

ARIZONA HOUSE OF REPRESENTATIVES
Forty-sixth Legislature – First Regular Session

**COMMITTEE ON PUBLIC INSTITUTIONS
AND COUNTIES**

Minutes of Meeting
Tuesday, February 25, 2003
House Hearing Room 5 -- 8:30 a.m.

Chairman Carruthers called the meeting to order at 8:30 a.m. and the secretary noted the attendance.

Members Present

Ms. Burns J	Ms. Laughter	Mr. Straughn
Mr. Bustamante	Ms. McClure	Mr. Wagner, Vice-Chairman
Mr. Hanson	Mr. Pierce	Mr. Carruthers, Chairman

Committee Action

H.B. 2432 – HELD	H.C.R. 2030 – DO PASS – 7-1-0-0
H.B. 2383 – DO PASS AMENDED – 6-1-1-0	H.B. 2411 – DO PASS AMENDED – 5-1-0-2

Speakers Present

Rene Guillen, Majority Intern
Steve Kemp, City Attorney, City of Peoria
Kevin Adam, Legislative Coordinator, League of Arizona Cities and Towns
Kevin McCarthy, President, Arizona Tax Research Association
Phil MacDonnell, Lobbyist, Waste Management
Joy Mee, Assistant Planning Director, City of Phoenix
Sally Bender, Assistant Director, County Supervisors Association
Steve Olson, Lobbyist, City of Scottsdale
Names of persons recognized by the Chair who appeared in support of H.B. 2383 but did not speak: (Page 4)
Judge Robert Gottsfield, Superior Court Judge, representing himself
Melissa Taylor, Majority Research Analyst
Michele Bolton, Director, National Federation of Independent Business (NFIB)
Bas Aja, Lobbyist, Arizona Cattlemen's Association
Michael Racy, Lobbyist, Pima County
Katharina Richter, Chief Civil Deputy, Pima County Attorney's Office
Names of persons recognized by the Chair who appeared in support of H.B. 2411 but did not speak: (Page 8)

Names of persons recognized by the Chair who appeared in opposition to H.B. 2411 but did not speak: (Page 8)

CONSIDERATION OF BILLS

Vice-Chairman Wagner assumed the Chair

H.B. 2432 – public building contracts – HELD

Vice-Chairman Wagner announced that H.B. 2432 would be held.

H.B. 2383 – county islands; annexation – DO PASS AMENDED

Rene Guillen, Majority Intern, explained H.B. 2383 in summary (Attachment 1).

Representative Hanson, sponsor of H.B. 2383, addressed the committee and discussed the details of the bill.

Steve Kemp, City Attorney, City of Peoria, addressed the committee in support of H.B. 2383. Mr. Kemp explained that the City of Peoria is very interested in annexation. There are number of strip islands throughout the state and many of them are very distant from county services. He stated that many of those islands are as much as 30 minutes from the closest fire station so the county has to rely upon the city to provide law enforcement to those areas although those areas do not pay taxes for the provision of city services. H.B. 2383 proposes to take the current standard used in the city improvement law and adopt that standard for annexation. That standard provides that if the owner of more than one-half in value of the real and personal property and the owners of more than one-half of the real personal property by number object to the annexation, the city could not go ahead with the annexation.

Mr. Kemp informed the committee that under current law, the city must obtain petition signatures for large annexations and must provide the property owners with a right to object for the smaller annexations. The current improvement district law in Arizona provides an objection period of 15 days after the publication of notice. He stated that due to concerns, there was support to extend the 15 days to 60 days following the publication of the notice. The proposed bill also provides that if owners do protest in sufficient number, the city could not start another annexation proceeding for one year. He provided a handout for the committee (Attachment 2) and offered to answer any questions.

In response to inquiry from Representative Burns, Mr. Kemp stated that all of the defects would be public record items and readily available to any person desiring to proceed with litigation to defeat the annexation. He added that the current law has a requirement to obtain a list and enter it into the public record before the annexation is started. That will allow parties who were interested in the annexation to determine exactly how many property owners by both number and value were necessary in order to object to and stop the annexation.

Representative Burns inquired about the annexation of a three-sided island. Mr. Kemp explained that the city could not annex a portion of a larger parcel because it would not comply with the three-side requirement.

Kevin Adam, Legislative Coordinator, League of Arizona Cities and Towns, addressed the committee. Mr. Adam explained that there were 310 county islands identified and that they clearly create a number of problems including cross jurisdictional issues and compatible land use issues. Therefore, it is a priority of the league to attempt to address the ability to more easily annex these county islands. He stated that it is a league resolution that was voted on by the 87 cities and towns and that the proposed amendment to increase the period from 15 to 60 days is reasonable.

In response to inquiry from Representative Burns regarding the continuation of waste service in the area, Mr. Adam explained that the waste service would have to continue for the duration of the existing contract.

Kevin McCarthy, President, Arizona Tax Research Association (ATRA), addressed the committee in opposition to H.B. 2383. Mr. McCarthy stated that procedures that are currently in statute for annexation should be maintained. He stated this bill is not a slight change to procedure and requiring people to opt out as opposed to affirmatively opting into that process is a huge change and would set the stage for further changes of that nature. He offered to answer any questions from the committee.

Phil MacDonnell, Lobbyist, Waste Management, addressed the committee in opposition to H.B. 2383. Mr. MacDonnell echoed comments made by Mr. McCarthy. He reiterated that this bill goes from property owners making a decision and approaching the government as a group to the city taking action requiring property owners to run around to stop it. He turned his attention to why a waste management company would be concerned about this legislation. He informed the committee that the city has a statute that monopolizes the trash hauling business, and in the event of an annexation, there is no adequate compensation scheme. He pointed out that in some states when there is an annexation, the waste company is either purchased or given five years to amortize the trucks and equipment with existing customers.

Joy Mee, Assistant Planning Director, City of Phoenix, addressed the committee in support of H.B. 2383. Ms. Mee stated that the bill does not change the percentages for opposition. The language in the bill states that 50 percent of the people have to oppose it. Secondly, regarding waste haulers, the city only picks up trash from single family homes. In commercial trash hauling provisions any non-residential would not change under an annexation.

Mr. MacDonnell stated that each city has different laws and while the City of Phoenix does pick up residential trash, many cities with populations under 60,000 monopolize all trash. The aggressive annexation will be in those small cities.

Mr. Kemp responded to inquiry from Representative Hanson and explained that in many areas, the closest fire protection is 30 minutes away. Counties cannot provide fire protection, and so in the event of an emergency, Rural Metro would call the city fire department. The city is then faced with the difficulties associated with boundaries.

He stated the same problem exists within the police departments. As a result, there may be a delayed response or the city may be asked to provide law enforcement as a matter of mutual aid. This becomes a problem in the case of domestic violence or a priority one call and because of the isolated area, the county is not able to respond and law enforcement is not available. Regarding the waste management issue, the Arizona Supreme Court addressed the issue in a case out of Mohave County when they said if private waste haulers had a license from the county, they can continue their operation inside the city until the end of the license.

Sally Bender, Assistant Director, County Supervisors Association, addressed the committee in support of H.B. 2383. She stated that county islands are a problem in every county throughout the state and that the association has been involved with this issue numerous times. She offered to host any future meetings regarding this issue.

Steve Olson, Lobbyist, City of Scottsdale, addressed the committee in support of H.B. 2383. He explained there are undeveloped areas in the City of Scottsdale that are surrounded by developed areas. These little islands are neglected and may have an uncompleted road that is not maintained. Some areas have run down businesses and landscaping and those areas are of concern to the city. He pointed out that they look like they are part of the city but the city has no ability to improve those areas or provide the kind of services that the people in the community expect.

Names of persons recognized by the Chair who appeared in support of H.B. 2383 but did not speak:

Tom Dorn, Arizona Planning Association
Barry Dill, City of Tucson
Dave Iwanski, City of Goodyear
Gretchen Kitchel, Pinnacle West

Chairman Carruthers moved that H.B. 2383 be give a do pass recommendation.

Representative Hanson moved that the following verbal amendment be adopted:

**Page 1, line 36, strike “fifteen” and insert “sixty”
Page 1, line 40, strike “fifteen” and insert “sixty”**

Question was called on the verbal amendment. The motion carried

**Chairman Carruthers moved that H.B. 2383 as amended do pass.
The motion carried by a roll call vote of 6-1-1-0 (Attachment 3).**

H.C.R. 2030 – probation; vapor-releasing substances – DO PASS

Judge Robert Gottsfeld, Superior Court Judge, representing himself, addressed the committee in support of H.C.R. 2030.

Judge Gottsfield explained that Proposition 200 requires mandatory probation for possession and use of controlled substances such as heroin, methamphetamine, cocaine, marijuana, etc. He explained that he researched the legislative history and recognized some defects in the bill. He pointed out that it only recognizes controlled substances and last year it was corrected to add drug paraphernalia. He stated the area to be added is the sniffing of toxic substances such as glue, white out, etc. He added that the purpose of this amendment to Proposition 200 is to complete the circle and add the sniffer drugs to the controlled substances and drug paraphernalia. The first offense is mandatory probation and no prison sentence.

Judge Gottsfield discussed the results of a recent study and informed the committee that in 1999, the State of Arizona spent \$1 million on treatment and supervision for 390 inmates who, without Proposition 200 would have been sent to prison at a cost of \$7.7 million. He pointed out that although many judges and prosecutors were initially against Proposition 200, it has been realized that cumulative drug treatment is helpful. Also, Proposition 200 requires offenders to pay for their treatment if they have it, based on their ability to pay. He summarized that this legislation will make certain that sales of drug paraphernalia and sniffer drugs are not within Proposition 200.

In response to inquiry from Chairman Carruthers, Judge Gottsfield explained that Proposition 200 is a statute that requires mandatory probation for a first time offender who is charged with possession and use of a controlled substance, drug paraphernalia or sniffer drugs. If an offender who is on probation for the first time violates that probation, he will then go to jail. For second offenders, the sentence would be up to one year of jail time and mandatory treatment.

In response to inquiry from Representative McClure, Judge Gottsfield provided a copy of the statute (Attachment 4) and explained that no one will get arrested for simply using rubbing alcohol or arts and crafts supplies. He explained that users will be caught actually using the inhalants or will have them in their possession. He added that the handout (Attachment 5) includes a definition of vapor-releasing substances and that this has been in the law since 1981. H.C.R. 2030 states that because it is a crime to inhale toxic-releasing substances, it should be under Proposition 200 so that there is mandatory probation for the first offense.

Judge Gottsfield responded to inquiry from Representative Burns and explained that the law states that possession for use must be proven and then the requirement that probation and drug treatment rather than jail time be given for a first time offense.

Chairman Carruthers moved that H.C.R. 2030 be given a do pass recommendation. The motion carried by a roll call vote of 7-1-0-0 (Attachment 6).

H.B. 2411 – governmental takings; remedies – DO PASS AMENDED

Melissa Taylor, Majority Research Analyst, explained H.B. 2411 in summary (Attachment 7) and the 2-line McClure Amendment dated 2/20/03 (Attachment 8).

Representative McClure, sponsor of H.B. 2411, addressed the committee. She explained that H.B. 2411 was modeled after a law in Texas that was enacted two years ago.

She stated this legislation is necessary for the protection of property owners.

Michele Bolton, Director, National Federation of Independent Business (NFIB), addressed the committee in support of H.B. 2411. She stated that NFIB members were balloted and 81 percent stated support of compensation for devalued property.

Bas Aja, Lobbyist, Arizona Cattlemen's Association, addressed the committee in support of H.B. 2411. Mr. Aja stated that 87 percent of the state is other than private property and only 13 percent of our state contains private property. He pointed out that the 13 percent should receive some type of limited protection. He responded to inquiry from Representative Burns and explained that H.B. 2411 addresses the market value today measured against the government action that is being applied to it and whether or not the property was reduced by 25 percent or more.

Michael Racy, Lobbyist, Pima County, addressed the committee in opposition to H.B. 2411. He introduced Katharina Richter and explained that she would offer both legal and constitutional perspective on the great number of issues facing Pima County with this legislation.

Katharina Richter, Chief Civil Deputy, Pima County Attorney's Office, addressed the committee in opposition of H.B. 2411. She explained that H.B. 2411 is constitutionally challenged because it changes the existing state and federal definition of taking of property and requires an arbitrator to determine whether a regulation or exaction develops in a taking. She pointed out that the just compensation clause in Article 2, Section 17 of the Arizona State Constitution makes clear that it is the courts and not the Legislature that must determine whether a taking of property has occurred, if a compensation is required and how much. The standards and the entities responsible for making such a determination cannot be altered by the Legislature.

She pointed out that the definition of a taking in H.B. 2411 is so broad and vague it is impossible to know in advance whether an action will reduce the value of the property by 25 percent or any percentage. Moreover, land values continue to fluctuate with change in market conditions irrespective of government regulation. She stated it is impossible for anyone to determine with any reasonable degree of certainty whether a reduction in value is due to pre-existing conditions, the market economy, and the passage of the regulation or any one of a number of factors that could be influenced by this. She discussed the definition of market value and explained that the definition in H.B. 2411 is quite different from the definition used for eminent domain purposes.

Ms. Richter stated that one of the purposes of the bill was to reduce time and perhaps the cost of challenging a particular regulation adopted by a local jurisdiction. However, this bill will spawn costly and protracted takings disputes. In the end, the statute will result in greater arbitration and litigation costs than existing court remedy. She stated that in order to find that a taking has occurred, the arbitrator must determine the value has been reduced by 25 percent or more. If a taking is found, the difference between the market value of the property both before and after the adoption of the regulation must be paid by the government or entity. She pointed out that the determination can only be made by a detailed and costly fact finding process requiring expert appraisers and other expert valuation witnesses.

She stated that the bill is also unnecessary because there already exists in statute a speedy, efficient inexpensive remedy to redress the negative effects of new regulation on private property. ARS 11-810 allows a property owner to challenge an exaction or a new regulation that results in the taking of property by signing an appeal to a hearing officer.

Finally, she commented to the vagueness and difficulty of enforcing this legislation and stated that H.B. 2411 will deter local jurisdictions from adopting police power regulations necessary to protect the public health, safety and welfare of its citizens.

In closing, she summarized that the changing of the judicial determination of what constitutes a taking is problematic. Additionally, there is a problem with the vagueness of the bill and the impossibility of knowing what the actual outcome and interpretation of the Legislation will be.

Representative McClure stated that the language in the bill was studied extensively by a constitution attorney. She disagreed with comments made by Ms. Richter and stated that H.B. 2411 is not unconstitutional.

Ms. Richter stated that the differences in the valuations between the two appraisers could be quite substantial. In the end the jury will determine the value of the property. She discussed parcels on peaks and ridges and stated that the peaks and ridges ordinances would not reduce the value of the property. Thirdly, she commented on the 50 percent dedication and explained that every parcel, regardless of its location, will have open space and setbacks. The only properties that develop 100 percent of the property are extremely intensive developments or areas such as parking lots. To say that someone must dedicate 50 percent of their property in order to get a building permit could not occur. She responded to comments made by Chairman Carruthers and stated that there cannot be any regulation of property without some effect on value. H.B. 2411 is extremely one-sided and gives greater rights to the individual property owner whose property was devalued. It also does not address the damage done to adjacent property owners.

In response to inquiry from Representative Hanson, Ms. Richter stated that if the 2-line McClure Amendment dated 2/20/03 (Attachment 8) is adopted it would address the concerns she had in terms of delegating to a non-judicial arbitrator the determination of a taking.

Chairman Carruthers moved that H.B. 2411 be given a do pass recommendation.

Representative McClure moved that the 2-line McClure Amendment dated 2/20/03 (Attachment 8) be adopted. The motion carried.

Mr. Racy stated he would contain his remarks to the bill as amended. He stated that this bill can and does continue to change throughout the process. He added that the concept that all properties are created equal and that all properties, no matter what stage of development, are entitled to the taxpayers guaranteeing their investment in that property when they hit the 25 percent threshold is fundamentally flawed. There is no such guarantee or entitlement of a return to an investment on real estate.

He stated that this bill presupposes that a group of appraisers could determine what the value would have been with or without the governmental action, which is next to impossible to determine. He stated his appreciation of the effort of Representative McClure. However, he asserted that this approach, with or without the 2-line McClure Amendment dated 2/20/03 (Attachment 8), simply does not get the job done.

Joy Mee, Assistant Planning Director, City of Phoenix, addressed the committee. Ms. Mee stated her opposition to H.B. 2411 because of its broad, far reaching, unintended consequences. She stated that government tries to respond to changes in development practices, technology and public opinion. This means that from time to time property is rezoned at the request of the public sector and the private sector. In addition, districts and text amendments are adopted and they all have the impact of changing the rules under which development occurs.

She discussed commercial development and stated her concern that passage of this law could destabilize the process. She pointed out that property values change as the result of how others maintain their property and that they change with market conditions. She stated that courts in the past have defined takings as denying a property owner reasonable economic use of his property and not a diminution of value. Government and private property are continually taking actions that affect property values. She added that passage of this legislation could dramatically slow or stop needed development activity, needed text amendments and benefits to communities for the fear of unintended costs. It would keep appraisers busy trying to predict values for actions that have not even occurred and would not allow for the collective impact of the decisions over time to be measured.

Steve Olson, Lobbyist, City of Scottsdale, addressed the committee in opposition to H.B. 2411. Mr. Olson responded to comments made by Mr. Aja regarding the 13 percent of the state that is private property and stated that this bill does not change any of that. He inquired as to how much of a property has to be impacted before it constitutes a taking. He stated that this bill is an unprecedented expansion into defining what is the Fifth Amendment of the Constitution. He provided a copy of his comments for the committee (Attachment 9) and offered to answer any questions from the committee.

Names of persons recognized by the Chair who appeared in support of H.B. 2411 but did not speak:

Spencer Kamps, Home Builders Association
Tom Farley, Arizona Association of Realtors
Susan Charlton, Diamond Ventures Inc.

Names of persons recognized by the Chair who appeared in opposition to H.B. 2411 but did not speak:

Rory Hays, Maricopa Flood Control District
Mike Garner, City of Mesa

Sally Bender, County Supervisors Association
Susan Culp, Arizona League of Conservation Voters
Sandy Bahr, Sierra Club
Kevin Adam, League of Arizona Cities and Towns

**Representative McClure moved that H.B. 2411 as amended do pass.
The motion carried by a roll call vote of 5-1-0-2 (Attachment 10).**

Without objection, the meeting adjourned at 10:50 a.m.

Robyne Richards, Committee Secretary
March 12, 2003

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