

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON MILITARY AFFAIRS AND PUBLIC SAFETY

Minutes of Meeting
Wednesday, March 7, 2012
House Hearing Room 3 -- 9:00 a.m.

Chairman Gowan called the meeting to order at 9:15 a.m. and the secretary called the roll.

Members Present

Mr. Dial	Mr. Hale	Ms. Proud, Vice-Chairman
Mr. Farley	Mr. Harper	Mr. Gowan, Chairman
Mr. Gallego	Mr. Smith D	

Members Absent

Mr. Stevens

Committee Action

SB1041 - DPA S/E (6-1-1-1)	SB1369 - DP (7-0-0-2)
SB1104 - DP (5-2-0-2)	SB1432 - DP (8-0-0-1)
SB1197 - DP (4-2-0-3)	SCM1007 - DP (8-0-0-1)
SB1212 - DP (6-0-0-3)	SCM1008 - DP (5-3-0-1)
SB1302 - HELD	SCR1033 - DP (8-0-0-1)

Chairman Gowan welcomed Steve Farley, new Member of the Committee, and introduced guest Randy Redmond, Fire Chief, Sierra Vista Fire Department.

CONSIDERATION OF BILLS:

SB1302 - military family relief fund - HELD
S/E: county post wildfire flood control

Chairman Gowan announced that SB1302 will be held.

SB1197 - law enforcement; overtime compensation - DO PASS

Mr. Harper moved that SB1197 do pass.

Paul Benny, Majority Assistant Research Analyst, stated that SB1197 authorizes a person engaged in law enforcement activities to work in excess of 40 hours per work week without overtime compensation if in agreement with their employer (Attachment 1).

Senator Steve Yarbrough, sponsor, said this legislation gives police administrators and police officers more flexibility. He welcomed support for SB1197.

Mr. Harper announced the names of those who signed up in support of SB1197 but did not speak:

Don Isaacson, Fraternal Order of Police

Lyle Mann, Deputy Director, Arizona Peace Officer Standards and Training Board

Norman Moore, Attorney, Fraternal Order of Police

Leah Hubbard, Intergovernmental Relations Coordinator, Town of Gilbert

Mr. Harper announced the names of those who signed up in opposition to SB1197 but did not speak:

Seth Apfel, representing self

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

Question was called on the motion that SB1197 do pass. The motion carried by a roll call vote of 4-2-0-3 (Attachment 2).

SB1212 - law enforcement officers; just cause - DO PASS

Mr. Harper moved that SB1212 do pass.

Casaundra Wallace, House Majority Staff Intern, stated that SB1212 applies the just cause appeals process for law enforcement officer terminations to demotions and suspensions lasting longer than 40 hours (Attachment 3). She reviewed the provisions of the bill:

- Allows a law enforcement officer who was demoted or suspended for more than 40 hours by an employer due to the employer amending, modifying, rejecting or reversing a decision of a hearing officer, administrative law judge or appeals board where the finding states that there was no just cause for the demotion or suspension to bring an action in superior court for a hearing de novo on the demotion or suspension.
- Requires the hearing officer, administrative law judge or appeals board to state in every finding of disciplinary action whether just cause existed for the disciplinary action.
- Permits a law enforcement officer who was demoted or suspended for more than 40 hours by an employer where there is no hearing officer, administrative law judge or appeals board to review the demotion or suspension to bring an action in superior court to review the agency's file.
- Entitles a demoted or suspended law enforcement officer to a hearing on the demotion or suspension if the court finds from a review of the file that there was not just cause for the demotion or suspension.
- Stipulates that if the superior court finds that just cause for the demotion or suspension for more than 40 hours did not exist, the court shall order the officer reinstated to the officer's previous position with the law enforcement agency.

- Allows the superior court to award to the law enforcement officer monetary damages not to exceed the officer's combined total of wages and benefits during the period of imposed disciplinary action that was lost as a result of the demotion or suspension.

Senator Andy Biggs, sponsor, offered to answer questions.

Brian Livingston, Executive Director, Arizona Police Association, in favor of SB1212, explained that when an officer is suspended or terminated, he has the right to appeal to superior court if just cause does not exist. This legislation includes those suspensions greater than 40 hours and allows an appeals officer within the city or town to make a determination on just cause. In the past, such a declaration was not required.

Mr. Harper noted that the League of Arizona Cities and Towns signed in as opposed to the bill and asked whether they tried to discuss the bill with the Association. Mr. Livingston replied that they did not contact him; they did not testify against the bill in the Senate but they did register their objection in the Senate.

Mr. Harper announced the names of those who signed up in support of SB1212 but did not speak:

Sara Sparman, Government Relations Specialist, Arizona Police Association, Phoenix Law Enforcement Association

Don Isaacson, Fraternal Order of Police

Norman Moore, Attorney, Fraternal Order of Police

Seth Apfel, representing self

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

Mike Williams, Arizona Police Association, Phoenix Law Enforcement Association

Levi Bolton, Vice President, Phoenix Law Enforcement Association

Mr. Harper announced the names of those who signed up in opposition to SB1212 but did not speak:

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

Question was called on the motion that SB1212 do pass. The motion carried by a roll call vote of 6-0-0-3 (Attachment 4).

SB1369 - crime victim advocates; privileged communications - DO PASS

Mr. Harper moved that SB1369 do pass.

Liz Dunfee, Majority Research Analyst, explained that SB1369 prevents a crime victim advocate from disclosing certain communications made by a victim (Attachment 5). She reviewed the bill's provisions:

- Prohibits a crime victim advocate from disclosing any communication made by or with the victim including when others are present, unless the victim provides written consent.

- Removes the ability for a crime victim advocate to disclose information regarding compensation or restitution without the victim's written consent.
- Clarifies that a victim may provide written or verbal consent to allow the crime victim advocate to disclose any communication to a prosecutor or law enforcement agency.
- Requires a prosecutor or law enforcement agent to disclose exculpatory information to the accused's attorney, rather than discoverable information.
- Modifies the definition of *crime victim advocate*.

Senator Don Shooter, sponsor, revealed that SB1369 passed out of the Senate unanimously. It confers privileged communications to victims' advocates and is a bill everyone can be proud of.

Diane Umphress, Executive Director, Amberly's Place, expressed support of SB1369. She said that Amberly's Place is a crisis response victims' center in Yuma. She asked support for victims when they make the 911 call to report a crime that has happened to them. Having crime victim advocates advise victims of their rights and walk them through the criminal justice system gives victims the support they need so they can participate in the criminal justice system and hold the perpetrators accountable. Currently, communications are not privileged when there is a third person in the room, usually a law enforcement officer. Victims need to be assured that their conversations are privileged. This legislation will support victims.

Jon Smith, Yuma County Attorney, testified in support of SB1369 which corrects a deficiency in statute. One of the County Attorney's functions is to provide victim advocacy. This change allows a victim and the advocate to stay together through the process. He pointed out that this proposal in no way dilutes the rights and the protections of the defendants pursuant to the Constitution and state laws.

Tori Bourguignon, Crisis Response Coordinator, Amberly's Place, stated support of SB1369. She said her work is predicated on having the confidence and trust of the victim in the middle of chaos, to explain rights, allay fears and stabilize trauma. She maintained that this is a small change that makes a tremendous difference in the work crisis responders do.

Brandyn Knoll, representing self, spoke in support of SB1369. She related that victims, such as she was, are frightened and need the support of crime victim advocates by their side.

Mr. Harper announced the names of those who signed up in support of SB1369 but did not speak:

David McBride, Yuma County Sheriff's Office

Matt Dusek, Detective, Yuma Police Department

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

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

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

Patricia L. Brooks, representing self

Kayla Van Cleve, representing self

Dynia Abraham, representing self

Mr. Harper announced the names of those who signed up in opposition to SB1369 but did not speak:

Seth Apfel, representing self

Mr. Harper announced the names of those who signed up as neutral on SB1369 but did not speak:

Jolana Thompson, Domestic Violence Services Supervisor, representing self

Question was called on the motion that SB1369 do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 6).

SB1041 - constables; prohibited acts - DO PASS AMENDED S/E
S/E: constables; prohibited acts; training board

Mr. Harper moved that SB1041 do pass.

Mr. Harper moved that the Gowan three-page strike-everything amendment dated 3/1/12 to SB1041 be adopted (Attachment 7).

Alexis Burkhart, Majority Intern, explained that the Gowan three-page strike-everything amendment dated 3/1/12 (Attachment 7) to SB1041 establishes constraints on constables involved in private process serving operations, and modifies membership of the Arizona Constables Ethics Standards and Training Board (CESTB) (Attachment 8). She reviewed the provisions of the strike-everything amendment:

- Prohibits constables from engaging in any act as a private process server outside of their elected or appointed duties.
- Forbids constables from owning an interest in any private process serving business.
- Specifies this prohibition does not apply to constables who employ a private process server on behalf of a county.
- Adds the Director of the Arizona Peace Officer Standards and Training Board or the Director's designee as a voting member of the CESTB.
- Clarifies that the justice of the peace member of the CESTB must be an elected justice of the peace.

Mr. Gallego queried whether a constable is prohibited from owning a process serving company under this legislation. Ms. Burkhart replied in the affirmative.

Senator Linda Gray, sponsor, stated that the bill deals with membership on the CESTB Board as well as a conflict of interest issue.

Philip Hazlett, President, Arizona Constables Association, in favor of the strike-everything amendment to SB1041, advised that Constables are already prohibited by statute from owning or being in business with any attorneys. There were a few constables in the state who owned private processing companies or who acted as private process servers, and instead of taking the work in as a constable, they would refer the business to their private company. The Association

believed this was a conflict of interest and requested that this legislation be brought forward to avoid future conflicts of interest and protect the integrity of the office of constable.

Mr. Harper announced the names of those who signed up in support of the strike-everything amendment to SB1041 but did not speak:

Ronald Myers, Constable, Peoria Justice Precinct, Arizona Constables Association

Carolyn Lane, Constable, Arizona Constables Association

Mark Sinclair, Constable, Maricopa County, Arizona Constables Association

Vince Roberts, Chief Constable, Pima County

Trey Williams, Legislative Liaison, Arizona Association of Counties

Lester Pearce, Presiding Justice of the Peace, Maricopa County

Question was called on the motion that the Gowan three-page strike-everything amendment dated 3/1/12 to SB1041 be adopted (Attachment 7). The motion carried.

Mr. Harper moved that SB1041 as amended do pass. The motion carried by a roll call vote of 6-1-1-1 (Attachment 9).

SB1432 - state department of corrections; continuation(now: prisoner release; identification; notification) - DO PASS

Vice-Chairman Proud moved that SB1432 do pass.

Liz Dunfee, Majority Research Analyst, stated that SB1432 is an emergency measure that modifies prisoner release requirements for the Arizona Department of Corrections (ADC) (Attachment 10). She reviewed the provisions of the bill:

- Enables ADC to withhold items that are statutorily determined to be contraband when a prisoner is released.
- Clarifies language relating to a prisoner's eligibility to receive certain monies from ADC upon release.
- Requires monies furnished to a prisoner upon release to be on a stored value card, smart card or other instrument or device that enables a person to obtain goods, services or items of value.
- Requires ADC to furnish shoes to all released prisoners, not exceeding \$35, including the cost of clothing.
- Requires ADC to assist a prisoner, before they are released, in acquiring an identification card or duplicate driver license from the Arizona Department of Transportation which may be paid for with monies from the prisoner's spendable account or dedicated discharge account.
- Requires ADC to notify a prisoner of their release date at least 48 hours prior to release, unless the prisoner's release date would be extended as a result of the notice.

- Clarifies the percentage of the prisoner's wages that must be deposited into a dedicated discharge account. That percentage must be deposited into the dedicated discharge account until the account registers \$100 instead of \$50.
- Makes technical and conforming changes.

Mr. Harper asked whether ADC makes the determination as to the issuer of the credit card. Ms. Dunfee answered that the bill does not provide specifics on the name of the credit card, stored value card, smart card or other instrument or device. Mr. Harper said he does not want to leave that decision up to the Director of the Department of Corrections.

Senator Linda Gray, sponsor, related that she attended an early release program several years ago. This bill addresses several early release issues and tries to correct some of the provisions in statute that ADC has not been complying with. She revealed some of the issues: inmates being released with slippers, not shoes; no family notification of early release; inmates being charged to cash their checks upon release, etc. She pointed out that it has been 42 years since changes have been made to the amount of money that is in an inmate's account, this proposal changes the amount from \$50 to \$100 and puts it on a bank card.

Mr. Hale asked if there currently is a statutory requirement about notice of release. Senator Gray noted the importance of family notification when there is early release. She said she will look at the statute to see if there is a notification provision regarding early release.

Senator Gray advised that an amendment may be offered in the Judiciary Committee relating to the emergency clause since the Department of Motor Vehicles (MVD) has advised that provision will cause problems for them in preparing the identification cards.

Jennifer Bowser, Arizona Department of Corrections (ADC), answered questions about shoes and notification of release.

Mr. Harper said that when a dollar amount is put into statute, he always suggests that language be included to adjust the amount annually with the consumer price index, so it does not have to be amended every few years based on inflation.

Vice-Chairman Proud announced the names of those who signed up in opposition to SB1432 but did not speak:

Seth Apfel, representing self

Vice-Chairman Proud announced the names of those who signed up as neutral on SB1432 but did not speak:

Kevin Biesty, Legislative Liaison, Arizona Department of Transportation

Question was called on the motion that SB1432 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 11).

SCM1007 - urging adoption; veterans remembered flag - DO PASS

Vice-Chairman Proud moved that SCM1007 do pass.

Alexis Burkhart, Majority Intern, stated that SCM1007 urges the United States Congress to adopt the Veterans Remembered Flag as a national symbol to recognize all past, present and future veterans (Attachment 12).

Question was called on the motion that SCM1007 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 13).

SCR1033 - United States Merchant Marine - DO PASS

Vice-Chairman Proud moved that SCR1033 do pass.

Paul Benny, Majority Assistant Research Analyst, advised that SCR1033 recognizes the contributions of the U.S. Merchant Marine, its veterans and the maritime industry. The Resolution encourages Arizona's citizens to observe National Maritime Day (Attachment 14).

Chairman Gowan said this Resolution recognizes and honors the Merchant Marines for their service.

Question was called on the motion that SCR1033 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 15).

SCM1008 - military bases; exemption from ESA - DO PASS

Vice-Chairman Proud moved that SCM1008 do pass.

Alexis Burkhart, Majority Intern, explained that SCM1008 urges the United States Congress to enact legislation to exempt United States military bases and training facilities from the regulations and restrictions of the Endangered Species Act (ESA) (Attachment 16).

Chairman Gowan advised that a military base near the San Pedro River is being affected by the ESA. He said that a lot of groups are suing to decrease the base's missions and trying to eradicate the base. This proposal urges Congress to recognize the importance of this country's defenses, and allows the bases to remain open and be protected from that Act.

Mr. Gallego commented that he does not see why it is impossible to have a military base and be compliant with the ESA. He said he does not think they are mutually exclusive, so he will be voting against this.

Chairman Gowan reiterated that two environmental groups are suing the military base and trying to prevent the base from existing. He maintained that will hurt this country's defenses.

Vice-Chairman Proud announced the names of those who signed up in opposition to SCM1008 but did not speak:

Peter Bengtson, representing self
Seth Apfel, representing self
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Question was called on the motion that SCM1008 do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 17).

SB1104 - appropriation; border security advisory committee - DO PASS

Vice-Chairman Proud moved that SB1104 do pass.

Paul Benny, Majority Assistant Research Analyst, advised that SB1104 is an emergency measure that transfers monies from the Border Security Trust Fund to the Joint Border Security Advisory Committee (Attachment 18). He reviewed the provisions of the bill:

- Appropriates the monies in the Fund to the Committee in FYs 2011-12 and 2012-13 for the purposes of administering and managing the construction and maintenance of the border fence.
- Specifies appropriated monies are exempt from lapsing.
- Prohibits Committee members from receiving reimbursement of expenses for Committee activities.
- Clarifies that if the state does not enter into a compact for a secure fence along the Arizona-Mexico border, the state may still develop its own funding mechanism to construct and maintain the border fence.

Senator Steve Smith, sponsor, testified that this proposal is a follow-up to last year's bill on constructing and maintaining the border fence. It further clarifies that any private money raised can be spent by the Joint Border Security Advisory Committee.

Mr. Gallego asked the number of miles of fencing built so far. Senator Smith replied that no fencing has been built to date. Mr. Gallego asked when construction will start. Senator Smith answered that construction is contingent on how much money is raised. Mr. Gallego wondered what will happen to the money if not enough money is raised. Senator Smith said that all the money raised will go towards efforts to secure the border. Mr. Gallego asked whether the money will be used for things other than building the fence if there is not enough money to build the fence. Senator Smith said the intent is to construct and maintain a border fence. If adequate funds are not available to accomplish that goal, legislation may be proposed next year to do something else to secure the border. Mr. Gallego said he is confused about having to come back next year and wondered whether the Joint Border Security Advisory Committee can circumvent the Legislature and vote to appropriate money as it sees fit. Senator Smith stated that the Committee will adhere to the language of the bill.

In response to Mr. Harper, Senator Smith advised that all money collected is being held in the Treasurer's Office and will be used to build the fence. He pointed out that all the monies raised so far are from private donations. Donations can be made to "Build the Border Fence."

Mr. Dial commended Senator Smith for his leadership on this issue.

Mr. Gallego noted that there is only one sheriff on the list of appointees. Senator Smith said the Committee's goal is to have a good representation of sheriffs. He said this legislation does not change membership of the Committee. Mr. Gallego stated that he wants to ensure that people appointed are actual experts in the field of law enforcement. He expressed surprise that the Sheriff of Santa Cruz County, who deals with border issues daily, is not a member of the Committee.

Question was called on the motion that SB1104 do pass. The motion carried by a roll call vote of 5-2-0-2 (Attachment 19).

Without objection, the meeting adjourned at 10:40 a.m.

Joanne Bell, Committee Secretary
March 23, 2012

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