

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-first Legislature – First Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 14, 2013
House Hearing Room 4 -- 9:00 a.m.

Chairman Farnsworth called the meeting to order at 9:15 a.m. and attendance was noted by the secretary.

Members Present

Mr. Allen	Mrs. Goodale	Mr. Quezada
Mr. Contreras	Mr. Orr	Mr. Farnsworth, Chairman

Members Absent

Mr. Hale (excused) Mr. Pierce J, Vice-Chairman (excused)

Committee Action

HB2073 - DP (6-0-0-2)	HB2517 - DP (5-1-0-2)
HB2156 - DPA (5-1-0-2)	HB2527- DP (4-2-0-2)
HB2218 - HELD AT REQUEST OF SPONSOR	HB2536 - DP (5-1-0-2)
HB2480 - DISCUSSED & HELD	HB2568 - HELD AT REQUEST OF SPONSOR

CONSIDERATION OF BILLS

HB2218 - unlawful exposure; sexually transmitted diseases - HELD AT REQUEST OF SPONSOR

Chairman Farnsworth announced that HB2218 will be held at the request of the sponsor.

HB2568 - election procedures; early voting - HELD AT REQUEST OF SPONSOR

Chairman Farnsworth announced that HB2568 will be held at the request of the sponsor.

HB2073 - animal abuse; prohibited animal ownership – DO PASS

Aaron Wonders, Majority Assistant Research Analyst, explained that HB2073 prohibits persons convicted of certain acts of animal cruelty from possessing an animal (Attachment 1).

Representative John Kavanagh, sponsor, related that this bill prohibits someone who is convicted of serious animal abuse from owning an animal. There is concern within the agricultural community; however, existing laws relating to general animal cruelty contain an exemption for livestock. If there is no exemption for working farm animals, he will include that. HB2073 allows someone convicted of animal abuse to go to court after two years to present evidence they are no longer a threat and have the prohibition lifted. This is a reasonable balance to protect animals that is not overly onerous on the agricultural industry or individuals who may have made a mistake.

Mr. Quezada noted the bill states two years on line 19, but five years on line 26. Representative Kavanagh replied that it should be two years; if there is a contradiction, he will make sure it is corrected.

Mrs. Goodale asked if the changes Representative Kavanagh plans to make will reassure constituents and people who work with animals. Representative Kavanagh indicated that he will be meeting with stakeholders and people from the Humane Society. The exemptions erroneously apply to the entire animal cruelty statute rather than the prohibited ownership section, which he will correct and ensure there are no loopholes.

Patrick Bray, Deputy Director of Government Affairs, Arizona Cattlemen's Association, stated that without an amendment he proposed, he opposes the bill. He opined that language is necessary in the animal cruelty section to protect people in their day-to-day activities and allow them to administer veterinary services without fear of prosecution.

Chairman Farnsworth stated he has been assured by Representative Kavanagh that he will continue to ensure those issues are dealt with appropriately.

Leonard Clark, representing self, spoke in support of HB2073. He submitted that canines who serve in the Armed Forces and save soldiers' lives deserve to be treated fairly, without neglecting all other animals.

Kathleen Mayer, Legislative Liaison, Pima County Attorney's Office, opposed HB2073. She stated that inclusion of the exemptions in the animal cruelty bill are overly broad and will allow anyone who lives on a ranch to abuse or neglect animals. People in puppy mills are doing c-sections, which this bill will make legal. There is no intent to hurt the cattle and agricultural industries; she supports the underlying bill, but there are a few items she would like to work with the sponsor on to make the process easier for prosecutors and law enforcement.

Chairman Farnsworth announced the names of those who signed up in support of HB2073 but did not speak:

Linda Artac, representing self

Gigi Hill, representing self

Patricia Cady, representing self

Scott Bonsall-Cargill, representing self

Gretchen Jacobs, Attorney, Arizona Animal Alliance

Debbie Mitchell, representing self

Wayne Mitchell, representing self

Vicki Guerrero, representing self

Lisa Diacik, representing self
Carla Morin, representing self
Tracy Thomason, representing self
Stephen Magoon, representing self
Kari Nienstedt, Arizona State Director, The Humane Society of the United States
Stephen Guida, representing self
Diana Apolinar, representing self
Sally Andrade, representing self
Jorge Calle, representing self
Jill Irvin, representing self
Jeremy Arp, representing self
Thomas Eberhardt, representing self
Jenna Lillibridge, representing self
Kathryn Granado, representing self
Carlos Granado, representing self
Cynthia Anderson, representing self
Steve Rundquist, representing self
Karen Michael, Animal Defense League of Arizona
Danielle Lasker, representing self
Martha German, Humane Voters of Arizona
Levi Bolton, Vice President, Phoenix Law Enforcement Association, Arizona Police Association
Kathryn Kobor, representing self
Ashsuire Forrest, representing self

Chairman Farnsworth announced the names of those who signed up in opposition to HB2073 but did not speak:

Sherrie Buzby Murasky, representing self
Suzanne Vivencio, representing self
Ed Bufford, representing self

Chairman Farnsworth announced the names of those who signed up as neutral on HB2073 but did not speak:

Nick Simonetta, Government Affairs Consultant, Arizona Fairs Association
Miryam Gutier Elm, Public Affairs Consultant, Ray Cammack Shows

Mr. Allen moved that HB2073 do pass.

Representative Kavanagh indicated that he will not offer the amendment Mr. Bray referred to, but he will keep Chairman Farnsworth up to date and offer an amendment on the Floor.

Question was called on the motion that HB2073 do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 2).

HB2156 - elections; public resources prohibited – DO PASS AMENDED

Magdalena Jorquez, Majority Research Analyst, explained that HB2156 prohibits the state and all its political subdivisions from spending or using public resources to influence an election (Attachment 3). The Farnsworth nine-page amendment to HB2156 dated 02/12/2013

(Attachment 4) mirrors and moves current language in the bill to the section in Title 15 regarding use of public resources by public schools, community colleges and universities to influence elections and removes language pertaining to political subdivisions, schools and charter schools.

Representative John Kavanagh, sponsor, said this bill is in response to a repeat egregious action by the Scottsdale Unified School District. A constituent was attending parents' night when a monitor displayed a commercial in support of the statewide sales tax increase for education. Representative Kavanagh said he was informed by the school that school resources were not used. The Attorney General's Office indicated it cannot prosecute because the law needs clarification, which is the purpose of HB2156. The bill allows the rental and use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election, *if it does not occur at the same time and place as a government-sponsored event*. HB2156 contains updated language, increases the penalty for violations by an individual or public entity and allows schools to continue sponsoring neutral candidate debates. He added that he received a letter from the Citizens Clean Elections Commission, which is concerned that the bill may prohibit the Commission from publishing candidate statements; he will meet with Legislative Council and, if there is a risk, the Commission will be exempted.

Discussion followed about whether statements in favor of bond elections will be eliminated.

Leonard Clark, representing self, neutral on HB2156, said he shares the sponsor's concern, but he wants to ensure that these egregious acts of partisanship in public schools are stopped. All places where children are educated and public tax dollars are accepted should not be allowed to do this.

Christina Sandefur, Attorney, Goldwater Institute, spoke in favor of HB2156. She indicated the bill states that school districts and other governmental entities cannot campaign with taxpayer dollars. Current law limits resources to equipment, materials and buildings, but electronic resources are now often used in schools and government buildings. HB2156 updates and modernizes the law to apply to electronic communication, web pages, etc. Also, current law does not apply to all governmental entities. Arizona law is difficult to follow and it is easy for government officials to violate, so HB2156 consolidates laws. Additionally, the current law is unenforceable and only the County Attorney or Attorney General can bring a cause of action; this bill allows taxpayers to do so as well.

Chairman Farnsworth clarified that charter schools are not political subdivisions of the state unless chartered by a school district or some other governmental body. Ninety-nine percent of charter schools are private corporations under Title 10 relating to corporations and associations.

Chairman Farnsworth announced the names of those who signed up in opposition to HB2156 but did not speak:

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association

Chairman Farnsworth announced the names of those who signed up in support of HB2156 but did not speak:

Gary Johnson, representing self

Howard Levine, Pachyderm Coalition

Karen Osborne, Elections Director, Maricopa County

Lucy Caldwell, Communications Director, Goldwater Institute
Spencer Kamps, Deputy Director, Home Builders Association of Central Arizona

Mr. Allen moved that HB2156 do pass.

Mr. Allen moved that the Farnsworth nine-page amendment to HB2156 dated 02/12/2013 (Attachment 4) be adopted. The motion carried.

Mr. Allen moved that HB2156 as amended do pass. The motion carried by a roll call vote of 5-1-0-2 (Attachment 5).

HB2517 - domestic violence; arrest – DO PASS

Paige Carr, Majority Intern, explained that HB2517 implements a minimum age requirement of at least 15 years before a peace officer must arrest a person in domestic violence cases involving a deadly weapon or dangerous instrument (Attachment 6).

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office, spoke in support of HB2517. She said this legislation was brought to the Maricopa County Attorney's Office from prosecutors in the Juvenile Crimes Division. The intent is to give law enforcement more discretion when investigating cases of domestic violence in which young minors are the perpetrator. There have been circumstances where siblings got into an argument that turned into an altercation and, under the current mandatory arrest provision of the domestic violence statute, if an injury occurs, an arrest must be made. HB2517 states that officers do not have to make an arrest unless it is necessary; however, the bill does not prevent a police officer from arresting a minor under the age of 15 if it is determined there is probable cause.

Names of persons who signed up in support of HB2517 but did not speak:
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council

Names of persons who signed up as neutral on HB2517 but did not speak:
Leonard Clark, representing self

Mr. Allen moved that HB2517 do pass. The motion carried by a roll call vote of 5-1-0-2 (Attachment 7).

HB2527 - elections; revisions – DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2527 removes the section of law that authorizes a county recorder to prohibit electioneering at any polling place in which emergency conditions exist and mirrors the provisions currently contained in the section of statute related to planned communities and display of political signs (Attachment 8).

Representative Michelle Ugenti, sponsor, indicated that HB2527 encompasses two provisions requested by the League of Arizona Cities and Towns for clarification relating to a consolidated election bill from last session. The first provision allows permanent councils of newly-incorporated cities to adopt the even-year election cycle; the second provision allows them the option to shorten or lengthen terms of offices for elected officials to comply with the election

dates. The bill also removes the ability for the county recorder to grant an emergency, which allows a polling location to prohibit electioneering outside the 75-foot limit and political signs on private property and homeowner's association (HOA) communities. HOAs will be able to prohibit political signs 71 days prior to an election and three days after, for private property and limited common elements, which is clarified.

Chairman Farnsworth announced the names of those who signed up as neutral on HB2527 but did not speak:

Leonard Clark, representing self

Jen Sweeney, Deputy Director, Arizona Association of Counties, opposed HB2527 because of Section 2, which removes the ability to designate a polling place as an emergency. When true emergencies occur, such as the roof blowing off the polling place, which occurred in Tonopah, or there is no access to the polling place because of nine-foot snow drifts in the northern counties, another place must be found quickly. Many facilities do not want electioneering to occur, which is why they do not initially want to be a polling place. It is difficult to find polling places in many precincts, and sometimes the only place willing to become a polling place does not want electioneering on the property, even outside the 75-foot limit, so preserving the emergency provision is very important for counties. Since the bill is assigned to two committees, she hopes the sponsor is willing to address that issue; defining *emergency* would remove her opposition.

In response to a question, Ms. Sweeney related that if a polling place is not found in a precinct, an attempt can be made to co-locate precincts within the same general area. If no facilities are willing to be a polling place in the entire precinct because an emergency distinction cannot be offered, voters will have to co-locate at a precinct that is not nearby.

Ms. Ugenti stated she is willing to work with Ms. Sweeney to find an alternative method in which emergencies are limited. It is arbitrary right now since *emergency* is not defined in statute.

Rene Guillen, Legislative Associate, League of Arizona Cities and Towns, in favor of HB2527, stated that the Members probably received emails from cities concerned about these issues so there may be an amendment in the Government Committee.

Chairman Farnsworth announced the names of those who signed up in opposition to HB2527 but did not speak:

Karen Osborne, Elections Director, Maricopa County

Chairman Farnsworth announced the names of those who signed up in support of HB2527 but did not speak:

Debra Galbraith, Town Manager, Town of Payson

Ryan Judy, Deputy Town Manager, Town of Prescott Valley

Chris Cornelison, Management Assistant, Town of Oro Valley

Matthew Busby, Assistant to the City Manager, City of Apache Junction

Gayle Mabery, Town Manager, Town of Clarkdale

Chris Marley, Mayor, Town of Chino Valley

Ed Muder, City Manager, City of Show Low

John Cassella, Intergovernmental Coordinator, City of Goodyear

Sara Sparman, Government Relations Specialist, Town of Queen Creek

Mr. Allen moved that HB2527 do pass. The motion carried by a roll call vote of 4-2-0-2 (Attachment 9).

HB2536 - campaign finance; committees; revisions – DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2536 makes numerous changes related to independent expenditures (IE) (Attachment 10).

Representative Michelle Ugenti, sponsor, said HB2536 was brought to her by the Arizona Chamber of Commerce and Industry and deals with campaign and campaign finance issues. The bill clarifies that someone on a host committee is not prohibited from engaging in an IE committee effort, standardizes the “Paid for by” disclosure statement for radio and television and allows corporations to solicit retirees and their families for funds for political action committees (PAC), which labor organizations are allowed to do.

Glenn Hamer, President/Chief Executive Officer, Arizona Chamber of Commerce and Industry, testified in support of HB2536. He related that this bill contains major campaign finance-related priorities for the Chamber to increase clarity and transparency, while decreasing administrative burdens. He stated he will be working with Representative Ugenti on amendments to change the amount of time a super PAC has to collect requisite numbers from one year to two years and lengthening the amount of time the designation will be valid from two years to four years, as well as other technical corrections.

Chairman Farnsworth announced the names of those who signed up as neutral on HB2536 but did not speak:

Todd Lang, Executive Director, Citizens Clean Elections Commission

Amy Chan, State Election Director, Secretary of State’s Office

Jim Drake, Assistant Secretary of State, Secretary of State's Office

Chairman Farnsworth announced the names of those who signed up in support of HB2536 but did not speak:

Richard A. Bark, Director, Government Relations & Environmental Counsel, Freeport-McMoran Copper & Gold

Garrick Taylor, Vice President, Government Relations & Communications, Arizona Chamber of Commerce and Industry

Michelle Bolton, Vice President of Public Affairs, Cox Communications

Gretchen Kitchel, Senior Public Affairs Representative, Salt River Project

Jeff Gray, Legislative Liaison, Arizona Chamber of Commerce & Industry

Mark Bolton, Attorney, representing self

Janna Day, Lobbyist, representing self

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

Mr. Allen moved that HB2536 do pass. The motion carried by a roll call vote of 5-1-0-2 (Attachment 11).

HB2480 – supreme court; attorney licensing – DISCUSSED & HELD

Paige Carr, Majority Intern, explained that HB2480 establishes the Supreme Court as the entity responsible for licensing attorneys for the practice of law in Arizona and specifies membership of any organization is not required for attorneys to become or remain a licensed attorney in Arizona (Attachment 12).

Mr. Allen, sponsor, said the State Bar of Arizona holds a special place in the Arizona Constitution and has been on its own without regulatory advice from the Legislature since 1983. There are some problems with the way the State Bar is run and cultural issues that occur. This bill addresses the cultural problems and aligns with the constitutional formation of this important activity in the state by re-delineating items in the Arizona Constitution that the Bar is supposed to be doing. The only change is that members no longer have to pay dues. HB2480 is constitutional because from 1933 to 1983, the Legislature was an equal partner in making rules for the Bar, which was never overturned by a court or even challenged.

Chairman Farnsworth commented that he is an inactive attorney but he does have to pay the fee.

Mr. Allen noted that many attorneys believe the culture of the Bar has become toxic to their activities and they are forced to participate in a manner that is unfair and not legal. In response to questions, he made the following comments:

- Many lawyers believe the Bar is hostile toward them. The lawyers represent the people, but it is done by levying a tax upon the activities of lawyers.
- He had conversations with several members of the court and the Executive Director and spokesperson for the State Bar, but he does not believe a compromise can be reached.
- The State Bar is already a function of the Supreme Court, which conducts other similar activities, using their budget, that do not involve administration of lawyers; court activities should also be paid for through the appropriations process, not by a levying a fee, which it does not have the right to do.
- Thirty-two other states have this proposed setup.
- He does not know if the language mirrors language in statute from 1933 to 1983, but there has been legislative interest in the State Bar's activity in the past.

Mrs. Goodale commented that people who will be impacted by this legislation should have the opportunity to provide input. She understands the issue about the levy, but Mr. Allen has not given the Bar an opportunity to try to resolve the issue. Mr. Allen responded that he believes the Legislature has a judiciary responsibility to organize government in a constitutional fashion. Whether people are happy or unhappy with the organization, if it is constructed in a way that is not legal, it should be corrected.

John Phelps, Chief Executive Officer, State Bar of Arizona, opposed HB2480. He clarified that about 30 bars in the country are mandatory; a minority are voluntary. Mandatory bars have been held constitutional by the U.S. Supreme Court and litigated at the Appellate Division in Arizona where it was ruled constitutional. The Bar was established by the Legislature, but it has been mandatory since 1933, which was consistent with the trend in many western states. He noted that the most recent member survey conducted by an independent third party in 2011 showed

that 75 percent of the lawyers were satisfied and 23 percent were not satisfied. The Bar does not have the authority to disbar, suspend or levy sanctions, which is done by the courts; it is the investigative and prosecutorial arm of the system.

Mr. Phelps stated his willingness to discuss and explore whether or not the structure can be changed or other issues should be reviewed, but stated that to rush through this and “throw the baby out with the bathwater” is not a good idea. He conveyed that a voluntary bar association is more like a trade association, which advances what lawyers want. The State Bar of Arizona protects the public so when someone sees a lawyer, he/she is professional, competent and ethical. Information and knowledge is parlayed into programs that develop, improve and mediate problems experienced by lawyers. In response to questions posed by Mr. Allen, he made the following comments:

- The oath Arizona attorneys take is similar to that of law enforcement officers in that they are required to uphold the Arizona and the U.S. Constitutions, but it goes further to say they will adhere to a creed of professionalism, which relates to the enhancement and improvement of the rule of law in the state. If Bar members are allowed to opt out, they will not be part of that and the overall profession will suffer.
- He does not believe there is a requirement that any fee required by the court should be specifically articulated in the Arizona Constitution.
- Legal minds reviewed arguments about the constitutionality of the mandatory State Bar in Arizona and in U.S. courts and found it to be constitutional; he assumes that fees and mandatory membership were part of that consideration.

Mr. Allen requested that HB2480 be held.

Chairman Farnsworth announced that HB2480 will be held.

Without objection, the meeting adjourned at 11:00 a.m.

Linda Taylor, Committee Secretary
March 12, 2013

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