

2009 HBACA Legislative Report



General Effective Date of all Legislation is
Thursday, September 30th 2009

July 1st marked the end of the 2009 legislative session, the longest session in Arizona in over 15 years. In total, approximately 1200 bills were introduced, with 191 bills eventually signed into law. Clearly, the first regular session of the 49th legislature will be remembered for the tense and oftentimes hostile budget negotiations between the legislature and Governor Jan Brewer on how to fill the largest budget deficit in Arizona history, a whopping \$3.2 *billion dollar shortfall*.

With the state overspending by over 30% (revenues at \$7.8 billion, expenses at \$11 billion), drastic action was needed to balance the budget and avoid a potential government shutdown on July 1, the first day of the new fiscal year. Unfortunately, the legislature and Governor had vastly different views on how to solve the FY2010 fiscal crisis. While the house and senate wanted to primarily rely on cuts, borrowing and gimmicks to fill in the gaping budget hole, the Governor instead proposed a \$1 billion dollar temporary tax increase as the remedy to the budget problem.

Governor Brewer's tax proposal proved to be the defining wedge issue for the entire legislative session, as it proved to have little support among legislative leadership and rank and file members. When the legislature finally did pass a balanced budget without a tax increase on June 4th, the senate refused to transmit it to the Governor, holding out hope that a compromise could be reached. In response, the Governor sued the legislature, demanding that all bills be transmitted as required by the constitution.

While the court reviewed the lawsuit filed by the Governor, the two parties finally sat down to see if a compromise could be reached. Talks were going nowhere until the court finally ruled a week before the end of the fiscal year that the legislature should transmit the bills, but under these circumstances the court would not require them to do so. Within three days, legislative leadership and the Governor reached a tentative agreement on the budget and a temporary sales tax increase, which would be referred to the voters for approval.

Late on June 30 (and early into July 1), the legislature approved the agreed upon budget, but was unable to garner the votes necessary for the sales tax referral. Upset over the lack of support for the tax referral, Governor Brewer decided to veto most of the agreed-upon budget, forcing a special session that is currently in progress.

The Governor's decision to veto the budget had multiple ramifications. First, it guarantees that the temporary suspension of the state equalization property tax will go back into effect the second week of August, increasing property taxes by over \$250 million. Second, the veto will actually *increase* the deficit for FY 2010, from \$3.2 billion to \$3.8 billion. Finally, it makes it much more likely that a tax referral will make it to the ballot, either in time for a special election in November or in March. In short, as bad as Arizona's fiscal situation looked in January, there is no question that it is now a whole lot worse.

The impact of the veto on the home building industry was just as severe. Throughout the entire legislative session, the HBACA had been actively seeking a “Housing Recovery Plan” for the construction industry, designed to reduce and reform impact fees and put a freeze on additional discriminatory increases in construction sales taxes and building code adoptions in Arizona. The result of our efforts was the inclusion of our recovery plan in SB 1035, the ‘general government’ budget reconciliation bill. The HBACA recovery plan had four components, including:

- 1) A three year moratorium on development impact fees
- 2) Impact fee reforms, including a definition of necessary public services and clear language that growth should pay its fair share and no more.
- 3) A three year freeze on discriminatory increases in the construction sales tax.
- 4) A three year freeze on new code adoptions applying to approved and developed lots.

SB 1035 passed both the House and the Senate, and along with the other nine budget bills, was negotiated with the Governor. After several weeks, an agreement was reached on a much smaller recovery plan that included a two year freeze on impact fee increases and construction sales tax increases and new code adoptions. Even with the scaled back provisions of the HBACA recovery plan, the Governor’s decision to veto the budget means no relief for the ailing construction industry and indicates a clear disconnect between the executive branch and home building industry about what really drives the Arizona economy.

HBACA Tracked Legislation

The following is a breakdown of the most significant legislation the HBACA tracked and monitored at the legislature. The first section discusses legislation passed and signed by the Governor, while the second part includes bills that either failed or vetoed by the Governor. Also provided is a link to the Arizona State Legislature website (www.azleg.gov) where additional information on each piece of legislation can be obtained.

The HBACA recommends that you seek advice from counsel for further detail on how to integrate these new laws into your business. For any additional information, feel free to contact Spencer Kamps (kampss@hbaca.org) or Scot Mussi (mussis@hbaca.org) via email or by phone at 602-274-6545.

Legislation Passed and Signed by the Governor

HB 2310: subdivision public reports (Rep. Adam Driggs)

HBACA Sponsored Legislation

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2310&image.x=0&image.y=0

HB 2310 updates how expedited public reports will be reviewed and approved at the Department of Real Estate. Under the new law, when an expedited report is submitted for review the

Department will have 10 business days (formerly 15 business days) to approve or deny the report. If the Department does not issue a ruling within the time allotted, the report will be automatically approved and the subdivider will be issued a certificate of administrative completeness.

Implementation: Please be aware of the new timeframes for public reports at the Department of Real Estate to ensure that the report is approved and certification is awarded in the time allotted.

HB 2173: notification; complaint; registrar of contractors (Rep. Frank Antentori)

HBACA Sponsored Legislation

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2173

The HBACA over the last several years has been committed to reducing the number of frivolous complaints and citations at the Registrar of Contractors and refocusing the agency's mission back onto its original purpose of licensing contractors and ensuring that work is completed in accordance with industry standards. HB 2173 is another step towards achieving that goal, implementing a couple of new reforms that will reduce the number of citations against the home building industry. A couple of the reforms include:

- The elimination of the word "wrongful" in section 32-1154(A)(7) as a reason a contractor may be cited by the registrar. A contractor may still be cited for any fraudulent act that harms a consumer, but no longer for any "wrongful" act.
- Clarification that a contractor's license number must appear on all broadcast, internet and billboard advertising. A recent ruling by the ROC stated that contractors must put their license number on ALL advertising, including hats, pens, shirts, etc. This language change ensures that a contractor does not.
- Clarification that disclosure language in commercial contracts can appear in a font size larger than 10 point.

This legislation also updates the notice in Title 12 that is provided to new homebuyers that explains the period in which a complaint may be filed at the Registrar of Contractors. When the law was changed two years ago clarifying that complaints must be filed within 2 years after the close of escrow or actual occupancy, whichever occurs first, the notice in Title 12 was not updated.

Implementation: Please be aware that when a complaint is filed at the ROC that a contractor can no longer be cited for a "wrongful" act. Also, please consult legal counsel and your sales department about the other changes in the law.

SB 1148: deed restrictions; for sale signs (Sen. Sylvia Allen)

HBACA Neutral

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1148

Similar to a bill passed last year preventing HOA's from prohibiting for sale signs, SB 1148 prevents a landowner from including in a deed restriction any clause or provision prohibiting for sale signs on a landowner's property. The law does limit the size and design of for sale signs and sign holders to the current industry standard.

Implementation: Please contact your legal counsel to ensure proper implementation of this law.

HB 2336: county renewable energy incentive districts (Rep. Lucy Mason)

HBACA Opposed

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2336

HB 2336 allows counties and municipalities to establish energy incentive districts to promote and encourage the construction of renewable energy equipment. In order to create the district, the following conditions must be met:

- The district consists of vacant or "underused" parcels, or other property the council deems suitable for renewable energy equipment, and are the appropriate size for the construction and operation of renewable energy equipment.
- The district is located in an area that does not cause the construction and operation of renewable energy equipment to be incompatible with other uses of surrounding property. The council shall consider factors relating to the construction and operation of renewable energy equipment including:
 - The ability to adequately buffer the district from surrounding incompatible uses.
 - The noise level emanating from the district alone and in relation to ambient noise levels at the perimeter of the property falling within the proposed district and relative to adjacent lands.
 - The extent to which the district would be located in proximity to existing transportation and electrical transmission corridors.
 - Compatibility with commercial and military air space requirements.
- The district is consistent with the existing general plan.
- Stipulates that the district may consist of large portions of land and non-contiguous plots.
- Requires the council to adopt a renewable energy incentive plan to encourage the construction and operation of renewable energy equipment in the district. The plan may contain:
 - Expedited zoning or rezoning procedures.
 - Expedited processing of plans, proposals, and permits.

- Waivers or abatement of zoning fees, processing fees, and improvement district fees and assessments for development activities.

Implementation: No further action is necessary with this legislation.

HB 2332: schools; energy contracts (Rep. Tom Boone)

HBACA Opposed

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2332

Legislation introduced to implement new standards for energy conservation and contracts for new and remodeled school construction. On the closing days of session an amendment was added establishing new standards for portable spas and residential pool pumps. The standards go into effect January 1, 2012 and are as follows:

- Portable electric spas shall not have a normalized standby power greater than five times the spa's fill volume in gallons raised to the two-thirds power.
- Residential pool pumps and residential pool pump motors shall comply with both of the following:
 - Motors shall not be split-phase or capacitor start-induction run type motors, except for the following:
 - The low-speed section of two-speed motors may be capacitor start-induction run type.
 - Forty-eight-frame motors designed for use with above-ground pools are exempt from this requirement.
- Motors with a total horsepower capacity of one or more shall have the capability of operating at two or more speeds with a low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate and shall be operated with a pump control with the capability of operating the pump at two or more speeds. Residential pool pump motor controls that are sold for use with a two or more speed motor shall have a default circulation speed setting no more than one-half of the motor's maximum rotation rate. Any high speed override capability shall be for a temporary period not to exceed one twenty-four hour cycle without resetting to the default setting.

SB 1168: storage; firearms; motor vehicles (Sen. Russell Pearce)

HBACA Opposed

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1168

SB 1168 prevents property owners, tenants, employers and businesses from prohibiting the storage or transport of firearms in locked and privately-owned vehicles parked in a parking lot, parking garage, or other designated parking area. Specifically, this law allows a person to store a firearm in their vehicle as long as the following conditions are met:

- The firearm is locked in a privately owned motor vehicle or in a locked compartment on the person's privately owned motorcycle.

- The firearm is not visible from the outside of the motor vehicle or motorcycle.

The legislation originally contained a provision that would have allowed any person to sue their employer if they believed they were deprived of their ability to store a firearm in a vehicle. Through the course of negotiations, this provision was eliminated from the bill.

Implementation: The HBACA recommends speaking with an attorney to guarantee compliance with the provisions of this law.

Legislation that Failed or was Vetoed by the Governor

HB 2034: HOA's; authority over roadways (Rep. Nancy Barto) HBACA Opposed

This bill would have prevented HOA's and subdivisions under declarant control from regulating parking on the roadways. After passing out of the house almost unanimously, the HBACA was able to amend into the bill a declarant exemption, protecting a declarants right to regulate parking during buildout. Fortunately the bill failed in Senate Government committee.

HB 2080: contractors; payment (Rep. Lauren Hendrix) HBACA Opposed

HB 2080 was the annual attempt to eliminate the ability to withhold retention in construction contracts. As has been the case for several years now, the HBACA, along with several other interested parties (including APS, Intel, Arizona Restaurant Association, NAIOP), entered into negotiations with the proponents of the bill to see if a potential compromise could be reached. After several meetings and months of negotiations, it was clear the sides were too far apart to reach any meaningful resolution on the issue. Shortly after talks ended, the sponsor of the bill committed that HB 2080 would not move forward. One promising result from the talks is that both sides appear to have reached an agreement on the 'Stonecreek Lawsuit', addressing an issue related to how payments are made and withheld on defective work.

HB 2247: home sales; water supply disclosure (Rep. Ed Ableser) HBACA Opposed

Would have required all subdividers who sold a home outside of the Active Management Area (AMA) to record with the county recorder a document indicating whether or not the subdivision has an adequate or inadequate water supply. The legislation would have only applied to new homes, not resale homes, further increasing the discrepancy in disclosure requirements between existing and new homes. The bill passed out of the House Environment Committee but was held in House Rules.

HB 2337: energy efficient buildings (Rep. Lucy Mason)
HBACA Opposed

Similar to the energy standards bill introduced last year, HB 2337 would have established “voluntary” goals for energy efficiency in Arizona. Under the proposal, all residential construction would have been required to be 50% more energy efficient by 2020, based on either the LEED or EPA energy standard. Additionally, each municipality would be required to electronically report to the State Commerce Energy office whether a residential structure met the voluntary goals required in statute. The HBACA was successful in getting this bill held in the Senate, but it is expected that this legislation will be introduced again next year.

HB 2391: homeowners associations; declarant failure (Rep. Andy Biggs)
HBACA Opposed

This legislation would have allowed HOA communities to rewrite their CC&R’s after the declarant ceased to operate in the community. This sweeping legislation would have applied to all new communities and to any subdivisions where a builder filed for bankruptcy and no longer managed the subdivision. After passing out of the House of Representatives, the bill was held in Senate Government, stopping its progress.

HB 2503: residential contractors recovery fund; persons injured (Rep. John McComish)
HBACA Opposed

This bill attempted to expand eligibility for compensation from the recovery fund to any person who had work performed on a multiunit commercial project by a residential contractor. The HBACA opposed this legislation because of the danger of compound claims and that the recovery fund has been swept by the legislature twice in last 12 months. In fact, the recovery fund has gone from \$12 million in June of 2008 to \$2.4 million in July of 2009. The fund is close to being depleted, so any expansion of claim eligibility would only push the fund towards insolvency. After speaking with the sponsor on the potential dangers of this legislation, he agreed to stop advocating for its passage.

SB 1335: unauthorized aliens; licensing (Sen. Russell Pearce)
HBACA Opposed

Although Arizona has one of the toughest employer sanction laws in America, there has been a continued push by illegal immigration opponents to grant prosecutors and others in law enforcement additional powers and privileges to investigate the hiring practices of employers. SB 1335 would have given the Attorney General or the County Attorney civil subpoena power to investigate employment records and documents, require the attendance and testimony from witnesses, and mandates full participation in the investigation by the employer even if the only evidence is an accusation of illegal employment practices. Additionally, this bill would have exempted law enforcement from all liability for engaging in the entrapment of an employer

who is suspected of hiring illegal immigrants. The HBACA strongly opposed this legislation, which fortunately did not receive a hearing in either chamber.

SB 1156: local development fees; schools; exclusions (Sen. Linda Gray)
HBACA Opposed

Would have exempted local schools from paying development impact fees for streets and sewer projects. Impact fees are required to be assessed in a non-discriminatory manner, which means schools must pay their fair share to cover their burden placed on the community. Any law that exempts schools or any other groups from paying these fees results in a cost shift onto other groups, including residential construction. The HBACA expressed their concerns to the sponsor of the legislation, who agreed afterwards to stop moving the bill.

HB 2267: municipalities; counties; fire sprinklers; codes (Rep. Sam Crump)
HBACA Sponsored Legislation

Legislation that would have preempted municipalities and counties from requiring the installation of fire sprinklers in all new residential homes. Specifically, the language stated that a city, town or county could not adopt any code or ordinance that prevented a person from choosing whether or not to have fire sprinklers installed in their home. The HBACA introduced the legislation in response to the International Code Council's decision to amend the International Residential Code to require that by 2011 fire sprinklers be installed in all new residential homes. With the potential inclusion of a code moratorium in the Arizona State Budget, the HBACA elected not to continue pushing this legislation.

SB 1288: CAGRDR revenue bonding; sustainability policies (Sen. John Nelson)
HBACA Supported

Under current law, the CAGRDR was created as a water replenishment district that is responsible for purchasing water and water rights in order to achieve safe yield by 2025 as mandated by statute. SB 1288 would have given the CAGRDR bonding authority to secure future water rights and purchase water infrastructure. The bonds would have been paid for by landowners that voluntarily joined the district and agreed to the fees used to repay the bonds. The legislation passed the Senate but stalled in the House, but is expected to resurface again next year.

SB 1077: State Trust Land Reform
HBACA OPPOSED

In yet another attempt to reform Arizona's State Trust Land process, the HBACA engaged in talks with the several stakeholders who have pursued reform over the last several years, including the Cattlemen's Association, Arizona School Boards Association, The Nature Conservancy, APS, SRP and the Sierra Club. And just like many other state land debates, the major sticking points included how much land needs to be conserved, who should be required to pay full appraised value, lease rights, the use of impact fees to pay for conservation land and

the creation of a management board. On almost every major issue, the conservation groups refused to reduce their demands, forcing the HBACA to oppose the reform efforts. As a result, SB 1077 failed to reach the senate floor for a vote. While the HBACA is open to discussing trust land reform efforts, the HBACA will continue to oppose any measure that shortchanges the trust and unfairly burdens new growth to pay for the conservation efforts.