

**ARIZONA POLICE ASSOCIATION
END OF SESSION LEGISLATIVE REPORT
50TH LEGISLATURE – 1ST REGULAR SESSION**

END OF SESSION BRIEFING

The first regular session of the 50th Legislature adjourned *sine die* on April 20, 2011, marking the 100th day of session. The Legislature approved 386 of the 1350 bills introduced. Legislation will become effective on the general effective date of July 20, 2011, unless otherwise specified within the language of the bill.

The fiscal year that begins July 1 is projected to end with a modest \$5 million surplus. Brewer and GOP legislative leaders believe they'll be able to keep the budget in balance throughout the coming year, instead of seeing it slip almost immediately into deficit, because they have balanced it structurally. That means they have matched state spending to the revenue the state is expected to generate in the next year.

The budget cut programs by \$1.1 billion and reduced some of the “gimmicks” used to balance past budgets. However, the plan also relies on shifting costs to local governments and continuing to defer \$1.3 billion in payments to various state programs. There are no tax increases and no new borrowing, although debt remains from previous years of borrowing.

Cities and towns face a total impact of \$46.1 million and the budget also imposes a fee of \$7 million on municipalities to help fund the Arizona Department of Water Resources. It also diverts \$39 million from the Highway User Revenue Fund (HURF) that would otherwise go to cities and towns. Of this amount, \$12.8 million is shifted to Department of Public Safety and \$26.3 million is transferred to the Arizona Department of Transportation for Motor Vehicle Division operations. There is no change to any of the other formula-distributed shared revenue funds.

The Arizona Police Association worked diligently on a number of bills throughout the session, whether it was ensuring the passage of APA backed legislation, amending legislation of potential consequence to APA members, or testifying on behalf legislation introduced by other groups that were favorable to APA members.

There is a possibility that the legislature will be brought back in special session this year to deal with the state personnel system. This session would discuss the option of doing removing the employee protections afforded to state workers and placing them all in an “at will” position. If such a session is called the APA will be actively engaged in this issue.

GOALS, BACKGROUND AND OUTCOMES OF APA 2011 LEGISLATIVE AGENDA

At the beginning of the legislative session, a number of legislative priorities were identified by the Arizona Police Association Board. Of greatest importance was the reform of the Public Safety Personnel Retirement System (PSPRS). Members of the APA participated in numerous stakeholder meetings with the Governor’s office and GOP leadership, which resulted in the passage of SB1609. Other priorities identified included codifying a method in which a law enforcement officer could seek recourse for violations of the “Just Cause” law; codifying the ability for an officer who is called as a witness in another officer’s investigation to have representation; increasing the time criteria a law enforcement officer has to establish a *prima facie* workers’ compensation claim involving exposure to MRSA; and codify AZPOST’s authority to hear cases of misconduct reported to them from an individual outside the respective agency.

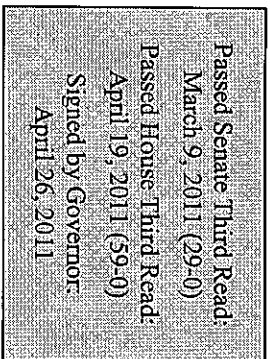
PSPRS Reform

SB1609 retirement systems; plans: plan design originally drafted and sponsored by Senator Steve Yarbrough makes changes to the existing contribution and benefit structures for the Arizona State Retirement System (ASRS), the Public Safety Personnel Retirement System (PSPRS), the Elected Officials Retirement Plan (EORP) and the Corrections Officers Retirement Plan (CORP).

Passed House Third Reading
April 14, 2011 (36-20)
Passed House Third Reading
April 18, 2011 (21-9)
Signed by Governor:
April 29, 2011

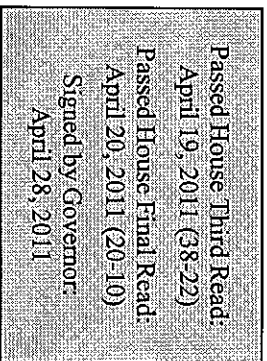
Members of the APA legislative team worked diligently throughout the entire legislative process to ensure that responsible pension reform was implemented this session. In November of 2010, the Arizona Republic published eight day investigation series into the health of Arizona's six retirement systems, revealing that the PSPRS system, like all other systems was in need of reform. It is estimated that the PSPRS system is funded at an Actuarial Value of approximately 65%, where a healthy pension system is deemed to be at an 80% funding level. Speaker Kirk Adams and Senator Steve Yarbrough lead legislative efforts, holding limited stakeholders meetings with various representative groups. However the APA, working in conjunction with the Governor's office, worked to remove the catastrophic changes to our pension system sought by Senator Yarbrough and Speaker Adams, and proposed a more constructive, effective and positive amendments to SB 1609. These amendments were adopted and ensured final passage of bill. Below are some of the key highlights of the bill as it was transmitted to the Governor for signature:

- **2-Tier System:** Implements a 2-tier system for new members hired after January 1, 2012 by redefining *normal retirement date* as the first day of the calendar month immediately following the employee's completion of 25 years of service. The bill also redefined *average monthly benefit compensation* calculation as five consecutive years within the last 20 completed years of credited service that yield the highest average.
- **Employee Contributions:** Require law enforcement officers and firefighters during the next five years to gradually pay more into their pension fund, current rate is 7.65%, and will be capped at 11.65% in 2015-2016.
- **DROP Eligibility:** For those members who will have 20 years in PSPRS on or before December 31st, 2011, the current DROP program will be available, regardless of when enrollment occurs. For those members with less than 20 years in PSPRS on or before December 31, 2011, eligibility to participate in DROP will require members to continue to pay the employee contribution rate while participating and new interest rates will be calculated by the PSPRS Board, but capped at 8%. For any member that is hired after January 1, 2012, DROP will not be available.
- **Retired Members Returning to Work:** Requires employers to pay an "alternative contribution rate" for employees who returned to work after they had retired from any of the four Arizona pension systems. Right now, both employees and the agencies that employ them pay nothing. This provision discourages the practice of "double dipping" - paying rehired retirees a salary on top of their pension.
- **Benefit Forfeiture:** The pension of any public employee who committed a felony in the performance of official duties may be taken.
- **COLA:** Alters the way cost-of-living adjustments (COLAs) are made for retirees in the elected-officials, public-safety and corrections pension programs. Each system has enough money to increase payouts for the next year or two, but once those funds are exhausted, a new formula will begin. Under the new plan, a cost-of-living increase can be paid only if annual earnings from investments exceed 10.5 %, and the pension must have enough assets to cover at least 60 % of future obligations; the greater the assets in the trust, the higher an increase that may be offered, although any increase is capped at 4% a year.
- **Military and Prior Service Credit:** Military veterans may purchase up to 5 years of service with the system as long as they first complete ten years of service with their agency. Also, a law enforcement officer who comes from an agency outside AZ and begins working for an AZ agency may purchase up to 5 years of service.



Recourse for Violations of the “Just Case” Law
SB1057 disciplinary action; law enforcement officers sponsored by Senator Linda Gray allows a law enforcement officer to bring an employer’s action in superior court if the officer was terminated under certain circumstances, and outlines the penalties if the court finds that there was no just cause for the action.

In governing bodies across Arizona, law enforcement officers are disciplined through a merit council or civil service board process. These councils and boards are required to provide a plan for fair and impartial selection, appointment, retention and separation or removal from service by resignation or dismissal of all classified law enforcement officers. In many circumstances decisions rendered by a council or board are considered “recommendations,” and therefore employers may choose to concur or reverse decisions made by the council or board. Additionally, not all councils or boards have an appeal process in place and municipalities and counties have no direct appeal to the Superior Court, making the decision of the employer the final say in the matter and leaving the law enforcement officer without an appeal option if they believe their termination was without just cause.

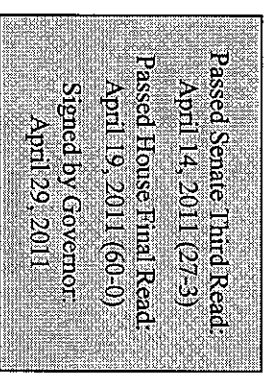


Law Enforcement Safety Equipment Funding and Photo Enforcement

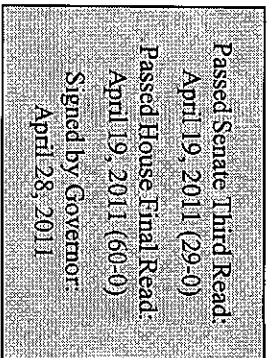
SB1398 fines; criminal and civil traffic violations; assessment sponsored by Senator Andy Biggs implements an additional \$13 assessment on any criminal or civil traffic citation issued by a law enforcement officer. Proceeds are distributed as follows: \$4 to the agency that investigated the offense or issued the citation and is earmarked for public safety equipment for officers; \$1 to justice courts for automation and to improve case processing; \$4 to the Public Safety Equipment Fund, and \$4 to a Border Security subaccount (established by this act) of the Gang and Immigration Intelligence Team Enforcement Mission Fund. The Dept of Public Safety shall distribute money in the Border Security subaccount directly to a county sheriff with no approval of that county’s board of supervisors necessary. Session law provisions include: a \$1 million appropriation from the state General Fund to the DPS to purchase equipment and supplies for the Pinal County Sheriff’s Office. The first \$1 million directed to the Border Security subaccount is diverted to the General Fund in repayment. Also in session law, for fiscal 2011-12, monies from the 5% of court filing fees and from the 7% of civil and criminal fines that otherwise would go to the Indigent Defense Fund are instead diverted to the Border Security subaccount. Additionally the bill repeals the statutory language of the state photo enforcement system and also requires a “truth in citations” piece on where ANY photo enforcement notification received by mail, the document must clearly state that the recipient does not have to identify the driver or respond, but that failure to do so may result in an additional service fine being assessed.

MRSA – Worker’s Compensation

HB2476 workmen’s compensation; certain diseases; exposure sponsored by Representative David Gowan increases the allowable time period within which an eligible public safety employee must report exposure to and be diagnosed with methicillin-resistant staphylococcus aureus (MRSA) for the employee to present a prima facie claim for a MRSA infection deemed to have arisen out of employment. A public safety employee will now have 30 days to report possible exposure to their employer and an additional 15 days after reporting to be diagnosed with MRSA in order to receive workmen’s compensation for related costs.



Under current law, firefighters and peace officers are required to report possible significant exposure to MRSA within ten calendar days, and they are required to receive a MRSA diagnosis within two to ten days of the exposure in order for any infirmity or impairment of their health to be presumed to be an occupational disease. However, MRSA generally has an incubation period of around ten days, and during this time no signs or symptoms of illness may be present. This incubation period results in the exclusion of some otherwise eligible employees from the benefits provided to sufferers of occupational diseases. Extending the window within which MRSA infections must be reported and diagnosed will prevent these exclusions.



Witness Officer – Right to Representation

HB2477 law enforcement officers; witness; representation sponsored by Representative David Gowan, provides a law enforcement officer who is designated as a witness in an investigation that could lead to another officer's dismissal, demotion or suspension the ability to request representation.

Pursuant to A.R.S. 38-1101, if an employer interviews a law enforcement officer or a probation officer and either the employer or the officer reasonably believe that the interview could result in dismissal, demotion, or suspension, then the officer may

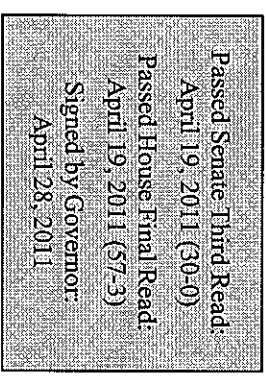
invoke certain protections:

- The officer may request to have a representative present, given certain restrictions;
- The officer must be provided with a written notice concerning the allegations against the officer and notifying the officer of the officer's right to have a representative present;
- If the employed requires the officer to submit to a polygraph examination, the person administering the examination must make an audio recording of the polygraph procedure and supply it to the officer;
- The officer is entitled to a period of time to consult with the officer's representative after the interview and may make a statement concerning facts or policies relevant to the interview.

However, current law does not allow an officer being interviewed as a witness to an investigation that could lead to another officer's dismissal, demotion or suspension. This bill will grant witness officers the authority to request representation, thereby adding safeguards against witness intimidation and abuse in the internal investigations of law enforcement agencies.

AZPOST Misconduct Reporting

HB2613 peace officer; misconduct sponsored by Representative David Stevens, allows law enforcement the president or chief executive officer of an agency recognized law enforcement association to submit misconduct reports to AZPOST for review if the law enforcement agency refuses to hear misconduct report or if the law enforcement association has contrary evidence to the agency's determination.



If any law enforcement officer is suspected of misconduct in violation of the rules of retention as established in statute, a complaint may be submitted to the Arizona Peace Officer Standards and Training Board (AZPOST) by a law enforcement agency for review. Action on such a complaint is a serious matter, as it can lead to suspension or revocation of a law enforcement officer's certification. However, under current law, only a law enforcement agency may submit complaints of officer misconduct to AZPOST. This enables law enforcement administrators to refuse to investigate complaints of misconduct on the basis of managerial or executive preference or individual bias. In the past six years alone, there have been a number of cases in which complaints ranging from unprofessional conduct to failure to supervise to lying under oath were ignored without investigation by law enforcement management. Such decisions may undermine public confidence in law enforcement leadership and command structure. This bill allows the president or chief executive officer of a law enforcement officers' association to file misconduct complaints in addition to the agency if the agency refuses to investigate the report or if the association has contrary evidence that does not support the agency's decision.

LEGISLATION OF INTEREST

At the completion of the 1st Regular Session of the 50th Legislature, the following list contains legislation with potential to impact the Arizona Police Association. Included for each bill is the bill sponsor, a brief explanation of the language, APA's position and the significant action taken by the Legislature.

HB2167 **dangerous drugs; definition; synthetic**
Sponsor: Representative Armanda Reeve

APA Position: Support

This bill expands the definition of *dangerous drugs* to include specific chemical compounds that typically compose synthetic cannabinoids. Effective February 18, 2011.

HB2167 was signed by the Governor on February 18, 2011.

HB2444 Law enforcement discipline (PLFA Legislative Agenda)

APA Position: Support

Sponsor: Representative Steve Montenegro

With stated exceptions, employers of law enforcement personnel must make a good faith effort to complete any investigation of employee misconduct by a law enforcement officer within 120 business days after the employer receives notice of the allegation. Procedures are prescribed if the investigation exceeds the 120 day limit. If disciplinary action is appropriate, the employer must give notice to the officer of intent to proceed with disciplinary action, along with a proposal of the specific action sought. The results of a polygraph examination in any investigation shall not form the sole basis for disciplinary action.

HB2444 was signed by the Governor on April 19, 2011.

HB2474 DPS employees; alternate work hours

APA Position: Neutral

Sponsor: Representative David Gowan

Until Jan. 1, 2014, the director of the Dept of Public Safety is authorized to establish alternate work periods for the purpose of determining overtime compensation for all DPS employees. [Previously, this authorization was in place only for DPS employees in the air rescue section of the department.] An Emergency Clause was enacted on this bill which means the bill became law when the Governor signed the bill. Session law only; does not amend statute.

HB2474 was signed by the Governor on April 19, 2011.

HB2650 county employees; merit system exemption

APA Position: Opposed

Sponsor: Representative Judy Burges

In a county of fewer than two million (all except Maricopa), the board of supervisors shall remove administrative positions from merit system protection if requested by an elected county officer. In all counties except Maricopa, all new hires are at-will employees; any employee covered by merit system protection becomes uncovered if the employee voluntarily accepts a change in assignment, regardless of whether the change is a promotion, demotion or lateral transfer; and any employee who receives and accepts a salary increase becomes uncovered on the start date of the increase. [Note: employees covered by the merit system may be removed only for cause. Uncovered employees serve at the pleasure.]

HB2650 was vetoed by the Governor on April 28, 2011.

SB1013 capitol police; transfer

APA Position: Neutral

Sponsor: President Russell Pearce

The Capitol Police, currently a division of the Dept of Administration, is transferred from DOA to the Dept of Public Safety. Capitol Police officers will have salaries equivalent to that of entry level DPS officers; Capitol Police sergeants will have salaries equivalent to the Sergeant I classification in DPS. Civilian personnel are transferred to classifications in DPS as approved by the Law Enforcement Merit System Council. The Capitol Police Administrative Towing Fund is continued and remains separate from the fund into which DPS deposits the revenue it collects from immobilizing or impounding vehicles.

SB1013 failed to receive a hearing in the House Appropriations Committee, however, the transfer of Capitol Police from ADOA to DPS was signed into law via SB1615 which made statutory and session law changes relating to government consolidation in order to implement the FY 2011-12 state budget.

SB1020 private investigators; officer prohibition

APA Position: Neutral

Sponsor: Senator Linda Gray

The Dept of Public Safety is prohibited from issuing a private investigators license or registration certificate to a person who is actively employed as a peace officer or who serves as a reserve peace officer. Accident reconstructionists are exempt.

SB1020 was signed by the Governor on April 25, 2011.

SB1117 immigration legislation challenges

Sponsor: President Russell Pearce

APA Position: Support

This bill continues indefinitely the authorization for the governor to direct counsel other than the Attorney General to defend challenges to Laws 2010, Chapter 113 (SB1070) and later amendments to it. Previously, the authorization expired on Jan. 1, 2011. Also authorizes the speaker of the House of Representatives and the president of the Senate to direct counsel to initiate a legal proceeding or appear on behalf of their respective chambers or on behalf of the Legislature in any challenge in a state or federal court to SB1070. Retroactive to January 1, 2011. Effective Feb. 7, 2011.

SB1117 was signed by the Governor February 7, 2011.

SB1233 peace officers; at-will employment

Sponsor: Senator Linda Gray

APA Position: Neutral

The statutory provision that a peace office may not be subjected to disciplinary action except for just cause does not apply to a police chief or assistant police chief, who are employed at-will (defined).

SB1233 was signed by the Governor on April 19, 2011.

SB1235 law enforcement officers; disciplinary procedures

Sponsor: Senator Linda Gray

APA Position: Support

At the request of a law enforcement officer facing a disciplinary action, the employing agency must provide a list and summary of disciplinary action ordered against other officers of similar rank and experience employed by the same agency who were accused of the same or similar violation within the previous two years. At the employer's choice, instead of summaries, file copies of case files of relevant disciplinary cases may be provided. If the employer is a county of fewer than 250,000 or a city of fewer than 65,000, and a change in hearing officer is requested, a first request must be granted and the alternate hearing officer must be made available through an intergovernmental agreement with another jurisdiction. If the officer is the party that requested the change of hearing officer, the costs of procuring the alternate hearing officer shall be shared equally between the employer and the officer. Additionally, if a critical incident stress management team member acquires information in confidence from a person in the course of the member's response to an incident, that information, with some stated exceptions, may not be disclosed in a legal proceeding, trial or investigation. Also applies existing whistleblower protection statutes to municipal law enforcement officers, thereby making it a prohibited personnel practice to take reprisal against a municipal law enforcement officer who discloses information he/she believes evidences a violation of a law, mismanagement, a gross waste of monies or an abuse of authority.

SB1235 was signed by the Governor on April 25, 2011. Late in the session, PLEA requested language be passed this session to address a recent court decision that deemed municipal employees were not covered under the "Whistle Blower" statute. A last minute amendment was added to SB1235 that specifically states that municipal law enforcement personnel are protected under the "Whistle Blower" protections.

SB1244 parent's rights; law enforcement investigation

Sponsor: Senator Ron Gould

APA Position: Support

Language in the Parents' Bill of Rights (ARS 1-602) is modified to state that parental permission for a political subdivision to make a video or voice recording of the child is not required if the recording is for a court proceeding is expanded to include if the recording is made by law enforcement officers as part of an official investigation. Emergency clause.

SB1244 was signed by the Governor on April 12, 2011.

SB1317 retirement; PSPRS; trustees; employment agreements

Sponsor: Senator Steve Yarbrough

APA Position: Support

Various changes in statutes dealing with the Public Safety Personnel Retirement System (PSPRS) the Elected Officials retirement Plan (EORP, and the Corrections Officers' Retirement Plan (CORP). The PSPRS Board is prohibited from making a retroactive pension payment to a person that is more than 90 days after the date of the person's application for benefits. The time period within which CORP employers are required to forward members' contributions is extended to 10 working days from five working days. Employers are subject to a daily penalty (calculated at 10% per annum) if contributions are not timely received. A retired member of PSPRS, EORP or CORP who elects to purchase health care coverage through the person's former employer must notify the retirement board in order to be eligible for the subsidy currently provided in law.

SB1317 was signed by the Governor on April 29, 2011.

SB1322 cities; services; managed competition

Sponsor: Senator Frank Antenori

APA Position: Oppose

Every city whose population is greater than 500,000 must provide each municipal service whose annual cost is \$500,000 or more through open and competitive bidding. Governmental departments and entities may participate in the bidding. These cities may additionally choose to use competitive bidding to provide services whose annual cost is less than \$500,000. The city must adopt written statements of work for each service for which bids will be sought. All documents and communications related to competitive bidding are public records. Any taxpayer in the city may bring special action to enforce compliance.

SB1322 was vetoed by the Governor April 28, 2011.

SB1325 union dues; political purposes

Sponsor: Senator Frank Antenori

APA Position: Oppose

Labor unions may not use any part of union dues for political purposes (defined) unless each person paying dues is given the opportunity to designate the types of candidates, legislation, issues or political party that will be supported with that portion of dues being used for political purposes.

SB1325 failed to receive a hearing in the Senate.

SB1329 public employees; lobbying; political activities

Sponsor: Senator Frank Antenori

APA Position: Neutral

A public employee paid in whole or in part from taxpayer monies is prohibited from engaging in political activity or lobbying a governmental entity during the employee's hours of employment unless the person takes unpaid leave or uses vacation, compensatory time or release time. Persons registered as authorized public lobbyists or as designated public lobbyists are exempt from the restriction against lobbying. Public entities are prohibited from using taxpayer monies to fund any part of a rally, protest or lobbying effort. A candidate for public office is authorized to request information as to whether a public employee may be in violation, and the custodian of public records must furnish the information within 10 days.

SB1329 was vetoed by the Governor on April 29, 2011. After working with the sponsor of the bill, an amendment was added that exempted out any employee representative for a law enforcement association who is designated to serve by either a contractual agreement or by acknowledgement of their position by their employer. This provision allowed the APA to move from opposition to neutrality.

SB1356 evading arrest or detention; crime

Sponsor: Senator Frank Antenori

APA Position: Support

A person who intentionally flees from a peace officer attempting to lawfully arrest or detain him/her commits the crime of evading arrest. Evading arrest is a class 1 (highest) misdemeanor. [Note: a Class 1 misdemeanor carries a sentence of 6 months and a fine of up to \$2,500.]

SB1356 failed to pass the House on Final Read in the early hours of April 20 (sine die) by a vote of 25-34.

SBI365 **paycheck deductions; political purposes**

Sponsor: Senator Frank Antenori

APA Position: Neutral

Beginning October 1, 2011, employers are prohibited from deducting any payment from an employee's paycheck for political purposes (defined) unless the employee annually provides written authorization for the deduction. Employers must obtain statements from each entity for which deductions are made as to what part, if any, of the deduction is for political purposes. Public safety employees (fire, police, corrections, etc) of this state or a political subdivision are excluded. Within 90 days of the effective date of this act, the attorney general is to adopt rules that describe acceptable forms of employee authorization and entity statement. The penalty for knowingly making improper deductions is a civil penalty of at least \$10,000 per violation.

SBI365 was signed by the Governor on April 26, 2011. After working with the sponsor of the bill, an amendment was adopted that exempted out state or local public safety employees. This provision allowed the APA to move from opposition to a position of neutrality.

SCR1028 **paycheck deductions; political purposes; requirement**

Sponsor: Senator Frank Antenori

APA Position: Oppose

The 2012 general election ballot is to carry the question of whether to amend the state Constitution to prohibit an employer from taking deductions from an employee's paycheck for political purposes without annual express written permission from the employee. "Political purposes" is defined as in support or opposition to a candidate, state of candidates, political party, proposed legislation, referendum or initiative or to any group that makes such contributions. Exceptions are provided for pensions, savings or health plans or for charitable contributions.

SCR1028 failed to be heard in the House Committee of the Whole.