

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON COMMERCE

Minutes of Meeting
Wednesday, March 14, 2012
House Hearing Room 5 -- 9:00 a.m.

Chairman Mesnard called the meeting to order at 9:02 a.m. and attendance was noted by the secretary.

Members Present

Ms. Alston
Ms. McCune Davis
Ms. Miranda C

Mr. Pratt
Mr. Robson
Mr. Weiers J

Mr. Gray R, Vice-Chairman
Mr. Mesnard, Chairman

Members Absent

None

Committee Action

SB1170 – DPA S/E (5-3-0-0)

SB1221 – DISCUSSED AND HELD

SB1273 – DPA (8-0-0-0)

SB1280 – DPA (8-0-0-0)

SB1306 – DPA S/E (7-0-0-1)

SB1318 – ~~DP~~ FAILED (0-6-1-1)

SB1344 – HELD

SB1388 – DP (7-0-0-1)

CONSIDERATION OF BILLS

SB1388 - return to work program – DO PASS

Kate Sommerville, House Majority Intern, advised that SB1388 requires the Department of Economic Security (DES) to develop the Return to Work Program (Program) (Attachment 1). Ms. Sommerville made reference to the following provisions:

- Allows individuals to volunteer in the Program for 20 to 32 hours per week, not to exceed six weeks.
- Allows individuals in the Program to continue to receive unemployment compensation benefits.
- Requires individuals participating in the Program to meet specific requirements.
- Terminates the Program on July 1, 2022.

Vice-Chairman Gray assumed the Chair.

Senator Paula Aboud, sponsor, explained that SB1388 requires DES to establish a program to provide structured training opportunities to individuals through designated employers. She stated that the bill is based off of successful programs in Georgia and New Hampshire and provides the small business community with an affordable approach to train employees.

Vice-Chairman Gray announced the names of those who signed up in support of SB1388 but did not speak:

Farrell Quinlan, State Director, National Federation of Independent Business

Seth Apfel, representing self

Mr. Robson moved that SB1388 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 2).

SB1306 - alarm system installation; contractors; municipalities(now: alarm businesses; agents; regulation; licensing) – DO PASS AMENDED S/E

S/E: same subject

Kate Sommerville, House Majority Intern, explained that the Mesnard 17-page strike-everything amendment to SB1306 dated 3/12/12 (Attachment 3) outlines the requirements for the Board of Technical Registration (Board) to issue alarm business and alarm agent certification or renewal certification cards and makes various definitions regarding alarm installation (Attachment 4).

Ms. Sommerville advised that the Mesnard three-line amendment dated 3/13/12 (Attachment 5) to the Mesnard 17-page strike-everything amendment to SB1306 dated 3/12/12 (Attachment 3) authorizes the Executive Director to issue certifications.

Susan Brenton, Executive Director, Arizona Alarm Association, testified in support of the proposed Mesnard strike-everything amendment to SB1306 dated 3/12/12 (Attachment 3) and the Mesnard three-line amendment dated 3/13/12 (Attachment 5). Ms. Brenton explained the process and expense for licensing alarm installers in various cities and expressed the necessity for the changes.

Vice-Chairman Gray announced the names of those who signed up in support of the strike-everything amendment to SB1306 but did not speak:

Guy T. Eggebrecht, representing self

Meghaen Duger, Arizona Alarm Association

Maria Malice, representing self

Ryan Denke, representing self

Ron Dalrymple, Director, Board of Technical Registration

Michael Stull, Government Affairs, Cox Communications

Vice-Chairman Gray announced the names of those who signed up as neutral on the strike-everything amendment to SB1306 but did not speak:

Tyler Palmer, Legislative Liaison, Registrar of Contractors

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

Mr. Robson moved that SB1306 do pass.

Mr. Robson moved that the Mesnard 17-page strike-everything amendment to SB1306 dated 3/12/12 (Attachment 3) be adopted.

Mr. Robson moved that the Mesnard three-line amendment dated 3/13/12 (Attachment 5) to the Mesnard 17-page strike-everything amendment dated 3/12/12 (Attachment 3) to SB1306 be adopted. The motion carried.

Mr. Robson moved that the Mesnard 17-page strike-everything amendment to SB1306 as amended be adopted. The motion carried.

Mr. Robson moved that SB1306 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 6).

SB1318 - photo radar; private investigator licenses – DP FAILED

Diana Clay, Majority Deputy Director of Research, explained that SB1318 stipulates that a *private investigator* includes a person working for a company that provides photo enforcement system services to the state or its political subdivisions if that person accesses Arizona Department of Transportation (ADOT) records or processes evidence or traffic complaints (Attachment 7).

Ryan Denke, representing self, testified in support of SB1318, stating the importance of identifying individuals that have access to citizens' private and personal information due to identity theft. He stated that he believes that photo enforcement companies hire employees that engage in fraudulent or questionable activities. He cited examples.

Mr. Weiers questioned the requirement of a private investigator for red light enforcement. Mr. Denke responded that individuals with access to sensitive records, such as motor vehicle records, should be certified. Mr. Weiers questioned the requirements for becoming a private investigator; Mr. Denke was uncertain.

Mr. Weiers stated that he believes the process to become a private investigator is more extensive than a background check and fingerprinting and asked if someone could describe the process.

Stan Barnes, American Traffic Solutions (ATS), testified in opposition to SB1318, explaining the extensive hiring process used by ATS. He expressed the discontent of a few individuals with photo enforcement and cited examples of the unsuccessful measures taken to remove photo enforcement in Paradise Valley. Mr. Barnes stated that ATS has never received a complaint on their employees for the handling of ADOT records.

In response to Mr. Weiers' question, Mr. Barnes stated that he believes the qualification to be a private investigator for photo enforcement purposes would be an expensive and bureaucratic process.

Brian Tassinari, Lobbyist, Redflex, testified in opposition to SB1318 and stated the following safeguards that Redflex has in place:

- Background checks going back seven years and conducted annually
- Internal process using redaction
- Password protection – employees only have access to the data necessary to do their job
- Information tracking by Redflex
- Audits conducted by a third party

He addressed Vice-Chairman Gray's question, expressing that Redflex has not been involved in any lawsuits involving the misuse of information that he is aware of.

The names of those who signed up in opposition to SB1318 but did not speak:

Seth Apfel, representing self

Rebecca Hudson, Arizona Chamber of Commerce and Industry

Michael Haener, Redflex

Mr. Robson moved that SB1318 do pass. The motion failed by a roll call vote of 0-6-1-1 (Attachment 8).

SB1273 - dog tracks; live racing exception – DO PASS AMENDED

Kate Sommerville, House Majority Intern, explained that SB1273 reduces the number of live dog races that a racetrack is required to conduct for purposes of simulcast wagering (Attachment 9). Ms. Sommerville advised that the Mesnard two-page amendment dated 3/13/12 (Attachment 10) outlines the requirements for a live horse racing track to conduct wagering on televised simulcast races received at the live racing facility or at any off track wagering facility.

Senator Michele Reagan, sponsor, stated that the intent of SB1273 is to reduce the amount of live dog races in order to simulcast the races, thus benefiting the dogs and the track owners.

In response to a question, Senator Reagan stated her support for the Mesnard two-page amendment dated 3/13/12 (Attachment 10).

John Mangum, Turf Paradise, testified in favor of SB1273 and the amendment, stating that the amendment is an agreement between racetrack owners, trainers and breeders at Turf Paradise.

Michael Racy, Tucson Greyhound Park, testified in support of SB1273, stating that the same bill passed out of the House and was held in the Senate last year. He said that the bill allows for additional flexibility for businesses to restrict racing, especially during the hot months of the year.

Christine Dorchak, President, Grey2K USA, testified in support of SB1273 and provided a handout (Attachment 11) addressing the humane and economic reasons for the bill.

Chairman Mesnard resumed the Chair.

Vice-Chairman Gray announced the names of those who signed up in support of SB1273 but did not speak:

Kari Nienstedt, Arizona State Director, The Humane Society of the United States

Gretchen Jacobs, Grey2K USA

Bas Aja, Arizona Horsemen's Benevolent and Protective Association

Vice-Chairman Gray moved that SB1273 do pass.

Vice-Chairman Gray moved that the Mesnard two-page amendment dated 3/13/12 (Attachment 10) be adopted. The motion carried.

Vice-Chairman Gray moved that SB1273 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 12).

SB1344 - energy efficiency programs; reporting(now: identical bids; state procurement; preference) – HELD

Chairman Mesnard announced that SB1344 will be held.

SB1221 - precious items dealer; permanent residence – DISCUSSED AND HELD
S/E: Arizona mortgage solution program

Diana Clay, Majority Deputy Director of Research, explained that the Weiers 28-page strike-everything amendment to SB1221 dated 3/12/12 (Attachment 13) is an emergency measure that establishes the Arizona Mortgage Solution Program (Program), under the Arizona Department of Housing, which will administer and supervise the Program and will sunset July 1, 2022 (Attachment 14).

Senator Michele Reagan, sponsor, stated that the Weiers 28-page strike-everything amendment to SB1221 dated 3/12/12 (Attachment 13) creates an alternative program to allow individuals that are underwater on their mortgages, but current in their payments, to refinance at fair market value. She stated that there is a fundamental problem when the banking industry will not work with the individual homeowner if the mortgage is current. Senator Reagan explained the Program in detail and provided literature on a MassMutual lawsuit (Attachment 15) and the nationwide credit and housing crisis (Attachment 16).

In response to questions, Senator Reagan addressed the following areas of concern:

- Creditor payment structure
- Fair market value
- Appropriations
- Promissory payments
- Time span of Program loans
- Qualifications for the Program
- Indirect taking – land and home
- Title clearance
- Constitutionality of the Program

- Refinancing after ten years
- Insurance fund
- Investors

Catherine Gomez, Saint Patrick's Catholic Community, testified in support of the Weiers 28-page strike-everything amendment to SB1221, explaining her experiences providing emergency assistance to struggling families. She expressed the need for the Program and stated that homeowners are depleting all available resources to save their homes.

Wendy Briggs, Arizona Bankers Association, testified in opposition to the Weiers 28-page strike-everything amendment to SB1221, stating the following concerns:

- Language within the bill
- Department of Housing potentially covering over 500,000 underwater mortgages in the state
- Recapture certificate
- Eminent domain
- Constitutionality
- Gift clause
- Liability to the state
- Nonrecourse bonds
- Market reaction
- Bond rating

Ms. McCune Davis questioned the implementation of federal programs providing relief to homeowners in Arizona. Ms. Briggs stated that a significant amount of money will be available to the state for loan modifications due to a recent lawsuit. Prior to the lawsuit, about 100,000 loans have been modified.

Ms. Miranda requested clarification on the gift clause. Ms. Briggs explained that article 9, section 7 of the Arizona Constitution prohibits the extension of credit by the state to an individual.

Donald Hagan, President, Arizona Mortgage Lenders Association, testified in opposition to the Weiers 28-page strike-everything amendment to SB1221, stating the significant impact on the market. Mr. Hagan expressed an interest in finding a solution to the housing crisis, but advised the consequences of SB1221 to the state and its creditors.

Vice-Chairman Gray assumed the Chair.

Ms. McCune Davis questioned bankers' transactions within the communities and asked for a solution. Mr. Hagan stated that a solution is a work in progress and bankers are using short sales to provide relief to homeowners. Ms. McCune Davis commented that bankers do not care about the communities involved and that foreclosures affect more than the homeowner.

Vice-Chairman Gray commented that the concerns of Ms. McCune Davis are the sentiments of many in the public and that the state needs the banking industry's support to find solutions.

Jim Lundy, Alliance Bank of Arizona, representing self, testified in opposition to the Weiers 28-page strike-everything amendment to SB1221, stating concerns with the constitutionality of the bill and expressed that SB1221 uses the police power of the state to force billions of mortgages on hundreds of lenders arbitrarily. He stated that he believes that the outcome of SB1221 creates the state institutionalization of strategic defaults concerning underwater mortgages.

Chairman Mesnard resumed the Chair.

In response to a question, Mr. Lundy stated that institutionalizing loans is not a solution for the housing crisis and informed Members that he submitted a 12-page document to the federal government addressing solutions for the housing crisis.

Mr. Weiers questioned the details of the document. Mr. Lundy summarized the document stating that the banking industry has not received any capital or regulatory reform from the federal government regarding loan modifications. He advised policy makers to take a residential mortgage asset class and provide the banking industry relief from capital and regulatory requirements and allow for interest and principal forgiveness.

Skip Braziel, Government Relations Counsel, MetLife, testified in opposition to the Weiers 28-page strike-everything amendment to SB1221 and stated that MetLife has \$42 billion invested in residential mortgages. He expressed concerns with the liquidity in the market and investments in securities.

Senator Reagan returned to the podium to reiterate that the Program uses private financing and responded to the following topics:

- Forced mortgages
- Loan modifications
- Unlawful foreclosures
- Constitutionality
- Gift clause
- Inaction of the banking industry

Chairman Mesnard announced that he will hold SB1221 to permit additional time to work on the bill.

Senator Reagan thanked the Committee for allowing discussion on the topic.

Ms. Alston stated that the banking industry received federal bailouts but lack compassion for the individual homeowner and has yet to find any solutions to the problem.

The names of those who signed up in support of the strike-everything amendment to SB1221 but did not speak:

Jozef de Groot, St. Patrick Catholic Community

Rob Dalager, City of Phoenix

Brad Lundahl, Government Relations, City of Scottsdale

Paul Barnes, Neighborhood Coalition of Greater Phoenix

The names of those who signed up in opposition to the strike-everything amendment to SB1221 but did not speak:

Lynne Herndon, City President, BBVA Compass Bank

J. Michael Low, Attorney, MetLife

Paul Hickman, President and CEO, Arizona Bankers Association

Gregory Harris, Securities Industry and Financial Markets Association

Stacey Langford, Arizona Bankers Association

Brenda Tucson, representing self

Rick Chambliss, representing self

Jane Kirk, representing self

Kim Lepore, representing self

Gretchen Conger, Arizona Chamber of Commerce and Industry

Lee Miller, Arizona Trustees Association

Susie Stevens, Mountain West Credit Union Association

Austin De Bey, Vice President/Government Affairs, Mountain West Credit Union Association

Greg Thorell, Residential Lending Manager, Pinnacle Bank

Rhonda Mello, representing self

Steve Voeller, President, Arizona Free Enterprise Club

The names of those who signed up as neutral on the strike-everything amendment to SB1221 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Michael Traylor, Director, Arizona Department of Housing

Tom Farley, Arizona Association of REALTORS®

Chairman Mesnard announced that SB1221 will be held.

SB1170 - multimedia production incentives – DO PASS AMENDED S/E
S/E: transaction privilege tax; distribution centers

Diana Clay, Majority Deputy Director of Research, explained that the Mesnard four-page strike-everything amendment dated 3/12/12 (Attachment 17) to SB1170 stipulates the requirement for certain persons to obtain a Transaction Privilege Tax (TPT) license from the Department of Revenue (DOR) and waives specific TPT and related interest and penalties for any retailer with an in-state distribution center or fulfillment presence (Attachment 18).

Ms. Clay explained that the Mesnard 13-line amendment dated 3/13/12 (Attachment 19) to the Mesnard four-page strike-everything amendment dated 3/12/12 (Attachment 17) to SB1170 rewrites and narrows the waiver language, makes the provision retroactive to 2005 and extends the dates by one year for implementation purposes.

Michelle Ahlmer, Executive Director, Arizona Retailers Association, testified in support of the proposed Mesnard four-page strike-everything amendment to SB1170, stating that the bill creates a fair and level competitive field for brick-and-mortar retailers regarding taxation and sales prices. She explained a ten percent sales price difference between brick-and-mortar retailers and online retailers due to a loophole in statute which SB1170 clarifies.

Don Isaacson, Amazon, testified in opposition to the Mesnard four-page strike-everything amendment to SB1170, expressing that the bill does not create a rational tax system but goes after one company: Amazon. He informed Members of current federal legislation promoting tax uniformity and interstate commerce. Mr. Isaacson referenced the 1992 Quill decision by the United States Supreme Court stating that the issue should be resolved at the federal level. He advised that SB1170 goes against the decision of the court.

In response to a question, Mr. Isaacson quoted a provision of the Arizona Constitution: article 4, part 2, section 19 stating that "no local or special laws shall be enacted in any of the following cases that is to say" and the list includes the assessment and collection of taxes.

Discussion ensued regarding Amazon, tax assessment and collection.

Jay Kaprosy, Senior Government Relations Advisor, Arizona Retailers Association, registered in support of the Mesnard four-page strike-everything amendment to SB1170 and stated the challenges of the brick-and-mortar retail environment when online entities continue to operate under different taxation rules. He expressed the fiscal impact to the state and addressed the legality of the bill.

Tracey Hester, Government Affairs Manager, Target, testified in favor of the Mesnard four-page strike-everything amendment to SB1170, provided a brief history of the online Target store and expressed the necessity for a fair and competitive marketplace.

The names of those who signed up in support of the strike-everything amendment to SB1170 but did not speak:

Gayle Shanks, Owner, Changing Hands Bookstore
William Diak, Mayor, City of Page
Stan Barnes, Best Buy
John Mangum, Arizona Food Marketing Alliance
Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance

The names of those who signed up in opposition to the strike-everything amendment to SB1170 but did not speak:

Kevin McCarthy, President, Arizona Tax Research Association
Norman Moore, Amazon

The names of those who signed up as neutral on the strike-everything amendment to SB1170 but did not speak:

Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Gray moved that SB1170 do pass.

Vice-Chairman Gray moved that the Mesnard four-page strike-everything amendment dated 3/12/12 (Attachment 17) be adopted.

Vice-Chairman Gray moved that the Mesnard 13-line amendment dated 3/13/12 (Attachment 19) to the Mesnard four-page strike-everything amendment dated 3/12/12 (Attachment 17) to SB1170 be adopted. The motion carried.

Vice-Chairman Gray moved that the Mesnard four-page strike-everything amendment to SB1170 as amended be adopted. The motion carried.

Chairman Mesnard stated the necessity of SB1170 and explained that the bill is modeled after similar legislation in other states.

Vice-Chairman Gray moved that SB1170 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 20).

SB1280 - tobacco; internet; mail sales; e-cigarettes – DO PASS AMENDED

Kate Sommerville, House Majority Intern, explained that SB1280 prohibits the sale of electronic cigarettes to minors and restricts certain persons from purchasing tobacco products from delivery sale. The bill requires nonparticipating manufacturers to make quarterly escrow deposits, permits the Department of Revenue (DOR) to disclose confidential information to the Attorney General for the purpose of determining compliance to the delivery sale restriction and makes various definitions to tobacco products (Attachment 21).

Ms. Sommerville advised that the Mesnard three-page amendment dated 3/13/12 stipulates that the DOR cannot refund the tax stamps that are affixed to articles or substances that are deemed contraband and tobacco products that are deemed contraband for which taxes are imposed cannot be reported or remitted (Attachment 22).

The names of those who signed up in support of SB1280 but did not speak:
Art Harding, Legislative Affairs Director, Arizona Attorney General's Office
Jim Norton, President, National Tobacco
Doug Lau, Arizona Attorney General's Office
Laura Hahn, Executive Vice President, Arizona Academy of Family Physicians
Pat VanMaanen, representing self

The names of those who signed up in opposition to SB1280 but did not speak:
Betty Campbell, President, Arizonans for Non-Smokers' Rights

The names of those who signed up as neutral on SB1280 but did not speak:
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Gray moved that SB1280 do pass.

Vice-Chairman Gray moved that the Mesnard three-page amendment dated 3/13/12 (Attachment 22) be adopted. The motion carried.

Vice-Chairman Gray moved that SB1280 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 23).

APPOINTMENT OF COMMITTEE OF REFERENCE

Chairman Mesnard appointed the following Members to the Committee of Reference:

Mr. Gray – Chairman
Mr. Pratt
Mr. Robson
Ms. McCune Davis
Ms. Miranda

Without objection, the meeting adjourned at 12:46 p.m.

Abby Selvey, Committee Secretary
April 13, 2012

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