

ARIZONA STATE LEGISLATURE
Forty-sixth Legislature – Second Regular Session

ARIZONA LEGISLATIVE COUNCIL

Minutes of Meeting
Wednesday, July 7, 2004
House Hearing Room 4 -- 10:00 a.m.

Chairman Flake called the meeting to order at 10:20 a.m. and roll call was taken.

Members Present

Senator Ken Bennett	Representative Jennifer Burns
Senator Linda Aguirre	Representative Chuck Gray
Senator Carolyn Allen	Representative Leah Landrum Taylor
Senator Jack Brown	Representative Linda Lopez
Senator Marilyn Jarrett	Representative John Loreda
Senator Toni Hellon	Representative Bob Robson
Senator Peter Rios	Representative Jake Flake, Chairman

Members Absent

None

Committee Action

Retiree Health Insurance Cost Study Selection Process – DP (14-0-0-0)
SCR 1012, state land exchanges – DPA (14-0-0-0)
HCR 2022, ballot measures; funding source – DPA (13-0-0-1)
HCR 2028, technology transfers; universities – DPA 14-0-0-0)
SCR 1009, justices of the peace pro tem; qualifications – DPA (13-1-0-0)
SCR 1022, state board of education – DPA (14-0-0-0)
HCR 2009, initiatives; filing date – DPA (14-0-0-0)
C-04-2004, no taxpayer money for politicians – DPA (9-4-0-1)
I-03-2004, Protect Arizona Now – DPA (10-2-1-1)

Speakers Present

Mike Braun, Executive Director, Arizona Legislative Council
Brad Regens, Assistant Director, Joint Legislative Budget Committee (JLBC)
Sandy Bahr, Sierra Club
William Hardin, Universities and Arizona Board of Regents
Paul Eckstein, representing the Clean Election Institute
Nathan Sproul, No Taxpayer Money for Politicians Committee
Michael Valder, representing himself

DETERMINATION OF RETIREE HEALTH INSURANCE COST STUDY SELECTION PROCESS – DO PASS

Mike Braun, Executive Director, Arizona Legislative Council, advised the Legislature passed H.B. 2542, PSPRS; pension limitation, Chapter 325, Laws of 2004. He said Section 8 of the bill directs Legislative Council to select and contract with a private entity to conduct a study on retiree health insurance (Attachment 1). Under the law, the Arizona State Retirement System (ASRS) is required to make recommendations to the Council on the selection of the private entity and also approves the cost of the study. The items covered by the study include:

- The ability to participate in health insurance program for retirees administered by the Department of Administration (ADOA).
- The feasibility of establishing a single health insurance program for all retirees.
- The feasibility of allowing retirees under sixty-five years of age to remain in the same health insurance plan as active employees.
- The feasibility of dedicating part of the retirement contribution rate or an increased contribution rate to defray the cost of health insurance premium payments.
- Review of contribution rates and benefits compared with the national average and other state retirement systems.
- Analysis of any federal or state legal restrictions on any of the recommendations.

The bill provides that the four different retirement systems shall cooperate with the successful vendor to provide information. In addition, the state retirement system shall reimburse the Council for the cost of the study.

Mr. Braun advised that the Legislative Council is exempt from the procurement code. In the past, the Council has used a public bidding process in similar situations. He reminded Members they have the right to play an active role in the selection process. Pursuant to Rule 17 of the Arizona Legislative Council Rules, Council Members have delegated the responsibility for selecting an entity to conduct the study to staff in the past. He pointed out the study must be completed by December 1, 2004, so time is of the essence to comply with that deadline.

Senator Aguirre commented that delegating that responsibility to staff will expedite the process and eliminate the need for the Council to meet in order to vote on a successful bidder. Mr. Braun said that is correct.

Senator Aguirre said she supports letting staff take care of this.

Senator Jarrett moved that pursuant to the Arizona Legislative Council Rule 17 and Laws 2004, Chapter 325, Section 8, the Executive Director is directed to enter into a contract with a private entity to conduct a study on retiree health care. The motion carried by a roll call vote of 14-0-0-0 (Attachment 2).

REVIEW OF THE PUBLICITY PAMPHLET:

Mike Braun, Executive Director, Arizona Legislative Council, briefed Members on the Initiative and Referendum and the Publicity Pamphlet (Attachment 3). The Publicity Pamphlet is published by the Secretary of State and mailed to every household with a registered voter prior to early balloting for the general election. The Pamphlet contains the following:

- Proposition Number assigned by the Secretary of State.
- Title and Text which come from either the Legislature or the proponent of the initiative. Members of the Legislative Council have no jurisdiction over the title or text of the measure.
- Analysis by Legislative Council, required by statute.
- Fiscal Impact Summary prepared by Joint Legislative Budget Committee (JLBC) staff for initiative measures. A fiscal analysis is prepared for every measure on the ballot, which is available on the JLBC website; however, statute only requires fiscal analyses be printed in the Publicity Pamphlet for initiative measures. Members of Legislative Council have no authorization to make changes to the JLBC staff fiscal analyses.
- Arguments “for” or “against” submitted by any interested parties
- Sample of the Ballot Format, which contains an official title, descriptive title and the effect of a “yes” or “no” vote. This information is prepared by the Secretary of State and approved by the Attorney General.

Other items that appear in the Publicity Pamphlet include Salary Commission recommendations and Commission on Judicial Performance, listing data on judges up for retention elections. Mr. Braun explained that countywide measures placed on the ballot by the Legislature do not appear on the State Publicity Pamphlet and are not analyzed by either the JLBC or Legislative Council. The analysis is done at the County level.

Chairman Flake queried whether the County Board of Supervisors has the responsibility for reviewing county measures. Mr. Braun answered the Board does not have independent authority, but because of the legislation that puts the issue to a vote, it is directed by the Legislature to do that.

Senator Rios pointed out that in the analysis of one of the propositions, JLBC language is almost identical to Legislative Council language. He wondered what happens when the Council changes the verbiage. Mr. Braun replied that JLBC is independent from this process. The language can be changed if they wish to do so. The statute provides that it is for the staff of JLBC to decide that. Senator Rios said that is a concern for him and may be the subject for future legislation.

Brad Regens, Assistant Director, Joint Legislative Budget Committee (JLBC), testified that for consistency purposes, JLBC has used the exact language as Legislative Council in most

circumstances. Any changes made by this Council will be taken into consideration and most likely will be incorporated into JLBC's analysis.

Mr. Braun reviewed the statutory requirements for adopting the analyses. Legislative Council staff prepares a draft impartial analysis of the measure. Each analysis shall include a description of the measure. It shall be written in clear and concise terms, whenever possible. The analysis may contain background information, including the effect of the measure on existing law. Legislative Council staff then makes the draft analyses available on its website. At that point, no changes can be made by the staff; any changes must come from a majority vote of the Members of the Council. All legislators must have a reasonable opportunity for comment. The ballot analyses must be filed with the Secretary of State by July 9.

S.C.R. 1012, STATE LAND EXCHANGES – DO PASS AMENDED

Mike Braun, Executive Director, Arizona Legislative Council, advised that the Legislature passed SCR 1012 in 2003. A similar measure was on the ballot in 2002. The difference between this year's measure and the 2002 measure is the addition of language that provides for assisting the preservation of military airports in the State as an acceptable purpose of land exchange. The language on line 10 of the analysis (Attachment 4) was also changed this year to read "never amended" in lieu of "never did amend." He pointed out the analysis was not challenged in 2002.

Sandy Bahr, Sierra Club, referred to Mr. Braun's statement about Arizona never amending its State Constitution to incorporate the authority for land exchanges. She thinks the public would interpret that to mean that Arizona never attempted to amend the Constitution. She suggested the analysis be amended to include language stating there have been previous attempts to amend the Constitution.

Senator Bennett queried whether any of those attempts to amend the Constitution occurred between 1936 and 1990. Ms. Bahr replied that five attempts were made between 1990 and the present time. Senator Bennett said that if none of the attempts occurred between 1936 and 1990, he would not want to give the impression there were unsuccessful attempts before 1990. Ms. Bahr said she believes it would make sense to add a statement at the end of the second paragraph so it would appear in chronological order.

Senator Brown cautioned about going into too much history. If language is changed, then the history of all the analyses should be given, and they are all different. This is limited because it only applies to public bodies and is tightly written. He said he does not think it should be changed. Ms. Bahr said that if history is going to be given, it should be the complete history. She thinks it is misleading to say that the Constitution has never been amended. Senator Brown disagreed. He does not believe the language is misleading.

Senator Bennett asked whether the second paragraph of the analysis was included in 2002 Legislative Council analysis. Mr. Braun replied in the affirmative.

Representative Gray commented that he does not find the language misleading; however, it might be less offensive if the wording was changed to read "did not amend" instead of "never amended." Senator Bennett agreed. He thinks it lends more clarity.

Senator Bennett moved that the Legislative Council analysis proposed for S.C.R. 1012 do pass (Attachment 4).

Representative Landrum Taylor explained the Landrum Taylor seven-line amendment dated 7/7/04 (Attachment 5). She said the amendment will help to clarify that the land received by the State in exchange would need to be maintained as open space.

To that point, Chairman Flake wondered whether Members want to tie the hands of the State Land Department to do what is most reasonable and prudent and highest and best use. Representative Landrum Taylor said she does not believe it will tie the Department's hands. She said this is for clarification purposes. She read the third paragraph of the analysis, inserting proposed language.

Senator Bennett noted that on line 19 of the analysis, "conserves" should be struck. He also feels the last sentence of the proposed amendment is unnecessary.

Representative Burns concurred with Senator Bennett.

Representative Landrum Taylor disclosed that current statute says the land the State gives does not have to be conserved but the land the State receives has to be conserved, and that is what she is trying to amend.

Senator Bennett said he would like clarification of which land has to be conserved, the land the State gives or the land the State receives.

Mr. Braun stated there is nothing in the measure about conserving the land the State receives.

Representative Burns said she supports the proposed amendment with the exception of the last sentence which is contradictory and will create confusion for the voters.

Senator Allen agreed with Representative Burns' comments. She finds the addition of the sentence confusing and complicates the issue. She expressed concern about how that will be read by the public.

Representative Landrum Taylor reiterated that she would like the land the State receives to be conserved.

Mr. Braun advised the measure does not address the issue of either conserving or not conserving land received.

Chairman Flake asked whether it would put the state trust land that is being traded in the same situation that all other state trust land is in today. Mr. Braun replied in the affirmative. Chairman Flake believes that if it is made something other than that, it will really confuse the issue.

Senator Bennett said he would like to divide the amendment so the first half can be amended. He said he cannot support the second half of the amendment.

Senator Bennett moved that the proposed legislative analysis be amended as follows:
Page 1, line 18, strike “only”; strike “and only if” and insert a period. Strike “the” insert “THE”; strike “is” insert “MUST BE”
Line 19, strike “conserves” insert “MUST EITHER CONSERVE”
Line 20, strike “assists” insert “ASSIST”
The motion carried.

Senator Rios moved that the proposed legislative analysis be further amended as follows:
Page 1, line 15, strike the period and insert “AND THE STATE ATTEMPTED TO AMEND THE CONSTITUTION.”

Representative Robson thinks that language is misleading. There is confusion as to whether the State or the citizens tried to amend the Constitution.

Senator Rios declared that his proposal is simply an attempt to provide an historical perspective. It provides information to voters in a general way that does not sway voters either way.

Senator Allen concurred with Representative Robson’s comment. The language is unclear.

Senator Hellon pointed out that past history is not included when developing legislation, so she does not think it is appropriate in this case. She thinks it is appropriate for the organization to mention that in their statement in the pamphlet if they wish to do so. Setting the precedent giving the impression that the State initiated something is a concern to her and she is not comfortable with the proposal.

Representative Gray agreed with Senator Hellon, especially in light that the courts have decided they now can step in and rewrite language. If a precedent is set that enumerates different points in history and one point in history is left out, the issue may be taken out of the hands of the Legislature by the courts. He expressed opposition to the proposed amendment.

Senator Rios said he is attempting to provide clarifying information because he does not want it said that the Legislature intentionally omitted some very important information.

For the record, Representative Robson said he feels the language does not accomplish the task before Members. He feels uncomfortable bringing the verbiage in that direction.

Question was called for that the Rios verbal amendment be adopted. The motion failed.

Representative Gray moved that the proposed legislative analysis be further amended as follows:
Page 1, line 10, strike “never amended” insert “DID NOT AMEND”

Senator Bennett expressed support for the Gray verbal amendment.

Senator Allen stated the Gray amendment might satisfy where Senator Rios was trying to go.

Question was called for that the Gray verbal amendment be adopted. The motion carried.

Senator Bennett moved that the Legislative Council analysis for S.C.R. 1012 as amended do pass. The motion carried by a roll call vote of 14-0-0-0 (Attachment 6).

H.C.R. 2022, BALLOT MEASURES; FUNDING SOURCE – (See Page 12)

Mike Braun, Executive Director, Arizona Legislative Council, explained that H.C.R. 2022 was passed by the Legislature in 2003. It establishes a funding source for initiative or referendum measures. It provides that if the funding source is inadequate, the Legislature may reduce the expenditure of state revenues for the year the revenue source is inadequate. The analysis provides background in the first paragraph and specific provisions in the second paragraph (Attachment 7).

Senator Bennett asked for an explanation of “divert” as it is currently contained in the Constitution. He noted that the ballot measure does not contain the word and thinks the term has a negative connotation. He thinks the fundamental focus of this measure is to address whether the Legislature can reduce funding if the funding source is insufficient. Mr. Braun agreed the word is not in the measure. Legislative Council staff used the word because it is part of existing law in Article IV. It is the section of Proposition 105 that says the Legislature shall not have the power to appropriate or divert funds.

Senator Jarrett asked whether removing the first paragraph would create a problem. She thinks the second paragraph is sufficient. Mr. Braun stated that lines 5-13 is the portion required by law. It is optional to include background information.

Senator Bennett moved that the Legislative Council analysis proposed for H.C.R. 2022 do pass (Attachment 7).

**Senator Jarrett moved that the proposed legislative analysis be amended as follows:
Page 1, strike lines 1 through 4.**

Representative Loredó pointed out that Members just voted on S.C.R. 1012 that has a whole page of background and historical data. He wondered why this measure is removing that information. Senator Jarrett replied that the intent is to clarify for the voters what the proposition actually does. She thinks the first paragraph confuses the voters. Representative Loredó believes existing language is clear. He thinks it is important to first clarify what the Constitution requires.

Senator Bennett said an alternative would be to reverse the paragraphs. He thinks the word “divert” should also be addressed.

Representative Loredó disagreed with Senator Bennett. Reversing the paragraphs might give people the impression that the first paragraph is part of the change.

Senator Hellon suggested solving the problem by starting the first paragraph with “currently.”

Representative Jarrett said she still would like to see the paragraphs reversed. She recommended reversing the paragraphs, inserting “This” before “Proposition” on line 5 and starting the second paragraph with “Currently.”

Chairman Flake pointed out the motion on the Floor is to remove the entire first paragraph.

Senator Jarrett said she will withdraw her motion and offer another motion.

Senator Aguirre expressed concern about removing the first paragraph because all the other propositions have some introduction. In addition, she thinks reversing the paragraphs will confuse people.

Chairman Flake advised that the amendment on the Floor is not to reverse the order of the paragraphs but to remove the first paragraph.

Senator Allen expressed support for the Jarrett amendment to remove the first four lines.

Representative Gray also stated support for the Jarrett amendment. The first paragraph talks about the Legislature and what they cannot divert, while the proposition is about ensuring there is a funding source. He feels there is a disconnect between the two paragraphs. The first paragraph addresses what the Legislature does with money later, and the second paragraph talks about a funding source on all initiatives. He thinks the first paragraph is misdirecting.

Chairman Flake stated this is addressing the problem that got the State in the big financial situation it is in now, i.e., the public passing Propositions 104 and 301 with partial funding.

Representative Loreda asked Mr. Braun why the first paragraph was included when the purpose of these analyses is to make the language of the initiatives clear to the reader. Mr. Braun replied it was an attempt to put this issue into some context. It was done in that fashion to explain the current situation and what will change. Representative Loreda agreed with providing background information in the first paragraph. He thinks the reader needs that background information to understand why the proposition is needed. He said he does not see any conflict with the language that describes the initiative.

Senator Rios spoke against the Jarrett motion. He thinks the language is needed and said he does not see why an exception should be made in this case. All other analyses start with the same data.

Senator Aguirre concurred with Representative Loreda and Senator Rios. If this change is made, the proposition will look totally different from all the other propositions on the ballot.

Senator Bennett agreed with Senator Rios, Senator Aguirre and Representative Loreda. It makes sense to give background information before there is an explanation of what is going to be changed. His concern is that this proposition has nothing to do with allowing the diversion of funds away from its intended purpose. The proposition says that if the voters approve or require mandatory expenditures of state revenues, a source of revenues must be provided. In addition, the proposition gives the Legislature the authority to reduce the expenditures if the revenues are

not sufficient to cover the mandatory expenditures. There is nothing in the language that authorizes the diversion of funds from one intended purpose to another.

Chairman Flake opined that the first paragraph takes away the intent of the second paragraph. It will lead the public to think the Legislature will be able to tinker with the funds.

Senator Jarrett noted there is no way of funding expenditures when the funds coming in do not cover the expenditures.

Senator Bennett suggested a postponement until the first paragraph can be rewritten that better describes the current situation that has nothing to do with diverting funds but with insufficient funds for mandated expenditures.

Representative Burns proposed the following verbiage to replace lines 1 through 4: "Currently the Arizona Constitution does not require a funding source for an initiative or referendum measure approved by the voters."

Senator Jarrett mentioned that is a good start. She said she will withdraw her motion so staff can work on language.

Senator Jarrett withdrew her motion to amend the analysis by striking lines 1 through 4.

Senator Bennett withdrew his motion that the Legislative Council analysis proposed for H.C.R. 2022 do pass (Attachment 7).

Chairman Flake tabled the issue while staff works on new language.

Representative Burns asked for direction for staff. One option is where a funding source is not required. The other option is to stipulate there will be no diversion by the Legislature once funds are allocated for a specific purpose.

Representative Gray spoke against diversion.

Senator Bennett reiterated this is not a diversion issue; it is a sufficiency issue.

Representative Loreda stated that if a funding source is identified, language can be added that it cannot be diverted.

Senator Jarrett urged caution. She said the Council is supposed to be describing, not writing law here.

Representative Burns thinks language should be worked on by staff and a written draft given to Members before any motion is made.

Chairman Flake announced the Council will move on to the next item while staff drafts new language.

H.C.R. 2028, TECHNOLOGY TRANSFERS; UNIVERSITIES – DO PASS AMENDED

Mike Braun, Executive Director, Arizona Legislative Council, reported that H.C.R. 2028 was passed by the Legislature in 2003. Currently, governmental entities are prohibited from having any ownership interest in a private corporation. The proposition would amend the Constitution to allow the government to obtain ownership interests in exchange for the license or transfer of interests in technology or intellectual property created or acquired by universities or the Board of Regents (Attachment 8).

Senator Bennett asked whether the focus of this is becoming a shareholder or joint owner in a company or a corporation. Mr. Braun replied in the affirmative. He noted that the prohibition on giving or loaning credit to any individual, association or corporation is not the issue.

Senator Bennett moved that the Legislative Council analysis proposed for H.C.R. 2028 do pass (Attachment 8).

Representative Robson moved that the Robson amendment to the Legislative Council analysis be adopted (Attachment 9).

Representative Robson explained that he has had discussions with Legislative Council and stakeholders, and the proposed language is satisfactory to all.

Mr. Braun advised this was reviewed prior to the meeting. He disclosed everything is a true and accurate statement and an impartial analysis.

William Hardin, Universities and Arizona Board of Regents, testified that the stakeholders had some input into this process. Those who worked on the bill believe it is an accurate and complete description. He urged Members to adopt the language.

Representative Gray pointed out that line 7 of the proposed analysis adds an additional exception that allows the State to license or transfer. He asked whether this allows the universities to license or the State through the universities to license. Mr. Hardin replied that the actual text of the amendment allows the State to make the licenses although, in practice, the universities, through the Board of Regents, actually make the transaction on behalf of the state.

Question was called for that the Robson motion be adopted (Attachment 9). The motion carried.

Senator Bennett moved that the Legislative Council analysis for H.C.R. 2028 as amended do pass. The motion carried by a roll call vote of 14-0-0-0 (Attachment 10).

S.C.R. 1009, JUSTICES OF THE PEACE PRO TEM; QUALIFICATIONS – DO PASS AMENDED

Mike Braun, Executive Director, Arizona Legislative Council, advised that S.C.R. 1009, passed by the Legislature in 2004, provides that justices of the peace pro tem would have the same qualifications as justices of the peace, except they would not have to reside in the precinct

(Attachment 11). The analysis clarifies that a temporary justice of the peace would not be required to be an attorney. The first two paragraphs of the analysis summarize current law. He pointed out that paragraph 2 implies that the Arizona Constitution provides that justices of the peace pro tem must be attorneys; however, that comes from an administrative order of the Supreme Court, not the Constitution.

Senator Jarrett noted there is a difference of opinion whether this language is in the Constitution. She would like to propose eliminating lines 5 through 7 because she said it is an opinion written in an administrative order by the Chief Justice.

Senator Bennett moved that the Legislative Council analysis proposed for S.C.R. 1009 do pass (Attachment 11).

Senator Jarrett queried whether the age requirement should be 19 years of age instead of 18 years of age. Mr. Braun replied there is nothing in the statute relating to that provision. There is a court opinion that says justices of the peace have to meet the same age requirement as other county officers.

**Senator Jarrett moved that the proposed legislative analysis be amended as follows:
Page 1, strikes lines 5 through 7.**

In response to Representative Burns, Mr. Braun explained the Constitution talks about judges pro tem, not justices of the peace pro tem. He advised that ARS §11-402 does not mention justices of the peace but talks about county offices with an age requirement of 18 years or older.

Question was called for that the Jarrett verbal amendment be adopted. The motion carried.

Senator Bennett moved that the Legislative Council analysis for S.C.R. 1009 as amended do pass. The motion carried by a roll call vote of 13-1-0-0 (Attachment 12).

S.C.R. 1022, STATE BOARD OF EDUCATION – DO PASS AMENDED

Mike Braun, Executive Director, Arizona Legislative Council, stated that S.C.R. 1022, passed by the Legislature in 2004, changes the membership of the Board of Education (Attachment 13). Membership of the Board is currently in the Constitution. In order to change the membership, the Constitution will have to be amended. The first paragraph of the analysis identifies the members and states that one member agency was eliminated in 2003.

Senator Bennett moved that the Legislative Council analysis proposed for S.C.R. 1022 do pass.

**Senator Jarrett moved that the proposed legislative analysis be amended as follows:
Page 1, lines 4 and 12, strike “lay” insert “PUBLIC”
The motion carried.**

Senator Bennett moved that the Legislative Council analysis for S.C.R. 1022 as amended do pass. The motion carried by a roll call vote of 14-0-0-0 (Attachment 14).

Chairman Flake announced the meeting is recessed until 1:15 p.m. THE MEETING RECESSED AT 12:10 P.M.

THE MEETING RECONVENED AT 1:30 P.M. All Members were present.

H.C.R. 2022, BALLOT MEASURES; FUNDING SOURCE – DO PASS AMENDED (See Page 7)

Sandy Bahr, Sierra Club, said she reviewed the amended analysis drafted by staff and finds it accurate and representative of the provisions (Attachment 15). She believes it is important to let the voters know there is a change in the status quo relative to the Voter Protection Act. In addition, she urged Members not to change the context in this one case because it makes the Council appear arbitrary and biased.

Senator Bennett moved that the Legislative Council analysis proposed for H.C.R. 2009 do pass.

Senator Bennett asked whether there is concern about adding a provision that states there is 20 months to collect signatures.

It was pointed out that Senator Bennett moved H.C.R. 2009 instead of H.C.R. 2022.

Senator Bennett withdrew his motion that H.C.R. 2009 do pass.

Senator Bennett moved that the Legislative Council analysis proposed for H.C.R. 2022 do pass (Attachment 7).

Senator Aguirre expressed support for the first paragraph of the amended analysis drafted by staff (Attachment 15). She said she finds the last paragraph unnecessary.

Senator Aguirre moved that the Legislative Council analysis be amended as follows:

Page 1, strike lines 1 through 4, and insert “CURRENTLY, THE ARIZONA CONSTITUTION DOES NOT REQUIRE THAT AN INITIATIVE OR A REFERENDUM INCLUDE A DEDICATED FUNDING SOURCE FOR REQUIRED EXPENDITURES.”

The motion carried.

Senator Bennett moved that the Legislative Council analysis for H.C.R. 2022 as amended do pass. The motion carried by a roll call vote of 13-0-0-1 (Attachment 16).

H.C.R. 2009, INITIATIVES; FILING DATE – DO PASS AMENDED

Mike Braun, Executive Director, Arizona Legislative Council, said that H.C.R. 2009 was passed by the Legislature in 2004. The measure refers to extending the period of time where initiative petitions have to be filed from the current four months before the election to seven months before the election (Attachment 17). This amendment to the Constitution would include a constitutional provision that says the petitions can be circulated up to 27 months before the general election.

Sandy Bahr, Sierra Club, said that further definition would complicate the issue for the voters. She believes the analysis should be adopted as is.

Senator Bennett moved that the Legislative Council analysis proposed for H.C.R. 2009 do pass.

Representative Loredó explained the purpose of the Loredó amendment breaks down the last sentence of the analysis into two bullet points so the language is more easily understood (Attachment 18).

Representative Loredó moved that the Legislative Council analysis be amended as proposed in the Loredó amendment (Attachment 18). The motion carried.

Senator Bennett moved that the Legislative Council analysis for H.C.R. 2009 as amended do pass. The motion carried by a roll call vote of 14-0-0-0 (Attachment 19).

C-04-2004, NO TAXPAYER MONEY FOR POLITICIANS – DO PASS AMENDED

Mike Braun, Executive Director, Arizona Legislative Council, explained this measure prohibits taxpayer money to fund any political candidate or campaign (Attachment 20). The analysis defines “taxpayer money.” He pointed out that a correction is required on line 7 to change “\$500” to “\$550.”

Senator Bennett moved that the Legislative Council analysis proposed for C-04-2004 do pass.

Senator Allen explained that her proposed amendment reverses the order of the paragraphs, strikes the first sentence of Legislative Council paragraph 1 and changes “\$500” to “\$550” (Attachment 21).

Senator Allen moved that the Legislative Council analysis be amended as proposed in the Allen amendment (Attachment 21).

Senator Rios queried the reason for striking the language that defines the Clean Elections Act. Senator Allen replied that is explained by moving the order of the paragraphs. Senator Rios expressed opposition to the Allen amendment. He thinks the current language of the analysis is clear.

Paul Eckstein, Clean Election Institute, testified that a number of lawsuits were filed in 1994 and 2002 to challenge the impartiality of previous analyses done by this Council. He said he does not believe the Legislative Council analysis is fair and does not contain a description required by statute. In order to have a description and an analysis, one must describe what the citizens in the Clean Elections Act adopted by Proposition 200. It cannot be determined from this analysis that vital functions of the Citizens Clean Elections Act Commission are being “defunded.” The analysis specifies that monies collected will go to the General Fund but it cannot be determined whether the Commission is left to do what it was designed to do when it was adopted in 1998. He objected to omitting “Citizens” when referring to the “Citizens Clean Elections Act” because it presents a problem. In addition, the analysis describes one of the functions of the Commission but neglects to point out other functions the Commission performs that have nothing to do with the funding of candidates running for public office. The Commission has the obligation of preparing voter pamphlets, sponsoring debates, enforcing campaign finance laws and ensuring that campaign finance reports are legally and timely filed. He said he thinks that in order to have an analysis and a description, the provisions of Proposition 200 must be provided. Additionally, the public should be informed of the effect of having the money revert to the General Fund. It removes a dedicated funding source and the Commission will be unable to perform its duties. Approximately 45 percent of the monies expended by the Commission are administrative and go for functions other than the public funding of persons running for public office.

Mr. Eckstein referred to the term “taxpayer money” and said that while it is defined in this proposition, it is not defined in Arizona law. To say a donation is taxpayer money is unfair. The term “taxpayer money” is highly-charged. The connotation here is that taxpayers are having money extracted from them in an involuntary way and used to support public funding.

In response to Senator Allen, Mr. Eckstein said the problem he has with the analysis is that it does not give context to let the people know what the Commission does. Moving the paragraphs around does not provide context.

Senator Allen referred to Mr. Eckstein’s use of the word “fair.” She objected to the implication that it is fair to use Clean Elections funding while candidates who take traditional funding are considered to be using “dirty money.”

Senator Allen addressed Mr. Eckstein’s comment that the public is not being forced to support public funding. She stated that a portion of civil fines goes to fund Clean Elections, so she thinks it is forcing people to contribute to candidates they do not want to support. She said many people resent that.

Representative Robson noted there is no reference to Clean Elections in the initiative. He said the measure is not about repealing the Clean Elections Act, but refers to taxpayer money for politicians. To that point, Representative Loreda said there is no other mechanism to publicly finance candidates, so he does not see a problem with stating that in the analysis.

Senator Jarrett stated that Clean Elections was supposed to equalize funding but, in looking at the records, there were a number of legislative races where Clean Elections candidates received \$12,000-\$13,000 more than the person raising money traditionally. She said she does not think that is fair or equalizes anything. Mr. Eckstein said the issue here is about an impartial analysis done by Legislative Council. He stated his concern is that it is not evident in the analysis that

this takes money away from the Commission currently used to support Commission functions that have nothing to do with public financing of candidates.

Senator Hellon referred to Mr. Eckstein's objection to the term "taxpayer money" in this measure. She said giving tax credits is money coming directly out of the General Fund. It gives a benefit to those people who contribute to this fund. She said that is taxpayer money that would otherwise go for other things the State funds. She believes the term is accurate because the money comes directly out of the General Fund and it is taxpayer money. Mr. Eckstein agreed; however, the point is there is the connotation that people are having to pay taxes involuntarily to support this system, and that is not the case. If a person does not like the system, one does not have to take the tax credit or check the box that says \$5 of the person's taxes will go to support the Commission. He reiterated his objection to the connotation that money is being extracted from taxpayers involuntarily.

Nathan Sproul, No Taxpayer Money for Politicians Committee, asked Members to support the Allen amendment. He agreed with Mr. Eckstein that context is vitally important. He stated it would be inappropriate to put something in the publicity pamphlet that does not address the context of the immediate implication of what this would address but also allows for a future context. The Legislative Council analysis focuses on one Act instead of recognizing that this addresses a much broader perspective than one Act. He said there is the potential for future and much broader issues that would be addressed by this constitutional amendment that is not in the analysis. It puts too much emphasis on one statutory Act and not enough importance on the broader picture.

Michael Valder, representing himself, advised that he was the principal founder of the Clean Elections Institute. He currently is the treasurer of the committee that opposes the passage of this proposition. He said the analysis does not define what the Clean Elections Fund is, and that needs to be stated in the analysis to let voters know this measure does away with the independent funding for the Clean Elections Commission and puts the money into the General Fund. The intent of the Citizens Clean Elections Act of 1998 was for the Clean Elections Commission to have an independent source of money that was not dependent on an appropriation by the General Fund. This measure will make the Commission compete with other state agencies for General Fund money in order to do its business.

Senator Bennett asked whether the Clean Elections Fund was established by statute or by a vote of the people. Mr. Valder replied the Fund was established by the voters in statute, not in the Constitution.

Senator Bennett queried whether the proposed measure would leave in place the collection mechanisms that produce revenue into that Fund, which would then be diverted to the General Fund. Mr. Valder answered that if someone objects to the 10 percent surcharge on civil fines, there is a good chance it will not be collectible because this measure abolishes the Fund. He thinks an opinion from a Constitutional attorney will be needed to answer if the government can collect a tax that was enacted by voters for a special purpose when that purpose is done away with.

Representative Gray wondered whether there is a need to switch the paragraphs. In all the other analyses, the background is placed prior to the description.

To that point, Senator Bennett commented he is convinced this might be an example where that should occur because the fundamental intent of the initiative is broader than just repealing Clean Elections. The Allen amendment is not in conflict because it defines the real intent of the measure. He thinks to start with a context that focuses on Clean Elections will actually be misleading in presenting the real intent of the measure. Representative Gray concurred with that explanation.

Representative Loredó questioned whether the verbiage in the Allen amendment: “funding for the publicly-funded campaign system” describes prospective systems or the system in existence now. If it describes the current system, he does not see a problem because it clarifies what the publicly-funded campaign system is.

Senator Rios spoke against the Allen proposal. He thinks the Legislative Council analysis lacks all the elements of Clean Elections, and the Allen changes make it worse. He said it cripples the Citizens Clean Elections Act and the public should know that. In addition, he thinks it will delay the Secretary of State putting out the publicity ballot.

**Question was called for that the Allen amendment be adopted (Attachment 21).
Division was called and by a hand vote of 8 to 6, the motion carried.**

Senator Brown suggested that a recess be called in order for staff to prepare a clean copy of the Allen amendment.

Chairman Flake called a recess.

Staff distributed a cleaned up version of the Allen amendment (Attachment 22).

Senator Allen moved that the Allen amendment be amended as follows:

**Page 1, line 11, after “system” insert “, KNOWN AS THE CITIZENS
CLEAN ELECTIONS ACT,”
The motion carried.**

Representative Landrum Taylor said she would like to offer an amendment to further clarify for the voters some of the components of the Clean Elections Act by listing the other duties of the Commission. A copy of her proposed changes was distributed (Attachment 23).

After discussion, Representative Landrum Taylor said she will only offer the capitalized language on lines 3 through 9 since the other changes are incorporated in the Allen amendment.

Representative Landrum Taylor moved that the Allen amendment be amended as follows (Attachment 23):

**Page 1, line 8, before “Funding” insert “THE CITIZENS CLEAN
ELECTIONS ACT ALSO ESTABLISHED A FIVE MEMBER CITIZENS CLEAN
ELECTIONS COMMISSION THAT IS RESPONSIBLE FOR, AMONG OTHER
DUTIES, PUBLISHING VOTER INFORMATION GUIDES FOR THE PRIMARY
AND GENERAL ELECTIONS, SPONSORING CANDIDATE DEBATES,
ENFORCING CAMPAIGN FINANCE LAWS AND ENSURING THAT**

CAMPAIGN FINANCE REPORTS ARE LEGALLY SUFFICIENT AND TIMELY FILED.”

Senator Allen spoke in opposition to the Landrum Taylor amendment. She thinks the amendment will confuse the issue.

Representative Landrum Taylor reiterated that it is important to have a clear definition of what the Citizens Clean Elections Act does.

Senator Jarrett said the Landrum Taylor amendment is misleading. It makes it appear that the Commission is the only one who is a watchdog over the process. She pointed out that candidates have to answer to the Secretary of State.

Representatives Burns stated the Commission will still be in existence and will have duties, but the proposition will eliminate the dedicated funding source. She opined the Landrum Taylor amendment muddies up the explanation of what this proposition does.

Representative Loreda said that in order to perform those statutory duties, the Commission will have to be funded by other sources. Mr. Braun said the duties were enacted by the voters. If the funding source is removed, there is the assumption the Legislature will have the responsibility to fund those remaining duties. He said he did not feel comfortable saying that, so that is why it was kept out of the analysis. Representative Loreda said if the dedicated funding source is taken away, the alternative is to use General Fund money to fund the functions of the Clean Elections Commission. In that case, taxpayer money will come out of the General Fund to perform the duties of the Commission.

Senator Jarrett asked whether this takes away all funding. She said she heard this takes away half of the money. Mr. Braun answered this measure does not end the surcharges, penalties, etc. Those monies would continue to be collected, and anything that went into the Clean Elections Fund would then be transferred to the General Fund. He assumes it would take a vote of the Legislature to fund the remaining duties of the Commission.

Representative Landrum Taylor said she believes it is important to list the Commission duties because the Commission is the only entity statutorily charged with performing those duties.

Senator Rios suggested combining the language in the Loredo 2 amendment (Attachment 24) with the Landrum Taylor amendment (Attachment 23) because it would read better. Representative Landrum Taylor agreed.

Representative Landrum Taylor withdrew her motion to amend the Allen amendment.

Representative Landrum Taylor moved that the Allen amendment be amended as follows (Attachment 23):

Page 1, line 8, before “Funding” insert “THIS PROPOSITION HAS THE EFFECT OF REMOVING THE VOTER-ENACTED DEDICATED FUNDING SOURCE FOR THE CITIZENS CLEAN ELECTIONS COMMISSION. THE CITIZENS CLEAN ELECTIONS ACT ALSO ESTABLISHED A FIVE MEMBER

CITIZENS CLEAN ELECTIONS COMMISSION THAT IS RESPONSIBLE FOR, AMONG OTHER DUTIES, PUBLISHING VOTER INFORMATION GUIDES FOR THE PRIMARY AND GENERAL ELECTIONS, SPONSORING CANDIDATE DEBATES, ENFORCING CAMPAIGN FINANCE LAWS AND ENSURING THAT CAMPAIGN FINANCE REPORTS ARE LEGALLY SUFFICIENT AND TIMELY FILED.”

Senator Allen advised she would like to strike the phrase “voter-enacted.”

After discussion of why the phrase should be included, Senator Allen expressed opposition to the entire amendment.

Question was called for that the Landrum Taylor verbal amendment be adopted. Division was called and by a hand vote of 6 to 8, the motion failed.

Representative Loredó moved that the Allen amendment to the Legislative Council analysis be amended as follows (Attachment 24):

Page 1, line 14, after “greater.” insert “THIS PROPOSITION HAS THE EFFECT OF REMOVING THE VOTER-ENACTED DEDICATED FUNDING SOURCE FOR THE CITIZENS CLEAN ELECTIONS COMMISSION.”

Senator Allen said, to be consistent, she is going to resist any other amendments because she does not like the term “voter-enacted.”

Senator Bennett mentioned that none of the past analyses have indicated whether the measures were statutory or voter-enacted. He thinks Senator Allen’s resistance to the term “voter-enacted” is appropriate. He expressed support of the crux of the Loredó amendment with the removal of that phrase because it should be clarified to the voter that this proposition will have the effect of removing the dedicated funding source for the Clean Elections Commission.

**Senator Bennett moved that the Loredó amendment be amended as follows:
Strike “VOTER-ENACTED”
The motion carried.**

Chairman Flake opined the Loredó amendment will kill the proposition. Senator Allen concurred.

Representative Loredó countered that this is descriptive and clarifying language.

Chairman Flake opined it would be better to do this in the “pro” and “con” arguments section. Representative Loredó disagreed. He said it is a completely factual statement. There is nothing subjective about it.

Representative Gray expressed opposition to the amendment. He thinks the analysis, as currently written, is clear.

Representative Loredó moved that the Loredó amendment as amended be adopted. Division was called and by a hand vote of 8 to 6, the motion carried.

**Senator Rios moved that the Allen amendment be amended as follows:
Page 1, lines 1 and 2, strike “taxpayer money” insert “PUBLIC MONEY”**

Representative Robson mentioned that the term “taxpayer money” is in the entire text of the proposed amendment. He thinks the Rios amendment is totally inconsistent and definitely confusing to the voters. He stated opposition to the Rios amendment.

Senator Allen declared she cannot support the amendment.

Question was called for that the Rios amendment to the Allen amendment be adopted. The motion failed.

Representative Gray moved that the Loredo #2 amendment (Attachment 24) be amended as follows:

Page 1, line 15, strike “DEDICATED” insert “PUBLIC”

Representative Burns stated opposition to the motion. The public funding source is not being removed, so she does not think that statement is accurate.

Senator Bennett believes the current language is more factual.

Representative Gray withdrew his motion.

Representative Loredo moved that the Allen amendment be amended by language in the Loredo #1 amendment (Attachment 25) as follows:

Page 1, lines 1 and 2, strike “taxpayer money” insert “ANY REVENUE COLLECTED BY STATE OR LOCAL GOVERNMENTS AND ANY AMOUNT ELIGIBLE FOR A STATE TAX REDUCTION, DONATION OR OTHER TAX FEATURE, WHICH INCLUDES THE FUNDING DESCRIBED BELOW”

Strike the second sentence.

Representative Loredo explained the purpose of the proposed amendment. It strikes “taxpayer money” and states the definition of taxpayer money.

Representative Loredo asked for the amount of the annual tax credits to Clean Elections.

Brad Regens, Assistant Director, Joint Legislative Budget Committee (JLBC), answered that the last funding source for the entire Commission was about \$12 million in 2002. This year the projection is \$9 million, of which approximately \$3 million goes for non-candidate funding.

Representative Loredo asked the amount that would potentially have to be funded out of the General Fund. Mr. Regens replied it would be about \$2.5 to \$3 million.

Representative Loredo asked the current amount of the tax credits. Mr. Regens said the tax credit gives the Commission about \$4.1 million.

In reply to Representative Robson, Mr. Regens said it costs the State \$8.2 million to give the \$4.1 million tax credit.

Senator Bennett queried the amount of taxpayer dollars that go into the Fund. Mr. Regens answered the two sources are the \$5 check-off box on the tax return that generates about \$4.1 million and the tax credit for donations that amounts to about \$100,000 per year.

Representative Robson pointed out the original text of the measure defines the source of taxpayer money. He thinks the measure clearly states the intent.

Question was called for that the Loredo #1 amendment be adopted (Attachment 25). The motion failed.

Senator Bennett moved that the Legislative Council analysis for C-04-2004 as amended do pass. The motion carried by a roll call vote of 9-4-0-1 (Attachment 26).

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Mike Braun, Executive Director, Arizona Legislative Council, advised that the analysis starts out with a general summary, followed by a summary of the individual portions (Attachment 27). This format is consistent with measures the Council has looked at in the past that are fairly complicated and lengthy. The first paragraph highlights the various requirements this initiative would place on registering to vote, presenting identification at the polling place and the government's responsibility to verify identity of applicants for certain public benefits. The final portion of the analysis addresses what is and is not defined in the initiative, and what is defined under federal law.

Senator Jarrett commented that the language on page 2, lines 7 through 10, appears to be speculation. She wondered whether that verbiage should be removed. Mr. Braun agreed that language is purely speculative.

Senator Jarrett also questioned whether the language on page 2, lines 11 through 18, needs to be in the explanation. She said she will be proposing amendments to remove both sections because that is federal law and she is not sure it really needs to be addressed. Mr. Braun explained the section that starts on page 2, line 11 is not speculation but a statement of fact to give more information on what the Council is speculating on.

Senator Bennett moved that the Legislative Council analysis proposed for I-03-2004 do pass.

Senator Jarrett moved that the Lopez #2 amendment that strikes lines 8 through 21 on page 2 be adopted (Attachment 28). The motion carried.

Representative Landrum Taylor expressed concern that, as written, a person will not be able to have a provisional ballot without proper identification. She does not want to disenfranchise anyone from voting. She wants to ensure that individuals are allowed to vote.

Representative Landrum Taylor moved that the Landrum Taylor amendment be adopted (Attachment 29).

Representative Landrum Taylor explained that her amendment inserts the following language after line 26 on page 1: “THE MEASURE DOES NOT ADDRESS WHETHER A PERSON WILL BE ALLOWED TO VOTE A PROVISIONAL BALLOT IF THE PERSON DOES NOT HAVE IDENTIFICATION.”

Senator Bennett expressed reluctance to include a statement that does not address the issue. He agreed that is a potential deficiency in the proposition; however, he does not think the language should be included in the description.

Representative Robson concurred with Senator Bennett. He stated that statute spells out how provisional ballots are handled and he is satisfied they are dealt with in a satisfactory manner.

Representative Landrum Taylor said her concern is nothing is clear in the measure that if the person does not have identification, he will not get a provisional ballot.

Senator Jarrett commented that nothing in the proposition stops a person from voting. That is taken care of in statute.

Question was called for that the Landrum Taylor amendment be adopted (Attachment 29). Division was called and by a hand vote of 6 to 7, the motion failed.

Representative Lopez moved that the Lopez #1 amendment be adopted (Attachment 30).

Representative Lopez explained the Lopez amendment clarifies the two areas being addressed by this measure: voting and public benefits.

Question was called for that the Lopez #1 amendment be adopted (Attachment 30). The motion failed.

**Senator Rios moved that the legislative analysis be amended as follows:
Page 1, line 1, after “presented” insert “BY EVERY PERSON”
line 2, after “presented” insert BY ALL VOTERS”
line 3, after “of” insert “ALL”**

Senator Rios explained the reason for his verbal amendment is because there currently exists the belief that this is an ethnicity issue, and requiring identification applies only to minorities. His amendment clarifies that it will apply to all persons, not just people of color.

Senator Allen agreed with Senator Rios.

Question was called for that the Rios amendment be adopted. The motion carried.

Representative Loredó moved that the Loredó amendment (Attachment 31) be adopted.

Representative Loredó explained the amendment inserts the following between lines 17 and 18: “THE COUNTY RECORDER MUST INCLUDE THIS PERSONAL IDENTIFYING

INFORMATION IN THE PERMANENT VOTER'S FILE FOR AT LEAST TWO YEARS.” He advised this language comes from the initiative on page 2, line 43.

Chairman Flake brought up the issue of the County Recorder keeping the information for two years if the person becomes deceased or is incarcerated. Representative Loredó reiterated the verbiage is taken directly from the language of the initiative. If something like that happens, he assumes it would be a matter for the lawyers to discuss.

Senator Bennett pointed out the amendment does not mirror the language of the initiative. He said he thinks the initiative language should be used.

Representative Loredó withdrew his motion.

Representative Loredó moved that the legislative analysis be amended as follows:

Page 1, between lines 17 and 18, insert “AFTER A PERSON HAS SUBMITTED SATISFACTORY EVIDENCE OF CITIZENSHIP, THE COUNTY RECORDER SHALL INDICATE THIS INFORMATION IN THE PERSON'S PERMANENT VOTER FILE. AFTER TWO YEARS, THE COUNTY RECORDER MAY DESTROY ALL DOCUMENTS THAT WERE SUBMITTED AS EVIDENCE OF CITIZENSHIP.”

Senator Bennett questioned why the language is inserted between lines 17 and 18. He thinks it should be added to the end of line 25. Inserting the language between lines 17 and 18 breaks up the concept instead of putting it in one place.

Representative Burns thinks it makes sense to place the language after line 17.

Chairman Flake queried whether the intent is to include the entire J. section of the initiative. Representative Loredó replied in the affirmative.

Representative Burns suggested amending the motion to add “after two years” after the first sentence and striking the last sentence.

Representative Loredó withdrew his amendment.

Representative Loredó moved that the legislative analysis be amended as follows:

Page 1, between lines 17 and 18, insert “THE COUNTY RECORDER SHALL INDICATE THIS INFORMATION IN THE PERSON'S PERMANENT VOTER FILE FOR AT LEAST TWO YEARS.”

The motion carried.

Senator Rios said there is a big question as to what constitutes a public benefit. There are arguments that this would also include police and fire protection. He wants voters to know, in situations that involve police or fire protection, that they may find themselves in a bind.

Senator Rios moved that the legislative analysis be amended as follows:

Page 1, line 25, strike the period. Insert “THAT MAY INCLUDE POLICE AND FIRE PROTECTION.”

Representative Robson said he does not believe eligibility questions are asked when police or firemen respond to a call.

Senator Rios said it is important to keep in mind that if police or firemen fail to verify eligibility, they are subject to a Class 2 misdemeanor, punishable by a jail sentence of up to four months and a fine of \$750. Since they are subject to that, he suspects they will stop to identify and verify before providing the service.

Question was called for that the Rios amendment be adopted. The motion failed.

Senator Bennett moved that the legislative analysis be amended as follows:

Page 1, line 5, after the period, insert “A PERSON WHO IS REGISTERED TO VOTE ON THE DATE THAT PROPOSITION ____ BECOMES EFFECTIVE IS NOT REQUIRED TO SUBMIT EVIDENCE OF CITIZENSHIP UNLESS THE PERSON MOVES TO A DIFFERENT COUNTY.”

Page 1, line 19, strike “A PERSON WHO IS REGISTERED TO VOTE ON THE DATE THAT PROPOSITION ____ BECOMES EFFECTIVE IS NOT REQUIRED TO SUBMIT EVIDENCE OF CITIZENSHIP UNLESS THE PERSON MOVES TO A DIFFERENT COUNTY.”

Representative Burns said she has a problem with moving the sentence from line 19 to line 5. The first paragraph is just a summary of the whole measure. She thinks if the language is moved, it looks like everyone is exempt from all those other things.

Representative Gray agreed with Representative Burns. This is talking about new registrations. If already registered, one does not have to show proof of citizenship.

Question was called for that the Bennett amendment be adopted. The motion failed.

Senator Bennett moved that the Legislative Council analysis for C-04-2004 as amended do pass. The motion carried by a roll call vote of 10-2-1-1 (Attachment 32).

Without objection, the meeting adjourned at 4:45 p.m.

Joanne Bell, Committee Secretary
March 7, 2017

(Original minutes, attachments and tape on file in the Chief Clerk’s Office)