

LEGISLATIVE UPDATE– FEBRUARY 2009

The Arizona State Legislature convened on Monday, January 13, 2009 for the First Regular Session of the 49th Legislature. As of February 3, 453 House Bills and 334 Senate Bills have been introduced. (Hard to believe we need that many new laws!). January was truly a busy month around the state capitol. On January 20, Governor Napolitano officially resigned as Governor, to accept appointment as Secretary of Homeland Security for President Obama. Jan Brewer, the Arizona Secretary of State, was sworn in as Governor on Wednesday, January 21. Succeeding her as the new Arizona Secretary of State was Ken Bennett, former State Senator from Prescott.

Also, Representative Steve Gallardo (D-13) decided he really didn't want to serve another term in the House of Representatives, even though he was elected in November, so he decided not to be sworn in when the Legislature convened January 13. The Maricopa County Board of Supervisors has appointed a replacement, Tolleson Vice-Mayor Anna Tovar.

As has been widely publicized, the state budget (which the constitution requires to be balanced every year) was estimated to be \$1.6 billion in the red for the current fiscal year, which is already half over. The legislature stepped in last week and modified the current year budget to bring it into balance. The Republican Legislative leadership had established a self-imposed deadline for modifying the current year budget by February 1, in order to avoid an additional \$ 160 million in spending obligations for the month.

At 2:00 a.m. Saturday, January 31, the legislature met their deadline by passing six budget bills aimed at managing the projected shortfall. The bills included \$600 million in spending reductions, assumed \$500 in new monies via the federal stimulus package, and \$ 582 million in fund transfers to the general fund.

Projections are that the budget for next fiscal year, which begins in July, will have even less revenue to work with than this year. Thus, the biggest issue facing the legislature this year will be to find ways to develop and pass a balanced budget for next year. The State Senate has announced it will not be hearing bills until the budget for Fiscal year 2010 is passed.

One bill that has not yet been introduced, but is expected to be shortly, will be a bill making changes to the alternative procurement methods for design and construction services allowed by existing state statute. These methods include design-build, construction manager at risk, and job order contracting. A group of stakeholders, including government agency owners, AGC, ACEC, the Arizona Builders Alliance, and others have been meeting for several months to develop necessary modifications to the statutes to address issues that have come up over the years. These proposed changes will be consensus changes, meaning they will be agreed upon by each of the members of the stakeholder group. ACEC has and will continue to be an active participant in this bill.

A few of the bills affecting the Engineering Industry that been introduced thus far:

House Bills:

HB 2005 Streets; Obstructions prohibited. Prohibits a person from obstructing a street by creating a ditch, rut, speed bump gate or any other device that restricts traffic flow. The bill may be in response to a recent house fire in a County island, where the fire department could not get to the fire in time because of unauthorized barricades blocking the street.

HB 2092 Comprehensive transaction privilege tax. Same as HB 2361 from last year (that did not pass). Would eliminate many of the exemptions that the Democrats don't like from having to collect and pay

state sales tax, and would include tax on all services (including engineering and architectural services). Would lower the state sales tax rate from the current 5% to 3.5 %. ACEC is adamantly opposed

HB 2129 State Aviation Fund; grants. Changes the maximum grant monies that any one airport may receive in any one fiscal year, from the current ten per cent of the total state aviation fund, to ten per cent of "the average annual revenue that the fund received over the past three years."

HB 2135 State contracts; participation goal; veterans. This bill would require the state Department of Administration to establish a goal of awarding three per cent of all state contracts to Veteran-owned businesses.

HB 2165 Vehicle and use fuel taxes. This bill would increase the state tax on fuel by 6 cents per gallon, the increase kicking in only if/when the price of fuel exceeds \$2.75 per gallon.

HB 2167 Transportation district working group. Establishes a committee (called a working group) consisting of the ADOT Director and the heads of each of the state's various Councils of governments (COGS) to study the issue of dividing the state into six transportation districts.

HB 2176 Water improvement districts; rates. Requires that the rates charged for water be "reasonable", and prohibits a district from requiring one class or category of user from bearing a "disproportionate " share of the water costs.

HB 2192 Development Fees; Public transportation. Same bill as HB 2665 which did not pass last year. Adds 'public transportation' to the list of items for which cities and towns may collect development fees from new developments.

HB 2193 Driving on Highways; lane regulations. Same as HB 2702 from last year that did not pass. On highways with three lanes in one direction, requires semi-trucks to drive in right-hand lane.

HB 2252 International ports development. Adding a new section of law in title 28 (ADOT) to engage in activities to facilitate the development of international trade between Arizona and other countries. Requires ADOT to establish in each border county an advisory council for international trade, and delegating the powers and duties to a "Border Regional Port Authority". Allows bonding by ADOT for the purpose of acquiring projects to facilitate international trade or commerce.

HB 2254 State transportation board membership. This bill would add a new member to the ADOT Board, who is required to be from a county in which one of the state's ports of entry (within 25 miles from the Mexico border) is located. Would require that the board member under this requirement be rotated among the counties that qualify.

HB 2256 Border Regional Port Authority. Creates a "Border Regional Port Authority" and makes changes to the existing statutes regarding the Arizona international development authority.

HB 2259 Local development fees; procedures. This bill amends the current procedures for implementation of municipal and county development fees, prohibits new development fees for 24 months after final approval of a development, and prohibits counties from assessing development fees to schools, except for street, water, and sewer utility improvements.

HB 2266 State highways; traffic; study committee. Establishes a legislative study committee on state highway operations and traffic incident management. Will identify those highways most important for

statewide commerce and public use, review current traffic incident procedures and issue a report to make improvements to incident management procedures.

HB 2267 municipalities; counties; fire sprinklers; codes. Prohibits a city, town or county from adopting an ordinance that mandates the installation of fire sprinklers in homes.

HB 2289 claim of public rights-of-way. Appears to claim right-of-way by the state for highway purposes across public lands.

HB 2329 Solar energy; permit fees. Sets maximum fees that municipalities can charge for building permits for construction of solar energy systems.

HB 2396 ADOT; transportation facility pilot projects. Adds a requirement to the existing ADOT statutes regarding privatization projects, that any foreign private entity must be licensed to do business in the state of Arizona.

HB 2440 Drought emergency; groundwater transfers. Adds a new law allowing but regulating the transfer of groundwater in non-AMA areas of the state in a declared "drought emergency".

Senate Bills:

SB 1130 School Facilities Board; project management. Repeat bill from each of the last two years, that has not seemed to find enough support to pass. Will allow the school facilities board to contract directly for construction project management services.

SB 1193 Government Construction; project delivery methods. Amends Title 48 in state statute, which relates to Special Taxing Districts. Allows the Special Taxing Districts to utilize APDM for Design-Build, Construction Manager at Risk, and Job Order Contracting.

SB 1214 Procurement Services; Outsourcing prohibited. Similar to two bills that were introduced but did not get a hearing last year, SB 1194 and HB 2393. This bill prohibits any department of the state from outsourcing work to any location outside of the United States, including any contract work for the state.

SB 1221 Apprentices; State Construction Project. Same bill as last year (that did not get a hearing). Applies to all construction projects funded by the state, would require that all employees of the contractor be Arizona residents and that a certain number of the construction personnel be apprentices.

SB 1239 and HB 2142. County Water Authority; Colorado River. Identical bills introduced in both the House and Senate, eliminates the requirement that the Mohave County Water Authority use 3,500 acre-feet of its 18,500 acre-feet of Colorado River water allocation exclusively for industrial use.

SB 1261 Public-private partnerships in transportation. Sponsored by Senator John Nelson. This bill would repeal the current statutes for ADOT in ARS Title 28, chapter 22 regarding Privation, and replace with new statutes regarding privatization for transportation projects.

SB 1306 Procurement services; costs; fees. This is the fourth or fifth year for this same bill. Prescott still wants to change the procurement statutes to allow bidding for engineering and architectural services. This bill would allow selection committees to consider fees, price, man-hours, or any other cost information, in the selection process. Completely negates QBS. ACEC and AIA are strongly opposed to this bill.