

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON APPROPRIATIONS

Minutes of Meeting
Wednesday, March 21, 2012
House Hearing Room 1 -- 1:00 p.m. or on recess or adj of Flr

Chairman Kavanagh called the meeting to order at 1:12 p.m. and attendance was noted by the secretary.

Members Present

Ms. Alston	Mr. Jones	Mr. Urie
Mr. Campbell	Mrs. McLain	Mr. Williams
Mr. Fillmore	Mrs. Tovar	Mr. Olson, Vice-Chairman
Mr. Forese	Mrs. Ugenti	Mr. Kavanagh, Chairman
Mr. Heinz		

Members Absent

None

Committee Action

SB1072 - DP FAILED (3-10-0-0)	SB1388 - DP (12-1-0-0)
SB1153 - DPA S/E (9-4-0-0)	SB1405 - HELD AT REQUEST OF SPONSOR
SB1165 - DPA S/E FAILED (6-7-0-0)	SB1415 - DP (7-5-0-1)
SB1166 - DPA S/E (12-0-0-1)	SB1480 - DPA S/E (10-0-0-3)
SB1231 - DP (9-3-0-1)	SB1490 - DP (12-1-0-0)
SB1288 - DP (12-0-0-1)	SB1495 - DPA (7-6-0-0)
SB1333 - DP (9-3-0-1)	SCR1005 - DP FAILED (5-7-0-1)
SB1351 - DPA S/E (12-1-0-0)	SCR1030 - DP FAILED (3-6-1-3)
SB1373 - DP (13-0-0-0)	SCR1031 - DPA S/E FAILED (4-9-0-0)

CONSIDERATION OF BILLS

SB1231 - appropriation; attorney general; habitat destruction - DO PASS

Vice-Chairman Olson moved that SB1231 do pass.

Stuart Luther, Majority Intern, explained that SB1231 appropriates \$250,000 from the state General Fund in FY 2012-2013 to the state Attorney General's Office for legal action against the United States Forest Service (USFS) (Attachment 1).

Senator Gail Griffin, sponsor, noted that the Members are familiar with the devastation caused by the catastrophic fires in the state. Not only did the fires impact timber and the timber industry, but also the habitat and endangered species. She requested the Members' support of SB1231.

Vice-Chairman Olson announced the names of those who signed up in support of SB1231 but did not speak:

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

Vice-Chairman Olson announced the names of those who signed up in opposition to SB1231 but did not speak:

Alisa McMahan, representing self

Michael Fiflis, representing self

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Question was called on the motion that SB1231 do pass. The motion carried by a roll call vote of 9-3-0-1 (Attachment 2).

SB1288 - municipal water fees; repeal; appropriation - DO PASS

Vice-Chairman Olson moved that SB1288 do pass.

Mike Huckins, Majority Research Analyst, explained that SB1288 repeals the ability of the Arizona Department of Water Resources (ADWR) to levy fees on municipalities and appropriates \$6.3 million from the General Fund for ADWR in FY 2012-2013 (Attachment 3).

Senator Gail Griffin, sponsor, related that some cities have water companies and can pass the fees along to users, but others do not, which is unfair. SB1288 appropriates \$6.3 million to fund ADWR, which she opined the state should be doing.

Jim Ogsbury, Legislative Director, League of Arizona Cities and Towns, in support of SB1288, made the following points:

- Cities and towns would gladly pay their fair share if there was an equitable mechanism for an assessment on all ADWR beneficiaries for the cost of departmental services; however, there is currently no nexus between services rendered and costs imposed.
- The assessment operates as a tax imposed on a per capita basis only on cities and towns, not on industry, counties or others who benefit from the services of ADWR.
- There is no distinction between localities with water companies that can pass costs onto users and those that do not.

Vice-Chairman Olson announced the names of those who signed up in support of SB1288 but did not speak:

Kevin Burke, Assistant to the Town Manager, Town of Oro Valley

Alisa McMahan, representing self

Michael Fiflis, representing self

Rob Adams, Mayor, City of Sedona

Andi Welsh, Assistant to City Manager, City of El Mirage
Jeffrey Kros, Legislative Director, Arizona Municipal Water Users Association
John Schell, Lobbyist, City of Peoria
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter
Jeff Gray, Legislative Liaison, City of Phoenix
Stuart Goodman, Lobbyist, Southern Arizona Water Users Association
Brad Lundahl, Government Relations, City of Scottsdale

Question was called on the motion that SB1288 do pass. The motion carried by a roll call vote of 12-0-0-1 (Attachment 4).

SB1415 - property status study; appropriation - DO PASS

Vice-Chairman Olson moved that SB1415 do pass.

Stuart Luther, Majority Intern, explained that SB1415 requires the Arizona Department of Revenue (DOR) to contract with each county assessor to conduct a property status study and appropriate funds for the study (Attachment 5).

Senator Gail Griffin, sponsor, said this bill requests that each county assessor identify the county's total private property, the portion that is tax-exempt and the portion in conservation status. Most of the counties she contacted indicated that this information can be obtained, but some smaller counties do not have information technology departments, and in one case, it will cost \$150 to hire someone to draw the maps and obtain the data. This study will fine-tune and identify potential tax bases for each county. She responded to questions about breakdown of municipalities into parks and streets.

Nick Dranias, Director, Center for Constitutional Government, representing self, in support of SB1415, indicated that this bill adds transparency, which is needed to understand the scope to which the federal government has failed to give Arizona its proper status of genuine state sovereignty.

Vice-Chairman Olson announced the names of those who signed up in opposition to SB1415 but did not speak:

Alisa McMahan, representing self

Michael Fiflis, representing self

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Question was called on the motion that SB1415 do pass. The motion carried by a roll call vote of 7-5-0-1 (Attachment 6).

SB1351 - flood control districts; mining activities - DO PASS AMENDED S/E
S/E: criminal laws limitation; exception

Vice-Chairman Olson moved that SB1351 do pass.

Vice-Chairman Olson moved that the Kavanagh 23-line strike-everything amendment to SB1351 dated 3/16/12 (Attachment 7) be adopted.

Mike Huckins, Majority Research Analyst, explained that the strike-everything amendment to SB1351 allows the governing body of a municipality that operates its own detention facility or contracts with a county-owned detention facility to enact an ordinance prohibiting a person from being intoxicated in public if that person is a danger to himself or others (Attachment 8).

Chairman Kavanagh, sponsor, advised that many years ago jurisdictions recognized the fact that public intoxication is often the result of an illness, such as alcoholism, and decriminalized public intoxication ordinances. The strike-everything amendment stipulates that if someone is so severely publicly intoxicated that they present a danger to their self and others, the person can be taken into custody.

Barry Aarons, Lobbyist, City of Scottsdale, in favor of the strike-everything amendment to SB1351, testified that this legislation gives cities the authority to pass an ordinance that will enable any municipality with a detention center or any state that contracts with a county with a detention center to be able to place these individuals in the detention center until they are sober.

Mrs. McLain asked why cities, counties or other political subdivisions have been prohibited from making their own laws on this issue. Mr. Aarons replied that it was not prohibited; there was no authorization for municipalities to pass an ordinance. This bill gives cities that authority.

Chairman Kavanagh said there was also a concern among industries that dispense alcohol, such as restaurants, hotels and tourism, that if each town passed a separate ordinance, there would be a patchwork of regulations that could extend to licensing, etc., and cause a regulatory nightmare.

Vice-Chairman Olson announced the names of those who signed up in support of the strike-everything amendment to SB1351 but did not speak:
Brad Lundahl, Government Relations, City of Scottsdale

Vice-Chairman Olson announced the names of those who signed up in opposition to the strike-everything amendment to SB1351 but did not speak:
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Question was called on the motion that the Kavanagh 23-line strike-everything amendment to SB1351 dated 3/16/12 (Attachment 7) be adopted. The motion carried.

Vice-Chairman Olson moved that SB1351 as amended do pass. The motion carried by a roll call vote of 12-1-0-0 (Attachment 9).

SCR1005 - constitution; amendments convention; federal debt - ~~DO PASS~~ FAILED

Vice-Chairman Olson moved that SCR1005 do pass.

Stuart Luther, Majority Intern, explained that SCR1005 requests the United States Congress to call a constitutional convention for the purpose of proposing a federal debt amendment to the U.S. Constitution (Attachment 10).

Jim Pinkerman, representing self, opposed SCR1005. He commented that the proposed legislation does not address the current federal debt condition, but raises the ceiling of debt to even higher levels and makes the states complicit (Attachment 11). SCR1005 is not needed nor is a convention necessary. He asked the Members to vote no on the resolution.

Dinah Lundell, representing self, opposed SCR1005 (Attachment 12). She submitted that if 34 states persuade Congress to call a convention, there is no way to hold the assembly to the subject for which it was petitioned; it could result in a “runaway” convention like the first convention in 1787. It does not make sense to hold a convention when Congress can balance the budget with a simple majority. She urged the Committee to table this measure and authorize the publication of Arizona’s congressional delegation’s votes for an increase in the national debt since the Constitution gave the people the ballot box to resolve such matters.

Senator Linda Gray, sponsor, said the language in SCR1005 states that the amendment to the Constitution would require approval from a majority of Legislatures from the separate states to increase the federal debt. She is confused why people believe that delegates sent to the convention will be voting for different amendments when the bill states that the convention members must be entirely focused on and exclusively limited to the subject matter, which is repeated three times in the resolution. Nor does she understand why people are concerned about a “runaway” convention when the federal debt is such a “runaway” that it is “choking the life out of America.” She contended that a message needs to be sent to Congress.

Barbara Blewster, representing self, opposed SCR1005. She related that Article V states that Congress, on the application of two-thirds of the several states, shall call a convention for proposing amendments; the word *specific* is not included (Attachment 13). Once a convention is called, it is sovereign and not answerable to the Congress or anyone. There have been calls to balance the federal budget since 1936 (Attachment 14). She said 46 of the 50 states are in debt and most have balanced budgets in their state constitutions; what is needed is self-discipline in government. She asked the Members to oppose SCR1005.

Doug Ardt, Chairman, Mesa Tea Party; Precinct Committeeman, Legislative District 18, representing self, opposed SCR1005 (Attachment 15). He said the call for an amendments convention addresses the symptom but not the disease. A constitutional convention and the state delegates chosen on the basis of their regional governments and allegiance provide endless openings for abuse. He asked the Members to vote no on this resolution and address the root causes rather than “band-aid” the symptoms.

Glenn Hughes, Chairman, RestoringFreedom.Org, spoke in favor of SCR1005. He stated that RestoringFreedom.Org was formed to develop bipartisan solutions for America’s problems. The group determined that the federal debt is the biggest issue and should be addressed. The federal debt is not only threatening the federal government’s ability to fund critical programs, infrastructure and military; it is also threatening the sovereignty of the nation. It was also determined that the problem is systemic.

Senator Curtis Olafson, North Dakota, in favor of SCR1005, submitted that the founding fathers intended that state legislators not only have the right to use Article V, but a duty when there is a serious challenge facing the nation that is not being addressed or solved by Congress. Now is the

time for state legislators to invoke their rights under Article V in relation to the out-of-control federal debt.

Vice-Chairman Olson assumed the Chair.

Senator Olafson contended that the arguments against SCR1005 are based on fear and not facts. There are multiple layers of protection against a “runaway” convention, but the most important is that unless and until 38 states ratify a proposed amendment, the Constitution remains unchanged. He added that this generation is incurring massive amounts of debt that are being sent to the next generation.

Chairman Kavanagh resumed the Chair.

Senator Olafson responded to questions posed by Mr. Fillmore about the possibility of Congress developing an alternative option.

Chuck Gray, former State Senator, RestoringFreedom.Org., spoke in favor of SCR1005. He related that two issues need to be addressed. The first is the 18-word federal debt amendment, which limits or places a check and balance on Congress and its spending habits. The second issue is the process, which this legislation starts so the sovereign states can take back their rights.

Discussion followed about the possibility of Congress finding a way to circumvent the federal debt.

In response to questions, Senator Chuck Gray clarified that the 18 words are “an increase in the federal debt requires approval from the majority of the Legislatures of the separate states”. The remaining verbiage is the detail work to make sure it is done narrowly and applies in each state. The convention would be limited to the debt amendment. In closing, he stated that this is an opportunity to do something different and asked for the Members’ support of SCR1005.

Nick Dranias, Director, Center for Constitutional Government, Goldwater Institute, provided a handout in favor of SCR1005 (Attachment 16). He related that this is an idea from two retired businessmen. It is an improvement on the Constitution’s design because it allocates power to the states to counterbalance misbehavior by the federal government. As to the “runaway” argument, the Article V process is in the Constitution and can be used; the fact that it can be abused is not an argument against using it. He responded to questions about conducting an amendments convention versus revocation of the 17th Amendment and noted that there is widespread support for SCR1005.

Vice-Chairman Olson announced the names of those who signed up in opposition to SCR1005 but did not speak:

Antoinette Lane, representing self

John Wentling, representing self

Vice-Chairman Olson announced the names of those who signed up in support of SCR1005 but did not speak:

Tracy Hughes, representing self

Mollie Hughes, representing self

Ryan Denke, representing self

Buck Shull, citizen, representing self, opposed to SCR1005, said this “con-con” has been attempted for years and he is against this procedure.

Jennifer Reynolds, representing self, stated she is in support of the U.S. Constitution as established by the founding fathers. She read a quote from *The New American Magazine* by Don Fotheringham indicating that it is crucially important to keep the Article V door locked up tight at this time in the nation’s history (Attachment 17). She submitted that there are currently no rules set for the states on how delegates are chosen for a convention. Article V only gives State Legislatures the power to call a convention and nothing more; once the convention opens, it sets its own rules and makes its own agenda. She urged the Members to vote no on SCR1005.

Senator Linda Gray stated that Thomas Jefferson wrote to a friend in 1798 that the one thing missing from the newly-minted Constitution was some kind of limit on federal debt. She asked for the Members’ support of the resolution.

Mr. Dranius returned to the podium and submitted that it is a complete and utter falsehood to say that the original constitutional convention was a “runaway”, which is documented on the Online Library of Liberty’s website and www.goldwaterinstitute.org/articlev.

Bill Blewster, representing self, opposed SCR1005 (Attachment 18). He stated that Patrick Henry made a statement about the 1787 convention that the delegates exceeded their power. He submitted that one point no one has talked about is whether the federal debt will ever be paid off, noting that it is always being replenished. Washington is out of control, which should be fixed without tinkering with the Constitution.

Question was called on the motion that SCR1005 do pass. The motion failed by a roll call vote of 5-7-0-1 (Attachment 19).

SB1405 - students; residency; military service - HELD AT REQUEST OF SPONSOR

Chairman Kavanagh announced that SB1405 will be held at the request of the sponsor.

SB1373 - technical correction; statute of limitations(now: tax credit; public school activities) - DO PASS

Vice-Chairman Olson moved that SB1373 do pass.

Paul Benny, Majority Assistant Research Analyst, explained that SB1373 allows contributions made to a public school for educational activities to be claimed under the public school tax credit (Attachment 20).

Senator Don Shooter, sponsor, remarked that this bill levels the playing field for public schools, allows parents to have more discretion over where their money goes and contribute to their child's education.

Mr. Urie asked, if a child is struggling with reading by third grade, whether the parent can designate a tax credit to tutor the child. Senator Shooter responded that the bill relates to any and all school-sanctioned activities, so if it is approved, he believes that can be done.

Mr. Jones stated that this is an important option where parents can become involved in the process and contribute to education. Currently, any in-kind or cash contributions must be used for extracurricular activities, which are important, but for school districts that are in abject poverty, the opportunity to use contributions for academic purposes makes sense.

Vice-Chairman Olson noted that a wealthy school district will have a greater ability to collect these contributions. He is concerned that the bill may be unconstitutional because the Arizona Constitution requires a general and uniform funding system for K-12 education. Senator Shooter said he was approached with that question, but he would like to let the process evolve and see what happens.

Vice-Chairman Olson announced the names of those who signed up in support of SB1373 but did not speak:

Toni Badone, Superintendent, Yuma Union High School District

Vice-Chairman Olson announced the names of those who signed up in opposition to SB1373 but did not speak:

Donna Kruck, representing self

Vice-Chairman Olson announced the names of those who signed up as neutral on SB1373 but did not speak:

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association

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

Question was called on the motion that SB1373 do pass. The motion carried by a roll call vote of 13-0-0-0 (Attachment 21).

SB1153 - capital outlay stabilization fund; report(now: hearing aid dispenser; licensure) - DO PASS AMENDED S/E S/E: rental cars; liability insurance; subrogation

Vice-Chairman Olson moved that SB1153 do pass.

Vice-Chairman Olson moved that the Kavanagh three-page strike-everything amendment to SB1153 dated 3/19/12 (Attachment 22) be adopted.

Vice-Chairman Olson moved that the Kavanagh five-line amendment to the strike-everything amendment to SB1153 dated 3/20/12 (Attachment 23) be adopted.

Sarah Wharton, Majority Research Analyst, Employment and Regulatory Affairs Committee, explained that the strike-everything amendment to SB1153 (Attachment 22) expands subrogation rights for rental car companies (Attachment 24). The Kavanagh five-line amendment to the strike-everything amendment clarifies that a rental car company has access to all damages sustained by a claimant and makes a technical change (Attachment 23).

Senator Andy Biggs, sponsor, related that this bill is a compromise that should have been done a few years ago. Auto rental companies believe they are disproportionately responsible for people who rent cars because, whether the renter is insured or not, the rental car company has to pay for damages if an accident occurs. With this strike-everything amendment, auto rental companies are responsible, but have the right of subrogation, i.e., to go after the party who caused the damage, or that party's insurance company.

Steve Barclay, American Car Rental Association, explained that car rental companies will continue to be the primary responsible party, but will have the right to recover against the renter who is at fault, or their insurance company, to the extent there is available coverage. The Kavanagh five-line amendment to the strike-everything amendment makes it clear that the car rental company stands in line after the injured third party, which gets the first shot at the other available coverage; this is important to trial lawyers. This legislation will not increase insurance premiums or change the legal landscape for auto insurance claims in Arizona. Rental car companies will have no incentive to pay more than they would otherwise in the absence of subrogation rights, and it will not affect privity of contract. He urged the Members to support the strike-everything amendment to SB1153 and the Kavanagh five-line amendment to the strike-everything amendment to restore fairness to the system of claims.

Chairman Kavanagh asked if the insurance company of the renter could short-circuit this by writing a policy saying coverage only applies to a vehicle owned by the policyholder. Mr. Barclay said they could try to do that, but he does not know if it would withstand scrutiny in terms of what is allowed under Arizona law. He surmised that is not the case or insurance companies would not be opposing the bill.

Mrs. Ugenti asked if the strike-everything amendment addresses disclosure so drivers know they will be liable for any incident in which they are at fault. Mr. Barclay said the legislation does not specifically require disclosure; however, supplemental coverage options are usually offered at the rental counter and people often ask what is covered and what is not. The Insurance Information Institute recommends that individuals find out what is covered by their auto insurance company and their credit card. He indicated that he is willing to discuss the inclusion of reasonable disclosure requirements.

Chairman Kavanagh announced that the following bills will be heard on March 22, 2012: SB1166, SB1490, SB1388, SCR1031, SB1165, SB1072 and SCR1030.

Don Isaacson, State Farm Insurance, opposed to the strike-everything amendment to SB1153, indicated that another version of this legislation failed in the Banking and Insurance Committee. This issue has been going on for 15 to 20 years. Car rental companies have the same obligation as every other commercial enterprise to insure their vehicles. This approach does not sacrifice the Arizona claimant, who can claim against the rental car company, but it does sacrifice the renter. With this legislation, the car rental company will pay the first level of insurance and then

go after the renter. More importantly, the rental car company pays the other claimant for public relations reasons, etc., so they will settle the claim, and the right of subrogation goes back to the renter who loses all control or ability to handle the claim.

Mr. Isaacson pointed out that this bill has not been heard by any other Committee or analyzed by the Arizona Department of Insurance in detail. There are many issues associated with rental car companies and insurance, and this last-minute change is not the way to handle a major public policy that changes the rules for anyone visiting Arizona. Also, individuals will not be aware of this change. He responded to questions about claims, whether this is a cost transfer and consumer protection.

J. Michael Low, Attorney, Allstate; American Family Insurance, opposed the strike-everything amendment to SB1153. He endorsed Mr. Isaacson's comments and pointed out that the strike-everything amendment allows the right of subrogation against the renter of the motor vehicle and their insurer for damages. The insurer has no relationship to the rental car company, but with the renter. The rental car company cannot file an independent action against the insurer, so as a matter of consistency and due process, that language should be removed. He said the insurance company has a duty to defend, but the rental car companies, under existing law, do not. They do not have a duty to try to mitigate the damages, therefore, the rental car company can agree to pay the injured party a specific amount and immediately subrogate. He responded to questions about the renter's insurance company's duty to defend and what occurs if there is disagreement among the parties.

Kelsey Lundy, R & R Partners, Enterprise Holdings, Inc., in response to a question, advised that Arbitration Forums, Inc. is an arbitration body that all major insurance companies belong to, including Enterprise and Budget Car Rentals, as well as many third-party administrators that administer claims for rental car companies. Any entity that signs up as a member agrees to binding arbitration.

Mr. Low indicated that another concern about the strike-everything amendment to SB1153 is that *damages* is not defined, nor is the word *claimant* defined in the Kavanagh five-line amendment to the strike-everything amendment. He said he is willing to meet over the summer to work this out.

Ms. Lundy returned to the podium to speak in support of the strike-everything amendment to SB1153. She stated that in 42 other states, the renter and their personal auto insurance policy ultimately pay for damages caused to a third party; in only eight states the rental car company is primary, and it is only in Arizona that the rental car company is primary and statutorily has no right of subrogation outside of damages caused by an unauthorized driver. It is unfair if an individual rents a car, causes an accident and damages or injuries to a third party, for the rental car company that is not at fault to have to pay. Rental car companies will continue insuring every vehicle according to statutory limits even if this legislation passes.

Ms. Lundy responded to questions about uninsured car renters, binding arbitration, subrogation in other states, logistics of the strike-everything amendment and responsibility for damages to rental cars.

Kerry Hayden, Manager, Government and Industry Affairs, Farmers Insurance Group of Companies, opposed the strike-everything amendment to SB1153 and rebutted several statements made by former speakers. She indicated that the significant change being made with this language is the right of subrogation for a third-party claim, which is huge. A.R.S. § 28-2166 applies to far more than rental cars and allows the right of subrogation for every company, if an accident occurs, that rents motorcycles, motor homes, recreational vehicles, U-Haul vehicles, etc., even if an individual's personal policy contains non-owned auto insurance coverage.

Ms. Hayden discussed non-owned auto insurance coverage and practices in other states. She submitted that the strike-everything amendment does the opposite of tort reform and provides the potential for two litigations for every auto accident. She added that Arbitration Forums, Inc. is binding to determine liability. She has never seen it used for subrogation; that does not mean it cannot, but she will have to find out.

Kevin DeMenna, Avis Car Rentals; Budget Car Rentals, in favor of the strike-everything amendment to SB1153, testified that not only are rental car companies primary, but if someone drives a rented vehicle and has an accident, if there is personal and property damage and the driver is cited, the driver will not be responsible for those costs. Rental car companies are prohibited by law from going after the driver who is responsible for his actions while operating the vehicle. The strike-everything amendment allows rental car companies to pay as the primary agent and seek to recover damages.

David Childers, Property Casualty Insurers Association of America; Farmers Insurance; Liberty Mutual, opposed the strike-everything amendment to SB1153. He indicated that the cost of exposure is included in the rental rates. This legislation will open the door for the sale of a revised product that rental car companies will offer when people find out they are liable for damages caused to a third party.

Vice-Chairman Olson announced the names of those who signed up in opposition to the strike-everything amendment to SB1153 but did not speak:

Wendy Briggs, American Insurance Association
Ellen Poole, Executive Director, Southwest Region Government Relations, USAA
Norman Moore, Attorney, State Farm Insurance
Russell Reiten, Government Affairs, Independent Insurance Agents and Brokers of Arizona
Gregory Harris, Lobbyist, Progressive Insurance

Vice-Chairman Olson announced the names of those who signed up as neutral on the strike-everything amendment to SB1153 but did not speak:

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance

Vice-Chairman Olson announced the names of those who signed up in support of the strike-everything amendment to SB1153 but did not speak:

Jim Norton, President, Enterprise Rental Car
Ryan DeMenna, Associate, Avis Car Rentals; Budget Car Rentals
Janice Goldstein, Arizona Trial Lawyers Association
Steve Patience, Attorney, Arizona Trial Lawyers Association
Christina Martinez, American Car Rental Association
Susie Stevens, Lobbyist, Arizona Recreational Vehicle Dealers Association

Gibson McKay, Sherpa Public Affairs; American Car Rental Association

Mrs. McLain remarked that subrogation was raised in the Banking and Insurance Committee a week ago by someone not associated with an insurance company or a rental car company, and an amendment to SB1286, rental car companies; liability insurance, was voted down; now it is suddenly being embraced by rental car companies as a solution to their dilemma. She opined that the questions raised by the Members deserve further discussion and investigation before a decision is made on such a major policy shift.

Senator Biggs said this issue has been discussed for a long time and he always suggested that subrogation is the answer. It is interesting that insurance lobbyists said since they are regulated, they have a relationship with the insured and a duty to defend, which indicates that they should be primary if their insured rents a car and perhaps subrogation should be eliminated. Also, one individual said that Arbitration Forums, Inc. never covered subrogation, yet he has an automobile subrogation arbitration agreement, which states specifically that it covers personal commercial automobile subrogation. He added that he is looking for an answer to a problem that arises every year for which he believes subrogation is the best solution.

Question was called on the motion that the Kavanagh five-line amendment to the strike-everything amendment to SB1153 dated 3/20/12 (Attachment 23) be adopted. The motion carried.

Vice-Chairman Olson moved that the Kavanagh three-page strike-everything amendment to SB1153 dated 3/19/12 (Attachment 22) as amended be adopted. The motion carried.

Vice-Chairman Olson moved that SB1153 as amended do pass. The motion carried by a roll call vote of 9-4-0-0 (Attachment 25).

AT 5:10 P.M. THE MEETING RECESSED UNTIL MARCH 22, 2012 AT 1:30 P.M.

THE MEETING RECONVENED ON MARCH 22, 2012 AT 1:40 P.M. ALL MEMBERS WERE PRESENT.

Vice-Chairman Olson assumed the Chair.

SB1480 - road enhancement improvement districts - DO PASS AMENDED S/E
S/E: maintenance records; taxis and limousines

Chairman Kavanagh moved that SB1480 do pass.

Chairman Kavanagh moved that the Kavanagh 19-line strike-everything amendment to SB1480 dated 3/19/12 (Attachment 26) be adopted.

Patrick Devine, Majority Intern, Government Committee, explained that the strike-everything amendment to SB1480 (Attachment 26) adds that livery vehicle, taxi or limousine maintenance records shall include information of a routine brake and tire inspection that is performed by a qualified or professional motor vehicle mechanic (Attachment 27).

Chairman Kavanagh announced the names of those who signed up in support of the strike-everything amendment to SB1480 but did not speak:

Dana Paschke, Partner, Policy Arizona, Total Transit, Inc.

Shawn Marquez, Director of Compliance Programs, Weights and Measures Department

Question was called on the motion that the Kavanagh 19-line strike-everything amendment to SB1480 dated 3/19/12 (Attachment 26) be adopted. The motion carried.

Chairman Kavanagh moved that SB1480 as amended do pass. The motion carried by a roll call vote of 10-0-0-3 (Attachment 28).

SB1166 - condominium associations; technical correction(now: airport authority; electronic annual report) - DO PASS AMENDED S/E
S/E: burial duties; power of attorney

Chairman Kavanagh moved that SB1166 do pass.

Chairman Kavanagh moved that the Kavanagh five-page strike-everything amendment to SB1166 dated 3/19/12 (Attachment 29) be adopted.

Chairman Kavanagh moved that the Kavanagh four-line amendment to the strike-everything amendment to SB1166 dated 3/20/12 (Attachment 30) be adopted.

Ingrid Garvey, Majority Research Analyst, Health and Human Services Committee, explained that the strike-everything amendment to SB1166 (Attachment 29) clarifies that the duty of burying a body or providing other funeral arrangements may fall to a person who is designated as having power of attorney if the power of attorney conveys to that person the authority to make decisions regarding the disposition of the decedent's remains (Attachment 31). The Kavanagh four-line amendment to the strike-everything amendment clarifies that the authority conveyed to a person through the power of attorney as it relates to the disposition of the decedent's remains is limited to funeral and burial arrangements (Attachment 30).

Jay Kaprosy, Senior Government Relations Advisor, SCI Arizona Funeral Services, in favor of the strike-everything amendment to SB1166, stated that legislation was passed a few years ago to allow individuals to designate someone, using a power of attorney, to be responsible for making funeral and burial decisions. This legislation seeks to clarify that it has to be stated and conveyed specifically by a health care power of attorney in order to be valid for that purpose. There have been problems with quarrels between interested parties and family during what is already an emotional time.

Chairman Kavanagh announced the names of those who signed up in support of the strike-everything amendment to SB1166 but did not speak:

Wendy Briggs, SCI Arizona Funeral Services

Question was called on the motion that that the Kavanagh four-line amendment to the strike-everything amendment to SB1166 dated 3/20/12 (Attachment 30) be adopted. The motion carried.

Chairman Kavanagh moved that the Kavanagh five-page strike-everything amendment to SB1166 dated 3/19/12 (Attachment 29) as amended be adopted. The motion carried.

Chairman Kavanagh moved that SB1166 as amended do pass. The motion carried by a roll call vote of 12-0-0-1 (Attachment 32).

SB1333 - evaluation; response; federal law - DO PASS

Chairman Kavanagh moved that SB1333 do pass.

Paul Benny, Majority Assistant Research Analyst, explained that SB1333 establishes the Evaluation of Federal Law Advisory Council and a Constitutional Defense Fund administered by the Council and subject to legislative appropriation (Attachment 33). In response to a question, he advised that the bill does not specify a starting amount; it states the money will be appropriated by the Legislature.

Chairman Kavanagh announced the names of those who signed up in opposition to SB1333 but did not speak:

Alisa McMahan, representing self

Michael Fiflis, representing self

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

Question was called on the motion that SB1333 do pass. The motion carried by a roll call vote of 9-3-0-1 (Attachment 34).

**SB1165 - technical correction; energy standards(now: state board geographic historic names) - DO PASS AMENDED S/E- FAILED
S/E: lack of insurance; vehicle impoundment**

Chairman Kavanagh moved that SB1165 do pass.

Chairman Kavanagh moved that the Kavanagh three-page strike-everything amendment to SB1165 dated 3/16/12 (Attachment 35) be adopted.

Paul Benny, Majority Assistant Research Analyst, explained that the strike-everything amendment to SB1165 (Attachment 35) mandates that a peace officer remove and either immobilize or impound a vehicle if the officer verifies the driver lacks mandatory motor vehicle insurance (Attachment 36).

Chairman Kavanagh, sponsor, said it is upsetting to have to pay for uninsured motorist coverage and that some people drive without automobile insurance. He never sponsored a bill to require towing of uninsured vehicles because people sometimes forget to place an updated proof of insurance card in their vehicle and he did not want to impose a \$200 fine on someone who

merely made a mistake. Last year, he discovered that police officers have access to a database in their vehicles to check the current status of a person's automobile insurance, so under this bill, if a police officer checks the database and finds that the driver has no insurance, their vehicle will be towed instead of the current practice of only giving the driver a summons. He indicated that the main argument against the bill is that the database has inaccuracies, but he found that the percentage of inaccurate entries is three to four percent. Inaccuracies occur when insurance agents input an incorrect vehicle identification number (VIN), which is almost immediately noticed by Motor Vehicle Division (MVD) staff who send a letter to the driver indicating there is a problem. If the holder of the policy calls MVD and straightens it out, this small percentage will only have a mismatch for a short period of time. He noted that the police officer must have some reason to check a driver's insurance card, such as violation of a traffic law. This will take uninsured motorists off the road and, as vehicles are impounded, people will be forced to pay for insurance.

In response to questions, Chairman Kavanagh related that every police agency in the state has access to the database. Input for renewal of insurance should be instantaneous because insurance agents can input information directly into the computer, and most people renew insurance before it expires. Many of the newer computer programs will detect an error with VIN input.

David Childers, Independent Agents and Brokers of Arizona; Farmers Insurance Company, opposed the strike-everything amendment to SB1165. He said it is his understanding that insurance companies must provide all notices of new insurance policies, cancellations and non-renewed insurance policies to MVD. The database requires electronic input, and when the program was first developed and implemented, MVD was aggressive about making the information available to police officers. He said he is not sure if all police officers have access to the database.

Chairman Kavanagh stated that if all police officers do not have access, it would be a moot point, because under this bill, the vehicle can only be towed with confirmation from the database.

Mr. Childers stated sometimes MVD had information that someone was not insured when, in fact, they were. When notices were sent out to individuals, the vehemence was such that MVD decided to implement a program delay notice, so there is approximately a 15-day delay between when the information is provided to MVD and when MVD takes official action.

He said current law allows removal and impoundment or mobilization of a vehicle under certain circumstances, such as driving without a valid driver license, etc. He is concerned that the punishment may outweigh the nature of the crime; there are graduated civil penalties, which could be "beefed up". He is also concerned that individuals may be caught inadvertently who have insurance.

Chairman Kavanagh said he thought the window of non-correction would be three weeks, but if letters are received in two weeks, it is probably three to four weeks. Mr. Childers responded that it would depend on the circumstances, but it would probably be approximately a four-week period.

Chairman Kavanagh said he is also pleased that Mr. Childers mentioned that towing is currently done since he is not aware of any current problems. Mr. Childers agreed that it is used, but only

in more egregious circumstances where there is not the same concern about merely not being able to prove insurance on the spot.

Discussion followed about potential errors, existing law relating to impoundment and impoundment hearings and responsibility for towing and storage fees if a vehicle is inadvertently towed.

Russell Reiten, Government Affairs Assistant, Independent Insurance Agents and Brokers of Arizona, opposed the strike-everything amendment to SB1165. He related concern that errors and the one- and two-month windows could incur towing, loss of vehicle for a certain amount of time, and fees, on individuals who may have insurance. Additionally, he is concerned about the language on page 2, lines 7 through 9, of the strike-everything amendment, which states that a motor vehicle insurance identification card can be used if it is dated after the cancellation or nonrenewal date; the cards do not contain the date, only the dates of coverage. He responded to questions concerning insurance for a used vehicle and potential abuse involving used vehicles and uninsured motorists.

Vice-Chairman Olson announced the names of those who signed up in opposition to the strike-everything amendment to SB1165 but did not speak:

Don Isaacson, State Farm Insurance

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

Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies

Norman Moore, Attorney, State Farm Insurance

Wendy Briggs, Arizona Trucking Association

Vice-Chairman Olson announced the names of those who signed up as neutral on the strike-everything amendment to SB1165 but did not speak:

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance

Chairman Kavanagh noted that only three percent of drivers have a mismatch, which only occurs for approximately one month out of the year. This bill is needed because 11.9 percent of drivers in Arizona do not have insurance. The current practice, when they are discovered, of giving them a summons and letting them drive away is not helping what is becoming a crisis situation. It will not be easy to tow a vehicle because the driver will have to somehow come in contact with the law, not have their insurance card and be among the three percent of people with a mismatch.

Question was called on the motion that the Kavanagh three-page strike-everything amendment to SB1165 dated 3/16/12 (Attachment 35) be adopted. The motion carried.

Chairman Kavanagh moved that SB1165 as amended do pass. The motion failed by a roll call vote of 6-7-0-0 (Attachment 37).

SB1490 - adoption petitions - DO PASS

Chairman Kavanagh moved that SB1490 do pass.

Bethan Jones, Majority Intern, Health and Human Services Committee, explained that SB1490 requires a court to grant, under certain circumstances, an adoption petition even if a child's parent has filed an appeal to the petition for the termination of parental rights (Attachment 38).

Senator Rick Murphy, sponsor, conveyed that children in foster care are free to be adopted after approximately 15 months. Often a parent will automatically appeal severance, file a notice of appeal, and a few months later, file grounds for the appeal, which takes several months to go through the system; 95 percent of appeals are summarily rejected and the severances are upheld. Meanwhile, any finalization of an adoption is placed on hold and the children wait in limbo, uncertain about what is going to happen. This bill allows the adoptive parent to decide if the uncertainty and delay outweigh the small risk of an appeal being sustained and an adoption being overturned.

Vice-Chairman Olson asked, if the adoption goes through and the appeal is granted in favor of the parents, whether the adoption will be undone. Senator Murphy said yes, it is unusual for that to happen, but it can happen. He said he hopes the foster parents will consult with an attorney about the appeal, and in rare cases where there are valid grounds, the foster parents will hold off, but in at least 98 percent of cases, permanency can be expedited because it is difficult for children to focus in school, etc., when they are unsettled.

Question was called on the motion that SB1490 do pass. The motion carried by a roll call vote of 12-1-0-0 (Attachment 39).

SB1388 - return to work program - DO PASS

Chairman Kavanagh moved that SB1388 do pass.

Kate Sommerville, Majority Intern, Commerce Committee, explained that SB1388 requires the Department of Economic Security (DES) to develop the Return to Work Program (Attachment 40).

Senator Paula Aboud, sponsor, said the language in this bill is modeled after a successful program in New Hampshire. The small business community in Tucson was having trouble finding any use for the jobs incentive bill and indicated that assistance with job training would be helpful because it is costly. She noticed in the *Governing Magazine* that New Hampshire has a program where unemployed workers on unemployment insurance (UI) are paired up through the Department of Economic Security (DES) with an employer for six weeks of job training. Even before the job training was over, one-fifth of the individuals were hired. There will be no cost to the employer or the trainee and the Program is under the guidelines of the U.S. Department of Labor (Attachment 41).

She related that the only cost to the state will be for workers' compensation and administration of the Program. The fiscal note shows \$150,000 that DES included for the computer program, so it will be more costly for the first year (\$266,000), but thereafter it will be slightly over \$100,000 to pay for individuals to oversee the Program. Two meetings were held with DES, and she heard there were concerns by the Phoenix Chamber of Commerce because there are already many job training programs. She said there are two free job training programs available, but those are for individuals on Temporary Assistance for Needy Families (TANF) and the Supplemental

Nutrition Assistance Program (SNAP), so this would be particularly attractive to employers who only have to provide training.

In response to questions, Senator Aboud indicated that individuals will still receive UI while receiving training. The program in New Hampshire is for individuals on UI currently or who qualify to be on unemployment benefits, but this bill only applies to individuals on UI. She would like to monitor the Program for one year and expand it if it performs well. She responded to further questions about workers' compensation, members of the business community contacted in Tucson, cost to the state, the potential number of jobs involved and potential abuse of the Program.

Senator Al Melvin, said he is a firm believer that there is dignity in all labor. This is a good bill that will help get people back to work in the long run.

Michelle Bolton, Vice President of Public Affairs and Economic Development, Greater Phoenix Chamber of Commerce, opposed SB1388. She said she appreciates efforts to get people to return to work; however, there are concerns about this bill:

- There are many other job training programs, including those for TANF and SNAP.
- This bill requires employers to participate in order to make the match, which generally involves a stakeholder process.
- The state will have to appropriate money to ramp up and maintain the Program, but if the Legislature decides not to appropriate money, DES will have to take money from an existing program for this Program.
- It costs an employer to ramp up a training program.
- There are no protections in place for any "bad actors", whether it is the employer or the employee.
- The Program is voluntary for the unemployed; however, the bill is not clear that it is voluntary for employers and states that DES will designate an employer to participate in the Program.
- Clarification is needed about the language indicating that an employer must be located in Arizona and *true training opportunities* is not defined.
- DES is exempt from the rulemaking process.

Chairman Kavanagh assumed the Chair.

In response to questions, Ms. Bolton further clarified concerns about the Program.

Mr. Fillmore noted that the bill states no eligible employee can be denied benefits during training and questioned if the bill extends UI benefits. Senator Aboud responded that it does not. Mr. Fillmore asked if someone in the last week of UI eligibility will be allowed to collect UI during the six weeks of training. Senator Aboud replied that UI benefits will end, but the question then would be whether the individual can still continue the job training, which may need to be addressed or left to the discretion of DES.

Vice-Chairman Olson resumed the Chair.

Vice-Chairman Olson asked if Senator Aboud is willing to clarify that participation in the program is voluntary for the employer. Senator Aboud said she is willing to do so.

In regard to workers' compensation, Senator Aboud agreed that the employer will pay a premium to the state fund so insurance will kick in if there is an injury on the job; it is not that the state will be liable for the injury.

Names of persons who signed up in support of SB1388 but did not speak:
Donna Kruck, Director of Advocacy Programs, Arizona Bridge to Independent Living

Names of persons who signed up in opposition to SB1388 but did not speak:
Gretchen Conger, Director of Government Relations, Arizona Chamber of Commerce and Industry

Question was called on the motion that SB1388 do pass. The motion carried by a roll call vote of 12-1-0-0 (Attachment 42).

SCR1031 - statewide initiatives; periodic reauthorization - ~~DO PASS AMENDED S/E~~
FAILED
S/E: photo enforcement; speeding; prohibition

Chairman Kavanagh moved that SCR1031 do pass.

Chairman Kavanagh moved that the Fillmore 27-line strike-everything amendment to SCR1031 dated 3/19/12 (Attachment 43) be adopted.

Mike Huckins, Majority Research Analyst, explained that the strike-everything amendment to SCR1031 (Attachment 43), upon voter approval, prohibits the use of photo enforcement systems in Arizona for speed limit enforcement (Attachment 44). The Heinz four-line amendment to the strike-everything amendment prohibits the use of the photo enforcement system at night (Attachment 45).

Ryan Denke, representing self, in support of the strike-everything amendment to SCR1031, provided a list of articles showing that speed enforcement has had no effect or a negative effect on safety (Attachment 46). He said while an outright ban on photo enforcement would be ideal, it is time the people in Arizona are given the choice of whether or not photo radar should be used. He related that he opposes the Heinz four-line amendment. This issue should be dealt with at the state level; these traffic laws are state laws and not city laws and there should be uniformity in enforcement. The people have had enough time to learn what photo radar is all about and they are responsible enough to make the right decision.

Jim Delton, representing self, in support of the strike-everything amendment to SCR1031, remarked that there is a lot of emotion and many financial and safety issues involved in this issue, but the primary item that should be focused on is safety. Referring to the handout provided by Mr. Denke (Attachment 46), he said many of those studies are nothing but anecdotes. He related that he commuted many years from downtown Tempe to downtown Phoenix on Interstate 10. When photo enforcement cameras went up, it became extremely

unsafe because brake lights went on near the cameras and an accident occurred almost every week; after the cameras were eliminated, that stopped.

Mr. Delton referenced a study on photo enforcement in the United Kingdom, which found that there were nearly 14 percent more injury accidents at locations with cameras than there were without cameras, and unlike many studies, this study had enough data to be statistically significant in its conclusions. He asked the Members not to pass the Heinz four-line amendment but to pass the strike-everything amendment to SCR1031 because it is time to put this contentious issue to rest by asking citizens their opinion and remove politicians and people with financial interests from the mix. The only amendment he would suggest is that the resolution be expanded to include all photo enforcement and not only speed limit enforcement.

Brian Tassinari, Lobbyist, Redflex, opposed the strike-everything amendment to SCR1031. He stated that some people believe photo enforcement is a money grab by greedy companies and cities wanting to line their coffers; others believe it promotes safety and it is a tool that law enforcement can use to keep streets safe. He noted that the headline of an investigative article in *The Arizona Republic* in July 2011 stated “Traffic Cameras Not Profitable for Arizona Cities” and listed the finances of various programs showing that many are losing money, some are breaking even and some are making a little bit of money, but it is not a cash cow; therefore, the only thing left is safety. He noted that Redflex uses fixed cameras at intersections to measure both speed and red light violations. Cars speeding at intersections are more likely to be unable to stop in time, and if they are in an accident, the damage is likely to be greater. Speed and red light enforcement are inextricably tied and there is no public policy reason to separate the two.

Chairman Kavanagh stated that the most controversy is with speed cameras and not so much red light cameras, so the decision was made to let voters decide on the speed cameras.

Mr. Tassinari indicated that as things change in the legislative process, there is often not enough time to look at the potential consequences. If this legislation passes, drivers will no longer be sanctioned for excessive speed at an intersection, so an aggressive driver who is speeding, rather than braking, will try to get the nose of his vehicle into the intersection so there will be no red light sanction; this legislation changes the incentive for bad drivers.

Stan Barnes, American Traffic Solutions (ATS), opposed the strike-everything amendment to SCR1031. He indicated that photo enforcement was born in Arizona and it is used by dozens of states because it saves lives and it is cost effective. Well over 1,000 people are employed in this industry all over the nation, working along with police officers. Some cities decided to use it. He said it is neither conservative nor governing to take an issue that is within legislative purview and ask voters to take a shot at it, forcing a multi-million-dollar campaign and clouding the ballot with something that is not necessary.

Shawn Dow, representing self, spoke in favor of the strike-everything amendment to SCR1031. He said he worked with 26 other state legislatures and over 40 cities and out of those, it has been possible to convince 15 states to get rid of photo radar. There have been 28 elections, 28 wins, and 40 cities took down cameras on their own simply by looking at accident data. He contended that this system is unconstitutional. These cameras increase accidents and do not increase safety.

Chairman Kavanagh announced the names of those who signed up in support of the strike-everything amendment to SCR1031 but did not speak:

Bill Gilmore, representing self

Michele Power, representing self

Mark Spear, Systems Engineer, representing self

Bill T., representing self

Chairman Kavanagh announced the names of those who signed up in opposition to the strike-everything amendment to SCR1031 but did not speak:

Rob Adams, Mayor, City of Sedona

Andi Welsh, Assistant to City Manager, City of El Mirage

Rebekah Friend, Lobbyist, Arizona AFL-CIO

Roman Ulman, American Federation of State, County and Municipal Employees, representing self

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

Donna Kruck, Director of Advocacy Programs, representing self

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association

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

Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter

John Wayne Gonzales, Legislative Liaison, City of Phoenix

John Thomas, Arizona Association of Chiefs of Police

Patrice Kraus, Intergovernmental Affairs Coordinator, City of Chandler

Lynne Weaver, Prop 13 Arizona

Scott Butler, City of Mesa

Mr. Heinz indicated that he will not offer the Heinz four-line amendment to the strike-everything amendment to SCR1031 (Attachment 45).

Question was called on the motion that the Fillmore 27-line strike-everything amendment to SCR1031 dated 3/19/12 (Attachment 43) be adopted. The motion carried.

Chairman Kavanagh moved that SCR1031 as amended do pass. The motion failed by a roll call vote of 4-9-0-0 (Attachment 47).

SB1495 - unemployment insurance; drug tests - DO PASS AMENDED

Chairman Kavanagh moved that SB1495 do pass.

Chairman Kavanagh moved that the Kavanagh three-line amendment to SB1495 dated 3/20/12 (Attachment 48) be adopted.

Stuart Luther, Majority Intern, explained that SB1495 requires the Arizona Department of Economic Security (DES) to require drug testing for applicants and recipients of Unemployment Insurance (UI) benefits and outlines DES responsibilities (Attachment 49). The Kavanagh three-line amendment to SB1495 stipulates that DES meet this requirement to the extent allowed by federal law (Attachment 48).

Senator Steve Smith, sponsor, submitted that there is a major problem in this country with out-of-control spending, entitlements and other items. The federal government recognizes there is a problem in UI and recently passed legislation stating that drug testing is allowed in some areas. Last year, the states borrowed nearly \$50 billion because unemployment coffers are going broke due to near-record unemployment, which is anticipated to be close to \$100 billion by the end of 2013. He said the Legislature owes it to the people of the state to require individuals who receive UI benefits to prove they are of sound mind and body.

Vice-Chairman Olson asked if Senator Smith is agreeable to an amendment specifying exact situations in which federal law requires drug testing to prevent Federal Unemployment Tax Act (FUTA) credits from being jeopardized. After a brief discussion, Senator Smith said he is willing to work on a clarifying amendment. His intention is not to harm the business community.

Mr. Heinz stated that a study of the program enacted in Florida detected a lower percentage of drug use by people on UI benefits than in the general population of the state. Senator Smith replied that he is not inferring that the unemployed have a higher propensity to use illicit drugs than working individuals; however, there is waste, fraud and abuse in the system and this is an attempt to keep people honest.

Vice-Chairman Olson submitted that if someone is collecting UI benefits, they must be employment-ready and actively seeking employment. No one can be employment-ready while using drugs.

Mr. Heinz indicated that drug addiction often requires treatment and not necessarily a punitive assessment like this. Senator Smith replied that someone who is using drugs should not receive UI benefits.

In response to questions, Senator Smith advised that every UI applicant will pay for the drug testing, which will be taken upon applying for UI benefits, and individuals may be randomly tested, but DES will decide the process. The cost of drug testing by some firms is \$20 or less, which he does not believe is too burdensome. He does not know how many people will be impacted by the bill, but the federal government recognizes a problem, which is why it was included in the recent Tax Relief Act of 2012.

Chairman Kavanagh said the reason for the Kavanagh three-line amendment is to protect FUTA credits and provide certainty to the business community so that whatever is not in conformance with federal law immediately self-destructs and does not become an issue for the federal government to deal with, which can be changed in Committee of the Whole if necessary. Senator Smith endorsed the Kavanagh three-line amendment, noting that the bill is intended to help the business community, and he is willing to add further amendments.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Chamber of Commerce, opposed SB1495. He provided a copy of a letter from the U.S. Department of Labor and language in Section 2105 that gives states flexibility in drug testing (Attachment 50). He said the way the federal UI system works is that employers pay a FUTA tax, and if a state has an approvable program, a FUTA credit is obtained. Part of having an approved state program is

following the federal law. The federal government will eliminate the FUTA credit directly from an employer if the program is no longer in compliance with federal law.

After a brief discussion, Mr. Osborn referred to Section 2105, drug testing of applicants, Section 303 of the Social Security Act (Attachment 50), noting that it is recently approved language from the federal government on what states can do in terms of drug testing. Section A gives two conditions in which drug testing is authorized: when an employee is terminated because of drug use and when the type of work requires drug testing. The Chamber has been very supportive of drug testing in those two areas. If a program is designed in compliance with Section 2105, the Chamber would be in support.

Chairman Kavanagh remarked that language can be included to state that drug testing can be required if there is probable cause to believe an individual is using drugs based on arrests, etc.

Mr. Osborn stated that key elements for an amendment would be to follow the pre-approved language or have provisions that say “if authorized by the federal government” and to make this at least discretionary with DES so that if the cost of the program should outweigh the benefits, a strategic decision can be made about that. The other issue is that under federal law, and according to the letter, the applicant cannot be responsible for paying for the test; the UI program must pay the cost.

Chairman Kavanagh commented that Senator Smith agreed to work on further language for amendments. Mr. Osborn indicated that he did not have the letter when the bill was heard in the Senate. Chairman Kavanagh stated that he will put together a stakeholder meeting.

Michelle Bolton, Vice President of Public Affairs, Greater Phoenix Chamber of Commerce, opposed to SB1495, indicated that she will be glad to participate in the stakeholder process.

Ellen Katz, Litigation Director, William E. Morris Institute for Justice, opposed SB1495, submitting that the bill violates federal constitutional and unemployment law (Attachment 51). She suggested that the bill be held and dealt with in a thoughtful way to try to address issues and not have a quick resolution that may jeopardize administrative funding or employers’ tax credits.

Linda Brickman, Chapter Leader for Arizona, ACT! for America, representing self, spoke in favor of SB1495. She said she knows a person who has been on UI for about 19 months and refuses to look for a job because he makes more money on UI than he does working. He also has a home, two cars, three dogs and travels wherever he wants. He has been receiving marijuana from his doctor to deal with his problems. She submitted that people like this should not be able to obtain UI and employers’ rates would decrease by not having to pay for such individuals. She added that this person recently got out of the hospital for the third time because he was having seizures from overdosing on drugs. He also has many friends in the same situation.

Mr. Osborn responded to questions about state and federal UI.

Chairman Kavanagh announced the names of those who signed up in opposition to SB1495 but did not speak:

Teresa Lopez, Government Relations Representative, Salt River Project

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

Susan Anable, Manager, Government Relations, representing self
Rebekah Friend, Lobbyist, Arizona AFL-CIO
Roman Ulman, American Federation of State, County and Municipal Employees, representing self
Heather Bernacki, Government Relations Associate, East Valley Chambers of Commerce Alliance
Donna Kruck, Director of Advocacy Programs, representing self
Karen McLaughlin, Director of Budget & Research, representing self
Jason Bagley, Government Affairs Manager, Intel Corporation
Cynthia Zwick, Executive Director, Arizona Community Action Association
Michael DiMaria, Director of Legislative Affairs, CenturyLink
Rip Wilson, K12, Inc.
Ginny Hildebrand, Executive Director, Association of Arizona Food Banks
Jenn McCall, Freescale Semiconductor, Inc.
Lee Miller, Lobbyist, Arizona Small Business Association
Yvonne Hunter, Arizona Petroleum Marketers' Association

Chairman Kavanagh announced the names of those who signed up as neutral on SB1495 but did not speak:

Nick Dranias, Director, Center for Constitutional Government, Goldwater Institute

Senator Smith stated that no one is breaking into peoples' homes and illegally searching and seizing. If individuals want UI benefits, they will volunteer for the drug testing, but he is more than willing to work on the language.

Question was called on the motion that the Kavanagh three-line amendment to SB1495 dated 3/20/12 (Attachment 48) be adopted. The motion carried.

Chairman Kavanagh moved that SB1495 as amended do pass. The motion carried by a roll call vote of 7-6-0-0 (Attachment 52).

AT 5:22 P.M. THE MEETING RECESSED UNTIL MONDAY, MARCH 26, 2012, AT 2:00 P.M. OR ON RECESS OR ADJOURNMENT OF THE FLOOR.

ON MARCH 26, 2012, THE MEETING RECONVENED AT 4:16 P.M. ALL MEMBERS WERE PRESENT.

SCR1030 - appropriation of state revenues; limitation - ~~DO PASS~~ FAILED

Vice-Chairman Olson moved that SCR1030 do pass.

Mike Huckins, Majority Research Analyst, explained that SCR1030, upon voter approval, modifies the constitutional state expenditure limitation by adjusting prior year revenues by population and cost-of-living growth (Attachment 53).

Vice-Chairman Olson announced the names of those who signed up in opposition to SCR1030 but did not speak:

David Carey, Arizona Disability Advocacy Coalition

Alisa McMahon, representing self
Michael Fiflis, representing self
Eva Hamant, representing self
Charles Essigs, Director of Government Relations, Arizona Association of School Business Officials
Christine Thompson, Assistant Executive Director for Government Affairs, Arizona Board of Regents
Steve Miller, Deputy Vice President, Public Affairs, Arizona State University
Jennifer Bonnett, Arizona Public Health Association
Donna Kruck, Director of Advocacy Programs, Arizona Bridge to Independent Living
Karen McLaughlin, Director of Budget & Research, Children's Action Alliance
Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association
Timothy Schmaltz, Coordinator, Protecting Arizona's Family Coalition
Sandy Bahr, Conservation Director, Sierra Club - Grand Canyon Chapter
Jennifer Loreda, Arizona Education Association
Ginny Hildebrand, Executive Director, Association of Arizona Food Banks
Barbara Fanning, Legislative Liaison, Arizona Hospital and Healthcare Association
Knox Kimberly, Lobbyist, Greater Phoenix Leadership

Question was called on the motion that SCR1030 do pass. The motion failed by a roll call vote of 3-6-1-3 (Attachment 54).

SB1072 - minors; reporting duty; missing; deceased - DO PASS- FAILED

Vice-Chairman Olson moved that SB1072 do pass.

Stephanie Johnson, Majority Assistant Research Analyst, Government Committee, explained that SB1072 establishes felony offenses for failing to report a missing child or vulnerable adult (Attachment 55). She responded to questions about sentences associated with class 4, 5 and 6 felonies.

Senator Linda Gray, sponsor, stated that meetings were held with law enforcement, prosecutors and the Governor's Office, which resulted in the recommendations in SB1072 and applies to children through age 12.

Mr. Urie brought up a situation in which Boy Scout leaders took the troop down into the Grand Canyon for three days. One boy said he could not go any farther so the Scout leader gave him the keys to the car and told him to wait in the car until the troop returned. He surmised that this law would mean those adult leaders committed a felony since the boys were 12 years old. Discussion followed among the Members.

Senator Gray and Mrs. Ugenti discussed the differences between SB1072 and a similar bill sponsored by Mrs. Ugenti.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, in support of SB1072, stated that from a prosecutor's perspective, this is a valuable tool to help deal with parents who murdered their children and did not report them missing or alert authorities that there was a dead body in their household. She indicated support for the age group, citing a case

that occurred in Pima County involving children over age 6, but under age 12, noting the language in this bill would have allowed prosecutors to hold the parents accountable. She noted that all of the penalties are probation-eligible; there is a mitigated range, as well as an aggravated range, so the judge will have a large area of discretion in determining an appropriate sentence.

Ms. Mayer responded to questions about the number of cases that occurred in Pima County, the potential for overreaching the law, the ages of children who run away from home, the situation with the Scout leader raised by Mr. Urie, grand juries, A.R.S. § 13-3619 relating to endangering the welfare and morals of a child and A.R.S. § 13-3623 relating to child or vulnerable adult abuse.

Vice-Chairman Olson announced the names of those who signed up in support of SB1072 but did not speak:

John Thomas, Arizona Association of Chiefs of Police

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

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

Senator Gray commented that in relation to children through age 12, there were 57 children in cases in that category in the previous year.

Question was called on the motion that SB1072 do pass. The motion failed by a roll call vote of 3-10-0-0 (Attachment 56).

Without objection, the meeting adjourned at 5:02 p.m.

Linda Taylor, Committee Secretary
April 30, 2012

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