
STRIKERS - GAMBIT OR GIMMICK?

A Compilation of
Newspaper and
Online Articles

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"STRIKERS" - A LEGISLATIVE GAMBIT OR GIMMICK?

Either way, a "striker" is a calculated move by some Arizona Legislators toward a beneficial objective. The purpose of this paper is to define a striker, give examples of strikers from past legislative sessions, and relate the supporters' point of view as well as that of critics of the practice. For it is just that - a "practice" and not a clause in the State Constitution, nor a written procedure on either political party's handbook, as far as is known. While well known to legislators, it is virtually unknown to the average constituent.

DEFINITION

A "strike everything after the enacting clause" amendment (also referred to as a "strike everything" amendment or simply a "striker") proposes to delete the entire text of the existing bill and substitute new language, essentially making it a completely different bill, possibly on an entirely different subject. These amendments are sometimes used to allow legislators to circumvent the deadlines on introduction of new legislation, deal with an issue that arises after the deadline or revive a bill that has previously been defeated.¹

EXAMPLES

It has been said that when it comes to Arizona's legislature, "dead is never really dead."² It has become common practice for legislators whose original bills failed, to reintroduce them toward the end of the session in a different manner. This maneuver — gutting a bill and completely replacing its contents and subject matter — is a way to introduce new measures after

the filing deadline, revive bills and circumvent committee chairs. No measure is dead, even if defeated on the floor, until the Legislature has adjourned. There were nearly 300 strike-everything amendments in the last three weeks of the 2010 session (compared to 28 in 2000).

Here are a few of them:

- **Senate Concurrent Resolution 1012** - Originally a technical correction to a law relating to public officers; now would ask voters to require the governor to appear before the House and Senate regularly to answer questions.
- **Senate Bill 1108** - Originally a technical correction to a law relating to children; now would allow anyone over age 21 to carry a concealed deadly weapon without a permit.
- **House Bill 2598** - Originally addressed the Registrar of Contractors; now would prohibit agencies from renewing or signing new contracts for photo enforcement without approval from the Joint Legislative Budget Committee.
- **House Bill 2641** - Originally related to condo-unit owners; now would legalize the sale of some kinds of fireworks.
- **House Bill 2723** - Originally dealt with the Active Management Area board of directors; now would make it illegal to transport a child in the back of a truck.

In 2012, Legislators introduced strike-everything amendments on 183 bills, sometimes more than one on a single piece of legislation. Sixty-seven of the bills signed by Gov. Brewer were strikers, a number that has been typical for the past decade.

A 20-week abortion ban resurfaced word-for-word under another bill number — a measure about attorney's fees — that had already passed the House and was in the Senate Judiciary Committee. It passed in the Senate and then went back to the House for a concurrence vote, without having to

go through committees, and was signed into law. The bill was upheld by a federal judge in Phoenix.

Other states have versions of strike-everything amendments, said Brenda Erickson, a senior research analyst at the National Conference of State Legislatures, but many require the new language to be germane to the original bill and may not allow a title change.

Arizona is at the loose end of the spectrum, where strikers can completely change the name and contents of a bill. Toll facilities turned into theme-park incentives. Judicial records became transportation. Reforms over the past 15 years have put some restraints on strikers, such as prohibiting them as last-minute floor amendments.³ Proposed strikers are now listed separately on the Legislature's website — and yet they're so hard to track that a recent list was missing five strike-everything amendments that were signed into law by Gov. Brewer.

STATE INTEGRITY INVESTIGATION REPORT

The State Integrity Investigation, a collaboration of the Center for Public Integrity, Global Integrity and Public Radio International, was a data-driven analysis of transparency and accountability in all 50 states, which resulted in a ranking of all 50, accompanied by both an overall letter grade and a numerical score.⁴ The State Integrity Investigation is a \$1.5 million public collaboration designed to expose practices that undermine trust in state capitols -- and spotlight the states that are doing things right.

The goals⁵ of the investigation were:

- *To examine states' commitment to government integrity and shine light on what's working and what's not.*
- *To convince state officials to improve their laws and practices. The State Integrity Index highlights "best practices" in state government and can serve as a basis for policy reforms that address the unique challenges facing each state.*
- *To inspire the public to become interested and invested in ensuring honest, effective state government. The Investigation offers many ways for people to become involved – following news about state integrity, emailing report cards to officials, sharing experiences with state government, proposing solutions, and connecting with local "good government" groups.*

The Investigation was not just a tally of scandals that have occurred in state governments. Instead, it measured the strength of laws and practices that encourage openness and deter corruption. The Investigation consulted 100 government integrity experts to determine what to measure, then created its State Integrity Index with 330 corruption risk indicators.

Journalists in each state conducted interviews and research to score the indicators, based on clear scoring criteria. Editors at Global Integrity and the Center for Public Integrity reviewed the journalists' work for accuracy and internal consistency. Experts in every state then independently reviewed the data. This project was produced with support from Omidyar Network and the Rita Allen Foundation, with additional support from Rockefeller Family Fund. The Wyncote Foundation provided

support for follow-up reporting on the project and its findings. More information on the investigation can be obtained by contacting nkusnetz@publicintegrity.org.

There are many ways to gauge government integrity. The State Integrity Investigation did not use convictions as an indicator. A hefty number of convictions may actually suggest that the system is working. Rather, the Investigation chose to measure the risks of corruption, as reflected in the strength or weakness of laws, policies, and procedures designed to ensure transparency and accountability in state government.⁶

Using a combination of on-the-ground investigative reporting and original data collection and analysis, the *State Integrity Index* researched 330 “Integrity Indicators” across 14 categories of state government: public access to information, political financing, executive accountability, legislative accountability, judicial accountability, state budget processes, civil service management, procurement, internal auditing, lobbying disclosure, pension fund management, ethics enforcement, insurance commissions, and redistricting.

Indicators assess what laws, if any, are on the books (“in law” indicator) and whether the laws are effective in practice (“in practice” indicators). In many states, the disconnect between scores on a state’s law and scores in practice suggest a serious enforcement gap.

Since the State Integrity Investigation was launched, reform efforts have been initiated in 16 states. Four of those states — Delaware, Iowa, Maine and Rhode Island — have passed laws or issued executive orders improving disclosure and access to public information. Lawmakers in seven

other states have proposed a broad slate of measures that would strengthen ethics oversight, tighten campaign finance reporting and more.

The ongoing 2013 legislative sessions have seen a flurry of activity. The Florida Senate and Georgia House have each passed major ethics reform bills that would strengthen ethics enforcement and rein in spending by lobbyists and independent campaign committees. While watchdogs say the bills contain serious flaws, the measures nonetheless could represent the first major reform efforts in those states in decades. Significant legislation has also been introduced in South Carolina, Maine and North Dakota.

Where legislators have been slow to act, in some cases the executive branch has stepped in. Rhode Island Gov. Lincoln Chafee created a new online portal in January 2013 to display audits, contracts and other financial documents in searchable format. Chafee's office has been working with Global Integrity, a partner in the State Integrity Investigation, to bolster open government practices. In Oklahoma, Finance Secretary Preston Doerflinger said his agency had improved online access and added thousands of records to public websites over the previous 12 months.

ARIZONA'S STRIKER LAWS

"The government belongs to the people. They should have full access to the process and how decisions are made."⁷ Citizens have the right to access government records. The question is whether they know how to access them and whether they will understand the process once they gain access.

What Supporters Say

Some lawmakers say that strikers are useful in several instances. "Sometimes it helps you get around an unsympathetic committee chairman."⁸

If a committee chairman chooses not to grant a bill a public hearing, a savvy legislator can find another bill that has been assigned to a different committee or that already has gotten through a committee, gut it and insert the language of his or her original bill after receiving the approval of that bill's sponsor.

Strikers also can offer a speedy shortcut around a slow process. If a striker is added to a House bill after it has already passed its House committee and the full House, the striker avoids any further hearings by the House committee. That allows the public only a Senate committee hearing in which to testify for or against the striker.

Some lawmakers will use a striker as an opportunity to preserve wording they prefer. For example, Sen. Russell Pearce, R-Mesa, abandoned his bill that eliminated the need for conceal-carry permits after the Senate voted to allow a change that he didn't like. Instead, he took the wording of his original bill and added it as a striker to a different Senate bill - minus the change.⁹

Pearce took issue with accusations that strikers are a way to circumvent the public-hearing process and sneak something through. "They are not sneak attacks," he said. "They are all heard in committees. We make sure all of them are heard appropriately, vetted and have a good

debate."¹⁰ Pearce said strikers also are used to address an issue that arises after the deadline to propose new bills passes. "There might be a critical issue that comes forward after the timeline,"¹¹ he added.

The director of communications for the Republican-majority House, Rey Torres, says the striker process "has been a very commonly used legislative tool and has also proven indispensable in getting good bills through the Legislature."

Strike-everything amendments aren't in and of themselves bad, said Mike Braun, executive director of the Arizona Legislative Council, which prepares bills and amendments during the session. They can be productive when a bill has had extensive changes: It's a lot clearer to wipe the slate clean and replace the language, added Braun.¹²

What Critics Say

Newspapers have editorialized against the use of strikers — The Arizona Republic called for a complete ban in 2007 — and the bills that result from them. The Eastern Arizona Courier, which serves a cluster of small communities, called them a "legislative gimmick." But even a decade ago, the process was so entrenched that The Daily Courier, which covers Yavapai County north of Phoenix, wrote that getting legislators to eliminate strikers would be like getting a drunk to give up booze or smokers to ditch cigarettes.¹³

"I call this portion of the session 'whack a mole'," said Sen. Ron Gould, R-Lake Havasu City. "All the bad bills keep popping back up."¹⁴ Gould said strikers make the legislative process tough for the public to follow as issues pop up and down and skip around between the chambers.

Gould also said House and Senate leadership already have the authority to allow a new bill in after the deadline. He said there is no good reason strikers should exist at all.

Sen. Amanda Aguirre, D-Yuma, called strikers a sign of desperation and persistence as the session nears its end. "It's playing hardball," she said. "It's pushing it to the limits."¹⁵

Other critics say the strikers are the antithesis of transparency, making it harder for Arizonans to follow legislation and bypassing committee discussion. As for the state budget blueprint, more and more, the process of hashing it out has "gone underground," said lobbyist Kevin DeMenna, a former Senate chief of staff for GOP leadership who has personally observed every legislative session since 1979.¹⁶

According to the Ingley and West article, the State Integrity Investigation Report¹⁷ was especially critical of how the Arizona budget process played out in 2012, resulting in even rank-and-file Republican lawmakers complaining that they were kept in the dark.

The Legislature used to hold extensive hearings before writing a budget plan and then, after negotiating with the governor, wrap up the end product with committee hearings before taking a final vote. But that system has disappeared over the past decade.

The process was so stripped down this year that "the \$8.6 billion budget passed with hardly any public comment at all," said Tim Schmaltz, coordinator of Protecting Arizona's Family Coalition. His sole chance to argue for reversing cuts in health care and other services was three minutes in an appropriations committee hearing.

The legislative cloak of secrecy, critics say, extends beyond the budget. The amendment process has become a way to obscure what legislators are doing, especially through the use of strike-everything amendments.

Sandy Bahr, director of the Sierra Club's Grand Canyon Chapter, combs through committee agendas, even those completely unrelated to the environmental issues she follows, to spot last-minute strikers. "If you're an average person," she said, "you wouldn't even know where to look."¹⁸

A bill allowing companies to do their own environmental audits, which conservation groups opposed, stalled in the Senate Natural Resources and Transportation Committee. But then it popped up as a striker, replacing a tax-related bill, in the Border Security, Federalism and State Sovereignty Committee.

"There was nothing in that committee that has anything to do with this bill. The people on the committee have not seen the issue before or anything related to it,"¹⁹ Bahr said. But the bill passed and was signed by the governor.

Controversial bills can move through the Legislature under the cover of innocuous measures. Strikers were pivotal in the passage of three abortion bills in 2012. For proponents, they were valuable tools. For opponents, they were end runs around the public process.

Concerns about transparency cut across partisan lines. Both Republicans and Democrats raise concerns about how strikers are shutting out the public.

Arizona Town Hall, a nonprofit civic organization that convenes a cross-section of people to look at statewide issues, has called for reforms in strikers twice in the past two years.

SUMMARY

A striker amendment is created by gutting the language of a failed bill and substituting new language, often with a totally unrelated focus and title. Both parties in the Arizona legislature have used striker amendments for sound reasons, supporters of the practice say. Critics in both parties, however, point to the confusion that the practice causes for the general public and even for lobbyists. For proponents, they are valuable tools. For opponents, they are end runs around the established legislative process.

In March of 2011, the State Integrity Investigation published its analysis of 50 states' governments, assigning each state a letter grade based on 300 government integrity indicators. No state received an "A"; Arizona received a D⁺ and was ranked 30th among the 50 states.

Since 2010, The Arizona Republic has published several articles about the striker practice and results of the State Integrity Investigation. But more politically charged issues such as abortion and SB 1070 have overshadowed the less visible issue of striker amendments. As one journalist put it, "The current makeup of the Arizona Legislature reinforces the status quo: Democrats are too weak to have an impact and the Republican majority is large enough to ignore a few restive members."²⁰

APPENDICES

Appendix A Arizona Legislative Accountability Grade (as rated by the State Integrity Investigation)

Appendix B Arizona Corruption Risk Report Card

APPENDIX A

**State Integrity Investigation Report
ARIZONA Legislative Accountability**

GRADE: D⁺

Indicator		Score
4.1	Can members of the legislature be held accountable for their actions?	95%
4.2	Are there regulations governing conflicts of interest by members of the state legislature?	50%
4.3	Are regulations governing conflicts of interest by members of the state legislature effective?	29%
4.4	Can citizens access the asset disclosure records of members of the state legislature?	80%
4.5	Can citizens access legislative processes and documents?	90%

APPENDIX B

Arizona Corruption Risk Report Card

Rank among 50 states: 30th

Overall grade: D+	
Public Access to Information C+	Political Financing D+
Executive Accountability C	Legislative Accountability D+
Judicial Accountability B-	State Budget Processes C
State Civil Service Management F	Procurement C-
Internal Auditing B	Lobbying Disclosure F
State Pension Fund Management F	Ethics Enforcement Agencies F
State Insurance Commissions F	Redistricting A

Reprinted from *State Integrity Investigation Report*, Apr 2011

¹ FAQ of the Arizona legislature website.

² Alla Beard Rau and Mary Jo Pitzl, *Legislative Strikers Keep Pet Projects Alive*, The Arizona Republic Apr 11, 2010

³ Mike Braun, Ex. Director of the Arizona Legislative Council, which prepares bills and amendments for the legislative session

⁴ See Appendices A and B of this paper for the investigation reports on Arizona.

⁵ *Center's State Integrity Investigation Selected as a Finalist for the Goldsmith Prize*, Center for Public Integrity April 29, 2013.

⁶ Caitlin Ginley, *50 States and No Winners*, Center for Public Integrity.

⁷ Karen Hobert Flynn, vice president for state operations of Common Cause

⁸ Sen. Jack Harper, R-Surprise.

⁹ Alla Beard Rau and Mary Jo Pitzl; *Legislative Strikers Keep Pet Projects Alive*, The Arizona Republic Apr. 11, 2010

¹⁰ Ibid

¹¹ Ibid

¹² Kathleen Ingley and Maureen West, *Transparency Missing in Arizona's legislature*; State Integrity Investigation Report Aug. 01, 2012

¹³ Ibid

¹⁴ *Controversial Approach Allows Legislators to Revive Pet Projects that Failed*, The Arizona Republic Apr. 11, 2010

¹⁵ Ibid

¹⁶ Kathleen Ingley and Maureen West, *Transparency Missing in Arizona's legislature*, State Integrity Investigation Report Aug. 01, 2012

¹⁷ See Appendix B, Arizona Corruption Risk Report Card.

¹⁸ Kathleen Ingley and Maureen West, *Transparency Missing in Arizona's legislature*, State Integrity Investigation Report Aug. 01, 2012

¹⁹ Ibid

²⁰ Ibid