

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

COMMITTEE ON JUDICIARY

Report of Regular Meeting
Wednesday, March 11, 2015
House Hearing Room 3 -- 10:00 a.m.

Convened 10:05 a.m.

Recessed

Reconvened

Adjourned 10:54 a.m.

Members Present

Mr. Friese
Mr. Hale
Mr. Kern
Mr. Mesnard
Mr. Borrelli, Vice-Chairman
Mr. Farnsworth, Chairman

Members Absent

Request to Speak

Report – Attachment 1

Presentations

Name

NONE

Organization

Attachments (Handouts)

Committee Action

Bill

Action

Vote

**Attachments (Summaries,
Amendments, Roll Call)**

SB1048	DP	6-0-0-0	2, 3
SB1063	DP	4-2-0-0	4, 5
SB1094	DP	4-2-0-0	6, 7
SB1145	DP	6-0-0-0	8, 9, 10
SB1179	DP	6-0-0-0	11, 12
SB1295	DP	6-0-0-0	13, 14
SB1316	NOT FIRST READ AND ASSIGNED		


Jan Mullenau, Chairman Assistant
Wednesday, March 11, 2015

(Original attachments on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)

Information Registered on the Request to Speak System

House Judiciary (3/11/2015)

SB1316, subpoena compliance; copying; clerical costs

Support:

Garrick Taylor, Arizona Chamber Of Commerce And Industry

SB1048, vexatious litigants; fees; costs; designation

Support:

Garrick Taylor, Arizona Chamber Of Commerce And Industry

SB1063, obstructing a highway; public thoroughfare

Oppose:

Leonard Clark Clark, representing self

SB1094, aggressive solicitation; offense

Testified in support:

Jeff Taylor, THE SALVATION ARMY

Oppose:

Alessandra Soler, ACLU Of Arizona ; Joan Serviss, Executive Director, AZ COALITION TO END HOMELESSNESS;
Leonard Clark Clark, representing self

All Comments:

Alessandra Soler, ACLU Of Arizona : Prohibiting only speech intended to solicit is a content-based regulation on speech. It may create large zones where solicitation is banned. The larger these zones, the less likely a court is to find the restriction reasonable.; Joan Serviss, AZ COALITION TO END HOMELESSNESS: This bill disproportionately targets & criminally punishes people experiencing homelessness. Criminalization is expensive & least effective way of addressing homelessness. Plus several cities in AZ have enacted ordinances prohibiting panhandling.

SB1145, restoration to competency; state costs

Testified in support:

Daniel Bogert, COUNTY SUPERVISORS ASSN OF AZ

Support:

Megan Kintner, Arizona Association Of Counties; Todd Madeksza, Director of Legislative Affairs, The County Supervisors Association

SB1179, criminal damage; gangs; criminal syndicates**Testified in support:**

Levi Bolton, AZ Police Association

Support:

luis ebratt, Combined Law Enforcement Associations Of Arizona; Mike Williams, AZ Police Association, PHOENIX LAW ENFORCEMENT ASSN; Jason Winsky, Combined Law Enforcement Associations Of Arizona; Ginnie Ann Sumner, representing self; James Mann, FRATERNAL ORDER OF POLICE (AZ STATE LODGE)

All Comments:

Mike Williams, AZ Police Association, PHOENIX LAW ENFORCEMENT ASSN: I would like to allocate my time to Levi Bolton.; Ginnie Ann Sumner, Self: Citizens Law Enforcement Anti-Graffiti Initiative

SB1295, fingerprinting; judgment of guilt; records**Testified in support:**

Andrew LeFevre, Arizona Criminal Justice Commission

Support:

Kimberly MacEachern, AZ PROSECUTING ATTORNEYS ADVISORY COUNCIL; kathleen mayer, Pima County Attorney's Office



HOUSE OF REPRESENTATIVES

SB 1048

vexatious litigants; fees; costs; designation

Sponsor: Senator Kavanagh

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

SB 1048 prohibits the court from waiving fees and costs for civil actions filed by a pro se vexatious litigant, except in domestic relation actions. Allows a party to amend a request to designate a pro se litigant a vexatious litigant.

HISTORY

Laws 1994, Chapter 358, § 1 authorizes the court to extend the time for paying any court fees and costs required by law or relieve against a default caused by nonpayment of a fee with the time provided by law, but specifies that no fees paid shall be refunded. The court is required to grant an application for deferral of court fees and costs if the applicant establishes by affidavit, including supporting documentation, that the applicant either: 1) is receiving temporary assistance for needy families (TANF) or food stamps; 2) is receiving supplemental security income; or 3) has income that is insufficient or barely sufficient to meet the daily essentials of life and that includes no allotment that could be budgeted for the fees and costs that are required to gain access to the court. Statute specifies that the court shall waive fees or costs when presented with proof that the applicant is permanently unable to pay. Current law specifies that a waiver of court fees or costs shall not be granted for class actions, domestic relation actions filed by an applicant who is incarcerated as a result of a felony conviction in an out-of-state correctional facility or in a jail waiting to be transported to a state department of corrections facility.

Arizona Revised Statutes § 12-3201 was added by Laws 2014, Chapter 41, § 1. This statute specifies that in a noncriminal case, at the request of a party or on the court's own motion, the presiding judge of the superior court or a judge designated by the presiding judge of the superior court may designate a pro se litigant a vexatious litigant. Statute declares that a pro se litigant is a vexatious litigant if the court finds the pro se litigant engaged in vexatious conduct. The prescribed designation prohibits the person from filing a new pleading, motion or other document without prior permission of the court. Statute defines *vexatious conduct*.

PROVISIONS

1. Prohibits the court from granting a waiver of court fees or costs in civil actions filed by a designated vexatious litigant unless the action is for a dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support.
2. Requires the court to order an applicant to pay deferred or waived court fees and costs if an applicant is found to be a vexatious litigant during the pendency of the action.
3. Allows a requesting party to make an amended request at any time if the court either:

SB 1048

- a. Determined that the party is not a vexatious litigant and the requesting party has new information or evidence that is relevant to the determination, even if there is not a pending case in the court.
 - b. Did not rule on the original request during the pendency of the action, even if there is not a pending case in the court.
4. Makes a technical change.
 5. Provides a delayed effective date.

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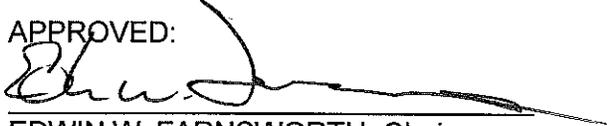
ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. SB 1048

DATE March 11, 2015 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		6	0	0	0

APPROVED:



EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman


 COMMITTEE SECRETARY

ATTACHMENT 3



HOUSE OF REPRESENTATIVES

SB 1063

obstructing a highway; public thoroughfare

Sponsor: Senator Kavanagh

X Committee on Judiciary
Committee on Government & Higher Education
Caucus and COW
House Engrossed

OVERVIEW

SB 1063 prescribes a Class 3 misdemeanor to pedestrians intentionally activating the pedestrian signal button on a highway or public thoroughfare if the person's reason is to both stop the passage of traffic on the highway or thoroughfare and to solicit money or a donation.

HISTORY

Arizona Revised Statutes § 13-2906 was added by Laws 1977, Chapter 142, § 91. Current statute prescribes a Class 3 misdemeanor to a person who obstructs a highway or other public thoroughfare if, having no legal privilege to do so, such person, alone or with other persons, recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

PROVISIONS

1. Prescribes a Class 3 misdemeanor to pedestrians intentionally activating the pedestrian signal button on a highway or public thoroughfare if the person's reason is to both stop the passage of traffic on the highway or thoroughfare and to solicit money or a donation.

ARIZONA HOUSE OF REPRESENTATIVES
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ROLL CALL VOTE

COMMITTEE ON _____ JUDICIARY _____ BILL NO. SB 1063

DATE March 11, 2015 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale			✓		
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	2	0	0

APPROVED:



EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman


 COMMITTEE SECRETARY

ATTACHMENT 5



HOUSE OF REPRESENTATIVES

SB 1094

aggressive solicitation; offense

Sponsor: Senator Kavanagh

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

SB 1094 establishes the offense of aggressive solicitation and revises the offense of loitering by removing a provision making it unlawful for persons to beg in a public place.

HISTORY

Arizona Revised Statutes § 13-2905 was added by Laws 1977, Chapter 142, § 91. The law specifies that a person commits loitering if intentionally: 1) is present in a public place and in an offensive manner or in a manner likely to disturb the public peace solicits another person to engage in any sexual offense; 2) is present in a transportation facility and after a reasonable request to cease or unless specifically authorized to do so solicits or engages in any business, trade or commercial transactions involving the sale of merchandise or services; 3) is present in a public place to beg, unless specifically authorized by law; 4) is present in a public place, unless specifically authorized by law, to gamble with any cards, dice or other similar gambling devices; 5) is present in or about a school, college or university building or grounds after a reasonable request to leave and either does not have any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there or does not have written permission to be there from anyone authorized to grant permission; 6) except as provided in section 13-3969, subsection A, solicits bail bond business inside a court building or immediately around or near the entrance of a county or city jail.

PROVISIONS

1. Revises the offense of loitering by removing a provision making it unlawful for persons to be in a public place to beg.
2. Establishes the offense of aggressive solicitation by making it unlawful for a person to solicit any money or other thing of value or solicit the sale of goods or services:
 - a. Within 15 feet of any bank entrance or exit or any automated teller machine if the person does not have permission of the bank or the proprietor of the automated teller machine to be there.
 - b. In a public area by:
 - i. Intentionally, knowingly or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent.
 - ii. Approaching or following the person being solicited in a manner that is intended or likely to cause a reasonable person to fear imminent bodily harm to oneself or another damage to or loss of property or that is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

SB 1094

- iii. Continuing to solicit the person after the person being solicited has clearly communicated a request that the solicitation stop.
 - iv. Intentionally, knowingly or recklessly obstructing the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation. This subdivision does not apply to acts that are authorized as an exercise of one's constitutional right to picket or protest.
 - v. Intentionally, knowingly or recklessly using obscene or abusive language or gestures that are intended or likely to cause a reasonable person to fear imminent bodily harm or that are reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
3. Prescribes a petty offense for the offense of aggressive solicitation.
 4. Defines *automated teller machine, bank, public area* and *solicit*.

ARIZONA HOUSE OF REPRESENTATIVES
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ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. SB 1094

DATE March 11, 2015 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese			✓		
Mr. Hale			✓		
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		4	2	0	0

APPROVED:

 EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman


 COMMITTEE SECRETARY

ATTACHMENT 7



HOUSE OF REPRESENTATIVES

SB 1145

restoration to competency; state costs

Sponsors: Senator Griffin

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

SB 1145 requires the state to pay the competency restoration treatment costs of a defendant who has been convicted of an offense, but who is not competent to be sentenced.

HISTORY

Arizona Revised Statutes (A.R.S.) § 13-4512 was added by Laws 1995, Chapter 250, § 3. The law specifies that the court may order a defendant to undergo out of custody competency restoration treatment. If the court determines that confinement is necessary for treatment, the court shall commit the defendant for competency restoration treatment to the competency restoration treatment program designated by the county board of supervisors. If the county board of supervisors has not designated a program to provide competency restoration treatment, the court may commit the defendant for competency restoration treatment to the Arizona State Hospital (ASH), subject to funding appropriated by the Legislature to ASH for inpatient competency restoration treatment services, or to any other facility that is approved by the court.

Statute requires a defendant to pay the cost of inpatient, in custody competency restoration treatment unless otherwise ordered by the court. If the court finds the defendant is unable to pay all or a portion of the costs of inpatient, in custody treatment, the state shall pay the costs of inpatient, in custody competency restoration treatment at ASH until 1) seven days, excluding Saturdays, Sundays or other legal holidays, after the hospital submits a report to the court stating that the defendant has regained competency or that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency; 2) the treatment order expires; 3) seven days, excluding Saturdays, Sundays or other legal holidays, after the charges are dismissed. If the competency proceedings arise out of a municipal court proceeding, the county or city shall pay the hospital costs that are incurred after the same period time listed above, and shall also pay for the costs of inpatient, in custody competency restoration treatment in court approved programs that are not programs at ASH.

PROVISIONS

1. Requires a city or county to reimburse the Department of Health Services (DHS) for 100 percent of the costs of a defendant's inpatient, in custody competency restoration treatment for FY 2016.
2. Requires the state to pay the competency restoration treatment costs of a defendant who has been convicted of an offense, but who is not competent to be sentenced.
3. Requires DHS to deposit reimbursements into the ASH fund.

SB 1145

4. Specifies that cities and counties must make the reimbursements within 30 days after request by DHS.
5. Specifies that the superintendent of ASH shall notify the state treasurer if a city or county does not make the reimbursement.
6. Directs the state treasurer to withhold the amount owed, including additional interest from any transaction privilege tax distributions to the city or county.
7. Requires monies to be deposited in the ASH fund.
8. Excludes reimbursements from the county expenditure limitations.

Restoration to Competency (RTC)
Talking Points

Proposal:

Amend statute to clarify that the state is responsible for costs associated with the Restoration to Competency (RTC) treatment of an individual, if unique circumstances arise resulting in an individual being remanded for RTC treatment post-conviction but still in the pre-sentencing or re-sentencing stage of the criminal justice system.

Restoration to Competency (RTC) Program:

- The RTC program provides psychiatric treatment and education services to persons deemed incompetent to stand trial
- If it is believed the defendant has no substantial probability to regain competency within 21 months of the date found incompetent, the court may:
 - Remand the defendant to the Department of Health Services to begin civil commitment proceedings
 - Appoint a guardian to care for and report on the defendant, or
 - Release the defendant from custody and drop the charges
- Since FY10, counties have been responsible for 100 percent of RTC costs

Ramon Martinez-Villareal Case:

- Ramon Martinez-Villareal, a Mexican National, (approx. 67-68 years of age) burglarized the home of former Arizona Assistant Attorney General Sarah Bailey in Tumacacori, AZ taking ammunition and several high caliber rifles during the weekend of October 8-10, 1982
- Soon afterwards, Mr. Martinez-Villareal and an accomplice used these weapons in the murder of a Tubac rancher and his employee (James McCrew & Fernando Babichi)
- Mr. Martinez-Villareal was arrested north of Tubac, AZ after returning from Mexico and was tried and convicted of two counts of first degree murder and one count of first degree burglary on April 27, 1983 and subsequently sentenced to death on May 20, 1983
- In July of 2001, Mr. Martinez-Villareal filed a Post-Conviction Relief petition in Santa Cruz County, claiming he has an intellectual disability and that his execution is prohibited under the Eighth Amendment
- In 2002, the U.S. Supreme Court decision in *Atkins v. Virginia*, 536 U.S. 304 (2002) held that executions of persons with an intellectual disability are prohibited under the Eighth Amendment
- After the Supreme Court ruling, it was determined that Mr. Martinez-Villareal has an IQ of 50, suffers from an intellectual disability, is mentally ill, and possibly schizophrenic, effectively vacating his death sentence and requiring him to be re-sentenced
- In 2007, Santa Cruz County Superior Court found that Mr. Martinez-Villareal was incompetent to be re-sentenced and remanded him to the RTC program at the Arizona State Hospital
- Because he had already been convicted, he will not be released under the 21-month rule
- This leaves Mr. Martinez-Villareal in a perpetual loop of RTC treatment
- The associated costs of the continued enrollment of Ramon Martinez-Villareal in RTC currently total **\$1,248,060**
- In FY 2014 alone, the cost for Mr. Martinez-Villareal's enrollment totaled **\$244,010**, equivalent to **5 full-time positions**
- **Over 7-cents** worth of Santa Cruz County's property tax rate is dedicated to paying for Mr. Martinez-Villareal's RTC costs each year

For more information, contact CSA staff at (602) 252-5521
January 14, 2015

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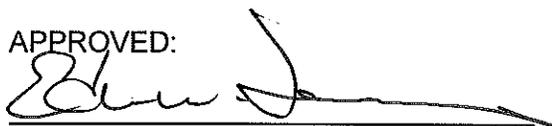
ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. SB 1145

DATE March 11, 2015 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		6	0	0	0

APPROVED:



EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman


 COMMITTEE SECRETARY

ATTACHMENT 10



HOUSE OF REPRESENTATIVES

SB 1179

criminal damage; gangs; criminal syndicates

Sponsors: Senators Smith; Meza; Representative Espinoza

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

SB 1179 prescribes a Class 5 felony to a person who recklessly damages property of another if the damage is inflicted to promote, further or assist any criminal street gang or criminal syndicate with the intent to intimidate.

HISTORY

Arizona Revised Statutes § 13-1602 was added by Laws 1977, Chapter 142, § 70. The law specifies that a person commits criminal damage by 1) recklessly defacing or damaging property of another person; 2) recklessly tampering with property of another person so as to substantially impair its function or value; 3) recklessly damaging property of a utility; 4) recklessly parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water; 5) recklessly drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, except the ground, and that is made without permission of the owner; 6) intentionally tampering with utility property.

PROVISIONS

1. Provides that criminal damage is a Class 5 felony if the damage is inflicted to promote, further or assist any criminal street gang or criminal syndicate with the intent to intimidate.
2. Specifies that the penalty remains a Class 4 felony if:
 - a. the criminal damage is \$10,000 or more;
 - b. the damage is to utility property in an amount of \$5,000 or more; or
 - c. the person tampers with utility property and the damage causes an imminent safety hazard to any person.

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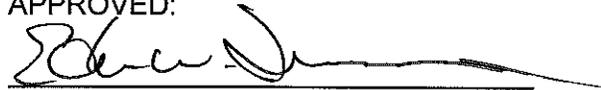
ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. SB 1179

DATE March 11, 2015 MOTION: dp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		6	0	0	0

APPROVED:



EDWIN W. FARNSWORTH, Chairman
 SONNY BORRELLI, Vice-Chairman


 COMMITTEE SECRETARY

ATTACHMENT 12



HOUSE OF REPRESENTATIVES

SB 1295

fingerprinting; judgment of guilt; records

Sponsor: Senator Smith

X Committee on Judiciary

Caucus and COW

House Engrossed

OVERVIEW

SB 1295 requires a booking agency to take an arrestee's ten-print fingerprints if the agency cannot determine whether legible ten-print fingerprints were taken by the arresting authority and allows the court to obtain and record a defendant's two fingerprint biometric-based identifier in the court case file.

HISTORY

Arizona Revised Statutes (A.R.S.) § 13-607 was added by Laws 1984, Chapter 142, § 1. The law specifies that at the time of sentencing a person convicted of a felony offense, theft, shoplifting or DUI, the court or its appointee shall execute a judgment of guilt and sentence document or minute order. The court or a person appointed by the court is required to permanently affix the defendant's right index fingerprint to the document or order. Affixing fingerprints to the court document or order is necessary to ensure that accurate criminal records in the *central state repository* are maintained.

A.R.S. § 41-1750 was added by Laws 1992, Chapter 247, § 4. The law requires the Department of Public Safety (DPS) to be responsible for the effective operation of the *central state repository* in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. Statute requires DPS to procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as a criminal defendant for a felony offense or an offense involving domestic violence, sex crimes or DUI offenses.

Two of the main duties required of DPS in regard to the central state repository are to provide criminal history record information to the fingerprinting division for the purpose of screening applicants for fingerprint clearance cards and exchange criminal justice information between the central state repository and statutorily specified individuals, boards, agencies, repositories of other states and the supreme court.

PROVISIONS

1. Requires a booking agency to take the arrestee's ten-print fingerprints if the agency cannot determine whether legible ten-print fingerprints were taken from the arrestee by the arresting authority.

SB 1295

2. Allows the court or its appointee to obtain and record the defendant's two fingerprint biometric-based identifier in the court case file, rather than permanently affix a defendant's fingerprint to the sentence document or minute order.
3. Requires the sentence document or minute order to specify if the offense was committed while the defendant was released from confinement.
4. Requires the court or the court clerk to certify that the defendant's two fingerprint biometric-based identifier was obtained and recorded in the case file.
5. Specifies that a person arrested for a misdemeanor offense involving domestic violence, sex crimes or DUI offenses shall not be released until the person provides either a fingerprint or a two fingerprint biometric-based identifier to the arresting agency.
6. Makes technical changes.

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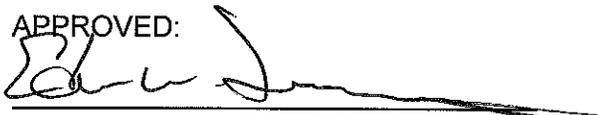
ROLL CALL VOTE

COMMITTEE ON JUDICIARY BILL NO. SB 1295

DATE March 11, 2015 MOTION: Sp

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Friese		✓			
Mr. Hale		✓			
Mr. Kern		✓			
Mr. Mesnard		✓			
Mr. Borrelli, Vice-Chairman		✓			
Mr. Farnsworth E, Chairman		✓			
		6	0	0	0

APPROVED:



EDWIN W. FARNSWORTH, Chairman
SONNY BORRELLI, Vice-Chairman


COMMITTEE SECRETARY

ATTACHMENT 14