

ARIZONA HOUSE OF REPRESENTATIVES
Forty-ninth Legislature – Second Regular Session

COMMITTEE ON MILITARY AFFAIRS AND PUBLIC SAFETY

Minutes of Meeting
Wednesday, April 7, 2010
House Hearing Room 3 -- 9:00 a.m.

Vice-Chairman Gowan called the meeting to order at 9:00 a.m. and attendance was noted by the secretary.

Members Present

Ms. Fleming
Ms. Reeve
Mr. Seel

Ms. Sinema
Mr. Stevens

Mr. Gowan, Vice-Chairman
Mr. Weiers JP, Chairman

Members Absent

Mrs. McGuire

Committee Action

SB1005 – DPA S/E (5-2-0-1)
SB1109 – DPA S/E (5-2-0-1)

SB1169 – DPA S/E (6-0-0-2)
SB1350 – DP (7-0-0-1)

CONSIDERATION OF BILLS:

**SB1005 – PSPRS; ordinary disability; eliminate offset – DO PASS AMENDED S/E
S/E: trap and skeet; tax exemption**

Mr. Seel moved that SB1005 do pass.

Mr. Seel moved that the Gowan two-page strike-everything amendment dated 4/5/10 to SB1005 be adopted (Attachment 1).

Nicholas Calderon, Majority Intern, stated that the proposed strike-everything amendment to SB1005 (Attachment 1) exempts shooting clubs from property taxes, provided they meet requirements pursuant to Section 501(c)(3) of the Internal Revenue Code (Attachment 2). The bill exempts trap and skeet shooting clubs that provide shooting training and hold competitions provided that the property and buildings are used for educational purposes and are not used or held for profit.

Senator Frank Antenori, sponsor, reminded Members that on February 10, this Committee passed HB2526, tax exemption; trap and skeet, authorizing the Tucson Trap and Skeet Club to build a training facility in Tucson which will be the only year-round all-weather training facility west of the Mississippi River to train Olympic shooters. In addition, it will enable the Club to have the World Cup, the national trap and skeet championships in Arizona. Pima County is very supportive of this legislation because even though the exemption will result in an \$18,000 loss in property tax revenue, the sales, bed, rental car and other associated taxes from hosting these events will be far greater than the loss of \$18,000. The plan is to improve several acres of property adjacent to the current facility which will raise the value of the property by approximately \$3 million, thus raising the property tax bill to about \$18,000 a year. Under the current fee system, the Club will be unable to pay the tax on the improved property. Unless the Club gets relief in the form of a property tax exemption, the proposal will not go forward. Reclassifying the facility as an educational and training facility will exempt the Club from the property tax. He advised there will be no revenue loss to the state because this is only an exemption from the county property tax; however, it will be a revenue benefit to the state because it will increase the amount of sales tax revenue that will be generated when these national sporting events are held.

In response to Ms. Sinema, Senator Antenori clarified that when the property is improved and the facility expanded, the property tax will be about \$18,000 which the Club will not be able to pay from the membership dues and fees it charges to use the facility.

Ms. Sinema asked whether members currently pay a fee to use the facility. Senator Antenori answered in the affirmative. He advised that members pay annual dues to use the facility and their guests pay a fee for materials, maintenance, etc.

Todd Rathner, representing Tucson Trap and Skeet Club, Arizona Rifle and Pistol Association, in support of the strike-everything amendment to SB1005, advised that numerous manufacturers and other industry people support the U.S.A. Olympic team by paying for travel, ammunition, uniforms, firearms, equipment, etc. He related that private support will be available for construction and improvements of the range; however, there are not the large amounts of money in Olympic shooting sports as there are in other sports. The Club operates at about a one or a one-and-a-half percent profit which is why the majority of the shooting facilities are run by the state; it is not a huge for-profit industry.

In response to Mr. Seel, Mr. Rathner stated that the economic impact on the region is estimated at \$12-13 million, based on the World Cup being held in 2012 and the Olympic training team using the facility. The impact could be greater if the facility is able to attract some of the international shooting teams.

Ms. Fleming pointed out that if this legislation is enacted, the language says that any trap and skeet facility will be eligible. Mr. Rathner disagreed because no other organization meets all of the criteria set forth in the legislation.

Ms. Sinema expressed concern that if things change in the future, the entire facility could be exempt from paying any property tax. Senator Antenori said that could conceivably be argued; however, city, county and state tax revenue will more than make up for the loss of a few

thousand dollars in property tax. Ms. Sinema commented that everyone agrees that it is desirable to attract and support these events; however, the way the language is drafted may not be fair to other nonprofit organizations.

Mr. Seel pointed out that even if the county foregoes the property tax, the revenue generated from sales taxes will increase tremendously. He maintained that this will create economic growth and jobs.

Senator Antenori related that Pima County has done an economic analysis and found that revenue will far exceed any county property tax loss.

Discussion ensued on Ms. Sinema's concerns about the way the language is drafted relating to additional property being developed. Chairman Weiers suggested that language be redrafted to address additional property that might be purchased. Senator Antenori noted that any additional property to be developed must be used for training and education.

Mr. Rathner pointed out that if the Club operates outside of its nonprofit activities and attempts to operate as a for-profit organization, it will lose its nonprofit designation from the federal government. Ms. Sinema explained that her concern is not for the loss of the 501(c)(3) status, but that the entire property will be exempt from any tax liability whatsoever. She claimed that the language goes beyond its original intent.

Gary Christensen, Arizona State Rifle & Pistol Association, stated support of the strike-everything amendment to SB1005.

**Question was called on the motion that the Gowan two-page strike-everything amendment dated 4/5/10 to SB1005 be adopted (Attachment 1).
The motion carried.**

Mr. Seel announced the names of those who signed up in support of the strike-everything amendment to SB1005 but did not speak:

Dave Kopp, President, Arizona Citizens Defense League, Inc.

John Wentling, Vice President, Arizona Citizens Defense League, Inc.

James Mann, Arizona Fraternal Order of Police

Matthew Dogali, State Lobbyist, The National Rifle Association

Brian Livingston, Executive Director, Arizona Police Association

Mr. Seel moved that SB1005 as amended do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 3).

**SB1109 – technical correction; vehicle refueling apparatus(now: disciplinary warnings; personnel; definition) – DO PASS AMENDED S/E
S/E: annexation; city or town**

Mr. Seel moved that SB1109 do pass.

Mr. Seel moved that the Weiers 25-line strike-everything amendment dated 4/5/10 to SB1109 be adopted (Attachment 4).

Thomas Adkins, Majority Research Analyst, explained that the proposed strike-everything amendment to SB1109 (Attachment 4) is an emergency measure that allows the governing board of a municipality to immediately annex certain territory with a majority vote of the governing board (Attachment 5). The bill allows a city or town in a county with a population of more than 350,000 persons to annex territory if the landowner has submitted a request to the federal government to take ownership of the territory or hold the territory in trust. The bill clarifies that the territory eligible for this type of annexation must be surrounded by the city or town, or bordered by the city or town on at least three sides. He advised that the language of the strike-everything amendment is identical to HB2297, city or town annexation, which passed out of the House on March 17. He added that HB2297 did not contain an emergency clause.

Lisa Hauser, representing Tohono O’odham Nation, testified against the proposed strike-everything amendment to SB1109. She offered to address concerns or questions Members may have with respect to opposition to the West Valley Resort. She questioned the constitutionality of the proposal and advised that the constitutional issues involved are not just those relating to the Arizona Constitution but some serious federal constitutional questions have been raised as well. She contended that the Gila Bend Indian Reservation Lands Replacement Act allows the Tohono O’odham Nation to replace destroyed reservation lands and to have these lands taken into trust and treated as reservation lands for all purposes. This proposal penalizes the Nation for invoking its federal rights by stripping it of rights that other landowners in Arizona possess to participate in the annexation process.

Chairman Weiers asked Ms. Hauser whether the annexation language takes away rights. Ms. Hauser replied in the affirmative and discussion ensued on the taking away of rights. Chairman Weiers noted that the issue is about the Nation building a casino. It is not about everyone else’s rights; it is talking about Indian Reservations. To that point, Ms. Hauser stated that brings up another constitutional concern that the courts may find this to be special legislation because this is not general legislation but addresses only certain kinds of landowners solely for the purpose of prohibiting the development of the West Valley Resort. Chairman Weiers disagreed that this is about a resort; it is specifically about a casino. He maintained that whether there is annexation or not, the Nation can still build a resort and the only thing it would not be able to build is a gambling facility. Ms. Hauser disclosed that she doubts the Nation will build a five-star resort in that location without the ability to make it more economically viable with the addition of the casino.

Vice-Chairman Gowan asked whether the Act being cited and the swapping of land refers to federal land. He asked what gives any Reservation the right to purchase land that belongs to the state and turn it into trust land, thus turning it into Reservation land. Ms. Hauser related there is only one federal Act that provides for this process. Vice-Chairman Gowan queried whether the federal government can transfer any land as replacement land. Ms. Hauser replied that the replacement land must be unincorporated land. She pointed out that this land is privately-owned, not owned by the state.

Mr. Seel said he understands this is a jurisdictional change, not a *takings* issue. It deals with a county island jurisdiction, or in this case, a city of Glendale jurisdiction. Ms. Hauser replied that this is dealing with the process for annexation and maintained that this Committee is considering carving out a special process that affects only Indian Nations.

Ms. Sinema referred to Vice-Chairman Gowan's concern about the right of the Tohono O'odham Nation to take lands into trust and use them for tribal purposes. She asked for an explanation of the purpose of the Act.

Vice-Chairman Gowan questioned the constitutionality of the taking of any state land by the federal government. Ms. Sinema said she believes that is an issue to be decided in federal court. Vice-Chairman Gowan brought up the issue of state sovereignty. Ms. Sinema again stated that if it is believed a federal law is not constitutional, the way to solve that is not to pass a state law but to sue in federal court.

Chairman Weiers said that he was told a year ago by the Chairman of the Tohono O'odham Nation that a casino will be built in his District and no one can do anything about it. He vowed to do everything in his power to stop that. Ms. Hauser reiterated that this legislation raises constitutional problems, both federal and state, which will end up in court and be resolved there. She again referred to the Gila Bend Indian Reservation Lands Replacement Act and advised that the purpose of the Act was to replace lands that were destroyed. The Tohono O'odham Nation lost a portion of its Reservation and this is intended to allow the Nation to replace those lands. She said this is a federal issue and the state has no standing to weigh in on this issue and cannot enact legislation on this matter.

Discussion ensued on federal law and constitutionality concerns.

In response to Chairman Gowan's query as to what gives the federal law constitutional powers, Ms. Hauser stated that the federal government has the power with respect to regulation of Indian Tribes. Vice-Chairman Gowan pointed out that the property is not federal Reservation land; it is land in the trust of the state. Ms. Hauser agreed that it is not Reservation land at the moment. Ms. Sinema commented that under the agreement between the federal government and tribal communities, this land shall and will be tribal land once this process goes through. Mr. Seel noted that this is a jurisdictional change from a county island jurisdiction to a municipality jurisdiction. The property in question is not Indian tribal land so it is not afforded the types of protections and processes that Representative Sinema is alluding to. Ms. Hauser said it is both a jurisdictional and regulatory issue. She disclosed that this legislative process has never been used in Arizona before to allow a municipality to annex land without the consent and participation of the landowner. She revealed that other Native American Tribes in Arizona oppose this legislation because of the precedent it sets and the scope of the legislation with respect to Native Americans in general.

Ms. Hauser continued with her testimony. She advised that many people in the district support the Tohono O'odham Nation's project. It will have a great economic impact on the region, citing that it will bring an estimated \$300 million in combined state and local revenue every year and create 6,000 construction jobs. She noted the long history of opposition to Indian gaming in the state; however, Indian gaming has proven to be a positive influence in the state and has given

back substantial amounts of money to the communities. She urged Members to think about the long-term impacts to the West Valley.

Mr. Seel stated his understanding that this is a jurisdictional change and, if passed, may precipitate a federal case. Ms. Hauser agreed that it may result in some litigation and federal questions.

In reply to Chairman Weiers's question whether all the Indian Reservations support the Tohono O'odham Nation in this legislation, Ms. Hauser related that the Gila River Indian community, as a business competitor, is opposed, as well as a number of other Tribes who indicated opposition to this legislation.

Chairman Weiers raised potential problems with the building of the Tohono O'odham Nation casino:

- Loss of revenue to the Gila River community due to the competition of another casino being built in the West Valley.
- The courts awarded the center portion of the property to the City of Glendale and it was annexed by the City, forcing the Tohono O'odham Nation to change its plans to build the casino either across the street from a school on the east portion of the property or by Luke Air Force Base on the west side.
- Concerns about airmen gambling if the casino is built by Luke Air Force Base.
- The resort/casino will take business away from current tax-paying hotels and resorts and may result in loss of jobs to those establishments.

Ms. Hauser responded to concerns raised by Chairman Weiers. She noted that litigation is continuing with respect to the middle parcel of the property. In addition, the school district has been working cooperatively with the Nation, resulting in the school district not taking a position in opposition to the project.

Ms. Fleming opined that this is a great opportunity to show what good neighbors the people of the Tohono O'odham Nation are.

Ms. Sinema asked Ms. Hauser to talk about the legal issues involved. Ms. Hauser advised that the courts will ultimately decide whether these lands will be provided to the Tohono O'odham Nation. She related that there is an exception to the provisions of the Indian Gaming Regulatory Act (IGRA) with respect to replacing lands that have been destroyed, taking those lands into trust and allowing them to be used for gaming purposes as if they had always been Reservation lands.

Ms. Sinema asked whether there have been any challenges to the constitutionality of the Land Replacement Act before today. Ms. Hauser replied in the negative. Ms. Sinema said she understands the Tohono O'odham Nation applied to take these lands into trust, and the process is ongoing at the federal level. She noted that anyone can participate in that process by voicing concerns.

Ms. Sinema and Ms. Hauser engaged in a discussion on constitutionality. Ms. Sinema stated that Article I, Section 8, of the U.S. Constitution gives Congress the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes". She queried

whether there is anything in the Arizona Constitution that gives the State of Arizona the sovereign power to regulate commerce among the Indian Tribes. Ms. Hauser answered that under IGRA, Congress granted authority to the states to sign Compacts with the Tribes. She said the U.S. Constitution explicitly permits the federal government to regulate the activities of Indian Tribes. Ms. Sinema concluded that states have the authority to engage in commerce and regulate Tribal activities only when granted the power to do so by Congress, and according to the U.S. Constitution, only Congress inherently has that authority. Ms. Hauser concurred.

Mr. Seel brought up the 10th Amendment of the U.S. Constitution, and asked whether this proposal is within the purview and reserved powers of the state. Ms. Hauser replied in the negative. She believes the 10th Amendment would not be a successful defense to this legislation.

Vice-Chairman Gowan queried whether the state has the power to regulate the property in question in Glendale. Ms. Hauser replied that it does at the moment in the sense that it has not yet been taken into trust; however, it is important to recognize the Nation's reliance on the federal law to provide for replacement of destroyed land. At this point in time, the land has actually been tendered to the federal government.

In response to Mr. Stevens' question whether she is legally representing the Tohono O'odham Nation, Ms. Hauser advised that her law firm has represented the Nation for about a year.

Mr. Stevens asked the date the Tohono O'odham Nation submitted its proposal to the federal government to put the land in trust. Ms. Hauser said it was January, 2009. Mr. Stevens asked for the date the Nation purchased the land and the name of the previous owner. Ms. Hauser replied that she believes the land was purchased in August, 2003, from a limited liability company. She said she can get the name of the company. Mr. Stevens asked for the official name the Nation used to purchase the land. Ms. Hauser answered that the Nation created Ranier Resources, Inc. for purposes of the sale.

Ms. Sinema commented that the real issue is whether the Tohono O'odham Nation has the legal right to access these lands and whether the City of Glendale has the legal right to seek annexation of those lands.

Craig Tindall, City Attorney, City of Glendale, in support of the strike-everything amendment to SB1109, stated that the statute allows local governments the ability to regulate lands within its territories. He related that Legislative Counsel has already passed on the constitutionality with respect to special legislation. He said the Tohono O'odham Nation advised that the State of Arizona and the City of Glendale have absolutely no say in what is going on with respect to the Nation's plan to build a resort/casino on this land and he believes that raises jurisdictional issues which the Legislature has the authority and the responsibility to address.

Ms. Sinema expressed concern about the Supremacy Clause, equal protection and due process issues. She asked how this is a legally appropriate course of action, and why this course of action is preferable to taking action at the federal level. Mr. Tindall stated that this body has a responsibility and the authority to protect its own jurisdiction. He said the U.S. Supremacy Clause does not mean the federal government can do whatever it wants. He said he believes this body has the right to protect its authority under the Constitution.

Ms. Sinema asked Mr. Tindall whether he believes the Land Replacements Act is flawed because it does not require that a state's legislature approve that replacement of land. Mr. Tindall replied that he believes that is a question that will be settled by the courts.

Ms. Sinema stated that Arizona landowners possess significant rights and contended that a government entity cannot annex land without the consent of the majority of the property owners. If this legislation were to pass, it will permit the City of Glendale to annex the land without the permission of any of its landowners. Mr. Tindall stated that the authority for annexation was created by this body and can be altered by this body.

Vice-Chairman Gowan asked whether anyone can transfer property to the federal government and whether they will be subject to this law if it passes. Mr. Tindall replied that this law is very restrictive in what it allows cities to do.

Ms. Reeve queried how this will affect how the parcel of land is currently zoned. Mr. Tindall said that when a parcel is annexed, it is brought in under similar zoning. Ms. Reeve asked how a casino can be built on the property if it is currently zoned as agricultural property. Mr. Tindall explained that the Tohono O'odham Nation will have to apply for a zoning change.

In response to Mr. Seel, Mr. Tindall stated that there are no zoning restrictions on Reservation land and the Tribes can do whatever they want on that land; a city will have no regulatory control over the land whatsoever.

Scot Butler, representing Gila River Indian Community, testified in support of the strike-everything amendment to SB1109. He referred to a position statement in support of HB2297 which contains identical language to this legislation (Attachment 6). He related that the Gila River Indian Community Council adopted a Resolution opposing the Tohono O'odham Nation's proposal as well as all other forms of off-Reservation gaming. He answered questions relating to why it is appropriate to address this issue at the legislative level.

In response to Ms. Fleming, Mr. Butler listed the tribes opposed to this legislation, explaining that opposition is based on general concerns about it setting a precedent of the Legislature dealing with Tribal matters.

Ms. Sinema asked how the Tohono O'odham Nation's application for taking this land into trust will impact the state gaming compacts. Ms. Hauser said she understands that this will not be characterized as gaming off the Reservation, so she believes it will not affect the compacts. Ms. Sinema asked whether the Tohono O'odham Nation is acting within its rights in taking the action it is currently pursuing. Ms. Hauser replied in the affirmative.

Mr. Stevens asked for an explanation of the five-year delay from when the Tohono O'odham Nation purchased the land and when it applied for the trust. Ms. Hauser said she cannot answer that unless she speculates or asks her client. Mr. Stevens asked whether the Nation intends to use the land for any purpose other than the casino. Ms. Hauser said she is not aware of any other purpose.

Mr. Seel announced the names of those who signed up in support of the strike-everything amendment to SB1109 but did not speak:

Dana Paschke, City of Glendale

Question was called on the motion that the Weiers 25-line strike-everything amendment dated 4/5/10 to SB1109 be adopted (Attachment 4). The motion carried.

Mr. Seel moved that SB1109 as amended do pass. The motion carried by a roll call vote of 5-2-0-1 (Attachment 7).

**SB1169 – law enforcement officer; spouse; insurance – DO PASS AMENDED S/E
S/E: secondary employment; corrections employees**

Mr. Seel moved that SB1169 do pass.

Mr. Seel moved that the Gowan two-page strike-everything amendment dated 4/5/10 to SB1169 be adopted (Attachment 8).

Nicholas Calderon, Majority Intern, explained that the proposed strike-everything amendment (Attachment 8) allows officers and employees of the Arizona Department of Corrections (ADC) to maintain secondary employment in any non-ADC correctional facility and institutions of higher learning (Attachment 9). He stated that the language of this bill is identical to HB2683, corrections employees; secondary employment, which passed out of the House on March 22.

Charles Ryan, Director, Arizona Department of Corrections (ADC), testified in support of the strike-everything amendment to SB1169. He advised that current law prohibits ADC employees from retaining secondary employment with any ADC contractors. This legislation will allow ADC employees to work for an ADC contractor with permission of the Director. He related that a number of officers work normal shifts for ADC and hold second jobs working security for nearby private prisons. Other employees work for ADC's food service contractors after a shift. He stated that this will not have an operational impact to the Department. To prevent a conflict of interest, the bill prohibits an officer from having a second job with any ADC contractor in which the officer has a monetary interest.

Mr. Seel announced the names of those who signed up in support of the strike-everything amendment to SB1169 but did not speak:

Jennifer Bowser, Arizona Department of Corrections

Don Isaacson, representing Fraternal Order of Police

John Wentling, Vice President, Arizona Citizens Defense League, Inc.

Bryan Soller, State Vice President, Arizona State Fraternal Order of Police

Ray Churay, Deputy Director, Maricopa County Sheriff's Office

James Mann, Arizona Fraternal Order of Police

Norman Moore, representing Fraternal Order of Police

Chuck Foy, Executive Director, Arizona Correctional Peace Officers Association

Rick Hovden, Police Lieutenant, Tucson Police Department

Question was called on the motion that the Gowan two-page strike-everything amendment date 4/5/10 to SB1169 be adopted (Attachment 8). The motion carried.

Mr. Seel moved that SB1169 as amended do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 10).

SB1350 – military affairs commission – DO PASS

Mr. Seel moved that SB1350 do pass.

Thomas Adkins, Majority Research Analyst, explained that SB1350 modifies the membership of the Military Affairs Commission and authorizes the Arizona Department of Emergency and Military Affairs (DEMA) to administer the Military Installation Fund (Attachment 11).

Lisa Adkins, Vice President for Public Policy, Arizona Military Affairs Commission, stated support for SB1350. She advised there is a huge overlap between the Governor's Military Affairs Commission and the Arizona Military Affairs Commission. This legislation is designed to undo that duplication, protect and enhance the military missions in Arizona and ensure that resources are used effectively and efficiently.

Mr. Seel announced the names of those who signed up in support of SB1350 but did not speak: David Hampton, Public Information Officer, Arizona Department of Veterans' Services
Vanessa Hickman, Arizona State Land Department

Mr. Seel announced the names of those who signed up as neutral on SB1350 but did not speak: Ed Flinn, Director of Joint Programs, Department of Emergency and Military Affairs

Question was called on the motion that S1350 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 12).

Vice-Chairman Gowan welcomed Ms. Sinema to the Committee and apologized for neglecting to do so at the previous meeting.

Without objection, the meeting adjourned at 12:19 p.m.

Joanne Bell, Committee Secretary
April 14, 2010

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)