

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

COMMITTEE ON INSURANCE AND RETIREMENT

Minutes of Meeting
Tuesday, February 5, 2013
House Hearing Room 3 -- 2:00 p.m.

Chairman Lovas called the meeting to order at 2:28 p.m. and attendance was noted by the secretary.

Members Present

Mr. Livingston	Mr. Robson	Mr. Allen, Vice-Chairman
Ms. McCune Davis	Ms. Steele	Mr. Lovas, Chairman
Mr. Mendez	Ms. Townsend	

Members Absent

None

Committee Action

HB2056 - DPA (8-0-0-0)

HB2279 - DP (8-0-0-0)

CONSIDERATION OF BILLS

HB2279 - employer; exception; officiating services - DO PASS

Vice-Chairman Allen moved that HB2279 do pass.

Chloe Love, Majority Intern, stated that HB2279 changes the definition of *employee* to exclude sports officials and referees who officiate in recreational, interscholastic or intercollegiate sporting events who are not employed by the school sponsor of the sporting event (Attachment 1). These individuals have the ability to accept or reject job assignments and to officiate contests for multiple entities.

Representative Tom Forese, sponsor, explained that many people fill these positions on a part-time basis. The Department of Economic Security (DES) currently treats sports officials as *employees*, and the law requires that employers pay unemployment insurance (UI) taxes on these individuals for the payment of unemployment benefits. He stated that classifying them as employees is putting small businesses that employ sports officials in a position where the businesses can no longer operate. It is important to note that these individuals provide a service to the community and to schools. He asked Members for support of HB2279.

Ms. McCune Davis brought up the relationship between an employer and a contractor. She said these individuals seem to be independent contractors who can pick and choose the jobs they want, giving them a lot of flexibility. She raised the following issues:

- Whether they are required to wear a uniform as a part of their job and if the employer determines what they wear.
- Since they are not considered by the businesses to be employees, no UI taxes will be paid, so they will not be eligible for UI benefits.
- What happens if a person is hurt on the job and how is workers' compensation handled.

Representative Forese said the challenge is the definition of *employee vs. independent contractor* which is making it impossible for some people to operate their business. This legislation is an attempt to address that issue by carving out an exemption for these referees.

Ms. McCune Davis asked for an explanation of how the performed services at sporting events align with the small businesses. Representative Forese said he prefers to defer the question to one of the owners of these businesses.

Mr. Robson queried whether there is a person or company that assigns the referees to sporting events. Representative Forese clarified that there are businesses that handle the scheduling of referees and umpires throughout the state. These are private for-profit organizations and the people they employ are hired on an independent-contractor basis. The issue is that DES classifies these individuals as an *employee* and requires the businesses to pay unemployment taxes for each employee.

Mark Hratko, Copper State Umpires Association, representing self, in support of HB2279, testified that he owns a business that provides umpires to baseball venues throughout the state, through the internet. The umpires can accept or decline assignments and are paid by way of the internet. The understanding has always been that sports officials are considered independent contractors and can accept assignments from more than one company without any ramifications.

In response to Chairman Lovas' question, Mr. Hratko replied that DES has been attempting to reclassify these people since 2011. The issue arose because of an umpire who moved from Pennsylvania to Arizona to pursue a job in professional baseball; when he did not achieve his goal, he filed an unemployment claim. Pennsylvania sent the claim to Arizona and Arizona treated it as an interstate claim against his company.

In reply to Mr. Robson, Mr. Hratko said he gets paid for sending these individuals to venues and, in return, he pays the umpires.

Ms. McCune Davis brought up injuries and workers' compensation. Mr. Hratko said that many officials buy secondary insurance. Individual venues also carry insurance to cover the individual who may be injured on the field, or to and from the event.

Ms. McCune Davis stated that the Arizona Constitution requires that employers provide workers' compensation to people from whom they generate income. She asked Mr. Hratko whether referees have asked for coverage through his company. Mr. Hratko replied in the negative.

In response to Mr. Livingston's questions, Mr. Hratko advised that umpires pay for their uniforms. In addition, they can accept whatever assignments they choose.

Mr. Robson asked how the workers' compensation claim was resolved. Mr. Hratko said it is still pending.

Barry Aarons, Lobbyist, Arizona Interscholastic Association, in support of HB2279, advised that the Association supports clarifying the language. Because of the pending claim, the Association believes it will benefit from clarification in the event a situation occurs in the future that might affect the Association. He offered to answer questions.

David Selden, Attorney, National Federation of Independent Business, spoke in support of HB2279. He said it would be extremely difficult for a sports league to recruit and schedule all of the officiating assignments, so many utilize small businesses as intermediaries. The Department of Economic Security (DES) is now taking the position that because there is an intermediary involved, the umpires/referees will be treated as employees. He maintained that will put most of these small companies out of business and make it very difficult for sports leagues to find officials. He opined that this legislation is a sensible clarification that serves the interests of everyone.

Mr. Robson advised that when he officiated as an umpire, the teams paid him directly; he truly was an independent contractor. Because payment is sent to the business and then the official is paid, he has concerns whether this is an independent contractor situation. Mr. Selden disagreed. He said that when an umpire picks and chooses when or where he works, that is the mark of an independent contractor.

Kathy Ber, Director of Legislative Services, Department of Economic Security (DES), neutral on HB2279, advised that the Internal Revenue Service (IRS) has determined that these individuals are independent contractors, not employees, since there is not a sufficient level of control over these workers.

Farrell Quinlan, State Director, National Federation of Independent Business, testified in favor of HB2279. He advised that over the years, the Department of Economic Security (DES) has been reclassifying workers who are independent contractors, so there is a need to clarify the language. He opined that this legislation is important because it affects an entire industry and may put some of these small companies out of business.

Chairman Lovas announced the names of those who signed up in support of HB2279 but did not speak:

Walter Dudley, Accountant, Arizona Society of Practicing Accountants

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

Chairman Lovas announced the names of those who signed up as neutral on HB2279 but did not speak:

Haydee Dawson, Financial Representative, Country Financial, National Association of Insurance and Financial Advisors

Question was called on the motion that HB2279 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 2).

HB2056 - PSPRS; amendments - DO PASS AMENDED

Vice-Chairman Allen moved that HB2056 do pass.

Jeanine Jones, Majority Research Analyst, explained that HB2056 makes administrative changes to the Public Safety Personnel Retirement System (PSPRS) (Attachment 3).

James Hacking, Administrator, Public Safety Personnel Retirement System (PSPRS), testified in support of HB2056. He said this is the plan's annual administrative bill. The provisions are intended to clarify issues that have come up during the past year. There are no cost consequences to the bill and no financial impact. The bill improves the ability of the local boards to administer the program.

Chairman Lovas announced the names of those who signed up in support of HB2056 did not speak:

Jared Smout, Deputy Administrator, Public Safety Personnel Retirement System

Dianne McCallister, Public Policy Partners, Public Safety Personnel Retirement System

Chairman Lovas announced the names of those who signed up as neutral on HB2056 but did not speak:

Leonard Clark, representing self

Haydee Dawson, representing self, National Association of Insurance and Financial Advisors

Vice-Chairman Allen moved that the Lovas two-page amendment dated 02/04/2013 be adopted (Attachment 4).

Ms. Jones explained that the Lovas two-page amendment dated 02/04/2013 reduces the amount of money for administering the Cancer Insurance Program from ten percent to five percent, clarifies the type of work for which pensionable compensation is contributed, extends the current retroactive payment period from 90 days to 180 days, and reinstates some inadvertently deleted language (Attachment 4).

Mr. Hacking advised that the amendment reflects the outcome of negotiations with the PSPRS constituency groups.

Question was called on the motion that the Lovas two-page amendment dated 02/04/2013 be adopted (Attachment 4). The motion carried.

Vice-Chairman Allen moved that HB2056 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 5).

Without objection, the meeting adjourned at 3:10 p.m.

Joanne Bell, Committee Secretary
February 8, 2013

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