

League of Arizona

Cities AND Towns

— Legislative Bulletin —

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Legislative Overview

Today is the sixty-first day of the first regular session of Arizona's 50th Legislature. If recent history is repeated and leadership expectations are fulfilled, then the current session is more than halfway completed.

Only two weeks of committee hearings remain. In the meantime, closed-door negotiations continue regarding production of a budget for the coming fiscal year. There is much speculation at the Capitol regarding the development by conservative legislators of an alternative budget containing spending cuts far more draconian than those proposed in the Governor's budget. The League is prepared to vigorously oppose any proposals calling for harmful budget reductions to cities and towns.

Development Impact Fees

Cities and towns are strongly encouraged to contact their members of the House of Representatives and ask them to oppose SB 1525 (city; town; development fees). The bill makes a number of sweeping changes to the development impact fee system and moves Arizona away from the principle that growth should pay for itself, rather than increase the burden on existing taxpayers.

This bill was drafted without involvement from cities and towns, and it undoes many items that have been previously negotiated between the homebuilding industry and municipalities over the last six years. City and town impact fee rates are currently under a statutory freeze that continues through June of 2012.

At the request of Governor Brewer, both sides have agreed to discuss the impact fee process, with all issues on the table. The first meeting of that work group was scheduled for today (Friday). We will keep you updated about any progress on the issue resulting from this work group process. Meanwhile, tell your Representatives that, among other things, the bill:

- limits the number of things for which impact fees can be charged, taking discretion away from city and town councils;
- changes how the fees are to be calculated;
- redefines which developments are eligible to benefit from impact fees and the process for updating a city's infrastructure improvement plan;
- sets up an extensive "offset" provision to credit other taxes and revenues against impact fees, making it unlikely any impact fees could even be assessed;
- requires projects to be completed within five years (or else development fees are refunded);
- greatly extends the timeline for adoption of fee schedules;
- jeopardizes the ability of cities to pay back outstanding bonds with impact fees, which may result in higher property or sales taxes;
- creates a new advisory committee in each city or town; at least 60 percent of this committee's membership must be drawn from the real estate and homebuilding industries;
- establishes an unreasonably short period of time for all cities and towns to rewrite their local development fee ordinances to comply with this new statute; and
- extends the "grandfather" provision for freezing rates on approved developments from two years to five years.

Please remind your Representatives that development impact fees actually create jobs because they are spent exclusively on infrastructure projects. Those infrastructure improvements are required for homebuilders to sell the houses they intend to build. It should not be the responsibility of city or town general funds or existing residents to subsidize growth in their communities.

Residential Rental Taxes

On Tuesday, March 8, the House Committee on Government considered SB 1160 (city sales tax; residential rental). The bill, requiring that the imposition of any tax increase on residential landlords be approved by a vote of the people, had previously passed the full Senate. Despite the League's vocal opposition, the bill was approved by the committee on a vote of 8-1. The bill now proceeds to the House floor.

Apartment Trash Collection

SB 1204 (trash collection; multifamily housing) is scheduled to be heard in the House Government Committee next Tuesday. The bill mandates that private waste haulers be given the opportunity to contract for the removal of trash from apartment

complexes. The sponsor, Senator Gail Griffin (R-Hereford) had agreed to work with the League when the bill moved to the House, and we remain hopeful that there will positive changes to the bill that cities and towns can accept.

Consumer Fireworks

On Wednesday, the Senate Committee of the Whole passed SB 1379 (consumer fireworks; regulation). The strike-everything amendment to the bill limits the extent to which cities and towns may regulate the use of fireworks. Among other things, it mandates that cities may not prohibit the use of consumer fireworks during the periods of June 15 to July 5 and December 12 to January 2. Additionally, the Senate adopted a floor amendment offered by Senator Frank Antenori (R-Tucson). That amendment prohibits the sale of fireworks in a county with a population of less than 500,000 people and containing between 2.5 and 5 million acres of federal land. The bill now proceeds to third reading.

Fire Sprinklers

On Thursday, Governor Brewer signed HB 2153 (municipalities; counties; fire sprinklers; code). The bill prohibits cities and towns from mandating the installation of sprinkler systems in new homes. Municipalities that adopted such requirements before 2010 are exempt. The bill will go into effect 90 days after the legislative session concludes.

Regulatory Reform Update

This week the Legislature addressed two bills involving regulatory reform. HB 2501 (rules; laws; ordinances; interpretation) requires that any rule, ordinance or law related to permitting, licensing or zoning that is ambiguous be interpreted in favor of the party challenging its clarity. The League opposes the measure, which passed the House of Representatives on Thursday by a vote of 40-20. On Tuesday, the Senate passed SB 1598 (cities; counties; regulatory review) by a party-line vote. The measure applies to local government the Regulatory Bill of Rights, which currently governs state agencies; it also makes changes to the general plan statutes regarding aggregate resources. The League is working to finalize amendment language to address our concerns.

Emergency Response Fee Prohibition

With certain exceptions, HB 2003 (emergency response services fee; prohibition) precludes political subdivisions from charging for the recovery of costs incurred for responding to motor vehicle accidents. At least one rural Arizona city regularly responds to accidents on a remote state highway because no one else is available to respond. Because of the strain on its already-stressed budget, that city seeks reimbursement for the costs incurred. Accordingly, Representative Nancy McLain (R-Bullhead City) amended the bill in committee to exempt counties with populations under one million.

The League is working with the automobile insurance industry on another amendment to ensure that the bill's prohibition does not apply to services rendered pursuant to intergovernmental agreements between cities and towns. The bill, which previously passed the House, was approved Wednesday by the Senate Public Safety and Human Services Committee on a 4-2 vote.

Photo Radar

A pair of bills regarding the use of photo radar for traffic enforcement purposes moved through the legislative process this week. SB 1354 (photo enforcement; violator identification; response) passed the Senate by a vote of 21-9 on March 8. The bill provides that persons receiving a photo radar ticket are required to neither identify the driver in the photo nor respond to the complaint.

A related measure, SCR 1029 (photo radar prohibition), passed the Senate by a vote of 18-12 on March 10. This concurrent resolution would put the question of a statewide photo radar ban to a vote of the people. A companion bill (SB 1352: photo radar prohibition), a measure to impose a statutory ban on the use of photo radar, was previously defeated in the Senate. The League opposes all of these radar bills to the extent they diminish local control and impact public safety.

Liquor

SB 1460 (liquor omnibus) passed third reading in the Senate this week by a vote of 23-7. The bill was amended to permit

municipalities and counties to protest the transfer of an existing liquor license to a new business owner; that had been one of our principal points of contention. The bill now proceeds to the House.

Political Signs

On Tuesday, the House debated HB 2500 (political signs) in the Committee of the Whole. This bill provides that political signs must be permitted in public rights-of-way as long as they don't create a public safety hazard. The bill sponsor, Representative David Gowan (R-Sierra Vista), offered a floor amendment crafted by the League that provides for:

- the inclusion of candidate contact information (to facilitate the return of removed signs);
- the length of time required (ten business days) cities must hold signs for candidates before the signs are otherwise disposed;
- immunity for municipalities for failure to remove non-compliant signs; and
- the creation of business zones within which political signs are prohibited.

The House passed its third reading on March 10 by a vote of 34-26.

Managed Competition and Personnel Compensation

On March 10, the Senate Committee of the Whole passed SB 1322 (s/e: managed competition, city services), a bill mandating comprehensive private competition for city services. The bill was amended on the floor by its sponsor, Senator Frank Antenori (R-Tucson), to change the population threshold of cities to which the bill applies from 200,000 to 500,000 persons. The amendment also raised the maximum dollar limit of permissible non-competed contracts from \$50,000 to \$75,000.

The Senate Committee of the Whole also passed SB 1345 (s/e: municipal employees; compensation). The bill originally provided that, beginning in 2014, the number of municipal employees shall not exceed 0.4 percent of the population of the city and that the average compensation of municipal employees shall not exceed the average salary of private sector employees in that community. The bill was amended on the floor to provide that the average compensation of a municipal employee shall not exceed 110% of the average salary of private sector employees.

SB 1347 (cities; compensation baseline) rolls back municipal pay grades to their fiscal year 2007 levels. The bill was retained on the Committee of the Whole calendar.

SB 1322 and SB 1345 will likely be third read next week. Although these bills, in their current form, apply only to Arizona's largest cities, they represent a terrible precedent and a frontal assault on local control and self-governance. Accordingly, the League strongly encourages all of its members to contact their senators to **urge a "NO" vote** on these two bills.

Rental Sales Tax Collection Update

HB 2289 (real property; rental; municipal taxes) passed the House on third read by a vote of 39-21 on Thursday. The bill had previously passed out of committee with a strike-everything amendment requiring the Department of Revenue (DOR) to collect and remit real property rental taxes for self-collecting cities on a quarterly basis. The bill, however, was further amended on the floor with language negotiated between Representative Jeff Dial (R-Ahwatukee), DOR and the League. The bill now requires DOR to provide information on its website regarding real property rental licensing and payment requirements. The League would like to thank Representative Dial for his cooperative efforts, and we look forward to continuing to work productively with him in the future.

Pension Reform Update

The major pension reform bills pending in the Legislature progressed through the process this week. SB 1609 (retirement systems; plans; plan design), Senator Steve Yarbrough's (R-Chandler) comprehensive pension reform bill, was first read and assigned to the House Committee on Employment and Regulatory Affairs. HB 2726 (public retirement systems; plan design), sponsored by Speaker of the House Kirk Adams, passed out of the House Rules Committee on Monday and both caucuses on Tuesday. The League continues to support the efforts of the Legislature to enact meaningful reform to our state's pension system.

Legislator Profile: David Burnell Smith

Representative David Burnell Smith distinctly remembers his first fight as a Golden Gloves boxer. Perhaps that's partly because his first boxing match was also his last.

Growing up in West Virginia, young David had listened to his dad's title fight on the radio. His father was contending for the Golden Gloves championship of his weight class. At five-foot-six, the elder Smith was a relatively diminutive yet ferocious boxer. He did not, however, fare well on that particular day. "Smith takes another hit!" "Smith is knocked down again," the sportscaster reported.

Determined to make his father proud, David climbed into the ring after having trained tirelessly for weeks. Finally, his moment arrived. The bell rang and the fight was on. Within seconds, he had his own bell rung. "I was hit so hard, I saw stars," the District 7 Representative recalls. He staggered through the remainder of the fight, but he never quit, and he was never knocked down.

The future lawmaker quickly concluded that he wasn't born to be a pugilist and decided that he would do his future fighting in the courtroom. His journey to the Bar, however, involved a long and uphill climb out of the hollers of West Virginia.

Raised in the heart of Appalachia, Rep. Smith learned at an early age about the value of hard work and determination. He got his first job as a newspaper boy at age nine, and he has worked continuously ever since. He worked at Kroger's grocery through high school and worked his way through the University of Charleston as a night clerk at a community bank. Working the graveyard shift, he would arrive at the bank at midnight, proofread checks through the night, rush home to change, head off to school, power through some homework, and then try to sneak in a couple hours of sleep before starting all over again. It was, he remembers, a miserable way to live.

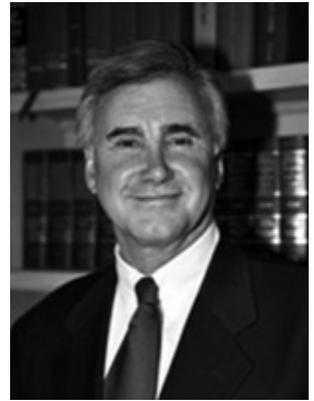
Rep. Smith also learned a great deal about human nature as a youngster traveling the back roads of West Virginia with his father, an employee of Dupont Chemical who served as a part-time minister in the Methodist Church. "He taught me that people who pray the loudest and the longest are the ones you need to watch out for the most," says Rep. Smith. "You can see the real nature of people far more clearly through their deeds than their words."

Following college and a tour in the Coast Guard reserves, Rep. Smith went to work for Gulf Oil. A highly successful sales representative in the field, he won a trip to Disney World for his achievements. More important, Gulf paid his way through law school at the University of Baltimore. Upon graduation from law school, Gulf offered him a position as one of two lawyers in the company's nascent environmental law department. Because he aspired to be a trial lawyer, Rep. Smith declined the offer, though he can't help but wonder how his life would have differed had he overseen the explosive growth of the oil giant's environmental practice.

Rep. Smith instead embraced his wife's objective to relocate to her native Colorado, where he built a successful law practice from scratch, working around the clock and indefatigably marketing his services. By and by, he was presented with a chance business opportunity in Glendale. That led to his passage of the Arizona Bar exam and commencement of a legal practice in the Valley. He purchased a house in Carefree, where he and his wife have lived ever since.

One day, in the course of representing a client, Rep. Smith traveled to the city offices of Peoria. "I'd like to see the judge," he requested. A clerical employee responded, "We don't have one. You want to be one?" "I said 'OK'," Rep. Smith recalls, "and just like that I became a judge pro tem."

Rep. Smith served on the bench for ten years, between 1984 and 1994, while he continued his private law practice. Somehow during that period, he also found time to appear in the movies. Notably, he played the role of a detective in *Dead Girls Don't Tango*, a campy murder mystery starring Karen Black. (He has a screen credit for this performance as "Dennis" in the Internet Movie Database - look it up!)



Rep. Smith has a congenital interest in politics. He walked door-to-door with his father when the latter ran for the state Legislature in West Virginia, and he majored in political science in college. His passion for politics ran at a fever pitch when he attended the first presidential inauguration of Ronald Reagan in 1981 as a guest of Holly Coors (the American conservative political activist and philanthropist who was married to Joseph Coors, the president of Coors Brewing Company). Seated next to Ginger Rogers, Rep. Smith felt somewhat self-conscious in his morning suit and black eel cowboy boots. He found himself in good company, though, when the newly elected President of the United States of America passed right in front of him - wearing a morning suit and cowboy boots. (In another parallel to America's 40th president, Rep. Smith was sworn into the Bar by the same individual who administered the oath of office to Reagan: the Honorable Warren E. Burger, serving at the time as Chief Justice of the United States Supreme Court.)

Rep. Smith threw his own cowboy hat into the ring of elective politics in 1994, when he ran for Congress against J.D. Hayworth and a host of Republican primary contestants. His loss in that election did anything but discourage him from future campaigns. He ran for the Arizona Senate in 1998 and lost. He ran again for the same seat in 2000 and lost. He ran in 2002 and lost. The very poster child of perseverance, he ran for the Arizona House in 2004 and emerged victorious. He resigned his seat, however, in the course of a dispute with the Citizens Clean Elections Commission over campaign spending. Like the Terminator, he vowed to his colleagues, "I'll be back."

Following yet another electoral setback in a 2006 House run, Rep. Smith fulfilled his pledge with a victory in 2010. Representing the municipalities of Carefree, Cave Creek, Phoenix and Scottsdale, Rep. Smith serves as vice chairman of the House Judiciary Committee. He also serves on the Banking and Insurance Committee and the Military Affairs and Public Safety Committee. A fierce proponent of liberty, he opposes the imposition of onerous mandates on cities and towns. "It is just as wrong," he asserts, "for the State to saddle the cities with unfunded mandates as it is for the federal government to force such mandates on the states."

Just as in his short-lived boxing career, Rep. David Burnell Smith has endured some punishing blows in his political career. But he has never been knocked down. And he will never ever quit.

Legislative Bulletin is published by the League of Arizona Cities and Towns.
Forward your comments or suggestions to league@azleague.org.