

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON GOVERNMENT

Minutes of Meeting
Tuesday, March 8, 2011
House Hearing Room 4 -- 2:00 p.m.

Vice-Chairman Urie called the meeting to order at 3:07 p.m. and attendance was noted by the secretary.

Members Present

Mr. Arredondo	Ms. Hobbs	Mrs. Ugenti
Mr. Forese	Mr. Meyer	Mr. Urie, Vice-Chairman
Mr. Gowan	Mr. Montenegro	Mrs. Burges, Chairman

Members Absent

None

Committee Action

SB1123 - DP (8-0-0-1)	SB1326 - DP (6-3-0-0)
SB1149 - DP (9-0-0-0)	SB1341 - DP (9-0-0-0)
SB1160 - DP (8-1-0-0)	SB1373 - DP (9-0-0-0)
SB1314 - DP (9-0-0-0)	SB1468 - DISCUSSED AND HELD
SB1318 - DP (7-2-0-0)	

CONSIDERATION OF BILLS

SB1123 - state library and archives amendments - DO PASS

Vice-Chairman Urie moved that SB1123 do pass.

Michelle Hindman, Majority Research Analyst, stated that SB1123 makes substantive and conforming changes to the statutes governing the Arizona State Library, Archives and Public Records (ASLAPR) (Attachment 1).

Chairman Burges asked if SB1123 is a cleanup bill; Ms. Hindman confirmed that it is.

Jim Drake, Assistant Secretary of State, Secretary of State's Office, deferred to Secretary of State Ken Bennett for testimony.

Ken Bennett, Secretary of State, testified in support of SB1123, stating that the bill is cleanup from when the Arizona State Library, Archives and Public Records moved.

Vice-Chairman Urie announced the names of those who signed up in support of SB1123 but did not speak:

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Question was called on the motion that SB1123 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 2).

SB1149 - planned communities; condominiums; document fees - DO PASS

Vice-Chairman Urie moved that SB1149 do pass.

Michelle Hindman, Majority Research Analyst, stated that SB1149 modifies the statute governing the powers and authorities of a homeowners' association (HOA) (Attachment 3). She explained the following provisions of the bill:

Condominiums & Planned Communities - Furnishing Documents

- Clarifies that the statement detailing unpaid assessments against a unit must be furnished by an HOA to the requesting entity within *ten* days of receiving a written request.
- Allows required documents to be sent by a unit owner or an HOA to either a purchaser or *a purchaser's authorized agent* within ten days after receipt of a written notice of pending sale.
- States that an HOA may furnish the required documents in either paper or *electronic* format.
- Stipulates that failure to provide specific information requested in writing in accordance with statute regarding unpaid common expense assessments, fees or charges currently due and payable from the selling unit owner shall extinguish any lien for any unpaid assessment then due against that unit or property.
- Adds the following to the list of documents an HOA must send in either paper or electronic format to a requesting entity within ten days of receipt of a written notice of pending sale:
 - A statement summarizing any pending lawsuits in which the HOA is a named party, including the amount of any money claimed.
 - For condominiums only, any condominium statement or other documents that may be required for certification of certain federally-financed loans.
- Allows an HOA to charge a unit or property owner no more than an aggregate of \$400 for the costs incurred in the preparation of a statement or other documents furnished by the HOA for the purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property.
- Permits an HOA to charge a unit or property owner no more than \$200 for the transfer of the property in the case of an initial or forced sale without notice.
- Allows an HOA to charge a *rush fee* of no more than \$100 if rush services are required within 72 hours.
- States that an HOA may charge a *document update fee* of no more than \$50 if 30 days or more have passed since the date of the original disclosure documents.
- Stipulates that if the aggregate fee for the purposes of resale disclosure, lien estoppel or other services related to the transfer or use of a property is *less than* \$400 on

January 1, 2010, the fee may increase at a rate of no more than 20 percent per year based on the immediately preceding fiscal year's amount.

- Clarifies that an HOA may charge the same fee without regard to whether or not the documents are being furnished in paper or electronic format.
- States that the document fees shall be collected no earlier than at the close of escrow and may only be charged *once* to a unit or property owner for that transaction.
- Prohibits an HOA from charging or collecting a fee relating to services for resale disclosure, lien estoppel and any other service related to the transfer or use of a property other than specifically prescribed in this Act.
- Stipulates that an HOA that charges or collects a fee in violation of this Act is subject to a civil penalty of no more than \$1,200.
- States that these provisions apply to a *managing agent* for an HOA that is acting on its behalf.

Condominiums and Planned Communities - Signs

- States that an HOA may not prohibit or charge a fee for the use or placement of the indoor or outdoor display of for rent or lease signs and sign riders, in any combination, displayed by a property owner on their property.
- Clarifies that an HOA shall not prohibit, in any way other than as *specifically* authorized in statute, the use of temporary open house signs, a unit owner's or owner's agent's for sale or lease sign, and open house hours for property that is available for sale or lease.
- States that an HOA or managing agent that violates specific statutes governing the use of indoor or outdoor signs by a property owner on their property forfeits and extinguishes the lien rights authorized by statute against that unit or property for a period of six consecutive months from the date of the violation.

Miscellaneous

- Makes technical and conforming changes.
- Contains a delayed effective date of from and after December 31, 2011.

Mr. Arredondo asked if the aggregate fee of \$400 is a cap; Ms. Hindman confirmed that it is.

Tom Farley, Arizona Association of REALTORS®, testified in support of SB1149, stating that it is a compromise with the Arizona Association Community Managers and represents a solution to the growing number and types of transfer fees related to the documents that are provided when a home is purchased within a HOA. He passed out two documents as examples of the types of abuses of the provision in statute to allow an HOA the ability to charge a *reasonable fee* (Attachments 4 and 5). Mr. Farley explained that SB1149 attempts to define the term *reasonable fee* and also addresses the issue of *stacking* fees.

Carol Perkinson, homeowner, representing self, testified in opposition to SB1149, stating that she lives in Venture Out RV Resort, which is an age 55 and older community. She explained that Venture Out has a number of Canadian residents and stated that delivering the Covenants, Codes and Restrictions (CC&Rs) to those residents within ten days, as stated in the bill, is a hardship. She stated that she does not believe that it is appropriate for the Legislature to determine what fees are appropriate when those fees are set by the homeowners within the community.

Vice-Chairman Urie asked if Venture Out RV Resort has a website where the CC&Rs can be posted for Canadian citizens to download. Ms. Perkinson explained that the community is age 55 and over, so there is a lack of computer literacy for these residents to navigate the website; a brief discussion followed.

Ken Dowlin, representing self, testified in opposition to SB1149, stating that he is concerned with the ten-day deadline for CC&Rs to be received by residents living in Canada. He expressed concern with the various bills currently being offered regarding HOAs.

Jeff Sandquist, Arizona Association of Community Managers (AACM), assumed the podium to clarify AACM's position on SB1149 as neutral. Mr. Sandquist stated that AACM's previous position was opposed, but is currently neutral due to the various amendments that have been offered for clarification and to address concerns.

Vice-Chairman Urie announced the names of those who signed up in support of SB1149 but did not speak:

John Mangum, Arizona Association of REALTORS®
Meghaen Duger, Arizona Association of REALTORS®
Jim Norton, President, AAM

Vice-Chairman Urie announced the names of those who signed up as neutral on SB1149 but did not speak:

Linda Lang, Executive Director, Arizona Association of Community Managers (AACM)

Question was called on the motion that SB1149 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 6).

SB1326 - homeowners' associations; flagpoles(now: flag display; homeowners' associations) - DO PASS

Vice-Chairman Urie moved that SB1326 do pass.

James Craig, Majority Intern, stated that SB1326 limits the restrictions a homeowners' association (HOA) can enact on the display of flags (Attachment 7). Mr. Craig explained the following provisions:

- Prevents an HOA from prohibiting the display of the Gadsden Flag.
- Prevents a planned community HOA from prohibiting the front yard or backyard display of flags allowed by statute.
- Allows a planned community HOA to limit the quantity of flags displayed at one time to no more than two.
- Allows a planned community HOA to limit the height of a flagpole to no more than the member's rooftop.

Vice-Chairman Urie announced the names of those who signed up in opposition to SB1326 but did not speak:

Ryan DeMenna, Associate, Community Associations Institute

Question was called on the motion that SB1326 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 8).

SB1341 - county planning; zoning; conforming legislation - DO PASS

Vice-Chairman Urie moved that SB1341 do pass.

Michelle Hindman, Majority Research Analyst, stated that SB1341 makes conforming changes to the Arizona statutes governing county planning and zoning as required by Laws 2010, Chapter 244 (Attachment 9).

Chairman Burges stated that SB1341 is cleanup legislation; Ms. Hindman confirmed.

Vice-Chairman Urie announced the names of those who signed up in support of SB1341 but did not speak:

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association

Beth Lewallen, Maricopa County Board of Supervisors

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Eric Emmert, Arizona Planning Association

Heather Bernacki, Government Relations Associate, American Planning Association Arizona Chapter

Question was called on the motion that SB1341 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 10).

SB1373 - governmental mall commission; public terms - DO PASS

Vice-Chairman Urie moved that SB1373 do pass.

James Craig, Majority Intern, stated that SB1373 reduces the term of office for public members of the Legislative Governmental Mall Commission (Commission) (Attachment 11).

Mr. Arredondo asked who appoints the members to the Commission. Mr. Craig answered that a list of members and their appointees is in statute; he read the list aloud to the Members at Mr. Arredondo's request.

Question was called on the motion that SB1373 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 12).

SB1468 - homeowners' associations; design guidelines; rules - DISCUSSED AND HELD

Vice-Chairman Urie moved that SB1468 do pass.

James Craig, Majority Intern, stated that SB1468 prevents homeowners' associations (HOA) from requiring security deposits from members to ensure compliance with design guidelines (Attachment 13).

Paul Gilbert, representing self, testified in opposition to SB1468, stating that HOAs have a concern with construction taking place onsite which has ceased and HOAs need to have the ability to either place a fence around the construction or remove the construction so that it is not a hazard or eyesore. He stated that SB1468 would remove that ability to fence or remove the construction and to have security posted nearby except through the HOA's funds. He provided various examples of such incomplete construction circumstances and suggested language to provide protection to the HOAs while not affecting the overall intention of the bill.

Mrs. Ugenti asked for an example of fines or fees that the HOAs are assessing. Mr. Gilbert explained that the HOAs are currently not prevented from listing in the CC&Rs a fee to ensure compliance with a design approved by the Design Committee. He explained that what he is suggesting is that the HOA be given the authority to tear down, fence or secure a building that, after 180 days, is not in compliance; he believes SB1468 would prevent this. Mrs. Ugenti requested a range of fees that are being assessed. Mr. Gilbert stated that the fees vary depending on each subdivision but that his experience is \$20,000 to \$120,000.

Mr. Arredondo asked if an amendment could be offered to address Mr. Gilbert's concerns. Chairman Burges suggested that Mr. Gilbert meet with Senator Gould, the bill's sponsor, to request that an amendment be added to the bill during Floor. She explained that she would prefer not to amend the bill without speaking to Senator Gould first; discussion ensued.

Mr. Forese stated that Mr. Gilbert is a real estate expert and his claim should be taken very seriously. He suggested that the bill be held for an opportunity to hear from Senator Gould. Chairman Burges announced that the bill can be held until the end of the meeting to give Senator Gould an opportunity to speak to the bill. Discussion continued regarding the possible language to address Mr. Gilbert's concerns.

Vice-Chairman Urie announced the names of those who signed up in support of SB1468 but did not speak:

Bob Burns, Arizona Senate - Retired, representing self

Vice-Chairman Urie announced the names of those who signed up in opposition to SB1468 but did not speak:

Walter Caroll, representing self

Chairman Burges announced that the Committee will hear the bill at the end of the meeting to allow Senator Gould, who is on the Floor at the Senate, an opportunity to speak to the bill. She stated that if Senator Gould does not become available, the bill will be held.

Without objection, Vice-Chairman Urie withdrew the motion that SB1468 do pass.

SB1160 - city sales tax; residential rental - DO PASS

Vice-Chairman Urie moved that SB1160 do pass.

Stephanie Johnson, Assistant Majority Research Analyst, stated that SB1160 prevents a city or town from imposing or increasing sales tax on residential renters unless approved by municipal voters (Attachment 14).

Courtney Gilstrap LeVinus, Arizona Multihousing Association, testified in support of SB1160 and provided a brief history of the bill. She clarified that cities and towns will not be required to send all sales tax increases to the ballot with the passing of SB1160, as was previously stated during testimony in other Committees. She stated that SB1160 will exempt residential rentals and if their charter allows them, cities and towns can still pass a sales tax on rent with a majority vote. Ms. LeVinus asserted that SB1160 does not require cities to treat commercial rent the same as residential rent; she cited provisions from the Model City Tax Code that addresses that concern.

Jim Ogsbury, Legislative Director, League of Arizona Cities and Towns, testified in opposition to SB1160, stating that sales taxes are the only source of revenue under the direct control of mayors and councils and restricting that authority makes it more difficult to balance budgets. He stated that SB1160 creates a special interest for one set of taxpayers.

Mr. Meyer inquired if city councils are restricted from raising taxes on citizens without going to the ballot. Mr. Ogsbury stated that city councils currently have that authority.

Thomas Belshe, League of Arizona Cities and Towns, assumed the podium in opposition to the bill to clarify that all cities and towns are required to adopt the provisions of the Model City Tax Code and if SB1160 passes, it would require all cities and towns to adopt the provision to hold an election regarding residential rental sales tax increases.

Mr. Urie inquired the current rule on advisory votes for city councils and if it is a permissible or mandatory. Mr. Belshe stated that for a sales tax, advisory vote is permissible; however, anything passed in the Model City Tax Code must be adopted by the cities and towns. Mr. Urie provided an example of a situation that took place in Gilbert and the interpretation of the terms *may* and *shall*; discussion ensued.

Chairman Burges announced the names of those who signed up in support of SB1160 but did not speak:

Michelle Bolton, Vice President of Public Affairs, Greater Phoenix Chamber of Commerce
Meghaen Duger, Arizona Association of REALTORS®

Vice-Chairman Urie announced the names of those who signed up in opposition to SB1160 but did not speak:

Richard Travis, City of Flagstaff
Chad Heinrich, Government Relations Coordinator, City of Tempe
David Johnson, Intergovernmental Affairs Analyst, Town of Buckeye
Michael Celaya, Intergovernmental Relations Director, City of Surprise
Matthew Busby, Assistant to the City Manager, City of Apache Junction
Leah Hubbard, Special Assistant to the City Manager, City of El Mirage
Paul Jepson, Assistant to the City Manager, City of Maricopa
Todd Baughman, City of Tucson
Ryan Harper, Triadvocates LLC, City of Sierra Vista

Kevin Burke, Assistant to the Town Manager, Town of Oro Valley
Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale
Michelle Gramley, Town of Gilbert
Bill Lee, City Manager, City of Somerton
Patrice Kraus, Intergovernmental Affairs Coordinator, City of Chandler
Brent Stoddard, Director of Intergovernmental Programs, City of Glendale
John Wayne Gonzales, Legislative Liaison, City of Phoenix

Question was called on the motion that SB1160 do pass. The motion carried by a roll call vote of 8-1-0-0 (Attachment 15).

SB1468 - homeowners' associations; design guidelines; rules - DISCUSSED AND HELD (cont.)

Chairman Burges announced that SB1468 will be held at the request of the sponsor.

SB1314 - county island fire districts; meetings - DO PASS

Vice-Chairman Urie moved that SB1314 do pass.

Stephanie Johnson, Assistant Majority Research Analyst, stated that SB1314 adds to the duties of a fire district (District) relating to the posting of a budget and maintenance of permanent public records (Attachment 16).

John Flynn, Gilbert County Island Fire District, testified in support of SB1314, stating that the bill allows for all public records of the District to be stored electronically and to be posted on its website; the Districts do not have assets or a place to store the records.

Vice-Chairman Urie announced the names of those who signed up in support of SB1160 but did not speak:

Lee Miller, Lobbyist, Gilbert/Chandler/Tempe County Island Fire Districts

Question was called on the motion that SB1314 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 17).

SB1318 - city council; vacancy; appointment; election - DO PASS

Vice-Chairman Urie moved that SB1318 do pass.

James Craig, Majority Intern, stated that SB1318 modifies the method of filling vacant seats on city and town councils, based on when the vacancy occurs (Attachment 18).

Ms. Hobbs asked what problem SB1318 is addressing.

Mr. Gowan, sponsor, stated that vacancies can occur early within a term and SB1318 allows a vote at the next available election.

Ms. Hobbs and Mr. Meyer stated that it was their understanding that the bill did the opposite of what Mr. Gowan explained. Mr. Gowan explained that if a person is elected for a position and vacates early in the term, some councils can appoint the replacement. SB1318 allows that seat to be filled at the next available election instead of at the completion of the term.

Michelle Hindman, Majority Research Analyst, addressed Members' question and provided that city council terms are for four years. Generally the elections are staggered. She explained that with SB1318, if a person is elected in 2010 and vacates 3 months later, the city council will make an appointment and that appointment would run for the remainder of the four-year term in the upcoming 2012 election. She explained that if the originally-elected member were to vacate in 2013, the appointee would fill the seat for the remainder of that term because he or she would have been appointed after the 2012 election and the term would end before the following election.

Discussion ensued between the Members and Mr. Gowan regarding various scenarios of vacancies, appointments and elections.

Ms. Hindman returned to address a question from Mr. Meyer and explained that in speaking with the League of Cities and Towns, it withdrew the concern about losing staggered terms because a notation would be made on the ballot distinguishing between candidates running for two- or four-year terms.

Question was called on the motion that SB1318 do pass. The motion carried by a roll call vote of 7-2-0-0 (Attachment 19).

Without objection, the meeting adjourned at 4:28 p.m.

Charly Laube, Committee Secretary
May 3, 2011

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