

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON MILITARY AFFAIRS AND PUBLIC SAFETY

Minutes of Meeting
Wednesday, March 14, 2012
House Hearing Room 3 -- 8:00 a.m.

Vice-Chairman Proud called the meeting to order at 8:10 a.m. and attendance was noted by the secretary.

Members Present

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

Members Absent

None

Committee Action

SB1040 - DPA S/E (5-3-0-1)	SB1323 - DP (6-0-0-3)
SB1083 - DP (6-3-0-0)	SB1364 - DPA (7-2-0-0)
SB1176 - DPA (7-0-0-2)	SB1405 - DP (7-0-0-2)
SB1182 - DP (6-3-0-0)	SB1412 - DP (7-1-0-1)
SB1186 - DPA (7-0-0-2)	SB1438 - DPA (7-0-0-2)
SB1244 - DPA S/E (8-0-0-1)	SB1472 - DPA (3-2-0-4)
SB1291 - DP (8-0-0-1)	SCR1011 - DP (8-0-0-1)
SB1296 - DP (8-0-0-1)	SCR1018 - DP (7-0-0-2)
SB1302 - DPA S/E (5-3-0-1)	SCR1020 - DP (9-0-0-0)
SB1305 - HELD	

CONSIDERATION OF BILLS:

SB1305 - game and fish omnibus act - HELD

Vice-Chairman Proud announced that SB1305 will be held.

SB1040 - constables; ethics; training board; members(now: constables; training board; members) - DO PASS AMENDED S/E

S/E: county highways; county engineer recommendation

Chairman Gowan moved that SB1040 do pass.

Chairman Gowan moved that the Gowan two-page strike-everything amendment dated 3/8/12 to SB1040 be adopted (Attachment 1).

Casaundra Wallace, Majority Leadership Intern, reviewed the provisions of the Gowan two-page strike-everything amendment dated 3/8/12 (Attachment 1) to SB1040 which modify the process for a county to establish, alter or abandon a public road by allowing a county engineer to recommend changes (Attachment 2).

Senator Gail Griffin, sponsor, advised that the bill was brought to her by the County Supervisors Association. Currently, in order to establish, alter or abandon a local highway, ten signatures of registered voters in the county are needed. The Association wanted the county engineer to be able to recommend to the Board of Supervisors (BOS) as well. Amendments were made in the Senate requiring the BOS to give written notice on any roadway abandonment and to have consent of a majority of the property owners along that roadway. She related that part of the loan package to finance a home is that the road is maintained by the county. If a road is abandoned, financing may not be available for future buyers, which could adversely affect property value. She said she cannot imagine the counties not wanting written notification in the process of abandoning the roadway and having the consent of the property owners as well. She said this is a property-rights issue and is a commonsense approach to the issue.

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association, testified in opposition to the strike-everything amendment to SB1040. The Association agrees with most of the provisions of the bill; however, it does not believe a county should have to seek approval of property owners whose property abuts the roadway at the expense of everyone else in the county when the decision is made to abandon a roadway. He advised that counties rarely abandon a roadway and, when they do, 95 percent of the time it is because the roadway has been annexed by a municipality. He asked Members to vote against this proposal.

Chairman Gowan announced the names of those who signed up as neutral on the strike-everything amendment to SB1040 but did not speak:

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

Chairman Gowan announced the names of those who signed up in opposition to the strike-everything amendment to SB1040 but did not speak:

Heather Bernacki, Government Relations Associate, Yuma County

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

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Barry Aarons, Lobbyist, Apache County and Greenlee County

Laura Magnus, Apache County and Greenlee County

**Question was called on the motion that the Gowan two-page strike-everything amendment dated 3/8/12 to SB1040 be adopted (Attachment 1).
The motion carried.**

Chairman Gowan moved that SB1040 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 3).

SB1364 - consumer fireworks; permitted regulation - DO PASS AMENDED

Chairman Gowan moved that SB1364 do pass.

Liz Dunfee, Majority Research Analyst, explained that SB1364 makes changes to regulations relating to the use and sale of permissible consumer fireworks and federally-deregulated novelty items (Attachment 4). The Gowan three-line amendment dated 3/12/12 makes minor technical changes (Attachment 5). The Gowan three-line amendment dated 3/13/12 removes the ability for a county with at least 2.5 million acres of federal land but not more than 5 million acres and a population of less than 500,000 persons to prohibit the sale and use of permissible consumer fireworks at any time (Attachment 6).

In response to Mr. Harper, Ms. Dunfee advised that the bill allows counties in forest areas to ban the use of permissible consumer fireworks and the amendment dated 3/13/12 will remove their ability to do that. Mr. Harper asked the purpose of the bill if the amendment reverses the intent of the bill. Chairman Gowan deferred the answer to the sponsor.

Senator Andy Biggs, sponsor, related that the amendment dated 3/13/12 removes the provision that omits two counties from state law, so the statute will apply evenly throughout the state. Under current law, the two counties are regulated differently because of the high-fire danger in those areas. He noted that the bill also contains a signage requirement that standardizes sign requirements throughout the state.

Chairman Gowan announced the names of those who signed up in support of SB1364 but did not speak:

Mike Williams, US Fireworks Safety Council, TNT Fireworks

Chairman Gowan announced the names of those who signed up as neutral on SB1364 but did not speak:

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

Chairman Gowan announced the names of those who signed up in opposition to SB1364 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Chairman Gowan moved that the Gowan three-line amendment dated 3/12/12 be adopted (Attachment 5). The motion carried.

Chairman Gowan moved that the Gowan three-line amendment dated 3/13/12 be adopted (Attachment 6). The motion carried.

Chairman Gowan moved that SB1364 as amended do pass. The motion carried by a roll call vote of 7-2-0-0 (Attachment 7).

SB1176 - parenting time; court-ordered supervisors - DO PASS AMENDED

Chairman Gowan moved that SB1176 do pass.

Paul Benny, Majority Assistant Research Analyst, stated that SB1176 requires persons who supervise parenting time for compensation to have a valid fingerprint clearance card and adds them to the list of mandatory reporters (Attachment 8). The bill modifies the definition of *reportable offense*. He explained that the Gowan 19-line amendment dated 3/13/12 states that school personnel are not required to report a non-accidental physical injury to a minor if certain conditions are met and expunges a student's record regarding incidents of non-accidental physical injury to a minor under specified situations (Attachment 9). The Proud five-line amendment dated 3/13/12 removes the requirement for persons who supervise parenting time for compensation to be a mandatory reporter and makes technical changes (Attachment 10).

In response to Mr. Smith, Mr. Benny agreed that this legislation does not affect those individuals who supervise parenting time without compensation.

Senator Linda Gray, sponsor, said she discovered there were some individuals not covered under this. There are times when these individuals are alone with a child and the purpose of this legislation is to ensure that they are covered under the fingerprint clearance card requirement and do not have any violations that could potentially harm the child.

Senator Gray referred to the Gowan amendment and asked whether there is a definition for serious physical injury and non-serious physical injury. Vice-Chairman Proud directed staff to check the statute to see if there is a definition for each. Chairman Gowan said an amendment will be offered on the Floor to ensure the language is proper.

Chairman Gowan announced the names of those who signed up in support of SB1176 but did not speak:

Shannon Rich, Arizona Coalition Against Domestic Violence

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Chairman Gowan moved that the Gowan 19-line amendment dated 3/13/12 be adopted (Attachment 9). The motion carried.

Chairman Gowan moved that the Proud five-line amendment dated 3/13/12 be adopted (Attachment 10). The motion carried.

Chairman Gowan moved that SB1176 as amended do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 11).

SB1083 - Arizona state guard(now: Arizona special missions unit) - DO PASS

Chairman Gowan moved that SB1083 do pass.

Paul Benny, Majority Assistant Research Analyst, reviewed the provisions of SB1083, an emergency measure that establishes the Arizona Special Missions Unit (ASMU) and appropriates \$1.4 million each year from the Gang and Immigration Intelligence Team Enforcement Mission (GIITEM) Border Security and Law Enforcement Subaccount to the ASMU (Attachment 12):

- Outlines the mission and states the intent of the unit is to provide a mission-ready volunteer force for use by this state and Homeland Security and community service activities as a supplement to state and local law enforcement agencies.
- Directs the commander to maintain the unit, appropriate staff positions, establish standard operating procedures, regulations and training programs, keep records and submit specified reports and adopt rules subject to review.
- Authorizes the commander to recruit from throughout the state.
- Authorizes the close and continuous pursuit of ongoing cross-border criminal activity.
- Grants members the same immunity afforded to public employees and law enforcement for specified acts.
- Authorizes the unit to detain and arrest in certain cases.
- Requires the submission of an annual report to the Legislature.
- Sunsets on July 1, 2022 and repeals related provisions on January 1, 2023.

Senator Sylvia Allen, sponsor, asked Members to support SB1083 to organize the Arizona Special Missions Unit. Unit members will be trained, vetted citizens who will volunteer many hours in an effort to stop cross-border criminal activity. They could be called upon to help in search and rescue efforts, respond to natural and man-made disasters, and any other missions directed by the Governor. The unit will answer to the Governor and report to the Legislature. Budgets of law enforcement agencies are strained and must cover all aspects of law enforcement; what is needed is help in this cross-border criminal activity. Many of the volunteers will be former military and law enforcement personnel who already have training and will have limited certification, i.e., limited authority. The monies to fund this unit will not come out of the General Fund but will come out of a new GIITEM subaccount. This legislation will allow for volunteers who will be trained to support county and municipal leaders in combating international criminal activities.

Vice-Chairman Proud raised the possibility of liability issues when working with law enforcement personnel. Senator Allen agreed that liability occurs every time law enforcement goes out but stated that liability is minimized with training. She reiterated that the bill includes training.

Mr. Gallego brought up the following issues: exemption from the procurement code, buying weapons and equipment, designing uniforms, and formulation of an operations plan.

Mr. Farley noted that the bill does not require the volunteers to undergo Arizona Peace Officer Standards and Training Board (AZPOST) training. He said it will be helpful for them to have this training because they will be working hand-in-hand with law enforcement officials. Senator Allen countered that AZPOST training is not needed because their duties will not encompass the broad spectrum of law enforcement. These volunteers will have a specific mission, focusing on cross-border criminal activity. Mr. Farley opined this bill creates a paramilitary organization. It

seems to be duplicative of law enforcement activities and, if they are trained differently, he believes it will create huge problems.

Mr. Farley queried why members of this unit are not required to be certified. Senator Allen advised that they will be doing other things. Additionally, there are no funds for certification.

Mr. Gallego asked whether there is an emergency clause in the bill. Senator Allen replied in the affirmative. She said that once the Governor signs the bill, it will take months to get this unit totally organized.

Mr. Gallego asked why this was not worked out with the National Guard. Senator Allen stated that the National Guard is controlled by the federal government, so she does not believe anything would be accomplished utilizing the National Guard.

Mr. Gallego noted that the bill allows members to detain people until law enforcement arrives. He expressed concern about persons and the state being charged with kidnapping or forced detention when it is determined the persons detained are legal citizens and being held against their will. Senator Allen said they will not be doing that as part of their duties; they will not be an assault group or arrest group.

Mr. Hale asked whether funding will come from sweeping GIITEM funds. Senator Allen answered in the negative. She explained that funds will be appropriated from a new GIITEM subaccount which has to be used for border security. Mr. Hale commented that this is using state funds to fund a private paramilitary organization. Senator Allen disagreed. She said this will be a state agency, not a private agency. Mr. Hale wondered if the money will be better appropriated to the sheriffs along the border to hire additional personnel because they are already trained and part of a state agency. Senator Allen disclosed that there is not enough money to hire additional law enforcement personnel for salaries, health care and retirement. She reiterated that counties do not have enough money to staff law enforcement agencies now. This legislation is a way for volunteers to assist local law enforcement on this particular issue to stop the criminal violent elements from coming into the state.

Lyle Mann, Executive Director, Arizona Peace Officer Standards and Training Board (AZPOST), against SB1083, stated that the terms used in the bill create problems. AZPOST trains and certifies peace officers. He requested the following terms be omitted from the bill: *pursuit, arrest and detention, detain and arrest until law enforcement arrives*. He maintained that all of these activities involve many hours of training and consist of many elements that have to be considered.

In reply to Mr. Harper, Mr. Mann said he would have no problem with the bill if it was crafted so volunteers were at the border to observe and report.

Mr. Mann listed concerns with the bill: exemption from procurement, rule making authority, certification, criminal records, ensuring proper training, power of arrest, pursuit and detention, etc.

Mr. Hale raised the immunity issue. He asked whether the state will be liable for the volunteer's action. Mr. Mann said his understanding of immunity involves whether the person received the proper training, whether sufficient supervision was provided to that individual and whether proper procedures were in place. In this case, the standard of care would be that this unit would not have proper training; supervision and procedures would be a function of what the commander puts in place, and whether those rose to the level of public safety. He opined that the individual would be covered but the state would be in jeopardy.

Patrick Bray, Deputy Director of Government Affairs, Arizona Cattlemen's Association, testified against SB1083. He said that although landowners and ranchers are very frustrated with what goes on along the border, none of the Association's members have asked for a security force at their home or on their ranches. Their plan was to rely on the federal government and what it needed to do, as well as other options, such as the National Guard. He said his membership has the following concerns: the amount of money appropriated for this organization, armed strangers crossing ranches, landowner liability, damage to cattle, broken fences, etc. He maintained that there is no need to have another agency on the land when there are more than enough agencies to address this issue.

Chairman Gowan stated that some of the cattlemen are asking for action to take place because the federal government continues to fail in its duties to secure the border. Mr. Bray said there are different ways to approach this particular issue, such as the National Guard or the Texas model which utilizes the Department of Public Safety.

Mr. Harper stated that there are not enough border patrol officers on the border and the National Guard is too expensive for the state to bear, so the alternative is to use volunteers on the border.

Mr. Gallego mentioned that this bill will only allow the ASMU to operate in areas where permission has been granted by the landowner or on state land. Mr. Bray said that is his understanding. Mr. Gallego wondered if the volunteers see someone on private property and have just cause, can they go on that private property whether or not the property owner is there to allow them access. Mr. Bray said he does not know. He said there are a number of unanswered questions.

Jen Sweeney, Government Affairs Director, Arizona Association of Counties, expressed opposition to SB1083 because of the overwhelming feedback from 14 county sheriffs. She said they do not like this kind of volunteer force and training is an issue. Additional issues are funding, as well as giving seizure capability to the ASMU. The Racketeer Influenced and Corrupt Organizations (RICO) monies are a huge benefit to county and municipal law enforcement; this bill further divides that money. She pointed out that the language of the bill requires the creation of the ASMU; however, the use of the unit is permissive, depending on whether the local law enforcement asks for their help, at which time a memorandum of understanding is entered into.

Letters in opposition to SB1083 from the Santa Cruz County Sheriff and the Pima County Sheriff were distributed (Attachments 13 and 14).

Mr. Smith said he heard the ranchers are complaining that they are not getting help from the sheriffs. He asked whether sheriffs are doing their job on the border and whether they are vocal about this proposal. Ms. Sweeney responded that she is not aware of any specific complaints and will be happy to follow up on that. She advised that the sheriffs have twice voted against this proposal.

Lou Taylor, representing self, in support of SB1083, advised that he is a retired Army Colonel. He said opposition to this proposal stems from letting the status quo and the open borders control the agenda. He said he believes in the creation and use of this unit. It will be used as a defensive force, not an offensive force. He asserted that the personnel vetting process goes above and beyond what law enforcement has. The plan is to have psychological screening and evaluation where needed. Training will be basic military training.

Mr. Gallego expressed the following concerns: how the volunteers will react with law enforcement, standard operating procedures, and proper training with limited hours of training. He commented that this does not appear to be a strictly defensive organization; it seems like it is offensive as well. It also appears to be more a militia than an adjunct to law enforcement.

Senator Allen made closing remarks:

- This is a money issue for some people
- GIITEM money will be used for equipment
- The National Guardsmen only act as observers
- RICO money will be used to give the ASMU more money
- The ASMU will report to the Legislature
- This legislation does something to protect the state

Mr. Gallego asked how much the commander will be paid. Senator Allen said she does not know. Mr. Gallego asked who will appoint the commander. Senator Allen answered that the Governor makes the appointment.

Chairman Gowan moved that the Gallego eight-line amendment dated 3/13/12 be adopted (Attachment 15).

Mr. Benny explained that the Gallego eight-line amendment dated 3/13/12 specifies that monies be transferred to county sheriffs located adjacent to the Arizona-Mexico border line rather than to the Arizona Special Missions Unit and states the monies will be allocated in direct correlation to the proportion of the mile length of the border line that each county occupies (Attachment 15).

Mr. Gallego explained that the amendment recognizes there are immigration problems on the border which are costly to border sheriffs. This amendment allows the GIITEM allocation that would have gone to the ASMU to go back to the sheriffs on the border to help them with the costs of dealing with problems on the border.

Mr. Farley spoke in support of the Gallego amendment. He claimed there is a real problem on the border. Cattlemen understand that more than anyone because problems are occurring on their lands every day, and those problems need to be stopped at the border. He said he believes

the sheriffs are working as hard as they can but they do not have the resources. It will help to have money given back to the sheriffs. He raised another issue asking about the consistency and effectiveness of the volunteers.

Mr. Smith asked whether the Gallego amendment will gut the bill and eliminate funding for this unit. Mr. Gallego said that is the intent of the amendment. He related that he is solidly against the idea of a Special Missions Unit. If the amendment passes, giving resources to the county sheriffs will result in more effective border enforcement.

Question was called on the motion that the Gallego eight-line amendment dated 3/13/12 be adopted (Attachment 15). The motion failed.

Chairman Gowan announced the names of those who signed up in support of SB1083 but did not speak:

Jeff Christ, representing self
Joy Staveley, Vice President-Owner, Canyoneers, Inc.
Richard Travis, City of Flagstaff
John Foote, Arizona State Defense Force Foundation
Dave Kopp, Manager, Arizona Citizens Defense League, Inc.
Luis Anderson, representing self
Beth Hallgren, Campaign Administrator, 40 Days For Life, representing self
Onita Davis, representing self
Roger Boone, representing self
Joyce Hill, representing self
Holly Buss, representing self
Jose Borrajero, representing self
Richard Hanson, representing self
John Wentling, Vice President, Arizona Citizens Defense League, Inc.

Chairman Gowan announced the names of those who signed up in opposition to SB1083 but did not speak:

Seth Apfel, representing self
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Cynthia Coping, representing self
Ben Goldstein, Lobbyist, Arizona Trial Lawyers Association
Trey Williams, Legislative Liaison, Arizona Association of Counties

Question was called on the motion that SB1083 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 16).

SB1412 - political signs; public right-of-way - DO PASS

Chairman Gowan moved that SB1412 do pass.

Paul Benny, Majority Assistant Research Analyst, stated that SB1412 permits an owner or occupant of a residential property to lawfully remove any political sign or printed material from a public right-of-way that is adjacent to that person's residential property (Attachment 17).

Senator Ron Gould, sponsor, stated that SB1412 corrects a problem created last year when the Legislature passed a bill prohibiting property owners from removing signs that were in the right-of-way. This legislation allows a property owner to remove a political sign in the right-of-way immediately adjacent to the owner's house.

Mr. Smith cautioned that this proposal permits a political opponent to remove campaign signs. Senator Gould replied that there is an ordinance that covers that situation.

Chairman Gowan announced the names of those who signed up in support of SB1412 but did not speak:

John Wentling, representing self

Chairman Gowan announced the names of those who signed up in opposition to SB1412 but did not speak:

Seth Apfel, representing self

Question was called on the motion that SB1412 do pass. The motion carried by a roll call vote of 7-1-0-1 (Attachment 18).

SB1182 - technical correction; underground storage; closure(now: 2012 NDAA act; governmental compliance) - DO PASS

Chairman Gowan moved that SB1182 do pass.

Casaundra Wallace, Majority Leadership Intern, advised that SB1182 prohibits this state and any agency of this state from implementing sections 1021 and 1022 of the National Defense Authorization Act (NDAA) for fiscal year 2012 (Attachment 19). Sections 1021 and 1022 of the Act deal with detention of persons the government suspects of involvement in terrorism.

Senator Sylvia Allen, sponsor, related that on December 31, 2011, the President of the United States signed into law the National Defense Authorization Act (NDAA). Under this Act, a person's right to an attorney is revoked because the person is deemed to be a military threat. She said the language of this Act is vague and contains little protections for citizens. SB1182 attempts to address and protect Arizona citizens against the NDAA.

In response to Mr. Gallego, Senator Allen revealed that President Obama gave his word not to ever use the Act when he signed it; however, she said that statement would not guarantee that other Presidents will not use it. She said the point is not an issue of trust; the Constitution clearly defines rights and protections when it comes to being arrested and it should be ensured that those rights and protections are always maintained.

Mr. Farley expressed concern with this bill because of the provision that makes law enforcement officials who try to enforce the NDAA in this state guilty of a Class 1 misdemeanor. He brought up the Supremacy Clause of the U.S. Constitution which requires law enforcement to follow federal law, while this legislation makes that a criminal offense. To that point, Chairman Gowan stated that the Supremacy Clause does not apply here. He said he believes a misdemeanor offense is too low. Senator Allen agreed. She contended that the misdemeanor offense should

be directed toward federal agencies that are trying to supersede the Arizona Constitution in this instance. She claimed that if there is no enforcement provision in this legislation, it will become meaningless.

Discussion ensued on rights granted by the Constitution.

Mr. Farley again said this legislation is about convicting someone of a Class 1 misdemeanor for disobeying federal law. Chairman Gowan disagreed; he said this is charging them with violating state law.

Discussion followed on federal and state law.

Mr. Farley reiterated that he does not want to punish law enforcement.

Chairman Gowan announced the names of those who signed up in support of SB1182 but did not speak:

William Diak, Mayor, City of Page

Seth Apfel, representing self

Chairman Gowan announced the names of those who signed up as neutral on SB1182 but did not speak:

Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona

Question was called on the motion that SB1182 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 20).

SCR1011 - technical correction; illegal aliens(now: national defense authorization act) - DO PASS

Chairman Gowan moved that SCR1011 do pass.

Casaundra Wallace, Majority Leadership Intern, stated that SCR1011 condemns sections 1021 and 1022 of the National Defense Authorization Act (NDAA) for fiscal year 2012 (Attachment 21).

Chairman Gowan announced the names of those who signed up in support of SCR1011 but did not speak:

John Wentling, representing self

Seth Apfel, representing self

Chairman Gowan announced the names of those who signed up as neutral on SCR1011 but did not speak:

Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona

Question was called on the motion that SCR1011 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 22).

SB1244 - security guard agency license; qualifications - DO PASS AMENDED S/E
S/E: yellow light cameras

Chairman Gowan moved that SB1244 do pass.

Chairman Gowan moved that the Gowan 10-line strike-everything amendment dated 3/12/12 to SB1244 be adopted (Attachment 23).

Paul Benny, Majority Assistant Research Analyst, explained that the Gowan 10-line strike-everything amendment dated 3/12/12 (Attachment 23) to SB1244 clarifies that a photo enforcement system must conform to the adopted manual and specifications, including the recommended yellow light and red light duration formulas, to result in a traffic ticket and complaint (Attachment 24).

Chairman Gowan stated that all yellow light cameras are modified to the engineers' rules and the cities have to comply with the engineers' ruling.

Chairman Gowan noted that everyone signed in as supporting the underlying bill; no one signed in support of the strike-everything amendment.

Question was called on the motion that the Gowan 10-line strike-everything amendment dated 3/12/12 to SB1244 be adopted (Attachment 23). The motion carried.

Chairman Gowan moved that SB1244 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 25).

SCR1018 - honoring Native American veterans - DO PASS

Chairman Gowan moved that SCR1018 do pass.

Alexis Burkhart, Majority Intern, said that SCR1018 expresses the Legislature's appreciation for Native American veterans who have served in the United States Armed Forces for their exceptional service, patriotism and courage (Attachment 26).

Mr. Hale stated that SCR1018 honors Native American military personnel who have always been on the front lines when there is a call from their country. He thanked Members for their vote.

Chairman Gowan announced the names of those who signed up in support of SCR1018 but did not speak:

David Hampton, Public Information Officer, Arizona Department of Veterans' Services
Norris Nordvold, Intergovernmental Programs Director, Inter Tribal Council of Arizona
Jon Altmann, Association of the U.S. Navy, representing self
Jonathan Hale, Diné College Board of Regents, Navajo Nation Council
Ron Lee, representing self
Theresa Ulmer, Consultant, Cocopah Indian Tribe

Question was called on the motion that SCR1018 do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 27).

Senator Jack Jackson, sponsor, related that 20,000 Native Americans currently live in Arizona who have served the military and 12,000 of those veterans are from the Navajo Tribe. In the past seven years, eight Navajo Code Talkers have passed away; this bill honors Navajo veterans. It will also help support several projects being undertaken on the Navajo Nation, such as a veterans' Home, a veterans' cemetery, Navajo Code Talker museum and veterans' complex.

SCR1020 - DEMA; recognition; emergency preparedness - DO PASS

Chairman Gowan moved that SCR1020 do pass.

Alexis Burkhart, Majority Intern, advised that SCR1020 expresses legislative appreciation of the Arizona Department of Emergency and Military Affairs (DEMA) for its outstanding efforts on behalf of the 2011 Vigilant Guard Exercise (Attachment 28). The bill also pays tribute to the agencies and tribes that participated in that Exercise.

Senator Jack Jackson, sponsor, explained that the 2011 Arizona Vigilant Guard Exercise was an eight-day statewide endeavor on how the state, through the Department of Emergency Management, prepares for national and man-made disasters. He believes DEMA's efforts need recognition and asked for Members' support.

Chairman Gowan announced the names of those who signed up in support of SCR1020 but did not speak:

Will Schulz, Arizona Department of Emergency and Military Affairs, representing self

Question was called on the motion that SCR1020 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 29).

SB1291 - veterans' donations fund; grants - DO PASS

Chairman Gowan moved that SB1291 do pass.

Alexis Burkhart, Majority Intern, explained that SB1291 modifies expenditure procedures for monies in the Veterans' Donations Fund (Attachment 30).

Vice-Chairman Proud stated that SB1291 rectifies certain rule changes asked for by the Auditor General.

David Hampton, Public Information Officer, Arizona Department of Veterans' Services, in favor of SB1291, said the bill is compliant with recommendations made by the Auditor General. On January 17, 2011, the Department implemented a new process for the use of the Veterans' Donation Fund which uses the online ProcureAZ system, the state procurement system.

Question was called on the motion that SB1291 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 31).

SB1296 - emergency management; relief; rules exemption - DO PASS

Mr. Smith moved that SB1296 do pass.

Alexis Burkhart, Majority Intern, advised that SB1296 exempts the Administration of Public Assistance Program monies for liabilities incurred for declared disasters from the Administrative Procedures Act (Attachment 32).

Will Schulz, Program Manager, Arizona Department of Emergency and Military Affairs (DEMA), in support of SB1296, stated that this legislation is an opportunity for the Department to standardize its public assistance standard operating procedures that are currently broad in nature and provide more guidance to the program.

Question was called on the motion that SB1296 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 33).

SB1302 - military family relief fund - DO PASS AMENDED S/E
S/E: post wildfire flood control; counties'

Chairman Gowan moved that SB1302 do pass.

Chairman Gowan moved that the Gowan 19-line strike-everything amendment dated 3/5/12 to SB1302 be adopted (Attachment 34).

Liz Dunfee, Majority Research Analyst, explained that the Gowan 19-line strike-everything amendment dated 3/5/12 (Attachment 34) to SB1302 outlines a county's duties regarding post wildfire flood mitigation activities (Attachment 35). The Gowan 11-line amendment dated 3/13/12 to the strike-everything amendment allows the state to reimburse the county for the cost of post wildfire mitigation activities pursuant to the authority of the Governor to declare an emergency and use funds to mitigate emergencies arising from floods or floodwaters (Attachment 36). The amendment also exempts a county from state procurement requirements for post wildfire flood mitigation activities.

Mr. Harper asked if the purpose for exempting a county from the procurement requirements is to speed up the process. Chairman Gowan answered in the affirmative. He advised that after some fires, areas not ordinarily in a flood plain zone became flood plain zones. This proposal is necessary to save certain properties from these flooding areas; it allows counties to utilize manpower and machinery to divert water from these homes to save those regions. The goal is public safety. The funding mechanism is through the Governor's emergency fund.

Chairman Gowan moved that the Gowan 11-line amendment dated 3/13/12 to the 19-line strike-everything amendment be adopted (Attachment 36). The motion carried.

Chairman Gowan moved that the Gowan 19-line strike-everything amendment dated 3/5/12 to SB1302 as amended be adopted (Attachment 34). The motion carried.

Barry Aarons, Lobbyist, Apache County & Greenlee County, testified in opposition to the strike-everything amendment to SB1302. He stated that the strike-everything amendment as well as the amendment to the strike-everything amendment provides the opportunity for an unfunded mandate. The strike-everything amendment requires that if property owners having a community of interest contact the county to mitigate flood waters arising from post wildfire soil erosion conditions, the county shall provide grading operations and drainage or trenching activities to ensure the properties are secured from flooding. Just the act of contacting the county initiates the mandate. The language of the amendment to the strike-everything amendment is permissive; it says the state may reimburse a county for the costs of post wildfire mitigation activities, creating a tremendous hardship for the smallest and most financially-vulnerable counties in the state. He noted an unintended consequence: some property owners declaring they have a community of interest and want mitigation done, and that mitigation affecting another property owner's property. In addition, the proposal provides that this may be done on an ongoing basis through multiple rainy seasons.

Discussion ensued between Chairman Gowan and Mr. Aarons on the public safety factor, a county's duty to address water flow to prevent further harm to citizens, the funding mechanism and a county's financial vulnerability.

Mr. Harper asked whether the mitigation will be on public right-of-ways or on private property. Mr. Aarons said this would allow the county to conduct mitigation activities on both public and private property. Mr. Harper remarked that this legislation clearly benefits private property owners. He asked whether the sponsor is willing to offer an amendment to clarify that flood mitigation would only be on public right-of-ways. Chairman Gowan stated that the purpose is for private property improvement, to prevent rainwater from going into homes. He reminded Members that there must be an emergency situation for this to occur. Mr. Harper stated that he believes that people who use the services of government should pay for those services. The burden should be on the people who use government service, rather than spreading it out to the entire county or using the Governor's emergency funds. Chairman Gowan pointed out that this is not a flood plain zone; it only became a flood plain when the fires destroyed the foliage, resulting in the water coming down and flooding the whole region. Mr. Aarons agreed with Mr. Harper. He said this is not limited to a flood plain and that most people who live next to a flood plain zone are cognizant of their obligations.

In reply to Mr. Smith's question about changing *shall* to *may*, Mr. Aarons answered that permissive language is more acceptable than an unfunded mandate.

Chairman Gowan asked Mr. Aarons whether the language is acceptable if a provision is included that reimburses the counties for costs incurred. Mr. Aarons said that is moving in the right direction because it will no longer be an unfunded mandate. He said he will have to take that language back to the county supervisors.

Mr. Harper commented that it might not be a mandate but will still be a redistribution of wealth from other parts of the state.

Mr. Smith mentioned that there should be some criteria in the bill, other than property owners contacting the county and claiming they have a problem resulting from wildfire soil erosion, otherwise the county will be mandated to take action.

Chairman Gowan advised that he will not put this forward unless a solution to this problem can be found. Mr. Aarons said he is more than willing to continue to negotiate.

Andy Bertelsen, Public Works Director, Coconino County, concurred with testimony made by Mr. Aarons in opposition to SB1302. He advised that Coconino County has experienced a lot of flooding due to wildfires and has spent a great deal of money trying to solve this problem. He said this language creates liability and jurisdictional issues; there are 11 jurisdictions that have control of property in the county's flood area. He said that if an attempt is made to solve an issue for one resident, it could create a flooding problem on their neighbor's property, resulting in liability issues to local government who responded in good faith.

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association, in opposition to SB1302, testified that the Association does not like the mandate or the permissiveness of the funding. He related that when property owners requested help, the counties were responsive and did provide help to mitigate flooding in the area: sandbags, diversion, and inmate labor. He said the Association appreciates being included in the stakeholder process and remains committed to trying to come to a solution.

Chairman Gowan announced the names of those who signed up in support of the strike-everything amendment to SB1302 but did not speak:

Antoinette Lane, representing self

Karlene Wenz, Government Affairs Specialist, Property Casualty Insurers Association of America

Chairman Gowan announced the names of those who signed up in opposition to the strike-everything amendment to SB1302 but did not speak:

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

Laura Magnus, Apache County & Greenlee County

Chairman Gowan moved that SB1302 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 37).

SB1438 - drug lab remediation; investigators - DO PASS AMENDED

Chairman Gowan moved that SB1438 do pass.

Chairman Gowan moved that the Gowan 20-line amendment dated 3/9/12 be adopted (Attachment 38).

Alexis Burkhart, Majority Intern, stated that SB1438 establishes guidelines and penalties relating to violations of clandestine drug laboratories and creates a Criminal Investigations Unit within

the State Board of Technical Registration (Attachment 39). She reviewed the provisions of the Gowan 20-line amendment dated 3/9/12 (Attachment 38):

- Removes the requirement of the peace officer to send the Department of Transportation a notice of removal if the seizure of a clandestine drug laboratory occurs in a mobile home or recreational vehicle.
- Removes the ability for a buyer to cancel a real property purchase contract if the owner fails to notify the buyer that there was a clandestine drug laboratory on the property.
- Removes the ability for a buyer to cancel a purchase contract if the owner fails to notify the buyer that there was a clandestine drug laboratory in the mobile home or recreational vehicle.
- Increases the penalty assessment for a violation relating to drug offenses from \$10 to \$15.
- Removes the requirement for the Director to base its guidelines for the conduct of investigations on the investigative policy and procedural guidelines of the Department of Public Safety.
- Specifies that the Board is exempt from the statutory rule making requirements for one year after the effective date of this act.
- Modifies the definition of *real property*.

Senator John Nelson, sponsor, related that engineers pay a fee to the State Board of Technical Registration and that money is used to police the agencies. There are only four or five entities that charge the fee and the cost to the Board has taken money away from the policing activities in the engineering community and put them into policing remediation activities.

Ron Dalrymple, Director, Board of Technical Registration, spoke in favor of SB1438. He advised that the bill was passed by this Committee last year as HB2362, drug lab; remediation; investigators, and has been modified since then; the funding mechanism was revised by the Senate working with the courts. The other provisions have been worked out with the stakeholders, clarifying ambiguity and misinterpretations. The Board, the sponsor and the stakeholders are all in agreement on this legislation.

Chairman Gowan announced the names of those who signed up as neutral on SB1438 but did not speak:

Nicole LaSlavic, representing self

Chairman Gowan announced the names of those who signed up in support of SB1438 but did not speak:

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

Maria Malice, Vice President, COPS Monitoring Arizona Alarm Association, representing self

Susan Brenton, Executive Director, Manufactured Housing Communities of Arizona

Gerald Richard, Special Policy Advisor for Law Enforcement, Arizona Attorney General's Office

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

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

Question was called on the motion that the Gowan 20-line amendment dated 3/9/12 be adopted (Attachment 38). The motion carried.

Chairman Gowan moved that SB1438 as amended do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 40).

SB1405 - students; residency; military service - DO PASS

Chairman Gowan moved that SB1405 do pass.

Paul Benny, Majority Assistant Research Analyst, said that SB1405 clarifies the service status of a veteran for immediate classification as an in-state student for tuition purposes (Attachment 41).

Jon Altmann, National Vice President, Association of the U.S. Navy, representing self, testified in support of SB1405. The bill is a correction to legislation passed last year that inadvertently left out the National Guard and Reserve members when it considered military members. This proposal brings fairness in providing benefits to all servicemen.

Question was called on the motion that SB1405 do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 42).

SB1186 - law enforcement officers; omnibus - DO PASS AMENDED

Chairman Gowan moved that SB1186 do pass.

Chairman Gowan moved that the Gowan seven-page amendment dated 3/13/12 be adopted (Attachment 43).

Liz Dunfee, Majority Research Analyst, stated that SB1186 makes various changes relating to law enforcement officers. It adds a new section of law regarding law enforcement officer fitness for duty examinations and makes a variety of statutory changes (Attachment 44). The Gowan seven-page amendment dated 3/13/12 adds special agents from the Attorney General's Office or a county attorney's office who are certified by the Arizona Peace Officers Standards and Training Board (AZPOST) to the definition of *peace officers* and repeals an outdated statute (Attachment 43).

James Mann, Executive Director, Arizona Fraternal Order of Police, testified in favor of SB1186. He related that agreement on the provisions of the bill was reached with all the stakeholders and said he knows of no opposition to the legislation. The bill clarifies existing legislation. The work fitness evaluations provision, which gives an injured officer the opportunity to have an independent examination to retain his job, is supported by all agencies. He also stated support for the Gowan amendment.

Mr. Smith noted that Dale Wiebusch of the League of Arizona Cities and Towns opposes the bill. Mr. Mann replied that this is the first indication he has heard of any opposition. He said he will check on that.

Chairman Gowan announced the names of those who signed up in support of SB1186 but did not speak:

Norman Moore, Attorney, Fraternal Order of Police

Charles Loftus, Special Agent Supervisor, representing self

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

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

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

Andrew Rubalcava, Chief Agent, representing self

Chairman Gowan announced the names of those who signed up in opposition to SB1186 but did not speak:

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

Seth Apfel, representing self

Question was called on the motion that the Gowan seven-page amendment dated 3/13/12 be adopted (Attachment 43). The motion carried.

Chairman Gowan moved that SB1186 as amended do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 45).

SB1472 - private investigator; security guard; board(now: private investigator; security guard; omnibus) - DO PASS AMENDED

Chairman Gowan moved that SB1472 do pass.

Chairman Gowan moved that the Gowan five-line amendment dated 3/13/12 at 10:44 a.m. (originally referenced as the Gowan five-line amendment dated 3/12/12 at 1:37 p.m.) be adopted (Attachment 46).

Liz Dunfee, Majority Research Analyst, explained that SB1472 expands the authority of the Private Investigator and Security Guard Board and makes numerous changes to the statutes related to private investigators and private security guards (Attachment 47). The Gowan five-line amendment dated 3/13/12 makes conforming changes to ensure the language mirrors the section relating to private investigators and security guards (Attachment 46).

Senator Linda Gray, sponsor, distributed handouts (Attachments 48 and 49). The proposal gives the Board the authority to take action against the industries it regulates. The Department of Public Safety (DPS) advised her of 151 complaints relating to private investigators and security guards but only three of those actually went to the Board. The lack of investigation by DPS was troubling to her; another concern related to private security guards who were not licensed. She noted that the Gowan amendment removes the requirement to be licensed. In response to issues that were raised, she agreed to reduce the penalty for violating the regulations, address the concern about active duty law enforcement officers not being able to own an agency while working, and maintain the definition of *propriety*.

Question was called on the motion that the Gowan five-line amendment dated 3/13/12 at 10:44 a.m. be adopted (Attachment 46). The motion carried.

Without objection, Vice-Chairman Proud moved that the Gowan four-line amendment dated 3/13/12 at 5:17 p.m. be adopted (Attachment 50).

Ms. Dunfee explained that the Gowan four-line amendment dated 3/13/12 at 5:17 p.m. decreases the penalty for violating the regulations from a Class 6 felony to a Class 1 misdemeanor and also removes the provision prohibiting a peace officer from being eligible for a security guard agency license (Attachment 50).

Mr. Gallego stated his understanding that police officers can be security guards but cannot own security companies. Ms. Dunfee advised that the amendment removes that provision.

Question was called on the motion that the Gowan four-line amendment dated 3/13/12 at 5:17 p.m. be adopted (Attachment 50). The motion carried.

Jayne McElfresh, Investigator, Region VI National Association Legal Investigators, representing self, in support of SB1472, advised that she is the past president of the Private Investigator and Security Guard Board. She stated that she is a licensed private investigator, licensed by the Department of Public Safety since 1985. She maintained that the Regulatory Board protects the public against unlicensed, unethical individuals who prey on the citizens of Arizona; it provides the means for disciplining licensees when necessary. Unlicensed operators take away work from licensed private investigators and security guard agencies. This bill does not affect proprietary companies or law enforcement; it brings this Board to the same standard as every other state board in allowing it to have the authority to hear complaints against unlicensed activity.

Dana Young, President, Arizona Association of Licensed Private Investigators, representing self, testified in support of SB1472. She said she has been an Arizona licensed private investigator since 1994. She advised that she is the current Chair of the Department of Public Safety Board. She stated that many complaints are never heard by the Board on unlicensed activities or fraudulent activities against consumers. The Board has had its hands tied on regulating its own industry.

Matt Brooks, Sergeant at Arms, Arizona Association of Licensed Private Investigators, representing self, in support of SB1472, related that he has been a licensed private investigator since 2007. Before 2007, he served as Chief of Police in Globe, Arizona. He related that no action was taken on a complaint he gave to the Department of Public Safety. He stressed that favoritism cannot be shown by DPS to certain police officers and an incompetent person cannot be allowed to get a license. Industry needs to be involved and have a voice in the Board process.

Chairman Gowan announced the names of those who signed up in support of SB1472 but did not speak:

Barry Goldman, representing self

Bill Rucker, representing self

Manny Flores, retired, Arizona Department of Public Safety, representing self

Rich Robertson, Private Investigator, representing self

Phil Candy, representing self
Joseph Abate, Arizona Process Servers Association
Andi Murphy, Investigator, representing self
Tammy Hardy, Investigator, representing self
Dondi Frigerio-Holmes, representing self
Ronald Ezell, representing self
Dan Swindall, representing self
Faith Morgan, representing self
Howard Anderson, representing self
Pat Shaughnessy, Arizona Association of Licensed Private Investigators

Chairman Gowan announced the names of those who signed up in opposition to SB1472 but did not speak:

Marcus Osborn, Manager of Government and Public Affairs, Arizona Chamber of Commerce and Industry
Susan Anable, Manager, Government Relations, Cox Communications
John Mangum, Arizona Food Marketing Alliance

Chairman Gowan announced the names of those who signed up as neutral on SB1472 but did not speak:

Mike Williams, Arizona Police Association, Phoenix Law Enforcement Association

Chairman Gowan moved that SB1472 as amended do pass. The motion carried by a roll call vote of 3-2-0-4 (Attachment 51).

SB1323 - municipalities; powers; technical correction(now: Arizona ranger vehicles; lights) - DO PASS

Chairman Gowan moved that SB1323 do pass.

Alexis Burkhart, Majority Intern, explained that SB1323 allows an Arizona Ranger vehicle to possess a lighted lamp exhibiting red and blue lights (Attachment 52).

Chairman Gowan explained that this legislation is an agreement with the Arizona Peace Officer Standards and Training Board (AZPOST) to allow Arizona Rangers to use lights to direct traffic for sporting events, fairs, etc. The rangers can also use lights when they are first on the scene of an accident. The lights must be rear facing, must only be used when the vehicle is stationary and can be used for official Arizona Ranger duties, traffic control or emergency operations.

Lyle Mann, Deputy Director, Arizona Peace Officer Standards and Training Board (AZPOST), testified against SB1323. He agreed with Chairman Gowan's explanation of the bill; however, he said the bill, as written, does not reflect the two agreements AZPOST had with the Arizona rangers: rear facing only and not in motion. He disclosed that he will be happy to withdraw his objection to the bill if it is amended to reflect the true agreement: visible from the rear and for stationary use only.

Chairman Gowan agreed to offer a Floor amendment to reflect that.

Jim Hester, representing self, spoke in support of SB1323. He explained that the Arizona Rangers is a volunteer organization consisting of 400 officers throughout the State of Arizona. The organization provides support and assistance services to law enforcement agencies. In 2010, the Arizona Rangers provided 60,000 hours of service to the state. The intent of this legislation is for officer safety in emergency situations.

Question was called on the motion that SB1323 do pass. The motion carried by a roll call vote of 6-0-0-3 (Attachment 53).

Without objection, the meeting adjourned at 1:25 p.m.

Joanne Bell, Committee Secretary
April 16, 2012

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