

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-first Legislature – Second Regular Session

COMMITTEE ON GOVERNMENT

Minutes of Meeting
Tuesday, January 28, 2014
House Hearing Room 4 -- 2:00 p.m.

Chairman Ugenti called the meeting to order at 2:05 p.m. and attendance was noted by the secretary.

Members Present

Mr. Borrelli
Mr. Coleman
Ms. Hernandez

Mr. Kavanagh
Mr. Quezada

Mr. Petersen, Vice-Chairman
Mrs. Ugenti, Chairman

Members Absent

Mr. Forese

Committee Action

HB2102 – DPA (6-0-0-2)
HB2126 – DP (6-0-0-2)
HB2148 – DP (6-0-0-2)
HB2162 – DP (6-0-0-2)

HB2225 – DPA (6-0-0-2)
HB2330 – DP (5-1-0-2)
HB2378 – DPA (6-0-0-2)
HB2387 – DP (7-0-0-1)

HB2162 – city or town council; vacancy – DO PASS

Victoria Pacheco, Majority Research Intern, advised that HB2162 stipulates that if any member on a city or town council ceases to be a qualified elector or resident of that municipality, their council seat must be deemed vacant; the bill requires the county attorney to investigate, on request, and determine whether a vacancy exists (Attachment 1).

Representative Debbie Lesko, sponsor, advised of a situation in the City of Surprise where a councilman appeared to have moved out of state but continued to hold office and attend meetings via telephone. HB2162 asserts that if any member on a city or town council ceases to be a qualified elector or resident of that municipality, at any time during the member's term of office, their council seat must be deemed vacant.

Sharon Wolcott, Mayor, City of Surprise, representing self, testified in support of HB2162, stating that without a clear definition of residency in Arizona statute, it is difficult to proceed with an investigation in a situation where a person holding office no longer lives in the district or state. This bill requires the county attorney for the county in which the municipality is located to

investigate, on request, and determine whether a vacancy exists. Ms. Wolcott suggested adding a clearer definition of *residency* to prevent further confusion.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2162 but did not speak:

Dale Wiebusch, Legislative Associate, League of Arizona Cities and Towns

Michael Celaya, representing self

Vice-Chairman Petersen moved that HB2162 do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 2).

HB2102 – legislative vacancies; district residency; quorum – DO PASS AMENDED

Victoria Pacheco, Majority Research Intern, explained that HB2102 removes the requirement for the precinct committeemen to nominate persons from the same county as the incumbent when filling a vacancy in the Legislature and eliminates consideration of the precinct committeemen's county of residence in determining a quorum (Attachment 3). The Petersen three-line amendment to HB2102 dated 1/27/14 (Attachment 4) removes the requirement that precinct committeemen be from the same county of residence as the incumbent when a vacancy occurs in the Legislature.

Representative Kelly Townsend, sponsor, explained that current statute does not allow districts with more than one county to nominate someone from any county other than the county the incumbent was originally from. She said that HB2102 is a long-overdue cleanup bill that allows a qualified person from the same district as the incumbent but not from the same county to fill a vacancy.

Vice-Chairman Petersen moved that HB2102 do pass.

Vice-Chairman Petersen moved that the Petersen three-line amendment to HB2102 dated 1/27/14 (Attachment 4) be adopted. The motion carried.

Vice-Chairman Petersen moved that HB2102 as amended do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 5).

HB2378 – municipal taxes and fees; prohibition – DO PASS AMENDED

Victoria Pacheco, Majority Research Intern, explained that HB2162 prohibits a municipality from levying or assessing a municipal-wide tax or fee against property owners based on the size or value of their property in order to fund any public service. The bill applies retroactively to January 1, 2014 (Attachment 6). Ms. Pacheco advised that the Ugenti four-line amendment dated 1/27/14 (Attachment 7) grandfathers in any municipality that adopted an ordinance before December 31, 2013 requiring property owners to obtain fire prevention and control services.

In response to Chairman Ugenti's inquiry, Ms. Pacheco related that the Town of Paradise Valley adopted an ordinance to assess a fee in lieu of a property tax.

Kevin McCarthy, President, Arizona Tax Research Association, testified in support of HB2378 and the amendment. He provided background on the complex property tax system and stated that this bill clarifies that a municipality cannot impose a fee against property owners to fund any public service. In response to a question, he explained that the legislation prescribes the mechanism to prevent a city from inventing another vehicle for what is really a property tax.

Mr. Kavanagh commented that he is familiar with the tactics used by the “tax and spend” crowd. He queried if the bill will prevent a municipality from forming a separate public safety district that will then create this exact same tax. Mr. McCarthy responded that the bill will not prevent that scenario. Mr. Kavanagh requested the inclusion of additional language to resolve his concern before the bill goes to Committee of the Whole.

Chairman Ugenti questioned the purpose of the caveat for the Town of Paradise Valley. Mr. McCarthy advised that an attempt to remove the Paradise Valley fee was unsuccessful last session. The primary concern is to prevent future municipalities from following suit.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2 but did not speak:

Rene Guillen, Lobbyist, League of Arizona Cities and Towns
Douglas Cole, Lobbyist, Town of Paradise Valley
Rebecca Hudson, Analyst, Corporate Public Affairs, Southwest Gas Corporation
Bill Fathauer, Americans for Prosperity
Scot Mussi, Arizona Free Enterprise Club
Farrell Quinlan, State Director, National Federation of Independent Business
Dave Kopp, Manager, Americans for Prosperity Arizona
Spencer Kamps, Lobbyist, Home Builders Association of Central Arizona

Vice-Chairman Petersen moved that HB2378 do pass.

Vice-Chairman Petersen moved that the Ugenti four-line amendment to HB2378 dated 1/27/14 (Attachment 7) be adopted. The motion carried.

Vice-Chairman Petersen moved that HB2378 as amended do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 8).

HB2387 – improvement districts; lighting; streets; parks – DO PASS

Virginia Carico, Majority Research Analyst, explained that a street light improvement district (SLID) is a special taxing district formed to purchase and not generate energy for the lighting of public streets and parks within an improvement district. HB2387 outlines the procedure for a county SLID to be converted to a municipal SLID. The municipality must first adopt a resolution to declare their intent to convert and assume jurisdiction of the SLID. The bill also outlines the content requirements of the resolution (Attachment 9).

Brad Lundahl, Lobbyist, City of Scottsdale, testified in favor of HB2387 and provided background on the 365 SLIDs located in Scottsdale. He stated that 40 of the SLIDs are located within the city’s municipal boundaries but are still part of the county system. The SLIDs were never converted to municipal purposes when the city annexed the land in the 1970s. This

legislation will simplify the process and authorize counties to transfer county-administered SLIDs to a municipality upon the consent of both governing bodies.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2387 but did not speak:

Barry Aarons, City of Scottsdale

Ryan Peters, League of Arizona Cities and Towns

Paul Jepson, Lobbyist, City of Maricopa

Vice-Chairman Petersen moved that HB2387 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 10).

HB2225 – county medical examiner; autopsies; images – DO PASS AMENDED

Virginia Carico, Majority Research Analyst, explained that HB2225 prohibits the public disclosure of visual images obtained during death investigations and clarifies immunity provisions for the county medical examiner and alternate medical examiner (Attachment 11). Ms. Carico advised that the Ugenti 10-line amendment dated 1/27/14 (Attachment 12) makes technical and conforming changes and stipulates that this section of statute shall not affect the conduct of trials or the discovery process as provided by law or court rule.

Representative Karen Fann, sponsor, stated that the primary reason for this legislation is to remove county medical examiners and alternate medical examiners from the middle of the legal process when lawsuits for information occur. The bill clarifies the legal rules and immunity provisions for medical examiners or alternate medical examiners and does not infringe upon any First Amendment rights.

In response to Mr. Quezada's inquiry, Representative Fann explained that individuals with the rights and abilities to obtain the information will continue to have access to the materials.

Rory Hays, representing Maricopa County, testified in support of HB2225, advising that state law stipulates material generated by an official government duty is considered to be public record with the exception of a legislative decision, state interest trumping the need for disclosure and privacy concerns.

In 2009, Arizona Court of Appeals case *Schoeneweis v. Hamner* dealt with issues relating to materials generated as part of a death investigation. The case directed the trial court to conduct an in camera review of the documents in question and to balance relevant interests; however, the court case did not resolve the process to be used to seek the court's review nor did it provide county medical examiners guidance on which parties should be entitled to the documents and images without first going to court.

Ms. Hays said that HB2225 only focuses on the visual images because, as the court pointed out, that type of material is most likely to raise privacy interests. She explained that the bill is designed to allow the courts to balance the interests under Arizona public records laws in determining material disclosures. Any person seeking disclosure of such materials shall file a petition in the superior court of the county in which the death investigation occurred for an in camera review of the materials with the following exceptions:

- Entities that have a privacy interest – parents, family members, personal representative of the estate, etc.
- Entities with a government interest – law enforcement, justice system, center for disease control, etc.

Ms. Hays advised that the amendment explicitly states that this statute directs the medical examiner, will not interfere with the existing rules of disclosure and discovery for the court and ensures the immunity of the medical examiner mirrors its statutory duties.

Mr. Quezada questioned the differences between Subsection A and Subsection B. He stated that it appears Subsection A sets the procedures for individuals to obtain an in camera review of the materials but in Subsection B there is an ability to obtain automatic access without an in camera review. Ms. Hays responded that certain procedures must be met in both sections and that automatic access is not available. Mr. Quezada stated that he agrees with the intent of the bill but requested the language be clarified. Ms. Hays agreed, stating that the language will be clarified before HB2225 reaches the Floor.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2225 but did not speak:

Trey Williams, Lobbyist, Arizona Association of Counties
 Don Isaacson, Arizona Fraternal Order of Police
 Art Harding, Lobbyist, Arizona Attorney General's Office
 Thomas Parker, Lobbyist, Arizona Fraternal Order of Police
 Jim Mann, Lobbyist, Arizona Fraternal Order of Police
 Todd Madeksza, Director of Legislative Affairs, County Supervisors Association

Vice-Chairman Petersen announced the names of those who signed up as neutral on HB2225 but did not speak:

Ben Goldstein, Lobbyist, Arizona Trial Lawyers Association
 John Moody, Lobbyist, Arizona Newspapers Association
 Chris Moeser, Attorney, Phoenix Newspapers, Inc.

Vice-Chairman Petersen moved that HB2225 do pass.

Vice-Chairman Petersen moved that the Ugenti 10-line amendment to HB2225 dated 1/27/14 (Attachment 12) be adopted. The motion carried.

Vice-Chairman Petersen moved that HB2225 as amended do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 13).

HB2126 – municipal annexation; size; exception – DO PASS

Tom Savage, Majority Research Assistant Analyst, advised that HB2126 modifies part of the definition of *contiguous* for the purposes of municipal annexation (Attachment 14).

Representative Frank Pratt, sponsor, related that last year, this bill received overwhelming support in the House. He explained that the intent of the legislation is to address the problem of

property ownership on property lines that run on angles such as, railroads and highways for the purpose of municipal annexation.

Chairman Ugenti asked if this is the exact language from last session. Representative Pratt related that HB2126 is the same as last year's amended version. Chairman Ugenti questioned if the legislation will only be for the purpose of municipal annexation. Representative Pratt responded that is the intent.

Paul Jepson, City of Maricopa, testified in favor of HB2126 and provided examples of angled property lines that the bill will remedy.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2126 but did not speak:

Ryan Peters, League of Arizona Cities and Towns

Vice-Chairman Petersen moved that HB2126 do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 15).

HB2148 – municipalities; counties; transfer; right-of-way – DO PASS

Virginia Carico, Majority Research Analyst, related that Laws 2013, Chapter 127, permitted a county right-of-way or roadway to be *transferred* instead of annexed to an adjacent municipality upon mutual consent of the governing bodies. HB2148 clarifies that a transfer of property between a county and a municipality must be treated by the receiving municipality as if the transferred property was newly annexed territory (Attachment 16).

Mr. Borrelli, sponsor, advised that the bill cleans up statute and cuts red tape to offset the bureaucratic “sludge” for the communities.

Michelle Hindman, Lobbyist, Maricopa County, testified in favor of HB2148. In response to a question, she explained the legislation clarifies that the receiving entity of the property is treated as if the transferred property was a newly annexed territory.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2148 but did not speak:

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association

Ryan Peters, League of Arizona Cities and Towns

Paul Jepson, Lobbyist, City of Maricopa

Vice-Chairman Petersen moved that HB2148 do pass. The motion carried by a roll call vote of 6-0-0-2 (Attachment 17).

HB2330 – municipalities; deannexation; public right-of-way – DO PASS

Tom Savage, Majority Research Assistant Analyst, explained that HB2330 allows a public right-of-way that is partially located in a municipality and partially located in a county to be deannexed from the municipality and returned to the county under certain conditions (Attachment 18).

Nick Simonetta, representing City of Peoria, testified in support of HB2330, stating that the intent of the bill is to simply allow a public right-away that is partially located in a city and partially located in a county to be deannexed from the city and returned to the county. The bill allows counties and cities to work together more efficiently.

Vice-Chairman Petersen announced the names of those who signed up in support of HB2330 but did not speak:

Ryan Peters, League of Arizona Cities and Towns

Steve Kemp, representing self

Vice-Chairman Petersen moved that HB2330 do pass.

Vice-Chairman Petersen opined concerns with the annexation process.

Question was called on the motion that HB2330 do pass. The motion carried by a roll call vote of 5-1-0-2 (Attachment 19).

Without objection, the meeting adjourned at 3:10 p.m.

Abby Selvey, Committee Secretary

February 11, 2014

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