

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

COMMITTEE ON JUDICIARY

Minutes of Meeting
Thursday, March 14, 2013
House Hearing Room 4 -- 10:00 a.m.

Chairman Farnsworth called the meeting to order at 10:05 a.m. and attendance was noted by the secretary.

Members Present

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

SB1232 - DP (8-0-0-0)	SB1370 - DP (6-2-0-0)
SB1233 - DP (8-0-0-0)	SB1371 - DPA (5-3-0-0)
SB1260 - DP (8-0-0-0)	SB1405 - DP (8-0-0-0)
SB1261 - DP (6-2-0-0)	SCR1009 - DP (6-2-0-0)
SB1312 - DP (8-0-0-0)	

CONSIDERATION OF BILLS

SB1370 - municipal franchise elections; rates; estimate - DO PASS

Paige Carr, Majority Intern, explained that SB1370 requires the ballot of a proposed franchise election to include an estimate of any projected fees or taxes that are not related to franchise work or fees (Attachment 1).

Senator Gail Griffin, sponsor, conveyed that a situation occurred in her district where a franchise agreement was on the ballot from a utility company that included an additional two percent fee. If cities create a franchise agreement that includes additional fees, it is transparent so people know what they are voting on. She met with utility companies and this bill contains their preferred language.

Mr. Quezada asked if a publicity pamphlet is sent out for these types of elections. Senator Griffin answered that she does not know about a publicity pamphlet, but there is an

obligation to print it in the newspaper. In this situation, there was a full-page article in very small print that hardly anyone read because it was so lengthy.

A. J. LaFaro, representing self, in support of SB1370, testified that he is a firm believer and advocate for full transparency in all levels of government. Many times, citizens do not take or have the time to clearly understand the impact of what is happening with regard to fees, taxes, etc., so there is no reason why the Committee should not support full transparency to voters of Arizona.

Vice-Chairman Pierce announced the names of those who signed up as neutral on SB1370 but did not speak:

Leonard Clark, representing self

Vice-Chairman Pierce moved that SB1370 do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 2).

SB1371 - municipal elections; ballot; disclosure - DO PASS AMENDED

Paige Carr, Majority Intern, explained that SB1371 prescribes ballot requirements for any municipal election to approve a bond, sales tax, property tax or franchise agreement measure (Attachment 3). The Farnsworth five-line amendment to SB1371 dated 3/13/13 (Attachment 4) makes a technical change and strikes any reference to franchise agreements.

Senator Gail Griffin, sponsor, stated this is another disclosure and transparency bill. When voters vote on bond issues, etc., there is no disclosure as to how much it will cost vacant land or commercial property owners, so this bill identifies the consequences.

Jen Sweeney, Deputy Director, Arizona Association of Counties, stated she opposes SB1371 because of the space on the ballot it will require. The ballot is a place to make a choice and not to have an analysis. Cities do have to provide a publicity pamphlet for issues related to the cities and almost all cities, except Phoenix, contract with counties to run elections, so the ballot length is a concern, especially since consolidated elections are anticipated in 2014.

Mr. Contreras asked the average cost factor if the bill passes. Ms. Sweeney replied that is difficult to determine because it is not known how many issues will be on the ballot; but if there is more text, the cost will increase.

Mr. Orr asked if there is an ability to have the analysis provided without lengthening the ballot. Ms. Sweeney stated that extra copies of the publicity pamphlets are available, upon request, at tables where elections are held.

A. J. LaFaro, representing self, in support of SB1371, stated he understands there is limited space on the ballot and requested that individuals who prepare publicity pamphlets use language that is understandable, especially on issues regarding taxes at the local level.

Vice-Chairman announced the names of persons who signed up as neutral on SB1371 but did not speak:

Matt Derr, Administrator, Corporate Public Affairs, Southwest Gas Corporation

Leonard Clark, representing self

Names of persons who signed up in opposition to SB1371 but did not speak:
Johnathan Roes, Director, Navajo County Election; Election Officers of Arizona

Vice-Chairman Pierce moved that SB1371 do pass.

Vice-Chairman Pierce moved that the Farnsworth five-line amendment to SB1371 dated 3/13/13 (Attachment 4) be adopted. The motion carried.

Vice-Chairman Pierce moved that SB1371 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 5).

SB1233 - limited liability companies; ownership interests - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that SB1233 amends the Arizona Limited Liability Company Act by adding a new provision to the section of statute governing members as it relates to forms of ownership (Attachment 6).

Senator Adam Driggs, sponsor, indicated that this policy already exists but, there are new practices, so it is important to update the statute.

David Case, State Bar of Arizona, in support of SB1233, stated since LLCs have become so popular in the last 20 years, people are holding real estate investments and operating real estate assets in LLCs by the thousands. Although LLCs could hold real estate previously in joint tenancy, there is no statutory mechanism that outlines the ramifications. This is a good bill for which stakeholders provided input.

Mr. Allen noted that the legislation is complicated. He sent the language to family members who work in LLCs and attorneys in states where ownership is addressed in statute. The consensus was that there is significant language for this issue. Mr. Case concurred with the items added by the LLC Drafting Committee from the Business Law Section, and said the additions have meaning and benefit. He added that with a statute like this, it is important to include language to prevent problems.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1233 but did not speak:

Mark Bolton, Attorney, State Bar of Arizona

Vice-Chairman Pierce moved that SB1233 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

SB1232 - trusts and estates - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that SB1232 makes several changes to the laws governing trusts and estates (Attachment 8).

Senator Adam Driggs, sponsor, indicated that these policies are established, but SB1232 updates the statute on exempted amounts for probate.

David Case, State Bar of Arizona, in support of SB1232, testified that the bill makes technical corrections to improve operations. Two major changes include increasing the minimum threshold amount for affidavits to avoid probate and raising personal property from \$50,000 to \$75,000 and real property from \$75,000 to \$100,000. Another change exempts 529 plans from creditors the same as IRAs and other retirement assets.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1232 but did not speak:

Mark Bolton, Attorney, State Bar of Arizona

Vice-Chairman Pierce moved that SB1232 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 9).

SB1261 - permanent early voting lists; amendments - DO PASS

Aaron Wonders, Majority Assistant Research Analyst, explained that SB1261 allows the county recorder or other officer in charge of elections to biennially mail a notice to certain voters on the permanent early voting list and remove voters who do not return a completed notice (Attachment 10).

Senator Michele Reagan, sponsor, related that there was an unusually high number of provisional ballots in the last election that caused long lines and delays. On election day, many people at the voting polls complained because they did not know they were on the permanent early voting list (PEVL). The only way to be removed from the list is by a request in writing, which is difficult if someone is not aware of being on the list. This bill was drafted in an effort to update the PEVL and make sure people who receive early ballots want to receive them and people who wish to go to the polls do not receive early ballots.

Mr. Quezada asked the purpose of criminalization for altering registration forms. Senator Reagan responded that has always been in statute; the bill also adds the PEVL provision.

Mr. Quezada stated that volunteers may not understand the laws or legal aspects of altering a form non-substantively. He asked if Senator Reagan is comfortable amending the language to state that non-substantive alterations are not included in the class 6 felony provision. Senator Reagan answered that is it up to the House Members to make changes.

Mr. Quezada said several statutory provisions give a clear message to voters that the PEVL is permanent but this bill changes the rules. Senator Reagan replied that the PEVL means permanent if someone avails themselves of the convenience it is supposed to provide. She is not trying to take away anyone's right to be on the list, which is why it is not automatic. A postcard is sent to individuals asking if they want to be on the list because many people do not realize they are on the PEVL. Education is needed to advise people they are signing up for the PEVL.

Mr. Quezada stated this bill is retroactive and it would be better to apply the bill from this point forward. Senator Reagan responded that the 2010 date is a starting point to make sure people are given four years versus two years. No one will be removed from the list for 2010 and 2012.

Mr. Hale asked if people who receive the notice will continue to be registered voters. He noted that there are seven Indian nations in his district where many people have limited education and receive permanent early voting ballots, but do not know how to read them. Education is needed, which is not included in SB1261. Senator Reagan answered that the bill will not affect voter registration and indicated that it is up to Mr. Hale to add an education component, but she does not believe it should be mandated.

Mr. Orr questioned if meetings were held with county recorders on this legislation. Senator Reagan replied in the affirmative, noting that the bill was suggested by all 15 county recorders to help communities update the list and keep people from being disenfranchised at the polls.

Guy Testini, Board President, Los Abogados Hispanic Bar Association, testified in opposition to SB1261, suggesting it is bad public policy. He said there is a problem with the current PEVL as evidenced by the burden of provisional ballots cast by voters on the PEVL who showed up at the polls on election day. There are more reasonable processes that could achieve the goal of this legislation that will present less of an infringement on the rights of individual voters, such as educating voters on the PEVL process.

Trey Williams, Legislative Liaison, Arizona Association of Counties, spoke in support of SB1261, noting that this is a bipartisan proposal from all 15 county recorders. Regarding the notice provision, after a voter has not voted by early ballot for four consecutive elections, the voter will be sent the notice. Voters who do not respond will be removed from the list, but it will not alter their voter registration or prevent individuals from casting a ballot in a polling place. Anyone who is removed from the PEVL or did not respond to the notice will be allowed to sign up again. Voters are already sent a notice 90 days before primary elections notifying voters they are on the PEVL and will receive an early ballot for the election with the address where it will be sent. The notice allows voters to opt out of the PEVL. He added that the voter registration form means the person swears and affirms the information if true, so is not advisable to alter the notice without the voter's consent.

Brendan Walsh, Executive Director, Central Arizonans for a Sustainable Economy, in opposition to SB1261, indicated that since 2010, nearly 80,000 Latino voters cast ballots through the PEVL process, which entirely transformed Latino voting in Arizona. There are many ways for people to unknowingly be removed from the PEVL; low-income voters move often and many are Independents that have two chances instead of four. Attempts are being made to educate voters but this bill attempts to short-circuit that process.

Mike Wilson, Policy Director, Border Action Network, opposed to SB1261, submitted that this bill is an attack on the inherent rights of people of color to vote and the voting process. It is race-based, which is part of the unwritten language.

Chairman Farnsworth asked what language in the bill relates to race and indicated that Mr. Wilson should not be attacking the sponsor with unfounded accusations. Mr. Wilson said he

is talking about perception of policy; the Committee owes it to the public to hear about perceptions, which is fateful to this process.

Chairman Farnsworth stated that the bill relates to maintaining the PEVL and has nothing to do with race.

Ann Rodriguez, Pima County Recorder, in support of SB1261, clarified that this is a bipartisan bill from county recorders on issues that need to be addressed. In 2006, the PEVL was created because constituents wanted to vote by mail. The 90-day notice was created to inform voters and allow address changes. Information is available on the Service Arizona website and the voter registration form. After two presidential elections and two gubernatorial elections, county recorders discussed an educational component, funding issues and people who claimed they were not on the PEVL, but are listed on the PEVL, and voters who did not vote. In response to questions, she related the following:

- This bill addresses the smaller pool of voters who have been receiving provisional ballots and the 90-day notice but are not voting.
- An educational option includes people who volunteer.
- In the next legislative session, county recorders will request money for the education component through TV and radio.

Ms. Rodriguez responded to further questions about why this legislation is being sponsored before educating voters, whether there is a prohibition against precincts providing training, how people who move are informed about removal from the PEVL and the cost to provide ballots to individuals. She acknowledged there will be a cost savings if the PEVL is updated, which could be used for educational purposes.

Leonard Clark, representing self, opposed to SB1261, related that this bill limits the right to free speech and many Native Americans will lose out if it passes.

Jen Sweeney, Deputy Director, Arizona Association of Counties, in support of SB1261, testified that the bill will save counties money and processing time so election results are obtained faster. Regarding the penalty, a voter registration form is a sworn statement that cannot be altered after it has been signed. If a form is received with missing information or it is difficult to read, there is other information on the form so the individual can be contacted by phone to request missing information. A training program is needed, but volunteers need to know that once the form is signed, it cannot be altered. This bill does not target any certain population of voters; it targets people who do not vote with an early ballot for primary and general elections.

In response to a question, Ms. Sweeney related that the bill as originally drafted was not retroactive to 2010; it was 2012. Groups opposed to the legislation in the Senate indicated that voters should have to miss four elections instead of two. It is not fair to have the four years apply to 2012, so the only way to include four years is to go back to 2010.

Mr. Orr asked if someone will remain on the PEVL if the individual does not vote in four elections but does vote in city and school board races. Ms Sweeney answered that the person would not be on the PEVL but could request to be placed back on the PEVL.

Faith Mendoza, student, representing self, in opposition to SB1261, testified that last year she volunteered to register voters and asked if they wanted to sign up for the PEVL or go to the polls. Many people chose the PEVL so she told them a ballot will be mailed to them to fill out and mail back. She related that many of the people who registered do not have much education or are not familiar with the voting process, so taking them off the PEVL does not make sense because the people are told it is permanent and the ballots will be sent via the mail. Many do not check or read their mail thinking it is junk mail. She added that she does not understand why it is necessary to go to this trouble to second-guess someone's vote.

Barbara Klein, President, League of Women Voters of Arizona, spoke in opposition to SB1261. She related that some voters in the state will be treated differently than others because the counties can choose to do this or not. People in Pima and Maricopa counties will be under one set of rules and other counties will be under different rules. This is an extra hoop for some voters to jump through, which does not treat everyone equally around the state.

A. J. LaFaro, representing self, related that he supports SB1261. Fifteen county recorders have done an excellent job in trying to understand what happened on November 6, 2012. The state and county elections departments bend over backwards to accommodate voters in Arizona. Each county should have the latitude to educate voters and residents as they see fit. This is an excellent bill that attempts to clean up the PEVL, which is not actually permanent. Any voter in the state who registers to vote needs to take responsibility.

Mr. Contreras commented that people who went to the polls and stated they should not have been on the PEVL should have received the 90-day notice. Mr. LaFaro responded that the 90-day notice is only distributed before primary elections so there could be a timing issue.

Jarrett Maupin, Reverend, Progressive Christian Coalition, opposed SB1261. He stated concern that people who were promised to be permanently on the PEVL to vote by mail will be obligated to come up with funds and resources to get to the voting polls, some of which are miles away from people in certain instances.

Jim Drake, Assistant Secretary of State, Secretary of State's Office, in support of SB1261, indicated that the Secretary of State's Office will utilize funding for education and work with Navajo and Apache Counties, as well as the rest of the state, to get the message out.

G. David DeLozier, Lawyer, representing self, spoke in opposition to SB1261 on behalf of various clients. He indicated that the people he represents are from every ethnic group who speak very little English. Most are citizens that are able to vote but some toss the cards in the trash. One client will probably no longer help fill out forms for people to register to vote because he is afraid he may be charged with a felony.

Karen Osborne, Elections Director, Maricopa County Elections, in support of SB1261, indicated that in Maricopa County, during the last election, there were 123,000 provisional ballots; 60,000 were unused. In reviewing this law, it was decided to make the bill retroactive to 2010. Every mailing in Maricopa County costs about \$3.10; in the general election the cost is more than \$6.00. The cost for mailing the unused provisional ballots could have been spent on educating voters. There are currently 1,000,270 people on the PEVL; this bill is a small part that county recorders are trying to address.

Mr. Quezada asked what is wrong with the current process and asked why people cannot be mailed a form giving the option to opt-out of the PEVL before passing this measure. Ms. Osborne answered that the 90-day notice in Maricopa County is already a unique color but voters continue to ignore it as much as any other materials. The letter states that an individual will be taken off the PEVL if it is not sent back in 30 days. This is something that has to be done to get the public's attention because voters do not respond.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1261 but did not speak:

Helen Purcell, County Recorder, Maricopa County
LeNora Fulton, County Recorder, Apache County
Johnathan Roes, Navajo County Election Director; Election Officers of Arizona
Patty Hansen, Elections Director, Coconino County
Amy Chan, State Election Director, Secretary of State
Sadie Jo Merlin, Recorder, Gila County
Wendy John, Recorder, Graham County
Berta Manuz, Recorder, Greenlee County
Shelly Baker, Recorder, La Paz County
Carol Meier, Recorder, Mohave County
Laurie Justman, Recorder, Navajo County
Virginia Ross, Recorder, Pinal County
Suzie Sainz, Recorder, Santa Cruz County
Leslie Hoffman, Recorder, Yavapai County
Robyn Pouquette, Recorder, Yuma County
Juanita Murray, Elections Director, Cochise County
Linda Eastlick, Director, Gila County Elections
Judy Dickerson, Elections Director, Graham County
Yvonne Pearson, Elections Director, Greenlee County
Donna Hale, Elections Director, La Paz County
Allen Temper, Elections Director, Mohave County
Brad Nelson, Elections Director, Pima County
Christine Rhodes, Recorder, Cochise County

Vice-Chairman Pierson announced the names of those who signed up in opposition to SB1261 but did not speak:

Sam Wercinski, Arizona Advocacy Network
Mike Waters, representing self
Joseph Seelye, Legislative Political Action Team Coordinator, Arizona Communications
Workers of America, representing self
Adriana Marinez, Intergovernmental Relations Coordinator, City of Tucson
Donald Begalke, representing self
David Carey, Arizona Disability Advocacy Coalition (AZDAC)
Peter Bengtson, representing self
Donna Kruck, Director of Advocacy Programs, Arizona Bridge to Independent Living
Doris Marie Provine, representing self

Rivko Knox, representing self
Timothy Schmaltz, Coordinator, Protecting Arizona's Family Coalition
Kevin Fugate, Finance Manager, representing self
Sandy Bahr, Conservation Director, Sierra Club Grand Canyon (Arizona) Chapter
Maribel Gloria, representing self
Eileana Felix, representing self
Ken Bierman, representing self
Diane Brown, representing self
Jennifer Loreda, Arizona Education Association
Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona
Emily Verdugo, representing self
Steven Moortel, Chicanos Por La Causa, Inc.
Molly McGovern, Service Employees International Union Arizona

Names of those who signed up as neutral on SB1261 but did not speak:
Aaron Kenney, representing self

Vice-Chairman Pierce moved that SB1261 do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 11).

SB1260 - elections; ballot measure petitions; amendments - DO PASS

Aaron Wonders, Assistant Research Analyst, explained that SB1260 makes changes to the initiative and referendum application procedures (Attachment 12).

Senator Michele Reagan, sponsor, advised that current law requires individuals to file a statement of organization at the same time an application for petition is obtained. SB1260 allows someone to file the statement of organization first and not at the same time as the application for petition. A citizens' group asked a city clerk how many signatures are needed to place something on the ballot and were told to "figure it out." The group tried, but the math was wrong, and the signatures were tossed out. Most cities post the information on websites and it is available at the Secretary of State's Office; SB1260 requires all cities to provide the same information.

Jackson Moll, Deputy Director, Municipal Affairs, Home Builders Association of Central Arizona, in support of SB1260, indicated that last year, the Association was involved in an initiative effort and noticed there were some ambiguities and inconsistencies in current law regarding initiative and referendums at the local level, which this bill addresses. He reviewed the provisions in the bill. In response to a question, he indicated that the bill applies to the City of Glendale.

Leonard Clark, representing self, in opposition to SB1260, indicated that it is good this is being done for cities and he hopes it will also apply to counties; if so, he supports the bill.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1260 but did not speak:

A. J. LaFaro, representing self
Jim Drake, Assistant Secretary of State, Secretary of State's Office

Amy Chan, State Election Director, Secretary of State's Office
Jen Sweeney, Deputy Director, Arizona Association of Counties
Karen Osborne, Elections Director, Maricopa County
Sydney Hay, Silver Bullet

Vice-Chairman Pierce announced the names of those who signed up in opposition to B1260 but did not speak:

Leeann Wieser, President, Arizona Federation of Teachers
Steven Moortel, Chicanos Por La Causa, Inc.

Vice-Chairman Pierce moved that SB1260 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 13).

SCR1009 - inmate labor and services - DO PASS

Paige Carr, Majority Intern, explained that SCR1009 declares the Legislature's support of the use of inmate labor and services throughout the state (Attachment 14).

Leonard Clark, representing self, neutral on SCR1009, stated it is good for prisoners but he is concerned because inmates are used in Communist Red China to undercut workers in America. He hopes this legislation only extends to state functions and not private companies and corporations.

Vice-Chairman Pearce moved that SCR1009 do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 15).

SB1312 - tobacco product manufacturers; cigarette machines - DO PASS

Magdalena Jorquez, Majority Research Analyst, explained that SB1312 amends the sections of law relating to the tobacco product manufacturers' escrow account and establishes the possession and use of a tobacco product rolling vending machine as a class 6 felony (Attachment 16).

Vice-Chairman Pierce announced the names of those who signed up in support of SB1312 but did not speak:

Don Isaacson, Reynolds American, Inc.
John Mangum, Altria; Arizona Food Marketing Alliance
Kimberly MacEachern, Staff Attorney, Arizona Prosecuting Attorneys' Advisory Council,
representing self
Art Harding, Legislative Affairs Director, Attorney General's Office
Doug Lau, Attorney General's Office

Vice-Chairman Pierce moved that SB1312 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 17).

SB1405 - adoption petitions - DO PASS

Aaron Wonders, Assistant Research Analyst, explained that SB1405 is an emergency measure that directs the court to grant a petition to adopt a child under certain circumstances (Attachment 18).

Senator Rick Murphy, sponsor, related that he discovered, as a foster and adoptive parent, that many parents who do not have a valid reason to appeal do so anyway; 95 percent are summarily dismissed and less than 5 percent are remanded to trial court where very few are overturned. The goal of the bill is to prevent delays for adoptions, relieve burdens on the system and provide permanency for the children.

In response to questions, he advised that if the appeal is successful, the adoption will be overturned, and only happens occasionally. The reason the bill does not say the court *may* grant the petition rather than *shall* is that the vast majority of courts do not have that discretion. The Indian Child Welfare Act (ICWA) relates to situations involving Indian children, particularly if the adoptive parents are not Indian. In these situations, there is much scrutiny because it is a fairly unusual occurrence. Overturning that type of adoption is rare because of the scrutiny.

Mr. Hale asked how the bill accommodates failure to provide notice to tribes, which is required under ICWA. Senator Murphy responded that if there is some failure to follow the correct procedures up front, the placement will be rescrutinized to determine if there is an Indian placement that should have been considered. He has two Indian foster children and, in both cases, there was extra scrutiny up front and the tribes were heavily involved. If there is a severance at that point, the tribe's lawyers can intervene.

Mr. Hale said he believes it is the responsibility of the state to provide notice to tribes, to which Senator Murphy agreed.

Vice-Chairman Pierce moved that SB1405 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 19).

Without objection, the meeting adjourned at 12:51 p.m.

Linda Taylor, Committee Secretary
April 17, 2013

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