diversion and treatment programs, even if the offender already has one drug possession conviction. The bill recognizes addictive behavior and gives substance-abuse offenders a second chance.

Mr. Chabin asked Mr. Montgomery whether he would be in favor of legislation that allows an arresting officer to note whether an offense involves drugs, alcohol abuse or mental illness. Mr. Montgomery advised that a lot of that information is already available in the criminal justice system. Mr. Chabin opined that information should be documented at the time of arrest.

Penelope Pestle, American Friends Service Committee, testified in support of HB2374 which considers more people for diversion programs. She said she believes it could be very beneficial if diversion can be expanded to include mental health issues. Broadening diversion programs reduces the number of people in prison and helps reduce the crime rate.

Vice-Chairman Smith announced the names of those who signed up in support of HB2374 but did not speak:

David Wells, representing self

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

Trey Williams, Legislative Liaison, Arizona Association of Counties

Ray Churay, Deputy Director, Maricopa County Sheriff's Office

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Caroline Isaacs, Program Director, American Friends Service Committee

Donna Hamm, Executive Director, Middle Ground Prison Reform

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2374 but did not speak:

Seth Apfel, representing self

In response to questions about Arizona's crime rate decreasing faster than the national average and about prison population, Mr. Montgomery answered that the trend toward addressing the crime problem is improving; however, this bill will not reduce the prison population because substance abuse offenders do not go to prison now.

Vice-Chairman Smith moved that HB2374 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 7).

HB2371 - disposal of unclaimed property - DO PASS

Yijee Jeong, Majority Intern, summarized the provisions of HB2371 which make changes to the requirements of the disposal of unclaimed property (Attachment 8):

- reduces the period within which reasonable efforts must be made to locate and notify the owner of unclaimed property from 90 to 30 days; thereafter the agency may proceed to dispose of it in the manner provided in statute
- changes the custody of unclaimed property from a state, county, city or town officer to a state, county, city or town agency
- removes the provision that allows for items valued at \$25 or less to be given to an appropriate charity
- mandates that a record of all transactions shall be maintained for at least 24 months
- makes technical and conforming changes

Discussion ensued on notification.

Mr. Chabin wondered how the owner of unclaimed property is notified under today's law.

Chairman Farnsworth advised that this is an attempt to update the statute. He is not aware of any opposition to the bill other than the provision on notice. The bill provides the option for the agency to either publish in a newspaper of general circulation or post the notice on its website.

Mr. Chabin brought up the fact that newspapers historically have published notices. Mandating that a source independent of government do the posting brings transparency to the process. Chairman Farnsworth advised that the trend is moving toward technology. He pointed out that the option is being left up to the individual agency.

Mr. Hale noted that technology is limited on Indian Reservations. He expressed the need to mandate that notification on the Reservation be made in newspapers because it is more effective than internet notification. Chairman Farnsworth reiterated that this legislation does not prohibit placing notices in the newspapers. Under this bill, the agency has the option to do what is most effective to notify the population it serves.

Mr. Ash noted that the currency is placed in the General Fund. He said he wants to ensure that the finders of that property are able to get the currency back, provided it is not contraband.

Mrs. Tovar stated that the change in notice from 90 days to 30 days may prohibit some people from getting notice. Chairman Farnsworth said that can be looked at further.

Vice-Chairman Smith announced the names of those who signed up in support of HB2371 but did not speak:

John Thomas, Arizona Association of Chiefs of Police
Robert Reddington, Evidence Custodian, representing self
Roy Casto, Property Supervisor, representing self
Ray Churay, Deputy Director, Maricopa County Sheriff's Office

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2371 but did not speak:

Paula Casey, representing self
Pam Miller, Publisher/CEO, Verde Valley Newspapers, Inc.
Chris Moeser, Attorney, Phoenix Newspapers, Inc.
Michael Preston Green, Lobbyist, Arizona Capitol Times
John Moody, Attorney, Arizona Newspapers Association

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2371 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2371 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 9).

HB2479 - eminent domain; improvements; assessing value - DO PASS

Yijee Jeong, Majority Intern, said that HB2479 requires that the court or jury shall ascertain and assess the full dollar value of any improvements made to the property sought to be condemned (Attachment 10).

Representative Carl Seel, sponsor, testified that fair market value may not reflect the true value of the property in a condemnation. Many people invest in improvements to their property and realize they may not recoup the total value of the improvements; however, it is a different situation when eminent domain is involved because those improvements may not be considered, only *reasonable compensation*. This legislation provides that when evaluating the condemned property, the added improvements shall be considered.

Mr. Harper questioned whether this will have a fiscal impact on the General Fund. Representative Seel answered that it could impact the General Fund; he believes the amount will be negligible. He stated that it is the duty of government to justly compensate people for their property.

Vice-Chairman Smith announced the names of those who signed up in support of HB2479 but did not speak:

Eric Emmert, Arizona Planning Association
Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2479 but did not speak:

Michael Vargas, Government Affairs Representative, APS

Mr. Ash asked whether the proposal includes emotional value. Representative Seel responded that the bill does not take that into consideration.

Vice-Chairman Smith moved that HB2479 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 11).

HB2544 - recovery of attorney fees - DO PASS

Magdalena Jorquez, Majority Research Analyst, advised that HB2544 removes the section of statute that requires the court to award reasonable attorney fees in any action that, by clear and convincing evidence, demonstrates the claim or defense constitutes harassment, is groundless and is not made in good faith (Attachment 12). The bill contains a delayed effective date of December 31, 2012.

Mr. Vogt, sponsor, stated that this legislation makes it easier to be awarded attorney fees for groundless lawsuits. He referenced two sections of law on harassment lawsuits and lawsuits not made in good faith; this bill simply removes duplicative efforts.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council, expressed support of HB2544. He stated that this proposal is the result of lengthy stakeholder meetings to consolidate and refine the statutes on frivolous lawsuits.

Vice-Chairman Smith announced the names of those who signed up in support of HB2544 but did not speak:

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

Janice Goldstein, Arizona Trial Lawyers Association

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

Ken Quartermain, Arizona Technology Council who asked that the following statement be read into the record:

“This is a great bill and the Arizona Technology Council, and its 600 member firms, 100,000 employees, see this bill as a positive change to the tort system in Arizona, and will be an effective economic development tool to attract new businesses.

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2544 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith announced the names of those who signed up as neutral on HB2544 but did not speak

J. Michael Low, Attorney, Allstate Insurance, American Family Insurance, American International Group, MetLife Insurance, Mutual Insurance Company of Arizona

Vice-Chairman Smith moved that HB2544 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 13).

HB2319 - notice; claim; private property rights - DO PASS

Magdalena Jorquez, Majority Research Analyst, stated that HB2319 exempts claims made for just compensation pursuant to the Private Property Protection Act from the pre-suit requirements relating to actions against public entities (Attachment 14).

Vice-Chairman Smith, sponsor, advised that this bill requires that a demand letter be written before filing a suit against a public entity.

Christina Sandefur, Attorney, Goldwater Institute, testified in support of HB2319. She said that property owners are at risk because of a judicial error that denies property owners their day in court. Prop 207, passed by the voters in 2006, protects property rights. When the government takes property away from the owner, it must pay the owner; the law requires that the owner send the government a notice, which includes the value of the property. The government can then restore the property rights or pay for taking the rights away. If it refuses to do either, the person can file a claim and go to court. One court in Flagstaff imposed a new procedure that is very confusing on how to file a Prop 207 claim. This bill restores to property owners the protections that the voters wanted when they passed Prop 207.

Vice-Chairman Smith announced the names of those who signed up in support of HB2319 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2319 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 15).

HB2549 - electronic; digital devices; stalking; threatening - DO PASS AMENDED

Yijee Jeong, Majority Intern, stated that HB2549 updates current statute to make unlawful any misuse of electronic or digital devices to terrify, intimidate, threaten, harass, annoy, offend or in the course of conduct of stalking (Attachment 16). The Vogt four-line amendment dated 2/1/12 clarifies that the course of conduct is using any electronic, digital or global positioning device to surveil a specific person or a specific person's internet or wireless activity continuously for 12 hours or more, or on two or more occasions over a period of time, however short (Attachment 17).

Mr. Vogt, sponsor, advised that this legislation updates current statute. The scope of the bill is narrowly crafted to exclude constitutionally-protected activities. Chairman Farnsworth asked about parents who are trying to surveil their children. Mr. Vogt replied that there has to be the intent to terrify or harass.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, testified in support of HB2549. She related that under the stalking statute, the person is using these devices with the intent to frighten someone to fear for their personal safety, be it physical injury or death.

Vice-Chairman Smith announced the names of those who signed up in support of HB2549 but did not speak:

Ryan Harper, Triadvocates LLC, Verizon Wireless

Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Trey Williams, Legislative Liaison, Arizona Association of Counties
Jen Sweeney, Government Affairs Director, Arizona Association of Counties
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office
Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence

Vice-Chairman Smith announced the names of those who signed up in opposition to HB2549 but did not speak:

Seth Apfel, representing self

Vice-Chairman Smith moved that HB2549 do pass.

Vice-Chairman Smith moved that the Vogt four-line amendment dated 2/1/12 be adopted (Attachment 17). The motion carried.

Vice-Chairman Smith moved that HB2549 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 18).

HB2558 - victim restitution; civil actions - DO PASS

MJ Bildner, Majority Assistant Research Analyst, stated that HB2558 clarifies that a person may bring a civil action for damages in excess of the restitution order actually paid by the defendant (Attachment 19).

Mr. Vogt, sponsor, explained that the intent of restitution orders is to compensate victims for their economic damages. Because defendants have limited resources, victims generally recover a limited amount of money. This proposal provides that regardless of what the defendant actually pays, the plaintiff can file a separate civil lawsuit to go after the remaining amount of money they have lost, whether it is insurance or a judgment against the defendant. He answered questions about double jeopardy.

Art Harding, Legislative Affairs Director, Attorney General's Office, expressed support of HB2558. He introduced Dan Levey, the Director of the Office of Victims Services.

Dan Levey, Director, Office of Victim Services, Attorney General's Office, testified in support of HB2558. In reply to Mr. Harper, he said that victims have a constitutional right to be compensated for their loss and the civil process is a valid remedy to get that restitution. He advised that in his experience, very few defendants pay restitution, and, if they do, they do not pay it in full.

Vice-Chairman Smith explained that a restitution order does not cover pain and suffering; it only covers economic loss. Compensation for pain and suffering can only be recouped in civil court.

Mr. Vogt related that the courts have concern about the calculation of interest; therefore, he will offer an amendment on the Floor to cover a minor technical change.

Vice-Chairman Smith announced the names of those who signed up in support of HB2558 but did not speak:

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

Lindsay Simmons, Systems Advocacy Coordinator, Arizona Coalition Against Domestic Violence

Vice-Chairman Smith moved that HB2558 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 20).

Without objection, the meeting adjourned at 11:41 a.m.

Joanne Bell, Committee Secretary

February 9, 2012

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