

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON ENVIRONMENT

Minutes of Meeting
Tuesday, February 14, 2012
House Hearing Room 5 -- 2:00 p.m.

Chairman Reeve called the meeting to order at 2:20 p.m. and attendance was noted by the secretary.

Members Present

Mr. Ableser
Ms. Alston
Mrs. Carter

Mr. Crandell
Mr. Pratt

Ms. Fann, Vice-Chairman
Miss Reeve, Chairman

Members Absent

None

Committee Action

HB2726 - DPA (5-2-0-0)
HB2776 - ~~DP~~ FAILED (2-4-0-1)

HB2798 - DPA (7-0-0-0)
HB2799 - DP (5-0-1-1)

CONSIDERATION OF BILLS:

HB2798 - air quality; dust plan; reports - DO PASS AMENDED

Vice-Chairman Fann moved that HB2798 do pass.

Vice-Chairman Fann moved that the Reeve nine-line amendment dated 2/13/12 be adopted (Attachment 1).

Justin Riches, Majority Research Analyst, advised that HB2798 establishes regulations for cities, towns, counties, and departments in Area A to submit annual reports regarding particulate measures on or before March 30 of each year (Attachment 2). The Reeve nine-line amendment dated 2/13/12 makes technical and conforming changes (Attachment 1).

Chairman Reeve related that while working on submitting the plan to the Environmental Protection Agency (EPA) on air quality, questions arose about whether the cities and towns were meeting their obligations. This legislation provides a reporting mechanism to ensure that they are meeting their enforcement requirements.

Mr. Crandell asked whether monitoring will be required to determine whether the information in the report is accurate. Chairman Reeve stated that the cities and towns are already submitting reports through the Arizona Department of Environmental Quality (ADEQ). The intent of this legislation is to put it in writing that they are fulfilling their statutory obligation.

Ms. Alston asked the cities' and towns' stance on this, and expressed concern whether this is a mandate. She said she is worried about taking money away from them and giving them more things to do. Chairman Reeve answered that the cities and towns helped draft this proposal; they are appreciative of the bill and believe it gives them more protection.

Jeff Gray, Legislative Liaison, City of Phoenix, neutral on HB2798, thanked the Chairman for reaching out to the City on this legislation. The City of Phoenix is comfortable with providing the information to ADEQ on an ongoing basis.

Vice-Chairman Fann announced the names of those who signed up in support of HB2798 but did not speak:

Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona
Steve Trussell, Arizona Rock Products Association
Nick Simonetta, Government Affairs Consultant, Arizona Off-Highway Vehicle Coalition
Richard Bohan, Director of Government Relations, Maricopa County Board of Supervisors
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter
Jo Crumbaker, Manager, Air Quality Planning Department, Maricopa County
Melissa Ramsey, representing self

Vice-Chairman Fann announced the names of those who signed up as neutral on HB2798 but did not speak:

Rene Guillen, Legislative Associate, League of Arizona Cities and Towns

Question was called on the motion that the Reeve nine-line amendment dated 2/13/12 be adopted (Attachment 1). The motion carried.

Vice-Chairman Fann moved that HB2798 as amended do pass. The motion carried by a roll call vote of 7-0-0-0 (Attachment 3).

HB2726 - environmental audit privilege - DO PASS AMENDED

Vice-Chairman Fann moved that HB2726 do pass.

Vice-Chairman Fann moved that the Carter 23-line amendment dated 2/10/12 be adopted (Attachment 4).

Tom Kwon, Majority Intern, stated that HB2726 outlines the requirements for environmental audit reports, privileges and exceptions (Attachment 5). The Carter 23-line amendment dated 2/10/12 makes the following changes (Attachment 4):

- Clarifies the definition of *environmental law*.
- Allows an audit report to include the items listed in A.R.S. section 19-1402, subsection B.
- Deletes language pertaining to government approval for an audit to be extended.
- Makes technical and conforming changes.

Mr. Ableser asked about the confidentiality information provision in relation to the Freedom of Information Act. Mr. Kwon said he will check on that.

Mrs. Carter, sponsor, stated that HB2726 provides an incentive for Arizona businesses to voluntarily perform environmental compliance self-audits, and keeps that information from being disclosed in civil or administrative proceedings. Arizona will join over 25 states that provide this type of environmental audit privilege. She pointed out that this bill does not provide immunity from enforcement, does not apply to criminal proceedings, and does not apply the privilege from disclosure when the intent is to commit fraud. In response to Mr. Ableser about the incentive to do their own internal environmental audits, Mrs. Carter answered that businesses are able to be proactive and bring their businesses into compliance. They do not have to be fearful of more rules and regulations.

Vice-Chairman Fann announced the names of those who signed up in support of HB2726 but did not speak:

Eric Emmert, East Valley Chambers of Commerce Alliance

Steve Trussell, Arizona Rock Products Association

Luis Anderson, representing self

Michael Vargas, Government Affairs Representative, Arizona Public Service

Rebecca Hudson, Environmental Policy Analyst, Arizona Chamber of Commerce and Industry

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

Art Harding, Legislative Affairs Director, Office of the Attorney General

Michelle Bolton, Vice President of Public Affairs, Greater Phoenix Chamber of Commerce

Genevra Richardson, ASARCO, LLC

Lyn White, Manager, Government Relations, Arizona Mining Association

Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona

Vice-Chairman Fann announced the names of those who signed up in opposition to HB2726 but did not speak:

Melissa Ramsey, representing self

Vice-Chairman Fann announced the names of those who signed up as neutral on HB2726 but did not speak:

Richard Bohan, Director of Government Relations, Maricopa County Board of Supervisors

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter, in opposition to HB2726, stated that the premise of the bill is a problem because it creates privilege and secrecy and asserted that good policy seldom comes out of secrecy. If a company self-audits, anything in that audit is secret and none of the information can be used in an administrative or civil action. There are punitive provisions in the bill for anyone who releases the information, whether an employee of the company or an employee of a state agency, which will have a chilling effect on any whistleblower activity. Whistleblowers often point out serious problems; issues that can result in a real threat to public health and safety. While there is not overt immunity in the bill, she believes there is a de facto immunity. She opined that this does not seem like an incentive program; it allows the least responsible entities to have a shield of secrecy and will not improve environmental compliance.

Mrs Carter stressed that immunity is not in the bill. Ms. Bahr countered that if the information cannot be used, that is de facto immunity. Mrs. Carter disagreed with the comment about a shield of secrecy. Ms. Bahr said she believes that most businesses want to be in compliance. She said any company can do an audit now. She stated that currently there are plenty of opportunities to correct deficiencies, so she does not see the need for secrecy.

Mr. Crandell said an advantage of this proposal relates to when one company is attempting to buy another company. This is an opportunity for owners to do this kind of audit to determine the environmental impact and it gives owners an incentive to fix problems without making the problems public knowledge. He believes this privilege is very important to protect a company's reputation and is a good incentive to increase environmental compliance. Mr. Ableser commented that with that logic, the same would apply to human beings. Mr. Crandell disagreed. Discussion ensued on applying these same standards to human beings as well as to companies.

David Kimball, Arizona Mining Association, expressed support of HB2726 and the amendment. He stated that Mr. Crandell has explained what reality is in the environmental world as well as identifying a key issue. He said that it is not by accident that 25 other states have engaged in this privilege legislation. Currently, Arizona does not have the same kind of procedures other states have that allow companies to evaluate whether it makes sense to locate within the State of Arizona and not inherit environmental liabilities or problems. He said this is legislation that the EPA has endorsed, has no immunity component and contains a number of exceptions to protect against anyone engaging in criminal acts. He advised that if a company detects a problem and does not address the problem in a reasonable time period, there is no protection.

Mr. Kimball stated that the Association believes this legislation is extremely beneficial from a business-development standpoint. It allows companies to evaluate the acquisition of a piece of property because when a company is purchased, the liability or contamination that exists on that property is also bought. He said the business community strongly supports this legislation which has some legitimate benefit incentives.

Mr. Ableser asked whether audits can be done now. Mr. Kimball replied in the affirmative. Mr. Ableser brought up issues relating to liability, confidentiality and holding other companies to a higher privilege. Mr. Kimball stated that liability is different in the environmental law area where a company is held liable for contamination it never caused. Mr. Ableser said he does not understand the need for this legislation if audits can already be done, nor does he see the need for the provisions relating to liability and confidentiality.

Richard Bark, Director, Government Relations, Freeport-McMoRan Copper & Gold Inc., expressed support of HB2726. He answered questions.

Mr. Kimball stated that one of the benefits of the bill is that it clearly defines what is covered in an environmental audit and it protects that information.

Ms. Carter reiterated that if a problem is found in the audit, the privilege does not apply if the problem is not fixed.

Question was called on the motion that the Carter 23-line amendment dated 2/10/12 be adopted (Attachment 4). The motion carried.

Vice-Chairman Fann moved that HB2726 as amended do pass. The motion carried by a roll call vote of 5-2-0-0 (Attachment 6).

HB2776 - aquifer protection permits; inspections; reports - ~~DO PASS~~ FAILED

Vice-Chairman Fann moved that HB2776 do pass.

Vice-Chairman Fann moved that the Ableser 16-line amendment dated 2/13/12 be adopted (Attachment 7).

Tom Kwon, Majority Intern, reviewed the provisions of HB2776 which specify new requirements for aquifer protection permits, inspections and reports (Attachment 8). The Ableser 16-line amendment dated 2/13/12 generalizes language pertaining to violations of aquifer protection permits (Attachment 7).

Representative Matt Heinz, sponsor, said his interest in aquifer protection permits relates to public health. HB2776 allows for electronic transmittal of reports of manually-entered data from third-party analytical labs that the permittees contract with for purposes of monitoring. He advised that this will save money for the Arizona Department of Environmental Quality (ADEQ) as well as for permittees. In addition, the bill allows ADEQ to be involved in water quality monitoring for new permits.

Henry Darwin, Director, Arizona Department of Environmental Quality (ADEQ), answered questions. He related that this proposal is in support of the Governor's e-government incentives in trying to create the ability for the Department to interact with the regulated community in a more efficient way. ADEQ has plans to develop e-reporting and e-permitting, and that part of the bill fits into the Department's plans. He said this will require infrastructure at a significant cost. The Department believes it will be able to handle the additional cost if such a requirement is imposed on the agency.

Chairman Reeve brought up the provisions in the bill relating to charging a fee and the request for exemption from rule-making authority. Mr. Darwin said that ADEQ is working with the sponsor on concerns. He explained that this will be a new obligation on the agency and appropriate funding is needed to accomplish this. The exemption provision is included to get this program up and running as soon as possible.

Mr. Crandell asked whether there is a problem in actual sampling. He wondered why language is being added for new permittees. Mr. Darwin stated that the agency has not performed monitoring in the past. This bill provides the authority and funding to do the monitoring.

Chairman Reeve raised the concern that, if the agency is not sending an inspector to oversee the monitoring, whether it is necessary to start now. There is also concern about adding another fee.

Mrs. Carter stated that she is a strong supporter of utilizing technological improvements to decrease burdens on businesses and on Arizona agencies; however, she is concerned about the rest of the bill. Mr. Darwin maintained that this will have a long-term return.

Mr. Ableser said he challenges the comment made that this will have a significant cost.

Mr. Crandell wondered whether this bill is necessary to get the agency where it needs to be.

Representative Heinz said it is important to note that this legislation is permissive; there is no requirement for ADEQ to assess any new fee unless it thinks there is a need. Also, there is no opposition to the bill. In answer to the testimony that this will have a significant cost, Representative Heinz reiterated that the Department is able to cover the initial investment that will save the taxpayers many dollars in the long-term.

Mr. Pratt announced the names of those who signed up in support of HB2776 but did not speak:
David Martin, Lobbyist, Arizona Chapter of Associated General Contractors

Mr. Pratt announced the names of those who signed up in opposition to HB2776 but did not speak:
Steve Trussell, Arizona Rock Products Association

Question was called on the motion that the Ableser 16-line amendment dated 2/13/12 be adopted (Attachment 7). The motion carried.

Mr. Pratt moved that HB2776 as amended do pass. The motion failed by a roll call vote of 2-4-0-1 (Attachment 9).

HB2799 - voluntary environmental stewardship program - DO PASS

Mr. Pratt moved that HB2799 do pass.

Mr. Pratt moved that the Ableser five-line amendment dated 2/13/12 be adopted (Attachment 10).

Justin Riches, Majority Research Analyst, explained that HB2799 requires the Director of the Arizona Department of Environmental Quality (ADEQ) to develop, implement and administer a Voluntary Environmental Stewardship Program (Attachment 11). The Ableser five-line amendment dated 2/13/12 specifies that the program shall not reduce or minimize current statutory or rule requirements for operating in this state (Attachment 10).

Chairman Reeve advised that there already is a program in place, but it is not well developed. The bill will incentivize businesses to be more active in the program. She said she does not believe the amendment is necessary because it is covered in law.

Mr. Pratt announced the names of those who signed up in support of HB2799 but did not speak:
Steve Trussell, Arizona Rock Products Association
Michael Vargas, Government Affairs Representative, Arizona Public Service
Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona
David Kimball, Gallagher & Kennedy

Mr. Pratt announced the names of those who signed up as neutral on HB2799 but did not speak:
Jo Crumbaker, Manager, Air Quality Planning Department, Maricopa County

Mr. Crandell said he applauds a group that can be recognized for best practices and procedures. He expressed concern with recognizing those individuals or groups who go above and beyond what the law actually requires because they may become part of the rule making and can become the new standard for everyone.

Henry Darwin, Director, Arizona Department of Environmental Quality (ADEQ), agreed that is a concern, but contended that it should not be a reason not to support this type of program. ADEQ would like the opportunity to reward those businesses that do not fit the regulatory mold, but attempt to benefit the environment beyond what they are required to do. He related that ADEQ will keep Mr. Crandell's concerns in mind if the program is developed.

Richard Bark, Director, Government Relations, Freeport-McMoRan Copper & Gold Inc., expressed support of HB2799. He advised that similar programs are in place in other states and he is very comfortable with the program. This legislation recognizes those individuals and companies who are doing the right thing in relation to the environment. This will not increase the standards or make the standards more stringent; it is more about sharing how things are done.

Mr. Crandell again expressed concern about the rule-making process, as well as who will bear the cost for the program. Mr. Darwin advised that a program actually exists in ADEQ, although it only has one tier. The new program will have multiple tiers, have incentives to go from one tier to another, and will not require a lot of oversight or cost.

Mr. Ableser commented that the concern about the rule-making process is the reason he proposed the amendment. Chairman Reeve again mentioned that it is already covered by current rule-making authority.

Mr. Darwin related that in his vision of the program, there are no conflicts under existing rule-making authority.

Question was called on the motion that the Ableser five-line amendment dated 2/13/12 be adopted (Attachment 10). The motion failed.

Question was called on the motion that HB2799 do pass. The motion carried by a roll call vote of 5-0-1-1 (Attachment 12).

Without objection, the meeting adjourned at 4:22 p.m.

Joanne Bell, Committee Secretary
February 29, 2012

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