



ISSUE 16 - APRIL 22, 2011

Legislative overview

At 5:25 a.m. on Wednesday, after an all night legislative marathon, the first session of the 50th Arizona Legislature adjourned *sine die*. The session concluded on the 100th legislative day of the year, the deadline established by rule in the House and Senate. It was the earliest *sine die* adjournment in eleven years.

News coming from the executive tower this week centered on Governor Brewer's veto of bills that arrived at her desk with the strong support of conservative legislators. After signing some of the most sweeping legislation in the country to loosen gun restrictions over the past two years, the Governor vetoed a controversial bill (SB 1467: educational institution; concealed weapons) to permit people to carry firearms on college campuses. In addition, she vetoed legislation (HB 2177: presidential candidates; qualifications; affidavit) to require President Barack Obama and other presidential candidates to prove their U.S. citizenship before their names can appear on the state's ballot.

Legislative leadership hopes that this session will be remembered for passage of a balanced budget, comprehensive pension reform and a sweeping jobs package. These are laudable achievements and the League of Cities and Towns congratulates the House and Senate for these accomplishments.

This Legislature, however, will be also be remembered for its relentless assault on Arizona's cities and towns. Bills to micromanage municipal contracting procedures, establish city employment levels, reduce state-shared revenues, and abolish the Model City Tax Code were among the raft of anti-city legislation introduced during the session. These bills diminish local authority and centralize power in the State. Ironically, many of those who most adamantly oppose federal government intrusion into state matters are more than anxious to impose state mandates on cities and towns.

Development impact fees

SB 1525 (city; town; development fees) was amended in the House on Tuesday evening with a floor amendment sponsored by Representative J.D. Mesnard (R-Chandler). The amendment reflects the consensus agreement reached between negotiators from the League and the Homebuilders Association. The bill passed the House by a vote of 41-18, and the Senate concurred in the House amendments by a vote of 20-10. The bill is awaiting the Governor's signature.

Cities and towns will be required to change their impact fee practices in order to conform to the new law, but we have a commitment from the Homebuilders Association that it will not run any new impact fee legislation until at least the 2015 session. This will provide an opportunity to implement the revised system without further changes. The League will be developing a model ordinance and other materials to assist in compliance.

Here is a list of the key provisions of the bill:

- Allows continued assessment and collection of current impact fee schedules to pay debt service on existing bonds for projects currently underway, even if the fees would no longer be allowed after the effective date of the bill.

- Maintains the phrase "necessary public services" in statute; a new definition, however, narrows the permissible uses of impact fees to address homebuilder concerns regarding improper use of fees for general government purposes, certain facilities, such as parks over 30 acres or libraries over 10,000 square feet, and other uses deemed by the homebuilders to be unacceptable, while preserving settled expectations with regard to core health/safety capital infrastructure facilities.
- Limits development fees to the proportional share of the cost of new infrastructure that is attributable to new development, and prohibits increasing the level of service that is provided to existing residents. Requires development fees to be assessed in service areas within which there is a substantial nexus between the necessary public service and new growth.
- Clarifies that offsets against impact fees need only be provided for taxes that are applied to capital costs of infrastructure. Between June 30, 2011 and July 31, 2012, a municipality cannot increase its construction sales tax rate to an amount greater than its general TPT rate (existing rates above the TPT rate can continue in effect). After August 1, 2014, the differential portion of a discriminatory sales tax on new construction must be counted as an offset in the calculation of the fee amount, regardless of its actual use.
- Clarifies that credits against impact fees are only due when a developer pays for (or is required to provide) infrastructure in an Infrastructure Improvements Plan for which development fees were assessed, including a facility that was added to replace or substitute for other infrastructure in an Infrastructure Improvements Plan.
- If impact fees are assessed, requires impact fees to be assessed against residential, commercial and industrial users, but continues to allow differential impact fee rates to be adopted for residential, commercial and multi-family construction.
- Specifies that a municipality may not waive development impact fees unless it provides reimbursement to impact fee accounts for the waived fees.
- Creates new public notice and hearing procedures for assessing, adopting, and amending development fees, with fees tied to the Infrastructure Improvements Plan in lieu of an independent fee study. Existing fee studies and plans will need to be replaced using the new system no later than August 1, 2014, or a municipality will be unable to continue to collect fees.
- Allows cities and towns to change their Infrastructure Improvements Plans without going through the public process where changes will not affect the level of service in a service area, or will not result in a fee increase of more than 5%.
- Requires Infrastructure Improvements Plans to: identify all capital projects that are the subject of development impact fees; disclose existing facilities, required upgrades, and other costs of existing facilities not associated with new development; identify offsets; and include a professionally prepared fee study to establish the development fees necessary to assess the appropriate level of costs for each permitted infrastructure item to new development.
- Requires a refund to current property owners of certain impact fees if the infrastructure that is the subject of a development fee is not built within ten years (or the timeframe identified in the IIP) or fifteen years for water and wastewater projects. Also requires a refund of the "savings" amount if actual costs are more than ten percent lower than the costs estimated in the IIP.
- Requires either creation of an advisory committee to provide input on the adoption and administration of impact fees or a biennial audit of a municipality's impact fee program.
- Changes "grandfathering" provision to apply for 24 months after issuance of the first building permit for residential construction; or upon final approval for commercial, industrial or multi-family construction. Eliminates indexing provisions.
- Creates new definitions of "development," "service areas" and "service units."
- Ends the existing development fee freeze on December 31, 2011.

Here is a list of effective dates contained in the bill:

- The effective date of the bill, including new definitions, grandfathering provisions and crediting/offset provisions, is January 1, 2012.
- The present impact fee rate freeze ends on December 31, 2011.
- Impact fees cannot be collected after January 1, 2012 for items not included in the new definitions, unless those items are financed with bonds or other financing mechanisms. If existing development fees are pledged to repay debt service for infrastructure items financed before June 1, 2011, then the existing development fees can continue to be collected until the existing debt is paid off.
- Cities and towns have until August 1, 2014 to adopt new Infrastructure Improvement Plans and fee studies. Impact fees cannot be charged by any municipality after that date without complying with these provisions. During that period, existing impact fees that fit within the new definitions can also be pledged to debt service (and will be thereafter protected), provided that the facilities for which they are used were included in an Infrastructure Improvements Plan by June 2011.

- Refund provisions are effective against fees paid on or after August 1, 2014 (fees must be spent - or facilities constructed - within 10 years for non-water/wastewater fees, 15 years for water/wastewater fees).
- Between June 30, 2011 and July 31, 2014, a municipality cannot increase its construction sales tax rate to an amount greater than its general TPT rate (existing rates above the TPT rate can continue in effect). After August 1, 2014, the differential portion of a discriminatory new construction sales tax must be counted as an offset in the calculation of the fee amount, regardless of its actual use.
- Money collected for newly prohibited purposes must be spent within the same general category of necessary public service for which it was collected by January 1, 2020. If not spent by that date, it must be distributed evenly among the categories of permitted infrastructure improvements.
- The advisory committee must be appointed by the time the municipality is required to provide public notice of its intent to adopt or update an IIP/fee study under the new statute; alternatively, the municipality can conduct a biennial audit.

Managed competition

In the dead of night, at 3:53 a.m. on the last day of the legislative session, Senate leadership brought forth SB 1322 (managed competition; city services) for a final vote of the Senate. No notice was given for the bill's consideration, as it did not appear on any published calendar for final action. The bill, representing a massive and unjustified incursion on local authority, provides that, with certain exceptions, all city services valued in excess of \$500,000 must be subject to private sector competition in Arizona's two largest cities.

The bill previously passed the Senate and was amended in the House to raise the dollar threshold for subject city services from \$75,000 to \$500,000. Because the legislation was amended in the House, it returned to the Senate for consideration of the change. There was no discussion on the bill, which passed by a final vote of 20-7.

The League has joined several cities and other organizations in requesting a veto of the bill by the Governor. The League's veto request letter [can be found here](#). A League resolution in support of a veto [can be found here](#).

Commercial lease tax exemption

On April 18, Governor Brewer signed into law legislation to exempt taxes on certain commercial lease transactions between related corporations (SB 1166: municipal tax exemption; commercial lease). The League, which opposed the measure throughout the legislative session, requested a veto of the bill and provided updated data to the Governor on the amount of transaction privilege tax revenue derived from commercial lease activity in Arizona's municipalities. Notwithstanding the League's efforts, the new law will go into effect on July 20, 2011.

Consumer fireworks

On April 19, the Senate formally concurred with House amendments to SB 1379 (now: consumer fireworks; regulation), a bill to limit the extent to which cities and towns may regulate the use of fireworks. Among other things, the legislation 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.

Over the course of the legislative session, SB 1379 was amended to address some concerns of cities and towns. One amendment prohibits the sale of fireworks in Yavapai and Coconino Counties and areas zoned for residential use. Another permits municipalities to impose an annual fee on facilities at which fireworks are sold. These fees are to defray costs associated with permitting and inspections.

The bill was presented to the Governor on April 20. She has ten days from the date of presentment to decide whether to sign it, veto it or permit it to become law without her signature.

Regulatory reform

SB 1598 (cities; counties; regulatory review) was passed by the Senate on a Final Read vote of 22-7. The measure applies the Regulatory Bill of Rights (currently governing state agencies) to local government; it also makes changes to the general plan statutes regarding aggregate resources (gravel). Because of adjustments to the bill made during stakeholder negotiations to

which the League was party, we have moved to a position of neutrality on the legislation.

Because of SB 1598's passage, further consideration of SB 1286 (counties; cities; permits; time limit) and SB 2501 (rules; laws; ordinances; interpretation) was terminated. The League strongly opposed each of these bills.

Utility charges

HB 2193 (municipal water charges; responsibility) prevailed on House Final Passage by a vote of 45-15 on Tuesday. This bill prevents municipalities from seeking recovery of utility charges from anyone other than an individual who has contracted for the service and resides or has resided at the service address. The bill now proceeds to the Governor's office. Governor Brewer has until May 2 to approve or veto the legislation.

Firearms

The Governor has yet to take action on SB 1201 (firearms omnibus), which was transmitted to her by the Legislature on April 15. The League opposes the bill because of its requirement that cities prohibiting guns from public buildings must employ armed guards and install metal detectors and gun lockers. The bill stipulates that firearms can be prohibited from private events located on public property (such as professional football games at public stadiums) without the additional security measures. Such measures, however, are required if guns are banned from a public facility in its normal course of business, as in regular city library operations.

The League of Arizona Cities and Towns has formally requested a veto of this legislation. A copy of the veto request letter [can be found here](#).

Pension reform

SB 1609 (retirement systems; plans; plan design) was sent to the Governor on April 18 after it passed the Senate on Final Read by a vote of 21-9. The measure prescribes numerous changes to the state's four public pension systems. This comprehensive reform package represents the product of exhaustive efforts by Speaker of the House Kirk Adams (R-Mesa) and Senator Steve Yarbrough (R-Chandler). The League supports the measure and thanks the sponsors and stakeholders for their dedicated efforts to enact meaningful reform.

Liquor omnibus

On Monday the Governor signed SB 1460 (liquor omnibus). The League moved to a position of neutrality on the bill because many of our concerns were satisfactorily addressed during negotiations throughout the session. As amended, the bill preserves certain authorities of municipalities with respect to: issuance of special events licenses; transfers of existing liquor licenses to new business owners; and the zoning of liquor-related businesses. The bill will become effective July 20.

Incorporation

SB 1333 (cities; towns; incorporation) includes adjustments to incorporation law to address a specific circumstance in Pima County. Pursuant to an agreement between the League and the bill's sponsor, Senator Frank Antenori (R-Tucson), the bill was amended in conference committee to limit the bill's application to no more than five counties and provide for a phase-in of state shared revenue in cases where a large incorporation occurs in any affected county.

The amended bill passed the Senate on the last day of the session by a vote of 19-8. It then passed the House by a vote of 31-25 and was sent to the Governor for her approval or rejection.

Invest Arizona

SB 1041 (Arizona quality jobs incentives), companion legislation to the Governor's Competitiveness Package, prevailed on final passage in the Senate and was sent to the Governor's desk for her signature. The bill, supported by the League, adds a property tax component to business recruitment efforts with the goal of attracting and retaining long-term, high quality jobs to the state. The two bills substantially boost Arizona's competitive position in relation to other Western states.

Photo radar and assessments

SB 1398 (now: moving violations; assessment; equipment; enforcement) was the subject of a flurry activity in the waning days of the legislative session. The bill passed the Senate on Final Read by a vote of 20-10 in the hours preceding *sine die*. The House passed the measure by a vote of 38-22 the previous day. The bill was heavily amended in Committee of the Whole as well as in SIT COW (Sitting as in Committee of the Whole). As transmitted to the Governor, SB 1398 now:

- Eliminates the state photo radar enforcement system.
- Stipulates that a law enforcement agency must inform the recipient of a photo radar citation that the recipient is not required to identify the driver nor respond to the citation if it was not properly issued. Additionally, the measure stipulates that failure to respond will result in the probability of being formally served, which will result in the person paying the cost of the service.
- Stipulates that the recipient of a photo radar notice of violation (NOV) is not required to identify the driver nor respond to the complaint.
- Imposes a supplemental \$13 assessment on every traffic fine for distribution to various entities for the primary purpose of supplementing monies for officer safety equipment.
- Specifies that monies collected from the assessment that are distributed to the Department of Public Safety (DPS) are for protective armor, electronic stun devices and other safety equipment.
- Allows the Pima County Sheriff to receive GIITEM (Gang and Immigration Intelligence Team Enforcement Mission) monies.
- Creates the GIITEM Border Security and Law Enforcement subaccount for law enforcement purposes related to border security. Monies distributed from the subaccount to a county sheriff go directly to the sheriff and are not subject to approval from the county board of supervisors.
- Appropriates \$1,000,000 from the state general fund to DPS to enter into a Memorandum of Understanding with Pinal County to purchase equipment and supplies for border security.
- Backfills the \$1,000,000 general fund appropriation with the first \$1,000,000 deposited into the GIITEM subaccount.
- Requires JLBC to report to the Legislature on or before June 30, 2012 on the use of monies in the GIITEM subaccount and the monies used for Pinal County.
- Redirects monies from the state aid to indigent defense fund in FY 12 to the GIITEM subaccount.

The bill was transmitted to Governor Brewer on April 20 for her consideration.

Legislator Profile - Senator John McComish

Senator John McComish is a first generation American, born in Youngstown, Ohio, in the heart of industrial America. His father arrived in the United States at the tender age of ten, when Senator McComish's grandfather took a job in Ohio's steel industry.

The senator's father never quite understood why the family patriarch left his hometown in Scotland. He had been a prominent and prosperous member of the community, who abandoned the security of a comfortable life to make his way in a strange land far, far away.

Some fifty years after arriving in America, the senator's father returned to Scotland for the first time. He found that nothing had changed. It was, in all apparent respects, the same static community in which he had spent his formative years. There were no signs of progress, no indications of social or economic advance. It was only then that he understood and respected his own father's decision to leave. McComish the elder had recognized that America was a land of opportunity, where anything is possible, and where his children would enjoy greater freedom and more life choices.

Cognizant of his forebears' sacrifice, Senator McComish has taken full advantage of the freedom and opportunity offered by his native land. Following years of academic achievement, corporate success and civic contribution, he currently represents the 20th Legislative District in the Arizona State Senate. His district includes Ahwatukee in Phoenix, as well as parts of Chandler and Tempe.



Senator McComish is a classic intellectual who doesn't wear his superior smarts on his sleeve. Rather, he is an engaging, warm and loyal individual who gravitated towards politics because of his searing interest in public policy.

One measure of his loyalty is the longevity of his marriage to his wife, Karen. Their 43-year marital union only tells part of the story, though. When Senator McComish was in seventh grade, he eyed his future bride (who at that time attended a different school) at an orientation assembly for the school they would both be entering the following year. This was a girl he was determined to meet. They started holding hands in eighth grade, and they've been inseparable ever since.

Following graduation from Colgate, which he attended on a football scholarship, Senator McComish began a rapid climb up the corporate ladder. He became a self-described "corporate gypsy" and worked in various cities for a variety of enterprises. By the age of 35, he was the national sales manager for Johnson and Johnson.

After twenty-four years of corporate success with Fortune 500 companies, Senator McComish had an epiphany. ("My wife says it was a mid-life crisis," he quips.) He had had enough of the corporate life and decided to realize his dream to settle down and open a bookstore. He and his wife knew Arizona from previous travels, and they had a smattering of family in the Grand Canyon state. So they came to the Valley, and Senator McComish reinvented himself as an Ahwatukee bookseller. His wife got a job teaching in the Kyrene elementary school district.

Senator McComish loved his life as a merchant of books. They didn't make much money, but they created an attractive and comfortable space for true bibliophiles and literary connoisseurs. He ordered Sunday newspapers from around the country and built a customer base of scholars and brainiacs.

After seven years, however, the senator could hear the hoof beats of big box bookstores and online retailers. He intuited that the days of his independent establishment were numbered. About that time, the directors of the Ahwatukee Chamber of Commerce decided to take their fledgling organization to the next level and to hire a full-time director. Senator McComish, who was at the time an active member of the Chamber, was awarded the job. During his service as the institution's chief executive officer, Chamber membership grew from 60 to 600.

One consequence of his job was his immersion into public policy. He became an expert on municipal affairs, participated in various policy-oriented working groups, and testified at the Legislature. His involvement with policy grew exponentially when he assumed the chairmanship of the Ahwatukee Foothills Village Planning Committee.

His absorption with policy led to the senator's decision to run for the Arizona House in 2002. He sought nomination as a lifelong Republican. His father had been a rare but outspoken Republican in industrial Youngstown. Speaking of his father, the senator recalls, "Whenever he saw a parent with a new baby, he would say, 'be careful - if you drop that baby on its head, he's likely to become a Democrat!'"

In the end, the citizens of District 20 decided to send their two incumbent Representatives (Rep. Bob Robson and then-Rep. John Huppenthal) back to the House, but Senator McComish came in a respectable third. In 2004, Rep. Huppenthal ran for the Senate, creating a House vacancy. Senator McComish won the open seat and hasn't lost an election since.

Senator McComish is a strong supporter of state shared revenues and believes that the tax-sharing system should continue without change. "Many of my colleagues have a misconception that cities are getting money that belongs to the State," observes Senator McComish. "That's not right. Under its longstanding contract with municipalities, the State *collects* taxes for itself and cities, and then divvies up the revenues according to formula."

Senator McComish has never been to Scotland, but such a trip is on his very short bucket list. When he gets there, he might find that the place isn't very much different from when his father last visited. He will know, however, that back on his own native soil, much has changed - partly because in this land of opportunity, he took the initiative, performed service above self and made a difference.

Legislative Bulletin is published by the League of Arizona Cities and Towns.
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