

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

**COMMITTEE ON JUDICIARY**

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

Chairman Farnsworth called the meeting to order at 8:09 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
Mrs. Goodale	Mr. Quezada	

**Members Absent**

None

**Committee Action**

SB1178 – DPA S/E (4-2-0-2)	SB1335 – DP (8-0-0-0)
SB1262 – DP (5-2-0-1)	SB1346 – DPA S/E (4-3-0-1)
SB1263 – DP (4-3-0-1)	SB1406 – DP (7-0-0-1)
SB1264 – DP (4-2-0-2)	SB1413 – <del>DPA</del> FAILED (3-4-0-1)
SB1291 – DP (7-1-0-0)	SB1454 – DP (8-0-0-0)
SB1266 – DP (7-0-0-1)	SCR1019 – DP (5-2-0-1)

**CONSIDERATION OF BILLS**

**SB1291 – fire districts; board meetings; attendance(now: duty to report abuse; exception) – DO PASS**

Paige Carr, Majority Intern, explained that SB1291 makes multiple changes to mandatory reporting requirements and alters the reportable offense definition to include the viewing of a minor. Additionally, as session law, it allows a school to expunge a report contained in a student's school file under specified conditions (Attachment 1).

Senator Gail Griffin, sponsor, explained that this legislation is in response to a constituent issue and will address normal playground activity.

**Vice-Chairman Pierce moved that SB1291 do pass. The motion carried by a roll call vote of 7-1-0-0 (Attachment 2).**

**SB1454 – campaign finance; in-kind contributions; disclosures – DO PASS**

Aaron Wonders, Majority Assistant Research Analyst, explained that SB1454 expands the definition of *in-kind contribution* and prohibits candidates from using clean elections monies to purchase certain items (Attachment 3).

Senator Kimberly Yee, sponsor, explained that SB1454 addresses proper disclosure in a campaign-related situation in which personal business logos are used and, if for a clean elections candidate, tax dollars would then be used to further that personal business.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1454 but did not speak:

Sydney Hay, Silver Bullet

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

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

**Vice-Chairman Pierce moved that SB1454 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 4).**

**SB1335 – secretary of state; committee prohibition(now: filing officer; campaign committee; prohibition) – DO PASS**

Arianne Kerr, Democratic Research Intern, explained that SB1335 prohibits filing officers or their employees from serving as an officer or honorary officer for a political committee if the filing officer is the prescribed filing officer for that campaign (Attachment 5).

Senator Robert Meza, sponsor, explained that this bill had bipartisan support in the Senate.

Mr. Allen asked what problem is being solved. Senator Meza stated that the purpose is to prevent the appearance of impropriety.

**Vice-Chairman Pierce moved that SB1335 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 6).**

**SB1346 – dangerous drugs; analogues; penalties – DO PASS AMENDED S/E**  
**S/E: class action; reform**

Magdalena Jorquez, Majority Research Analyst, explained that the proposed strike-everything amendment to SB1346 adds an article of law governing class actions and delineates court requirements (Attachment 7).

Gretchen Conger, Arizona Chamber of Commerce and Industry, testified in support of SB1346 which seeks to ensure Arizona's continued development of a business-friendly civil justice environment. The legislation does not remove the ability to file class action lawsuits in Arizona; it applies structure to ensure that the class lawsuit is legitimate.

Ms. Conger addressed Mr. Hale's question about the procedure for certifying a class by explaining that SB1346 merely allows the defendant to appeal early on regarding the legitimacy of the class.

Barry Aarons, Arizona Trial Lawyers Association, appeared against SB1346 and deferred to William Fischbach for further testimony.

William Fischbach, representing self, explained his opposition to SB1346 which will affect speedy recovery through class action. He described past securities fraud litigation in which seniors lost their savings then had to wait for years to recoup their losses. He added that SB1346 will place an undue burden on the appellate system.

Discussion ensued regarding settling versus litigating of class action lawsuits and the Walmart sex discrimination lawsuit in which the class was repeatedly certified but the decision was reversed unanimously by the Supreme Court.

Mr. Fischbach pointed out that SB1346 will discourage a judge from certifying a class; discussion ensued. Mr. Hale pointed out that an attorney can move for class action at any point and that discovery may lead to class certification.

John Mangum, Arizona Chamber of Commerce, testified in favor of SB1346. He stated that it will not pose an undue burden on the court to end a case early.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1346 but did not speak:

Jason Bagley, Government Affairs Manager, Intel Corporation

Don Isaacson, State Farm Insurance; Pfizer

James Stabler, SCF Arizona

Heather Bernacki Wilkey, Government Affairs, East Valley Chambers of Commerce Alliance

Norman Moore, Pfizer; State Farm Insurance

Joseph Abate, PhRMA

Farrell Quinlan, National Federation of Independent Business

Ellen Poole, USAA

Wendy Briggs, American Insurance Association

Michael Liburdi, representing self

Vice-Chairman Pierce announced the names of those who signed up in opposition to SB1346 but did not speak:

Geoffrey Trachtenberg, Arizona Trial Lawyers Association

Levi Bolton, Phoenix Law Enforcement Association; Arizona Police Association

Mike Williams, Arizona Police Association; Phoenix Law Enforcement

**Vice-Chairman Pierce moved that SB1346 do pass.**

**Vice-Chairman Pierce moved that the Farnsworth two-page strike-everything amendment to SB1346 dated 3/19/13 (Attachment 8) be adopted. The motion carried.**

**Vice-Chairman Pierce moved that SB1346 as amended do pass. The motion carried by a roll call vote of 4-3-0-1 (Attachment 9).**

**SB1266 – illegal dumping; penalties – DO PASS**

Aaron Wonders, Majority Assistant Research Analyst, explained that SB1266 modifies requirements relating to illegal dumping in a city, town or county and establishes a new penalty for persons committing certain criminal littering or polluting offenses (Attachment 10).

Chairman Farnsworth stated that he will offer a Floor amendment to increase the penalty to a reckless standard to avoid a penalty for accidental littering such as a garbage can blowing over.

Senator Barbara McGuire, sponsor, stated that this legislation is a work in progress and she deferred to William Dunn to testify further.

William Dunn, Winkleman Natural Resource Conservation District, testified in support of SB1266. He explained that it will provide adequate penalties for illegal dumping and gives law enforcement the tools needed to prosecute.

Mr. Allen asked what problem is being addressed. Mr. Dunn described a problem with state land lessees who do not clean up the leased property.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1266 but did not speak:

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

Vice-Chairman Pierce announced the names of those who signed up as neutral on SB1266 but did not speak:

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

**Vice-Chairman Pierce moved that SB1266 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 11).**

**SB1406 – parental rights; termination; determinations – DO PASS**

Paige Carr, Majority Intern, explained that SB1406, as an emergency measure, modifies evidence sufficient to justify the termination of parental rights, certain court determinations and timing of permanency hearings, depending on the child's age (Attachment 12).

Chairman Farnsworth announced the names of those who signed up in support of SB1406 but did not speak:

Amy Love, Arizona Judicial Council

**Vice-Chairman Pierce moved that SB1406 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 13).**

**SB1413 – appeals; postconviction relief – DO PASS AMENDED FAILED**

Magdalena Jorquez, Majority Research Analyst, explained that SB1413 makes several changes to the procedural requirements governing post-conviction relief (PCR) proceedings in capital cases (Attachment 14).

Ms. Jorquez explained that the Farnsworth six-line amendment (Attachment 15) adds an applicability clause.

Kent Cattani, Solicitor General, Attorney General's Office, testified in support of SB1413 which will move up the post-conviction proceeding in capital cases to right after trial rather than waiting until the completion of direct appeal, which can be years after the trial.

Mr. Cattani stated that SB1413 has been proposed for two reasons:

1. If defendants raise *ineffective assistance of trial counsel* on direct appeal, it can be used as a basis to excuse a procedural default.
2. It makes more sense to have an evidentiary hearing sooner than later when the focus can be on what the defense attorney did or did not do, e.g. defendant's mental health assessment.

Mr. Allen asked why this procedure is not used for all criminal appeals. Mr. Cattani replied that it could be used but that this legislation is trying to correct death penalty concerns.

James Logan, Maricopa County, explained his opposition to SB1413, saying that it will waste a lot of taxpayer money to save a little money. Appeals are cheap (\$30,000) when compared to PCRs which can cost up to \$500,000. He reiterated that SB1413 will waste county money to save federal money and it will delay the whole system waiting for PCRs. He stated that the burden of proof is on the defendant in the PCR.

Mr. Quezada asked if this is a procedural change and if it requires statute. Mr. Logan replied that this is a procedural change with no changes to evidence or functions and does not require a statute because Supreme Court rules should cover this.

John Moody, Maricopa County, testified against SB1413 on the basis of cost, describing the county resources which must be provided for both the prosecution and defense in PCR proceedings.

Discussion ensued regarding the associated costs, the effect of delaying the appeal, and the effect on the length of the entire process of SB1413.

Mr. Cattani stated that SB1413 will help defendants whose attorneys have raised all appeals; he alluded to the Victim's Bill of Rights and stated that this procedure should be in statute rather than using rules to manage it.

Jerry Landau, Legislative Liaison, Arizona Supreme Court, appeared as neutral on SB1413. He spoke to the Farnsworth amendment's applicability clause, which he supports because it clarifies legislative intent by stating that the bill affects those whose appeal is filed on or after the effective date.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1413 but did not speak:

Art Harding, Legislative Affairs Director, Arizona Attorney General's Office

Vice-Chairman Pierce announced the names of those who signed up in opposition to SB1413 but did not speak:

Kristin Cipolla, County Supervisors Association

James Elmo, Director of Public Defense Services, Maricopa County

**Vice-Chairman Pierce moved that SB1413 do pass.**

**Vice-Chairman Pierce moved that the Farnsworth six-line amendment dated 3/20/13 (Attachment 15) be adopted. The motion carried.**

**Vice-Chairman Pierce moved that SB1413 as amended do pass. The motion failed by a roll call vote of 3-4-0-1 (Attachment 16).**

**SB1178 – ASRS; long-term disability – DO PASS AMENDED S/E**  
**S/E: exercise of religion; definition**

Aaron Wonders, Majority Assistant Research Analyst, explained that the proposed strike-everything amendment to SB1178 amends the definition of *exercise of religion* as it relates to the free exercise of religion and modifies legal proceedings for a person whose exercise of religion is burdened by state action (Attachment 17).

Senator Steve Yarbrough, sponsor, provided the background to SB1178 and explained that it updates and improves the language of Arizona's Religious Freedom Restoration Act (RFRA) and ensures that Arizona maintains the highest level of protection for free exercise of religion.

Senator Yarbrough assured the Members that SB1178 has nothing to do with the recent Phoenix ordinance regarding nondiscrimination.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1178 but did not speak:

Josh Kredit, Center for Arizona Policy

Ron Johnson, Arizona Catholic Conference

Vice-Chairman Pierce announced the names of those who signed up in opposition to SB1178 but did not speak:

Linda Brown, Secular Coalition for Arizona

Joseph Seelye, representing self

**Vice-Chairman Pierce moved that SB1178 do pass.**

**Vice-Chairman Pierce moved that the Farnsworth three-page strike-everything amendment to SB1178 dated 3/19/13 (Attachment 18) be adopted. The motion carried.**

**Vice-Chairman Pierce moved that SB1178 as amended do pass. The motion carried by a roll call vote of 4-2-0-2 (Attachment 19).**

**SB1264 – initiative, referendum and recall – DO PASS**

Magdalena Jorquez, Majority Research Analyst, explained that SB1264 makes several changes to the procedural requirements governing referendum, initiative and recall applications and petitions (Attachment 20).

Senator Michele Reagan, sponsor, explained that SB1264 will update current statutes and ensure consistency across the different types of elections. She added that SB1264 focuses on *strict compliance* when court cases are necessary, while current statutes use *substantial compliance* which allows judges to make decisions rather than the voters.

Vice-Chairman Pierce assumed the Chair.

Mr. Quezada asked why poll workers' party affiliation need not be the same as it was in the last election. Senator Reagan indicated that there is difficulty finding enough poll workers as it is and this will allow more people to work on election day. Discussion ensued.

Mr. Quezada asked about the change in the date of recall elections from 90 days to 120 days. Senator Reagan replied that Arizona's system is not equipped to handle a statewide recall and the extra time will assist the Secretary of State's Office.

Chairman Farnsworth resumed the Chair.

Mr. Orr asked if the Secretary of State and the elections officers are supportive of these changes. Senator Reagan replied that, in the stakeholder meetings, they were supportive.

Timothy La Sota, Silver Bullet, testified in opposition to SB1264 because *strict compliance* is a standard that is impossible to achieve for initiatives and referenda; this will result in fewer cases going to the voters because minor errors on the petitions can result in the documents being thrown out.

Chairman Farnsworth asked if limitations are appropriate in this process. Mr. La Sota replied in the affirmative, but reiterated his concern that the voters' rights should not be dependent upon whether or not an ambiguous government document has been filled out properly. Mr. La Sota clarified that his concerns were not about substance but about the form of the document.

Jim Drake, Deputy Secretary of State, Secretary of State's Office, testified in support of SB1264 but expressed concern with verbiage on page 9, lines 9 through 13, which imposes an affirmative duty on the Secretary of State to look beyond the petitions to a person's notary status.

Michael Liburdi, representing self, stated his support for SB1264 and describe instances when *substantial compliance* has been a disaster over the last several years.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1264 but did not speak:

Paul Ryan, representing self

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

Gretchen Conger, Arizona Chamber of Commerce and Industry

Vice-Chairman Pierce announced the names of those who signed up in opposition to SB1264 but did not speak:

Sydney Hay, Silver Bullet

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

Kari Nienstedt, Arizona State Director, The Humane Society of the United States

Karen Michael, Animal Defense League of Arizona

Donna Kruck, Director of Advocacy Programs, Arizona Bridge to Independent Living

**Vice-Chairman Pierce moved that SB1264 do pass. The motion carried by a roll call vote of 4-2-0-2 (Attachment 21).**

### **SCR1019 – initiative, referendum; signature allocation – DO PASS**

Paige Carr, Majority Intern, explained that SCR1019 requires, subject to voter approval, initiative or referendum petitions to contain signatures from at least five different counties and at least 25 percent of the minimum number of signatures to be collected from counties other than the two most populous (Attachment 22).

Senator Michele Reagan, sponsor, explained that SCR1019 will involve more residents of the state than just those from Maricopa and Pima counties which have 75 percent of the population. She stressed that rural residents are in favor of this legislation and that the formula used mirrors the population distribution in Arizona.

Vice-Chairman Pierce assumed the Chair.

Trey Williams, Legislative Liaison, Arizona Association of Counties, testified in support of SCR1019 which will require statewide initiative petitions to come from at least five different counties and for 25 percent of those signatures to come from counties other than Maricopa and Pima. This will give everyone in the state an equitable voice in getting statewide petitions on the ballot.

Chairman Farnsworth resumed the Chair.

Vice-Chairman Pierce announced the names of those who signed up in support of SCR1019 but did not speak:

Karen Osborne, Elections Director, Maricopa County Elections

Jen Sweeney, Deputy Director, Arizona Association of Counties

Johnathan Roes, Navajo County Election Director, Election Officers of Arizona

Vice-Chairman Pierce announced the names of those who signed up in opposition to SCR1019 but did not speak:

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

Kari Nienstedt, Arizona State Director, The Humane Society of the United States  
Karen Michael, Animal Defense League of Arizona

**Vice-Chairman Pierce moved that SCR1019 do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 23).**

**SB1262 – campaign finance limits; recall election – DO PASS**

Aaron Wonders, Majority Assistant Research Analyst, explained that SB1262 includes the period in which a recall petition is circulated in the definition of a recall election and applies campaign contribution limits to recall elections (Attachment 24).

Senator Michele Reagan, sponsor, explained that SB1262 intends to accomplish three things:

1. clarify contribution limits
2. clarify that money can be transferred back and forth
3. define when a recall election starts

Mr. Quezada expressed concern that SB1262 will set campaign limits on individuals trying to do the recall. Senator Reagan agreed, stating that the language may inadvertently do that and it was never her intention; she stated her hope that this will be fixed via a House Floor amendment.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1262 but did not speak:

Paul Ryan, representing self

Michael Liburdi, representing self

**Vice-Chairman Pierce moved that SB1262 do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 25).**

**SB1263 – paid circulators; statewide measures; recall – DO PASS**

Magdalena Jorquez, Majority Research Analyst, explained that SB1263 requires any paid circulator who intends to circulate candidate, ballot measure or recall petitions to register with the Secretary of State before circulating a petition and delineates those requirements (Attachment 26).

Senator Michele Reagan, sponsor, explained that SB1263 intends to curb abuses by paid petition circulators. She stated that legitimate signatures are disenfranchised when the circulator is not registered and that SB1263 will also place an emphasis on companies to vet their own employees who are gathering signatures.

Sydney Hay, Silver Bullet, testified in opposition to SB1263 because of her concern that it will place a tremendous burden on grassroots individuals collecting signatures for referenda. She stated that she agrees with Senator Reagan's intent, but stressed that not all circulating groups are companies.

Paul Ryan, representing self, expressed his support for SB1263. He relayed that Arizona has an overall signature failure rate of 40 percent according to the Secretary of State's office. SB1263 is

intended to reverse that by vetting folks who collect signatures. He reminded the Members that paid collectors are motivated by money, whereas volunteers are motivated by the issues. He added that SB1263 will increase transparency in the process by publishing a list of paid circulators on the Secretary of State's website.

Vice-Chairman Pierce announced the names of those who signed up in support of SB1263 but did not speak:

Rebecca Baker, Deputy County Attorney, Maricopa County Attorney's Office  
Michael Liburdi, representing self

Vice-Chairman Pierce announced the names of those who signed up in opposition to SB1263 but did not speak:

Kari Nienstedt, Arizona State Director, The Humane Society of the United States  
Sandy Bahr, Conservation Director, Sierra Club, Grand Canyon Chapter

Vice-Chairman Pierce announced the names of those who signed up as neutral on SB1263 but did not speak:

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

**Vice-Chairman Pierce moved that SB1263 do pass. The motion carried by a roll call vote of 4-3-0-1 (Attachment 27).**

Without objection, the meeting adjourned at 10:39 a.m.

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Jane Dooley, Committee Secretary  
May 1, 2013

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