



# LEGISLATIVE BULLETIN

**Issue No. 8 – March 2<sup>nd</sup>, 2018**

## Legislative Overview

Today marks the 54<sup>th</sup> day of session and this week staff at the League have been engaged in a number of stakeholder meetings and meeting with legislators on bills impacting city and town government.

Action in the legislature continued this week at a moderate pace, with most of the activity occurring in standing committees. Floor and committee activity will increase in the coming weeks as the legislature works to take action on bills before deadlines pass. While budget discussions have continued, the introduction of a budget package has yet to occur.

## Digital Goods and Services

SB 1392 and HB 2479, TPT; digital goods and services, sponsored by Sen. David Farnsworth (R-Mesa) and Rep. Michelle Ugenti-Rita (R-Scottsdale) respectively, are the companion bills that emerged from the interim committee on Digital Goods and Services.

The intent is to draw a line between “pre-written software” and “specified digital goods” (books, music, movies, etc.) that are “transferred electronically” meaning wholly downloaded or saved in some manner by the user and thus are considered taxable, versus the same items that are “remotely accessed” over the Internet (“in the cloud”) without downloading a complete copy and thus are defined as exempt “specified digital services.” To accomplish this, the bill creates at least eight new exemptions for transactions that have been held taxable for decades.

On Wednesday of this week, despite our best efforts, HB 2479 was approved in the House Committee of the Whole and passed on Third Read by a vote of 39-19. However, when the companion bill SB 1392 was scheduled for floor action in the Senate Committee of the Whole, it was retained on the calendar. This was due to the many phone calls and messages from cities and towns to their legislators as well as the completion of a fiscal note by the Joint Legislative Budget Committee. That [fiscal note](#)

confirmed our misgivings about the bill including the new exemptions we identified and cost to state and local governments.

The current analysis by League staff on the fiscal impact to cities and towns shows an estimated loss of approximately \$48 million in the first year, and increasing losses each year thereafter as more and more products are delivered digitally. Since the early 1990s, sales of digital goods have been considered taxable under the Retail classification because software files consist of data that is measurable in kilobytes, megabytes, gigabytes, etc.

The U.S. Supreme Court has accepted a case from South Dakota that could potentially overturn the Quill decision from 1992. This would change the requirements establishing "nexus" and taxing authority, particularly with regard to out-of-State sellers such as those on the Internet. It is widely believed the court accepted the case in order to modernize the Quill decision and broaden the taxability of retail products sold online.

It is imperative that we keep up our efforts to educate legislators about the true negative impacts of this dramatic policy change.

## COX Statewide Cable License

The stakeholder process for HB2579 video service; certificates of authority, continues with Cox Communications but with no agreement as of yet. It is sponsored by Rep. Jill Norgaard (R-Phoenix). The bill as introduced would allow incumbent and competitive video and Internet providers, such as Cox, Comcast and CenturyLink, to obtain a more corporate-friendly statewide license agreement from the Secretary of State and completely abandon their existing agreements with cities and towns that were negotiated in good faith to protect rights-of-way, consumers and taxpayers. The bill has a double committee assignment in the Senate and we hope this allows more time for a thorough vetting of the bill to ensure it works for consumers who use these services and for taxpayers who do not.

Cable licensing at the local level has been the standard for the entire existence of cable TV, for more than 50 years. Yet, in a few weeks, Cox is trying to completely undo that system, one that has worked well for consumers. Cox has claimed that local license agreements impede competition and consumer choice. We believe competition is good and our existing license agreements encourage competitor providers to deploy their technology and services into our communities to benefit our residents. There are no existing federal, state or municipal laws that prevent competition; if a competitor wants to enter into the market today, all they have to do is ask. No legislation or government entity can force competition to occur. This decision is entirely up to the industry to decide whether or not it is worthwhile to invest in our communities to compete in the cable TV or Internet market. The cable industry is seeing more competition from satellite and video streaming services.

The experience in other states that have adopted statewide franchise/license laws similar to HB2579 is very significant and it is clear that it did not live up to expectations. The proponents of these measures claimed that more competition, lower prices, and increased customer satisfaction would be achieved by deregulating the video market, much like what HB2579 seeks to do. However, it is abundantly clear that these expectations were not achieved. In fact, customer satisfaction is at all-time lows, prices increased substantially soon after legislation was adopted and customer complaints have increased considerably. We believe HB2579 will have the same outcome in Arizona due to the fact that there is no delegation of oversight of these companies to ensure they are following FCC customer service standards. In addition, the bill will not protect taxpayers because there are provisions that would shift some costs of street repair, restoration and undergrounding of cable facilities to the city. As a result, all taxpayers would pay to repair street damage caused by cable companies, even those that do not subscribe to their services.

Please contact your Senators to explain the damaging impacts of this legislation and request a more thorough stakeholder process be conducted to ensure this bill will not negatively impact consumers and taxpayers.

## Zoning; Private Schools

This week HB 2461 zoning regulations; private schools, sponsored by Rep. Vince Leach (R-Tucson), passed out of the Senate Education Committee on a 4-3 vote. This bill would prohibit counties and municipalities from adopting land use regulations or imposing conditions for building or use permits on private schools that are not enforced or imposed on charter schools.

Traditional public schools do not go through a city zoning process. However, they are typically included as part of larger developments and do go through a public process at the school board level. This local governing body is positioned to hear concerns from adjacent neighborhoods and can work to mitigate any negative impacts (for example, lights from sports fields, traffic from buses and parents dropping off students, etc.) the school could create.

Several years ago, the statutes were modified to give charter schools this same treatment. Unfortunately, since these schools no longer go through a zoning process, there is no opportunity for neighbors to weigh in with their concerns or have a process to resolve conflicts with other land uses. Consequently, some problems have occurred.

HB 2461 would extend this same statutory exemption from the zoning process to private schools. While there has been an ongoing debate in Arizona over educational opportunities provided by traditional public schools, charter public schools and private schools, that is not our concern with this bill. Rather, it is the impact on neighborhoods because residents will no longer have a place to register their concerns prior to the

development of a private school or have any recourse to address conditions that are created that are not compatible with the adjacent land uses.

Please contact your legislators to let them know that you believe that neighborhoods should have the chance to be heard when it comes to what is being built next to them and to ask them to vote no on this bill when it comes to the Senate floor unless these concerns are addressed.

## Vehicle Fees; Alternative Fuel VLT/HURF Distribution; Cities, Towns, Counties

This session, in the House and Senate, the Legislature has considered companion bills addressing the continuous sweeps of HURF to fund the Department of Public Safety (DPS). HB2166 and SB1146; vehicle fees; alternative fuel VLT, sponsored by Representative Noel Campbell (R-Prescott) and Senator Bob Worsley (R-Mesa) respectively attempt to address HURF sweeps and adequately fund DPS.

The amended provisions of these companion bills require the annual collection of a highway safety fee with the vehicle registration application. The highway safety fee funds will be deposited into the Arizona Highway Patrol Fund and the fee must be sufficient to fund 110% of DPS highway patrol budget for each fiscal year.

Additionally, the bills require the Director of the Arizona Department of Transportation (ADOT) to set a percentage by which they'll charge a vehicle license tax (VLT) to owners of alternative fuel vehicles beginning January 1, 2020. Finally, the bill continues to exempt a VLT for alternative vehicles with a gross weight of greater than 10,000 pounds (tractor trailers, etc.).

On February 20, 2018 HB2166 was approved in the House 35-24-1 and was transferred to the Senate where it has not been assigned. SB1146 was approved in Committee of the Whole on February 22, 2018 with identical amendments to those adopted in the House; however, this bill has not appeared for a full vote in the Senate.

The League signed in support of these bills as we see it as an effort to address sweeps from HURF that have been taking place since 1982.

On a similar topic, HB2514; HURF distributions; cities, towns, counties is sponsored by Representative David Cook (R-Florence, Coolidge, Globe, Casa Grande) and passed the House 36-20-4.

The amended language in HB2514 changes the distribution of HURF funds by directing an initial \$18M to rural counties and cities before calculating the additional funds based on the traditional formula.

As mentioned in the February 16, 2018 [bulletin](#), the League signed in and spoke in opposition to HB2514 indicating we do not believe it is useful to pit rural cities versus urban cities and rural counties versus urban counties. Rather, we believe the root cause of the HURF funding problem is that the available pool of money is too small since the gas tax has not been raised since 1991. The current gas tax of 18¢, adjusted for inflation, is 33¢ in today's dollars.

Additionally, the League identified that while the purchasing power of the pool of HURF funds continues to decline, the state has swept HURF funds every year since 1982 to fund the portions of the budget because DPS does not have a dedicated funding source. Since 2001 the state has swept \$1.1B from HURF resulting in degrading roads and fewer road projects.

We believe our time is better suited addressing the lack of overall funds in HURF and finding DPS a dedicated funding source, and HB2166 and SB1146 address one of those two issues. We encourage you to reach out to your legislators to ensure the Senate adopts the House version of the bill and vote on HB2166.

## ASRS; Nonparticipating employers

This past week the Senate considered SB1054; ASRS; nonparticipating employers sponsored by Senator Karen Fann (R-Prescott). This bill attempts to close a previously un contemplated loophole whereby employers who were removed from the Arizona State Retirement System (ASRS) through legislative action but remained a public employer would not have to pay their portion of their accrued pension liabilities.

In 2012, after the conversion of State Compensation Fund, Arizona – a public entity – to CopperPoint – a private entity – Senator Steve Yarbrough (R-Chandler) sponsored SB1194 requiring an entity that converted from public to private pay their portion of the accrued unfunded liabilities. In recent years certain public employers have discussed pursuing future legislation to remove them from the ASRS so that they can operate “more like a business.”

In light of these discussions, the ASRS approached the legislature seeking protection in statute whereby if a public employer were to be removed from the pension system the ASRS would be able to charge that employer, on an annual basis, their portion of that year's unfunded liability. The League signed in and spoke in support of SB1054 because the language ensures that the millions of dollars in accrued liabilities from an extracted employer are not transferred to the contribution rates of remaining employees and employers (cities, towns, counties, school districts, State, etc.) in the retirement system.

This bill was heard in Senate Finance on February 11, 2018 and passed with a 6-1 vote. On February 28, 2018 the full chamber voted on the bill passing it 29-1.

## Sober Living Homes

SB 1465 and HB 2529 sober living homes; certification, sponsored by Sen. Kate Brophy-McGee (R-Phoenix) and Rep. Noel Campbell (R-Prescott), respectively, would establish a state-wide licensing system for sober living homes.

While discussions are still ongoing, the basic principle of both bills is that *all* sober living homes would be required to be licensed going forward. The standards for licensure would be developed by the Arizona Department of Health Services (DHS), with input from the public and other stakeholders, but would largely mirror national standards in place in other states. Furthermore, DHS would have the authority to shut down or take legal action against sober homes that did not comply.

Last year at the Annual Conference the League's full membership adopted a resolution to advance legislation to protect neighborhoods and sober living home residents from poorly-run, unregulated sober homes. Recognizing that the opioid epidemic has created an unprecedented demand for substance abuse recovery housing and that this environment has unfortunately been used by some to exploit those in recovery, the League along with several of our cities, DHS, the Arizona Recovery Housing Association, and other stakeholders have been working with Senator Brophy-McGee and Rep. Campbell on a statewide legislative solution.

In terms of process, both bills have steadily advanced and are awaiting further action while the final terms of the legislation are decided. The timeline will depend on how quickly discussions are wrapped up but we expect movement in the coming weeks.

On a related note, SB 1451 patient referral inducements; prohibited compensation, sponsored by Sen. Nancy Barto (R-Phoenix) passed out of the Senate this week. This bill would prohibit the "brokering" of substance abuse patients amongst sober homes and other substance abuse treatment providers. Patient brokering, like unregulated sober living homes, has been a nationwide problem and the League supports addressing both issues proactively at the state level.

The League will continue to work with legislators and other stakeholders to develop the best policies for dealing with these issues and will provide updates as these particular bills move through the process. If you have specific questions or comments related to these bills or the issue in general please contact Legislative Associate Alex Vidal ([avidal@azleague.org](mailto:avidal@azleague.org)).

## Legislative Bill Monitoring

Our Legislative Bill Monitoring system has been upgraded! The issue with linking directly to a specific bill's information page on the Arizona Legislature website has been

resolved. We have also implemented a self-updating list through Arizona Capitol Reports, providing you with the most up-to-date information possible!

[Click here to browse through our Legislative Bill Monitoring page!](#)