

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

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, February 21, 2013
House Hearing Room 4 -- 8:00 a.m.

Chairman Farnsworth called the meeting to order at 8:19 a.m. and attendance was noted by the secretary.

Members Present

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|---------------|-------------|-----------------------------|
| Mr. Allen | Mr. Hale | Mr. Pierce J, Vice-Chairman |
| Mr. Contreras | Mr. Orr | Mr. Farnsworth, Chairman |
| Ms. Goodale | Mr. Quezada | |

Members Absent

None

Committee Action

| | |
|----------------------------|----------------------------|
| HB2097 - DPA S/E (8-0-0-0) | HB2518 - DP (5-2-0-1) |
| HB2310 - DPA S/E (6-2-0-0) | HB2573 - DP (6-2-0-0) |
| HB2311 - DPA S/E (7-0-0-1) | HB2578 - DP (8-0-0-0) |
| HB2325 - DP (8-0-0-0) | HB2593 - DPA S/E (5-3-0-0) |
| HB2350 - DISCUSSED & HELD | HB2628 - DP (8-0-0-0) |
| HB2395 - DPA S/E (5-3-0-0) | HB2629 - DP (7-0-0-1) |
| HB2462 - DP (8-0-0-0) | HCR2026 - DP (5-3-0-0) |
| HB2512 - DP (5-3-0-0) | |

CONSIDERATION OF BILLS

HB2593 - technical correction; veterans - DO PASS AMENDED S/E
S/E: campaign finance; contribution limits

Magdalena Jorquez, Majority Research Analyst, explained that the proposed Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013 (Attachment 1) increases the amount of money individuals and political committees may contribute to a candidate and removes the aggregate contribution limit for individuals and political committees (Attachment 2).

Representative J.D. Mesnard, sponsor, related that the proposed Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013 addresses the following three areas:

- Nature and purpose of campaigns
- Free speech
- Transparency

Representative Mesnard conveyed that many candidates have been relegated to spectators in their campaigns. A mass funding of independent expenditures by political action committees (PAC) is taking place and a candidate's ability to have their message heard by the public is limited.

Bill Montgomery, Attorney, Maricopa County Attorney's Office, testified in support of the proposed Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013, stating that in Arizona, there are currently two systems being used to contribute to candidates. The consequence of some investigations his office participated in is that the low level of contribution limits for individuals and aggregate creates an environment where people who want to participate by contributing to a particular candidate cannot do so. There is an increase in monies spent in the independent expenditures process if individual citizens are not allowed to contribute more freely and exercise free speech.

Ken Bennett, Secretary of State, testified as neutral on the proposed Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013, stating that campaign finance limits are too low. He expressed concerns regarding transparency and potential elimination of the Citizens Clean Elections Commission because it was approved by the voters.

Todd Lang, Director, Citizens Clean Elections Commission, testified in opposition to the Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013, stating that it increases individual and PAC contribution limits from the current \$440 to \$2,000; if that is done again in the General Election, it will be \$4,000, which is a ten-fold increase that will make it difficult for Clean Elections candidates to compete.

Mr. Allen asked if it is unfair if a traditional candidate has more money than a Clean Elections candidate. Mr. Lang answered in the negative, stating that the money currently provided to Clean Elections candidates is competitive, but with HB2593, that will no longer be the case. Mr. Allen stated that he ran as a traditional candidate in the past election, yet, he raised less than his Clean Elections opposition. Discussion ensued.

Sam Wercinski, Executive Director, Arizona Advocacy Network, testified in opposition to the Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013, stating that there is potential for corrupting influences to arise within the political system. Arizona voters passed the Citizens Clean Elections Act in 1998 in response to the bribery and political corruption that was witnessed in AzScam, as well as the Fiesta Bowl investigation.

Leonard Clark, representing self, testified as neutral to the Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013, stating that normal citizens are excluded from the political process but he has an open mind.

Michael Liburdi, Attorney, representing self, testified in support of the Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013, stating that he believes it is an

excellent solution to Arizona's unconstitutionally low campaign finance limits. Current law sets low limits that have not kept pace with inflation or campaign finance needs since 1986. He stated that if the Citizens Clean Elections Commission wants to amend Clean Elections limits, consideration should be given to presenting it to the voters with an initiative.

Vice-Chairman Pierce announced the names of those who signed up in support of the strike-everything amendment to HB2593 but did not speak:

Scot Mussi, Free Enterprise Club

Nicholas Dranias, Director, Center for Constitutional Government, Goldwater Institute, representing self

Daniel Seiden, Special Assistant for Legislation and Policy, Maricopa County Attorney's Office

Vice-Chairman Pierce announced the names of those who signed up as neutral on the strike-everything amendment to HB2593 but did not speak:

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

Vice-Chairman Pierce announced the names of those who signed up in opposition to the strike-everything amendment to HB2593 but did not speak:

Joseph Seelye, Legislative Political Action Team Coordinator, Arizona Communications Workers of America, representing self

Jim Pullaro, representing self

Jan Bobbett, representing self

Patty Pelfrey, representing self

Barbara Klein, League of Women Voters of Arizona

Dr. Bonnie Saunders, League of Women Voters of Arizona

Jennifer Loreda, Arizona Education Association

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

Vice-Chairman Pierce moved that HB2593 do pass.

Vice-Chairman Pierce moved that the Farnsworth 16-page strike-everything amendment to HB2593 dated 02/19/2013 be adopted (Attachment 1). The motion carried.

Vice-Chairman Pierce moved that HB2593 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 3).

HB2097 - technical correction; trapping license - DO PASS AMENDED S/E

S/E: pawn shop; restitution

Aaron Wonders, Majority Assistant Research Analyst, stated that the proposed Farnsworth 10-line strike-everything amendment to HB2097 dated 2/19/13 (Attachment 4) requires a person convicted of theft, or similar violations of the law, to pay restitution to a pawnbroker under certain circumstances (Attachment 5).

Mr. Wonders explained that the Farnsworth 11-line amendment to HB2097 dated 02/20/2013 (Attachment 6) to the Farnsworth 10-line strike-everything amendment dated 2/11/13

(Attachment 4) directs persons to pay restitution to precious items dealers under the same circumstances and includes numismatic or bullion gold coins in the definition of *property*.

Representative David Gowan, sponsor, testified in support of the legislation, relating the circumstances of a shop owner in his district who receives gold. If the gold is registered as stolen and retrieved by the police, this legislation would require the convict, upon release, to pay restitution to the shop owner for the money lost on that stolen item. He explained that the Farnsworth 11-line amendment to the strike-everything amendment includes gold dealers.

Ms. Goodale asked Representative Gowan to define *gold dealers*. Representative Gowan responded that pawnbrokers and gold dealers are separate in law; a pawnbroker takes any goods except gold.

Ms. Goodale stated that a pawnbroker maintains a list of property received, whereas a gold dealer does not. She questioned how it will be possible to keep track of a gold dealer if a list is not maintained. Representative Gowan stated that he is addressing that issue and reiterated his reasons for introducing the bill. Discussion ensued.

Vice-Chairman Pierce announced the names of those who signed up in opposition to the strike-everything amendment to HB2306 but did not speak:
Del Dawley, IT Principal Analyst, Pima Community College, representing self

Vice-Chairman Pierce moved that HB2097 do pass.

Vice-Chairman Pierce moved that the Farnsworth 10-line strike-everything amendment to HB2097 dated 02/19/13 (Attachment 4) be adopted.

Vice-Chairman Pierce moved that the Farnsworth 11-line amendment to HB2097 dated 02/20/2013 (Attachment 6) to the Farnsworth 10-line strike-everything amendment to HB2097 dated 02/19/13 (Attachment 4) be adopted. The motion carried.

Vice-Chairman Pierce moved that the Farnsworth 10-line strike-everything amendment to HB2097 dated 02/19/13 (Attachment 4) as amended be adopted. The motion carried.

Vice-Chairman Pierce moved that HB2097 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

HB2462 - bail bond agents; lists; loitering - DO PASS

Aaron Wonders, Majority Assistant Research Analyst, explained that HB2462 makes changes to the requirements governing the acceptance of appearance bonds and the keeping of bail bond agent lists. This requirement includes persons soliciting bail bond businesses inside or around any court or city jail in the definition of *loitering* (Attachment 8).

Representative David Gowan, sponsor, stated that HB2462 is clean-up legislation to stop soliciting in the courts and around jails to promote certain bondsmen. It requires a rotating list that clerks of the courts of each county will transmit each month. The bill also allows employees of the licensed bondsman to deliver bonds and bondsmen to post bail with cash.

Mr. Allen noted that the time frame to accept bail bonds will be 24 hours and asked about the current time limit. Representative Gowan answered that he believes there is no time limit in the current statute. Mr. Allen explained that in some rural counties, it may be difficult financially to remain open 24 hours. Representative Gowan explained that HB2462 does not require the courts or jails to change business hours; it allows bonds to be accepted 24 hours, if the building is open 24 hours.

John Burns, President, Arizona Bail Bondsmen Association, testified in support of HB2462 and addressed Mr. Allen's previous question. He stated that constitutionally, when the issuing officer issues a release, the defendant in custody may have to remain in jail up to a day without being able to post bail, which equates to serving a sentence. The rotating list and allowing bondsmen to post bail with cash will significantly reduce the unnecessary time a defendant is in jail.

Mr. Allen opined that it is not beyond the realm of inconvenience to require that someone remain incarcerated six hours to post bond. The requirement for jails to allow 24-hour acceptance of bonds is "heavy handed" against smaller counties. Mr. Burns responded that it is unfair to require a defendant to remain in custody an additional 24 or even 48 hours after a bond is posted, when that defendant may never be sentenced to serve time for the alleged crime.

Jennifer Sweeney, Arizona Association of Counties, testified as neutral on HB2462, stating that no feedback was received from sheriffs that the 24-hour time frame is a problem. She explained that the sheriffs voiced concern with the dollar limit for accepting bonds.

Representative Gowan related that stakeholders raised the concern that many \$100 bills are counterfeit.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2462 but did not speak:

Jerry Landau, Legislative Liaison, Arizona Supreme Court, Arizona Judicial Council

Vice-Chairman moved that HB2462 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 9).

HB2578 - licensing; accountability; penalties; exceeding regulation - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2578 establishes penalty classifications on municipal, county, state and district employees who *knowingly* base a licensing decision in whole or in part on a requirement or condition that is not specifically authorized by law (Attachment 10).

Representative Warren Petersen, sponsor, stated that HB2578 provides accountability by creating penalties for public employees who *knowingly* require a permit applicant to exceed statute or an ordinance, for which there is already a law in place. He provided an example where a builder

was applying to rezone a parcel for improvement, but a city council staff member required a 1,000-foot notification, rather than a notification to development within 500 feet of that parcel per city ordinance without authorization. If a staff member wants to change a policy, the proper procedure is to obtain approval from the city council. Litigation is currently the only recourse, which is costly and time consuming, so HB2578 will provide increased accountability at the source of the problem. He added that there is no fiscal impact.

Mr. Farnsworth asked if there is currently any fiscal accountability in the form of a penalty. Representative Petersen answered in the negative.

Mr. Contreras asked for clarification of *unlawfully making a licensing decision*. Representative Petersen answered that HB2578 covers city, state and county agencies and any permit that is issued. If an employee of one of the aforementioned agencies *knowingly* attempts to require an applicant to meet a higher requirement than is specified in statute, the penalties in HB2578 will apply. Discussion ensued regarding vagueness of language in the bill and a possible Floor amendment to change the penalties from criminal to civil.

Mr. Orr asked if the term *knowingly* will be clarified to protect the clerk. Chairman Farnsworth explained that the term *knowingly* is a legal standard and should be sufficient verbiage.

Ms. Goodale asked if the penalty can be reduced to civil instead of criminal. Representative Petersen agreed and explained that stakeholders also raised concerns regarding the statute of limitations, etc. More work is needed before the bill is heard on the Floor.

Denny Barney, Supervisor, Maricopa County, District 1, in support of HB2578, stated that he supports the overall intent of the bill and the accountability it provides. He suggested that language is needed for clarification surrounding the defense of an employee, as well as the statute of limitations. He added he is confident those issues will be resolved.

Victor Petersen, Member, Gilbert Town Council, representing self, testified in support of HB2578, relating a situation that occurred where he missed a window of opportunity on a parcel of land because of a similar experience to the example provided by Representative Petersen.

Gail Schmidt, Franchise Owner, Buffalo Wild Wings, representing self, testified in support of HB2578 and provided her personal experience with the loss of two franchises due to a licensing decision that, in her opinion, was unlawful.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2578 but did not speak:

Stuart Kimball, Gallagher & Kennedy

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

Scot Mussi, Free Enterprise Club

Sydney Hay, AMIGOS Trade Association

Jared Taylor, Council Member, Town of Gilbert, representing self

Lucy Caldwell, Communications Director, Goldwater Institute

Nicholas Dranias, Director, Center for Constitutional Government, Goldwater Institute, representing self

Steve Trussell, Arizona Rock Products Association

Tracy Langston, representing self

Vice-Chairman Pierce announced the names of those who signed up in opposition to HB2578 but did not speak:

Scott Butler, City of Mesa

Rene Guillen, Legislative Associate, League of Arizona Cities and Towns

Vice-Chairman Pierce moved that HB2578 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 11).

HB2350 - permanent early voting list; notarization - DISCUSSED AND HELD

Aaron Wonders, Majority Assistant Research Analyst, stated that HB2350 requires a notarized signature to be submitted with requests for an early ballot or additions to the permanent early voter list (PEVL) (Attachment 12).

Representative Carl Seel, sponsor, explained that HB2350 addresses a gap in Proposition 200 by requiring that a voter present photo identification when registering to be placed on the PEVL. The county recorder's office has four years to comply with the new requirement.

Mr. Orr asked if any changes were made to the bill regarding concerns he raised in the previous committee. Representative Seel replied in the negative, but explained that he is open to making minor changes with a Floor amendment. He stated that notarization will not be required to register to vote, due to conflict with the Voter Rights Act, but notarization will be required to be added to the PEVL. Mr. Orr restated his concerns and explained that he will not vote for the bill in its current state.

Mr. Allen asked how many voters are currently on the PEVL in Arizona. Representative Seel answered that approximately 40 percent of all voters are on the PEVL. Mr. Allen expressed concern about the requirement of notarization without allowing the notary to charge for their services. He opined that HB2350 interferes with the free enterprise system. Representative Seel restated his understanding of the provisions within the Voter Rights Act that prohibit any legislation from interfering with voters' ability to cast a vote.

Mr. Contreras inquired about the origin of HB2350. Representative Seel stated that the intent is to clearly verify that all voters are voting lawfully. He reiterated that Proposition 200 calls for scrutiny, and the biggest challenge to that scrutiny is early balloting. Mr. Contreras asked if HB2350 is meant to target Latino voters. Representative Seel explained that the ability to vote in the United States (U.S.) is a right preserved for citizens and verification is needed to ensure that all voters exercising that right are lawful U.S. citizens. HB2350 simply maintains the integrity of Proposition 200 by ensuring that the same checks that are made in person are required for those voting through the mail. Mr. Contreras and Representative Seel engaged in discussion surrounding the perceived intent of HB2350.

Chairman Farnsworth addressed Mr. Contreras' comments regarding Representative Seel's intent in sponsoring HB2350 and reminded him of Committee rules surrounding impugning another Member.

Vice-Chairman Pierce announced the names of those who signed up in opposition to HB2350 but did not speak:

Leonard Clark, representing self
Jen Sweeney, Deputy Director, Arizona Association of Counties
Sam Wercinski, Arizona Advocacy Network
Raquel Teran, State Director, Mi Familia Vota
Molly McGovern, SEIU Arizona
Sandy Bahr, Conservation Director, Sierra Club Grand Canyon Arizona Chapter
Adriana Marinez, Intergovernmental Relations Coordinator, City of Tucson
Joseph Seelye, Legislative Political Action Team Coordinator, Arizona Communications Workers of America, representing self
Doris Marie Provine, representing self
Rivko Knox, representing self
Barbara Klein, League of Women Voters of Arizona
Dr. Bonnie Saunders, League of Women Voters of Arizona
Jennifer Loreda, Arizona Education Association
Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona
Peri Jude Radecic, Director of Public Advocacy, Arizona Center for Disability Law
Bryan Ginter, representing self
Eric Ehst, representing self
Karen Osborne, Elections Director, Maricopa County Elections
David Valle, representing self

Chairman Farnsworth announced that HB2350 will be held.

HB2573 - prohibited government compliance; 2012 NDAA - DO PASS

Paige Carr, Majority Intern, explained that HB2573 prohibits the state and any state agency from giving material support or from participating with the implementation of sections 1021 and 1022 of the 2012 National Defense Authorization Act (NDAA) (P.L. 112-81) (Attachment 13).

Representative Carl Seel, sponsor, explained that HB2573 prevents the federal government from interfering with habeas corpus and deferred to Brian Berkland for further testimony.

Bryan Berkland, Member, Tenth Amendment Center, testified in support of HB2573, stating that its focus is the decentralization of federal government power as required by the U.S. Constitution, which guarantees protections against indefinite detention of any U.S. citizen without trial in the fourth, fifth, sixth, ninth and tenth amendments. He opined that the federal government is not currently following the U.S. Constitution.

Leonard Clark, representing self, testified as neutral on HB2573, opining that there is an undeclared war in the U.S. where Congress can authorize the violation of civil rights without any checks and balances.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2573 but did not speak:

Tom Platt, representing self
Vitaliy Maksimov, representing self

Elisha Dorfsmith, representing self
Cindy Dorfsmith, representing self
Annette Hardman, representing self
Pat Petrini, representing self
Annette Freeman, representing self
Jake Kellander, representing self
Del Dawley, IT Principle Analyst, Pima Community College, representing self
Cassandra Mooneyham, representing self
Ken Biehl, representing self
Shondean Coochise, representing self
Anton C, representing self
Jelaire Richardson, representing self
Willie Stubbs, representing self
Jaunna Mahoney, representing self
J Forte, representing self
Darren McDonald, representing self
Wes Warren, representing self
Dora Warren, representing self
Will Leach, representing self
Kyle Leckey, representing self
Matt Papke, Last Chance for Liberty
Joni Leckey, representing self
Jeremy Saxey, representing self
Kyle Lauing, representing self
Sara Jacoby, representing self
Kyle S, representing self
Greg Wirth, representing self
Greg Weisman, representing self
David Moore, representing self
Christy Weisman, representing self
David Dew, representing self
John Laurie, representing self
Danielle Fertig, representing self
Deborah Moore, representing self
Jeremy Galloway, representing self
Adam Bronnenkant, representing self
Mike Baysek, representing self
S. Adams, representing self
Mark Stuart, representing self
James Crofts, representing self
Adam Koelsch, representing self
Tracy Langston, representing self
Joel Alcott, representing self
Karyn Nelson, representing self
David P., representing self
Dave Kopp, Manager, Arizona Citizens Defense League, Inc.
Cathy Vallecorsa, representing self
Barry Young, representing self

Adam Henriksen, Tenth Amendment Center

Vice-Chairman Pierce announced the names of those who signed up as neutral on HB2573 but did not speak:

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

Vice-Chairman moved that HB2573 do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 14).

HCR2026 - clean elections; education funding - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HCR2026 seeks to amend, via referendum, the sections of statute relating to education funding by the Citizens Clean Elections Commission's (CCEC) excess monies (Attachment 15).

Representative Paul Boyer, sponsor, stated that the CCEC has existed for 15 years. Voters have seen the abuse of public monies and deserve the opportunity to reevaluate the CCEC's effectiveness and purpose. He opined that the term *Clean Elections*, whether intentionally or not, is deceptive because the CCEC provides public money for politicians. He related his traditional campaign experience.

Todd Lang, Executive Director, Citizens Clean Elections Commission, testified in opposition to HCR2026, providing the following reasons:

- Clean Elections works and helps candidates enter politics who may not have been able to do so otherwise.
- The funding source for Clean Elections is a surcharge on fines and penalties; therefore, it is revenue positive.
- HCR2026 is designed to clean up campaigns.
- The bill may possibly not be germane because it does not repeal the law, but unfunds the current law.

Chairman Farnsworth asked why there is a problem with taking funding from Clean Elections for education in the midst of difficult economic and fiscal times. Mr. Lang answered that a ballot question to the voters should be straightforward, such as, "Do you want to keep Clean Elections?" Putting this up against education is not clear to the voters. Chairman Farnsworth and Mr. Lang debated the best phrasing of the question for the ballot.

Representative Boyer noted that he verified with House attorneys that HCR2026 is germane. He opined that it is necessary to increase funding to education for many reasons.

Sam Wercinski, Arizona Advocacy Network, testified in opposition to HCR2026, stating that he believes, based on Representative Boyer's testimony, that the intent is to eliminate the funding mechanism for CCEC's oversight of campaigns, the education funding the Clean Elections Act provides and the option for candidates to run under Clean Elections.

Vice-Chairman announced the names of those who signed up in opposition to HCR2026 but did not speak:

Joseph Kanefield, Citizens Clean Elections Commission

Jan Bobbett, representing self

Joseph Seelye, Legislative Political Action Team Coordinator, Arizona Communications Workers of America, representing self

Michelle Steinberg, representing self

Patty Pelfrey, representing self

Rivko Knox, representing self

Diana Murray, representing self

Randall Holmes, representing self

Eric Ehst, representing self

Nicholas Collins, representing self

Pardis Baradar, representing self

David Valle, representing self

Dr. Bonnie Saunders, League of Women Voters of Arizona

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

Barbara Klein, League of Women Voters of Arizona

Vice-Chairman Pierce announced the names of those who signed up as neutral on HCR2026 but did not speak:

Leonard Clark, representing self

Vice-Chairman moved that HCR2026 do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 16).

HB2628 - prosecutor presence; interview of minor - DO PASS

Paige Carr, Majority Intern, stated that HB2628 prohibits a defendant, defendant's attorney or defendant's agent from interviewing a minor child who has agreed to an interview unless the prosecutor is present (Attachment 17).

Representative Bruce Wheeler, sponsor, testified that under current law, defense attorneys are prohibited from contacting sex abuse victims, but there is no prohibition against an ally of the defendant taking a minor victim to an attorney. He deferred the remainder of his testimony to Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office.

Ms. Goodale requested clarification of the terms *minor child* and *victim*. Representative Wheeler affirmed that not all minor children fall under this bill, only minor children who are victims.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, testified in support of HB2628, stating that prosecutors are concerned with how the victim's rights statutes as currently written intersect with child sexual abuse cases. A victim in a criminal proceeding has the right to refuse a pretrial interview when a request is made by a defense attorney through the prosecutor's office. Most adult victims opt not to be subjected to such an interview by defense attorneys, and if they do, prosecutors are present. In the case of a minor victim, the child cannot exercise his or her constitutional right to refuse an interview; that right is provided to the minor's parent or guardian. When the abuser is a stranger, most parents/guardians will not

permit their child to be subjected to such an interview; however, in cases where the abuser is a family member, the child must be interviewed by specially trained forensic interviewers, which is videotaped jointly by Child Protective Services and law enforcement. There are many cases where family members of the defendant do not want the defendant to be prosecuted and will take the child to the defendant's attorney for the sole purpose of coercing a recantation, which undermines the integrity of the system.

Mr. Allen asked if a minor child is only assigned a guardian ad litem in family court. Ms. Mayer answered that guardians ad litem are appointed in family and criminal courts, particularly in superior courts at the request of the prosecuting attorney, if there is suspicion of any coercing or tampering with the victim.

Mr. Allen asked if the guardian ad litem is better equipped to determine if the minor victim should participate in an interview with the defense attorney. Ms. Mayer replied that when an interview is taking place, where a parent takes the child to the defense attorney, the prosecuting attorney is not notified so the opportunity for a guardian ad litem to be present is not available.

Mr. Hale asked about the consequences for violation under HB2628. Ms. Mayer stated that under current law, if a defense attorney violates statute, there is no specific penalty; the prosecutor would use the complaint mechanism to the State Bar of Arizona.

Mr. Hale asked, if a violation occurs, whether the prosecuting attorney can make a motion to suppress evidence collected in the interview. Ms. Mayer explained that a sanction can be sought from the court, but a judge is not likely to grant that motion.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2628 but did not speak:

Kimberly Mac Eachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council,
representing self

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

Vice-Chairman moved that HCR2628 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 18).

HB2629 - tampering with a witness - DO PASS

Paige Carr, Majority Intern, explained that HB2629 stipulates that tampering with a witness includes the attempt to induce a witness and adds evading a summons or a subpoena to the list of acts that qualify as tampering with a witness (Attachment 19).

Representative Bruce Wheeler, sponsor, deferred testimony to Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office.

Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office, testified in support of HB2629, stating that tampering with a witness should include not only successful attempts, but also unsuccessful tampering attempts. She cited an example of a convicted felon who repeatedly sent letters to convince a victim not to comply with subpoenas with the promise of a monetary benefit. The victim did not cooperate with the requests of the defendant;

therefore, the courts did not allow prosecuting attorneys to charge the defendant with tampering with a witness. The responsibility should lie solely with the defendant who is attempting to tamper.

Mr. Allen asked if avoiding a summons without tampering is a criminal offense. Ms. Mayer confirmed that avoiding a summons is a class 1 misdemeanor.

Vice-Chairman Pierce announced the names of those who signed up in support of HB2629 but did not speak:

Kimberly Mac Eachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Vice-Chairman moved that HB2629 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 20).

HB2518 - cities and towns; approval voting - DO PASS

Aaron Wonders, Majority Assistant Research Analyst, explained that HB2518 allows a city or town to adopt an approval voting system for the primary or first election (Attachment 21).

Andrew Jennings, representing self, testified in support of HB2518 and explained that with the existing voting system, the person with the most votes wins. Currently each voter is only allowed to vote for one candidate but allowing every voter to vote for all candidates they favor, is a better way of selecting a winner. If there are only two candidates, the current system works well, but if there are more than three candidates, it causes a vote-splitting effect and/or a spoiler effect. He added that approval voting is currently prohibited.

Jen Sweeney, Deputy Director, Arizona Association of Counties, testified as neutral on HB2518, stating that in calendar year 2014, consolidated elections will be enforced per a bill passed in the 2012 Legislative Session. HB2518 will change the current format of the ballot.

Vice-Chairman moved that HB2518 do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 22).

HB2325 - personal property; exemptions - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2325 makes several changes to the statutes governing exemptions to personal property (Attachment 23).

Chairman Farnsworth, sponsor, stated that HB2325 removes the list of items that can be kept in the case of a bankruptcy and increases the dollar amounts. If a person has a family heirloom, eliminating the list allows the individual to decide what to keep up to the cap. He originally intended to offer an amendment to include computers, but the deadline was missed, so it will be offered on the Floor.

Constantino Flores, representing self, testified in opposition to HB2325, stating that he is the President of the Bankruptcy Trustees Association in Arizona and has been a lawyer for 21 years.

Mr. Flores said it was his understanding that the cap for household goods was going to be increased, but he does not see that in the bill.

Chairman Farnsworth reiterated that the amendment will be offered on the Floor.

Mr. Flores continued that doubling the amount of exemptions for people with disabilities makes sense, but he has seen cases where lawyers advise clients to have a doctor deem them disabled in order to obtain a placard from the Department of Motor Vehicles, which is proof of a disability so the person receives the exemption at the doubled rate. If the vehicle exemption is approved, the disabled person must prove that the vehicle is modified to accommodate a disability.

Chairman Farnsworth and Mr. Flores engaged in discussion regarding whether or not Mr. Flores is mischaracterizing the motive of people in support of HB2325.

Vice-Chairman Pierce announced the names of those who signed up in opposition to HB2325 but did not speak:

Jenna Brouk, Bankruptcy Trustees
Bill Pierce, representing self
Dina Anderson, representing self
Stan Kartchner, representing self
David Reaves, representing self
Ryan Anderson, representing self
Misty Weigle, representing self
David Birdsell, representing self
Jill Ford, representing self
Maureen Gaughan, representing self
Lothar Goernitz, representing self
Eric Haley, representing self
Beth Lang, representing self
Robert MacKenzie, representing self
S. William Manera, representing self
Roger Brown, representing self
Diane Mann, representing self
Anthony Mason, representing self
Gayle Mills, representing self
Brian Mullen, representing self
Trudy Nowak, representing self
Jim Smith, representing self
Dale Ulrich, representing self
Lawrence Warfield, representing self
Russell Brown, representing self
Edward Maney, representing self
Dawn Bayne, representing self
Christen Carnes, representing self
Adam Nach, representing self
Stuart Rogers, representing self
Paul Hilkert, representing self
Joel Newell, representing self

Camilla Strongin, Bankruptcy Trustees

Vice-Chairman moved that HB2325 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 24).

HB2310 - escheated property; proceeds; claim - DO PASS AMENDED S/E
S/E: administrative office of the courts; evaluation

Paige Carr, Majority Intern, explained that the Farnsworth 24-line strike-everything amendment to HB2310 dated 02/19/2013 (Attachment 25) requires the Administrative Office of the Courts (AOC) to establish methods and standards to evaluate the effectiveness, efficiency and accountability of mental health courts (Attachment 26).

Barry Aarons, Lobbyist, American Friends Service Committee, testified in support of the Farnsworth 24-line strike-everything amendment to HB2310 dated 02/19/2013, stating that the concept of a mental health court, in light of recent tragedies, has been very successful. It is one of the tools used to identify, diagnose and treat to keep people suffering from mental health issues from going in and out of prison. He added that he will search for supplemental funding while this legislation moves forward.

Chairman Farnsworth explained that the courts are concerned because no funding is provided, but Mr. Aarons will be lobbying for additional funding that is needed prior to moving this legislation through the legislative process.

Mr. Orr inquired about the amount of supplemental funding that is needed. Mr. Aarons answered that the original estimate of supplemental funding was \$125,000, which may be more than is needed. Contracting may be an option and should be considered as the bill moves to the Floor.

Vice-Chairman Pierce inquired about potential private investment opportunities through organizations. Mr. Aarons stated that he will be glad to pursue any possible investors, if the opportunity arises.

Amy Love, Legislative Intern, Administrative Office of the Courts (AOC), testified in slight opposition to the Farnsworth 24-line strike-everything amendment to HB2310 dated 02/19/2013, stating that it is potentially an unfunded mandate. The courts rearranged calendars to accommodate mental health cases and are of the opinion that any monies should go toward services for the mentally ill population. Because more of these courts are being established across the state, some standardization is needed. She mentioned that grants may be another possible source of funding.

Vice-Chairman Pierce announced the names of those who signed up in support of the strike-everything amendment to HB2310 but did not speak:
Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office

Vice-Chairman Pierce moved that HB2310 do pass.

Vice-Chairman Pierce moved that the Farnsworth 24-line strike-everything amendment to HB2310 dated 02/19/2013 (Attachment 25) be adopted. The motion carried.

Vice-Chairman Pierce moved that HB2310 as amended do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 27).

HB2311 - garnishment; failure to comply - DO PASS AMENDED S/E
S/E: restitution lien; administrative hearing

Magdalena Jorquez, Majority Research Analyst, explained that the Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13 (Attachment 28) permits the Director of the Arizona Department of Transportation (ADOT) to remove a restitution lien from a vehicle record under specified circumstances (Attachment 29).

Ms. Jorquez explained that the Farnsworth four-page amendment to HB2311 dated 02/20/2013 (Attachment 30) to the proposed Farnsworth four-page strike-everything amendment dated 2/19/13 (Attachment 28) specifies that a lien created in favor of the state for the total amount of fines, assessments, surcharges, costs, incarceration costs and fees ordered may not be perfected against a titled motor vehicle.

Chairman Farnsworth clarified that the amendment to the strike-everything amendment allows restitution liens only.

Bobbi Sparrow, Government Relations Director, Arizona Automobile Dealers Association, testified in support of the Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13, stating that in 2005, 300 restitution liens were connected to true victims and the statute was changed to allow driving under the influence (DUI) restitution liens that had no victims involved, which increased the number of liens attached to vehicles to 50,000. When a vehicle is purchased, the new owner takes the car to the Department of Motor Vehicles to obtain the title; if a restitution lien is attached, the title on the vehicle cannot be obtained until the lien is cleared. She added that Arizona is one of two states that allow restitution liens with fees attached.

Kristin Cipolla, Legislative Liaison, County Supervisors Association, provided a handout entitled Total Restitution Collections in Maricopa County from 2002-2012 (Attachment 31). She indicated a neutral position on the Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13. She said the Association recognizes that a secondary victim has been created by liens placed on vehicles. She expressed concern about the amendment to the strike-everything amendment, which removes the ability to place restitution liens on vehicles, except for victim restitution, because Maricopa County and other counties benefit from the use of restitution liens on vehicles.

Chairman Farnsworth asked how many liens are paid by criminals versus secondary victims. Ms. Cipolla replied that according to Maricopa County, the majority of liens are paid by criminals. Chairman Farnsworth expressed concern that a minority portion is paid by secondary victims who have no way of knowing if there is an existing restitution lien on the vehicle they are purchasing. Discussion ensued regarding lack of notification to the buyer of a vehicle with a restitution lien.

Vice-Chairman Pierce announced the names of those who signed up in support of the strike-everything amendment to HB2311 but did not speak:

Jason Isaak, Lobbyist, Toyota

Kerry Hayden, Government Affairs Representative, Farmers Insurance Group

J. Michael Low, Attorney, Allstate

John Mangum, Barrett-Jackson Auto Auctions

Vice-Chairman Pierce announced the names of those who signed up in opposition to the strike-everything amendment to HB2311 but did not speak:

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

Vice-Chairman Pierce announced the names of those who signed up as neutral on the strike-everything amendment to HB2311 but did not speak:

John Carlson, Special Assistant, ADOT, representing self

Allister Adel, Chief Presiding Administrative Law Judge, ADOT

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

Don Isaacson, State Farm Insurance, testified in support of the Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13, stating that in a total loss settlement, the vehicle is purchased from the insured; restitution liens add another level of complication.

Vice-Chairman Pierce moved that HB2311 do pass.

Vice-Chairman Pierce moved that the Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13 be adopted (Attachment 28). The motion carried.

Vice-Chairman Pierce moved that the Farnsworth four-page amendment dated 02/20/2013 (Attachment 30) to the Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13 (Attachment 28) be adopted. The motion carried.

Vice-Chairman Pierce moved that Farnsworth four-page strike-everything amendment to HB2311 dated 2/19/13 (Attachment 28) as amended be adopted. The motion carried.

Vice-Chairman Pierce moved that HB2311 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 32).

HB2395 - technical correction; evidence; medical malpractice - DO PASS AMENDED S/E
S/E: civil liability; private special education

Magdalena Jorquez, Majority Research Analyst, explained that the Pierce nine-line strike-everything amendment to HB2395 dated 2/19/13 (Attachment 33) establishes a standard of gross negligence in any civil action based on negligence relating to private schools that provide special education services and are approved by the Arizona Department of Education (ADE) (Attachment 34).

Michael Liburdi, Attorney, Arizona Association of Private Special Education Providers, testified in support of the Pierce nine-line strike-everything amendment to HB2395 dated 2/19/13, stating that private schools focus on a narrow segment of Arizona's public school population, which is high-risk, violent K-12 students who have been through the juvenile justice system. Because of their behavior, it is not desirable to have these students in the general public school environment, so privately-owned public schools exist for the sole purpose of educating those students. Because these students are at high risk for endangering themselves, other students and teachers, the schools are exposed to liability under the current simple negligent standard whereby the plaintiff must prove that the behavior was somehow deficient. The goal of HB2395 is to raise the standard of care to gross negligence so the plaintiff must prove there was a conscious disregard for risk.

Francie Austin, President, The Austin Centers For Exceptional Students; Arizona Association of Private Special Education Providers, testified in support of the Pierce nine-line strike-everything amendment to HB2395 dated 2/19/13, stating that the purpose of privately-owned schools is to remediate high-risk students to return to public schools; after attending the private schools, 33 percent return to public schools and are successful. Parents have become aware that settlements can be received through the schools' insurance companies in situations where students are self-injurious. She provided the example of a student who was walking down the hall and became enraged at a comment by another student, punched his hand through the drywall, hit a stud, and broke a bone in his wrist. The parents threatened a lawsuit; therefore, the insurance company settled, raising the rates for the school.

Brian Shipman, President, Arizona Association of Private Special Educational Providers, testified in support of the Pierce nine-line strike-everything amendment to HB2395 dated 2/19/13, stating that parents continually thank him for existence of these schools that care for their child. Without these schools, the children would potentially end up in the criminal justice system. He cited examples of successful students.

Barry Aarons, Lobbyist, Arizona Trial Lawyers Association, testified in opposition to the Pierce nine-line strike-everything amendment to HB2395 dated 2/19/13, stating there may be collateral and unintended consequences. The language is broad and there are other sources of relief for these schools, such as changing insurance statutes or providing opportunities for risk pools. He added that accidents happen and schools should be held accountable when an injury occurs, so raising the standard is inappropriate.

Chairman Farnsworth asked if Mr. Aarons is agreeable to narrowing the standard of gross negligence. Mr. Aarons replied in the negative and offered to meet with Mr. Pierce to resolve his concerns. He expressed concern about the circumstances that could result from raising the standard. Discussion ensued regarding narrowing of the gross negligence standard.

Vice-Chairman announced the names of those who signed up in opposition to the strike-everything amendment to HB2395 but did not speak:

Janice Goldstein, Arizona Trial Lawyers Association

Staci Burk, Member, Gilbert Unified School District Governing Board

Jill Ryan, representing self

Peri Jude Radecic, Director, Public Advocacy, Arizona Center for Disability Law

Sarah Kader, Staff Attorney, Arizona Center for Disability Law

Hope Kirsch, representing self
Susan Cannata, The Arc of Arizona

Vice-Chairman announced the names of those who signed up as neutral on the strike-everything amendment to HB2395 but did not speak:
Leonard Clark, representing self

Gretchen Jacobs, Attorney, Autism Society of America Greater Phoenix Chapter, testified in opposition to the strike-everything amendment to HB2395 dated 2/19/13, stating that she has a non-verbal daughter who is vulnerable without supervision. Regarding previous testimony about a young boy who punched a wall, the parents threatened to sue, and the claim was settled by the insurance company, she indicated she is unsure of the accuracy of the statement and explained her understanding of what insurance companies cover. She said suing is extremely expensive and, for a special needs parent to spend precious money on suing is unlikely, without just cause. She expressed concern that her daughter will be negatively affected by raising the standard to gross negligence. She provided a handout from the United States Government Accountability Office entitled: *Seclusions and Restraints – Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (Attachment 35).

Chairman Farnsworth stated he does not agree with Ms. Jacobs's statement that the example of the boy who broke his wrist is unlikely. Discussion ensued regarding the need to raise the standard based on atypical lawsuits by individuals desiring to abuse the system.

Ms. Jacobs stated her disapproval of pushing HB2395 through the legislative process at the last minute. Vice-Chairman Pierce responded that he does not believe the bill was rushed through at the last minute. Discussion continued regarding the need to raise the standard to gross negligence based on doubling insurance costs to the schools due to lawsuits by parents of higher-risk, self-injurious children.

Ms. Goodale stated that she has a non-verbal, severely autistic grandson. Because of the higher risk involved with raising such a child, private schools are needed and must be protected. Without these schools, high-risk children will return to public schools and the same level of care will no longer be available.

Vice-Chairman Pierce announced the names of those who signed up signed up in support of the strike-everything amendment to HB2395 but did not speak:
Jason Isaak, Lobbyist, Toyota
Kerry Hayden, Government Affairs Representative, Farmers Insurance Group
J. Michael Low, Attorney, Allstate
John Mangum, Barrett-Jackson Auto Auctions

Vice-Chairman Pierce announced the names of those who signed up in opposition to the strike-everything amendment to HB2395 but did not speak:
Kathleen Mayer, Deputy Pima County Attorney, Pima County Attorney's Office

Vice-Chairman Pierce announced the names of those who signed up as neutral on the strike-everything amendment to HB2395 but did not speak:

John Carlson, Special Assistant, Arizona Department of Transportation (ADOT), representing self

Allister Adel, Chief Presiding Administrative Law Judge, ADOT

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

Vice-Chairman Pierce moved that HB2395 do pass.

Vice-Chairman Pierce moved that the Pierce nine-line strike-everything amendment to HB2395 dated 2/19/13 (Attachment 33) be adopted. The motion carried.

Vice-Chairman Pierce moved that HB2395 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 36).

HB2512 - trusts; beneficiary suits against settlor - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that HB2512 provides conditions that apply if a beneficiary files a civil action against a settlor regarding a trust or other governing instrument (Attachment 37).

Representative John Allen, sponsor, deferred testimony to Richard Durfee, Attorney.

Richard Durfee, Attorney, representing self, testified in support of HB2512, stating that under the current legal system, if a client does not want their estate litigated, the option to prevent litigation is to employ a contractor to control disposition of their property, which is a trust. The point of a trust is to implement a private contractual remedy for how the property is going to be handled and to avoid intervention of the courts. The most destructive problem that can arise in dealing with an estate is litigation and, from his experience, families do not recover from litigating an estate. He added that the goal of HB2512 is to eliminate litigation.

Mr. Quezada asked what problem is being addressed. Mr. Durfee provided an example of parents who gifted their property to their children through a trust and the children, not liking the amount of the gift, sued the parents to change the terms of the trust. HB2512 will change the statute so if a child brings a lawsuit against a trust set up by the parent, the child will be disinherited and treated as deceased.

Chairman Farnsworth asked how HB2512 will affect cases where it is believed that coercion or undue influence occurred during drafting of the trust. Mr. Durfee answered that in cases of coercion or undue influence, he is unsure of the consequences under this legislation.

Mr. Contreras stated that the language in the bill is unclear. Mr. Allen remarked that he will offer an amendment on the Floor to clarify the intent.

Chairman Farnsworth restated concern regarding dismissal of legitimate claims regarding coercion, etc. Mr. Durfee stated that he would also like to see refinement of the bill's language.

R. Keith Perkins, representing self, testified in support of HB2512, stating that the rules of court that typically balance the rights of litigants in this situation are upside down. If a disgruntled

child wants to force a parent to change their will, the child can find an attorney on a contingency fee basis to litigate, which equates to attacking the parents' retirement income to pay for a lawsuit out of the parents' savings, where the child has no up-front fees. There is an unbalance of power involved in this type of litigation, which victimizes the rest of the trustees, as well as the parents.

Mr. Hale stated that he believes HB2512 punishes the child for the sins of the parents. Mr. Perkins explained that the person who should be protected is the person whose money is being litigated.

Vice-Chairman announced the names of those who signed up in support of HB2512 but did not speak:

Warde Nichols, Clarus Consulting

James Candland, Principle, Clarus Consulting

Kari Joyce, representing self

Vice-Chairman moved that HB2512 do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 38).

Without objection, the meeting adjourned at 12:26 p.m.

Charly Laube, Committee Secretary
March 20, 2013

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