



Arizona Fraternal Order of Police

2011 Legislative Recap

50th Legislature – 1st Regular Session 2011

Overview:

The 50th Legislature – 1st Regular Session 2011, adjourned on April 20, 2011, after 100 days in session. During the session, the FOP Legislative Committee reviewed all 1350 bills that were introduced. Of the 386 bills passed by the House and Senate, the governor signed 357 and vetoed 29. Unless otherwise specified in the language of the bill, the effective date of the legislation will be July 20, 2011.

It should be noted; the governor is in favor of bringing the legislature back in a special session to consider a 300 page “personnel reform” bill, which would be more accurately described as, “at will” employment for state employees. The governor’s staff told us, “full AZPOST certified” law enforcement would likely be exempt from most provisions in the “at will” employment bill. However, it’s certain the governor intends to propose “at will employment” for all corrections officers, parole officers, probation officers and civilian employees. We advised the governor’s office we would oppose “at will” employment for any law enforcement employee, regardless of whether or not they were fully sworn, limited sworn, corrections officers or civilian law enforcement employees.

Compounding last year’s budget shortfall, cities and towns will be adversely impacted by the state budget passed this session. Basically, the legislature took \$39 million in Highway User Revenue Funds (HURF), giving it to DPS and MVD. In addition, the legislature imposed a \$7 million fee on the cities to fund the Arizona Water Resources Department.

Over the past several elections, the state legislature has changed. The rhetoric is now harsher, the accusations bolder and the solutions more simplistic – less government, lower taxes, fewer public employees and reduced benefits.

Since we are public employees, we have become a prime target.

We’ve always been able to work with elected officials in both parties. We never really cared about party labels or philosophies. Our role has been to make sure lawmakers understood the importance of the job done by law enforcement officers.

Regrettably, many of our most strongly held beliefs are now under attack both nationally and locally.

FOP 2011 Legislative Agenda:

As determined by the FOP legislative Committee, with input from FOP membership, FOP lobbyists, FOP ALC attorneys, and the Arizona FOP executive board, the FOP legislative agenda for 2011 included;

- Making further improvements to law enforcement due process rights (SB1235),
- supporting bills favorable to the FOP member’s interests,
- opposing unfair and unconstitutional changes to retirement benefits,



- opposing bills harmful to the rights of law enforcement officers.

Frankly, this legislative session had a remarkably different tone from past years. Part of the difference can be attributed to the large number of freshman legislators with stridently conservative views. In addition, it was evident that many bills were introduced as a springboard for legislators to gain name recognition during the upcoming 2012 elections.

FOP Response to Retirement Legislation:

The FOP Legislative Committee; the Arizona FOP Executive Board; our FOP lobbyists, Don Isaacson and Norm Moore; along with our PR firm's owner David Leibowitz, played an important role in mitigating or eliminating the most harmful of the retirement proposals produced by the legislature.

Starting well before the Arizona Republic printed a slanted series of stories, the FOP PR firm was fully engaged, ensuring the FOP had the opportunity to respond to media reports attacking law enforcement retirement benefits. Quickly, it became apparent that the FOP and the firefighters were among the few defenders of our retirement benefits.

Let me make it clear, the retirement systems, with the exception of CORP are underfunded. The underfunding puts serious strain on budgets. As such, we believe some reform of the retirement system is needed, however, we do not believe breaking the promises made to PSPRS and CORP participants was necessary. The underfunded status of the retirement system was not caused by overly generous retirement benefits. The underfunding was caused by Wall Street fraud.

As the retirement debate in the media and the legislature unfolded, unions representing the FOP, Arizona Fire Fighters, Phoenix Sergeants and Lieutenants, Phoenix and DPS retirees, the Judges Association, APA, PLEA and, infrequently, AZCOPS, met at least weekly, if not more often, to coordinate and share information.

During the legislative session, three competing retirement reform bills surfaced.

- First, the PSPRS Board of Trustees forwarded a bill to the House asking for a series of reforms, all of which the FOP opposed. The bill was never assigned to committee and, as expected, died a quiet death (which would be expected of a bill competing with a "Speaker's bill").
- Second, the Speaker of the House brought forth a bill which was heavily criticized because the Speaker had not included ANY stakeholders, including the retirement system, in the development of his bill. The AZ FOP President, John Ortolano, Legislative Committee Member, Stephen Vandergrift, and a severely disabled retired FOP member testified to great effect in committee opposing the bill. Unfortunately, a crack in the unified law enforcement unions appeared when an APA spokesman signed in "FOR" the bill (which was later explained as an attempt to show some sort of cooperation with the Speaker). Worse, the committee reacted harshly to the APA spokesman's testimony. Fortunately, although the Speaker's bill passed through committee, it had little support for a floor vote and died for lack of action.
- Third, Senator Yarbrough and the Senate staff produced several versions of SB 1609. Although Senator Yarbrough invited all of the stakeholders to a couple of meetings, those meetings



couldn't seriously be considered participatory negotiations. In fact, nothing proposed by the stakeholders was included Sen. Yarbrough's proposal. The AZ FOP President, John Ortolano, and Legislative Committee Member, Stephen Vandergrift, representing corrections, testified in opposition to SB 1609. Senator Yarbrough's version of SB 1609 was replaced by an amendment negotiated by the Governor's Office.

Frankly, the bulk of the work to oppose the initial retirement proposals occurred in the legislature's courtyard and hallways. The FOP lobbyists, board members and our working group set meetings with legislators urging them to vote no on SB 1609. We held a joint press conference and hosted a "breakfast" for legislators. We criticized the legislature for not meeting with us in good faith.

Working with our PR firm and the firefighters, the FOP helped fund a state-wide TV media campaign using the phrase, "Governor Brewer is right, we must keep our commitment to those that have played by the rules." We believe the joint FOP/firefighter media campaign opened the door for the Governor to take charge of negotiations.

For some time, our effective media campaign and lobbying efforts blocked the Speaker and Senator Yarbrough from bringing the retirement bill to a floor vote. Several republicans told us they would vote against the bill unless the employee organizations were given the opportunity to make some changes.

The Governor's Office contacted the FOP. We were given the opportunity to offer a proposal to modify some of the more harmful SB 1609 provisions. The offer was heavily conditioned, which prevented a total remake of the bill.

Specifically, the FOP, the firefighters, APA and PLEA were the only organizations invited to the governor's office to negotiate the final provisions of SB 1609. Before the meeting, we ALL agreed to the specific proposal we made to the governor's office.

You should know, we bluntly told the governor's office that the conditions placed on our proposal made the amended bill, in our opinion, just as unconstitutional as the original SB1609.

Our jointly agreed upon proposal was accepted by the governor's office and incorporated into an amendment. The governor's office asked us to change our position on SB 1609 to "neutral" because our proposal was accepted, however, we refused. We explained our position to legislators by stating, "A victim who voluntarily hands over his money to an armed robber, isn't neutral."

We complied with the governor's condition that we cease "active" opposition to SB 1609 in order to preserve DROP, allow military service purchases, extend the number of years to phase in the contribution rate increase, eliminate an unnecessary contribution rate increase for CORP participants and retain 2 years worth of retiree benefit increases for PSPRS participants.

The heavily amended SB 1609 passed the House and the Senate; however, it did not have the necessary number of votes to enact the "emergency clause." As a result, many members had more time to plan service purchases.

The Governor signed SB 1609. It will become law on July 20, 2011. Keep in mind, enactment dates of many of the provisions are specifically designated in the language of the bill.



What changes were made to DROP?



For officers **with less than 20 years of credited service as of January 1, 2012**, DROP is retained with two changes:

- First, DROP participants will be required to continue to make the regular employee retirement contributions when they go into DROP.
 - Second, the rate of interest earned on the DROP amount will be the actuarial smoothed rate of return but no less than 2% nor more than the assumed earnings rate of the Fund which will be 8% at the time that this bill goes into effect.
- Example: FY Return %
2010 13.47
2009 -17.73
2008 -7.27
2007 17.05
2006 8.32
2005 9.11
2004 14.97
Total 7 Year Period % = 37.92
Averaged over the 7 years = Smoothed Rate 5.42%

For officers **with at least 20 years of credited service**, as of January 1, 2012, DROP will remain exactly the same. Those officers will not pay an employee contribution and the rate of interest earned is the same as the assumed earnings rate (currently 8.25% and 8% beginning July 1, 2011).

There will be no DROP for those hired on or after January 1, 2012.

The CORP Reverse DROP is not changed.

How does the employee contribution rate increase work?



The PSPRS employee contribution rate (currently 7.65%) will be increased to 11.65% over 5 years as follows:

Fiscal year 2011 2012 = 8.65%
2012 2013 = 9.55%
2013 2014 = 10.35%
2014 2015 = 11.05%
2015 2016 and each fiscal year thereafter = 11.65%

The CORP employee contribution rate will not increase. Other than CORP, no state retirement system escaped contribution rate increases this session, including the similarly well funded ASRS plan, whose participants will be required to pay 3% more in employee contributions.

Will post-retirement benefits, also called a COLA, be provided to retirees?



The quick answer is that PSPRS retirees will get the full increase of \$152.84 per month in July of 2011.

In July 2012, retirees will get either a full or partial increase.

In 2013, the **new** COLA structure will go into effect. Basically, in 2013, and each year thereafter, if the investment earnings exceed 10.5%, the raise would then depend upon the funded level; greater than 60% funded = 2%, greater than 65% funded = 2.5%, greater than 70% funded = 3%, greater than 75% funded = 3.5%, greater than 80% funded = 4%. However, only the money earned above 10.5% would be available to fund the raise.

The new COLA structure becomes effective **"UNLESS"** there are any funds left over in the "excess earnings account." If **any** funds are left in the account, the new structure is **not** implemented, and only those funds in the account will be used for a raise that year. Think about what would happen if there was only \$1.95 left in the account. Several thousand retirees would split that amount.

For members hired after January 1, 2012, with the exception of line-of-duty widows and line-of-duty disability pensions, a member must be fifty five years old and have been retired for at least a year to receive the COLA.

For CORP, the COLA system is the same as described above, except that the July 2011 raise is 4%.



Can we still purchase of military and out-of-state law enforcement time?



This provision applies to all retirement systems; PSPRS, CORP, EORP and ASRS. SB1609 allows a member to purchase time from prior years of service under the following conditions:

Must have at least ten years as an active member of the retirement system.

Cannot use the same years to qualify for two separate pensions. EXAMPLE: You have 20 years of military service and you are collecting a military pension or are simply eligible to collect that pension you may not buy those years in PSPRS.

Allows the purchase of up to sixty months of service or other pension time rather than the current forty-eight months.

What does the pension forfeiture language and the effective date mean?

Upon conviction or plea, to a class 5 or higher felony, which occurred in the performance of official duties, all or part of the pension can be forfeited as follows:





Future hires will lose their entire pension.

For current actives, loss of the portion of the pension credited towards the period of time served **after** the effective date of SB1609.

There are mechanisms within the bill to provide a pension to the spouse and children as long as the spouse was not a participant in the crime or had knowledge of it.

What is the purpose of the study committee in SB1609?

The legislature ordered a study committee to examine specific pension issues and report back to the legislature. The items to be looked at include; defined contribution system, disability retirements and the possibility of abolishing local boards.

What are the changes for new hires?

In both PSPRS and CORP, officers hired after January 1, 2012, will no longer have a 20 year retirement. Officers must serve 25 years and be 52 1/2 years old in order to retire and get benefits. In addition, the "final average calculation" or FAC will be 60 months rather than the current 36 months.

One of the most disappointing provisions in SB1609 involves the "new hire" eligibility for receiving a COLA. No new hire is eligible for a COLA, after retirement, until age 55.

Due Process:

Our FOP bill, SB1235, was negotiated with stakeholders during the off session. As a result of the negotiations, our bill was supported by employers including the Chief's Association, and the Maricopa County Sheriff's Office. The bill was sponsored by Senator Linda Gray. It was passed unanimously through Senate and House committees and through Senate and House floor votes.

FOP Bill - SB1235 LAW ENFORCEMENT OFFICERS; DISCIPLINARY PROCEDURES

Sponsor Senator Linda Gray Votes: Senate: 30 FOR – 0 AGAINST | House: 59 FOR – 0 AGAINST

[Capitol Reports Summary] Allows an appeal of a suspension for more than 8 hours (down from 16). At the request of a law enforcement officer facing 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, copies of case files of relevant disciplinary cases may be provided. If a change in hearing officer is requested by either the officer or the employer and the employer is a county of fewer than 250,000 or a city of fewer than 65,000, 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 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 s/he believes evidences a violation of a law, mismanagement, a gross waste of monies or an abuse of authority. **SIGNED BY GOVERNOR.**

SB1057 (Chapter 244) LAW ENFORCEMENT OFFICERS; DISCIPLINARY ACTION

[Capitol Reports Summary] If a law enforcement officer was terminated by action of the head of the law enforcement agency or of the chief executive officer of the municipality reversing the decision of a merit commission or civil service board, the officer is entitled to bring an action in Superior Court for a new hearing. If the termination occurred in a jurisdiction that has no merit commission or civil service board, the officer may ask the court to review the file. If the court finds just cause for termination did not exist, it must order the officer reinstated and may order payment of damages that shall not exceed the combined total of wages and benefits lost. In all cases, the court may award the winning party reasonable attorney fees. **SIGNED BY GOVERNOR.**

HB2444 (Chapter 198) LAW ENFORCEMENT OFFICER DISCIPLINE

[Capitol Reports Summary] 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. **SIGNED BY GOVERNOR.**

HB2477 (Chapter 301) LAW ENFORCEMENT OFFICERS; WITNESS; REPRESENTATION

[Capitol Reports Summary] Law enforcement and corrections officers have a right to representation during interviews with an employer if the officer is a witness relating to an investigation that could lead to another officer's dismissal, demotion or suspension. The witness officer is also permitted to discuss testimony with the representative, although unauthorized release of information is subject to disciplinary action. **SIGNED BY GOVERNOR.**

At will Employment: Vetoed. It will be back.

In the last hours of the legislative session, in the middle of the night, HB2650 was passed without public comment. The bill would have made all county employees, including law enforcement, "at will" employees (except Maricopa County).

FOP President, John Ortolano, wrote a letter to the Governor asking that the bill be vetoed. It was.

HB2650 COUNTY EMPLOYEES; MERIT SYSTEM EXEMPTION



[Capitol Reports Summary] In all counties except Maricopa, all new hires would have been at-will employees; any employee covered by merit system protection would have been uncovered if the employee voluntarily accepted a change in assignment, regardless of whether the change was a promotion, demotion or lateral transfer; and any employee who received and accepted a salary increase would have been 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.] Additionally, in a county of fewer than 2 million (all except Maricopa), the board of supervisors would have been authorized to remove administrative positions from merit system protection if requested by an elected county officer. **VETOED BY GOVERNOR.** Her veto message stated there are at least four areas of significant concern for her, including the exclusion of Maricopa from the bill. She said a special session at which her proposals for personnel system reform will be a good opportunity to address with greater clarity and care the concerns brought by this bill

Other Bills:

HB2476 (Chapter 317) WORKERS' COMPENSATION; CERTAIN DISEASES; EXPOSURE MRSA

[Capitol Reports Summary] For the purposes of making a valid workers' compensation claim, the time limit for an employee to report possible exposure to certain diseases (MRSA) is increased to 30 calendar days from ten. Additionally, in the specific case of methicillin-resistant staphylococcus aureus, the time period between exposure and diagnosis is increased to 15 days from ten. **SIGNED BY GOVERNOR.**

HB2613 (Chapter 303) PEACE OFFICERS; MISCONDUCT (PEACE OFFICER MISCONDUCT; REPORTING)

[Capitol Reports Summary] The list of powers of the Arizona Peace Officer Standards and Training Board (AZPOST) is expanded to include receiving complaints of peace officer misconduct, requesting law enforcement agencies to investigate, and conducting independent investigations. It is further empowered to deny, suspend, revoke or cancel the certification of a peace officer found not in compliance with the minimum qualifications regarding citizenship and fitness to be an officer. Further, AZPOST is authorized to receive complaints from an association of law enforcement officers if the association believes a law enforcement agency refused to investigate a violation or issued findings contrary to prima facie evidence of a violation of non-compliance with minimum qualifications related to citizenship or fitness. **SIGNED BY GOVERNOR.**

HB2474 (Chapter 200) DPS EMPLOYEES; ALTERNATIVE WORK HOURS

[Capitol Reports Summary] 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.] Effective April 19, 2011. Session law only; does not amend statute. **SIGNED BY GOVERNOR.**

SB1020 (Chapter 222) PRIVATE INVESTIGATORS; OFFICER



[Capitol Reports Summary] The Dept of Public Safety is prohibited from issuing a private investigator's license or registration certificate to a person who is actively employed as a peace officer or who serves as a reserve peace officer. Retired peace officers and peace officers who are accident reconstructionists are exempt. **SIGNED BY GOVERNOR.**

SB1233 (Chapter 208) PEACE OFFICERS; AT-WILL EMPLOYMENT

[Capitol Reports Summary] The statutory provision that a peace officer 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). **SIGNED BY GOVERNOR.**

SB1244 (Chapter 69) PARENTS' RIGHTS; LAW ENFORCEMENT INVESTIGATION

A provision in the Parents' Bill of Rights (ARS 1-602) stating 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. **Effective April 12, 2011. SIGNED BY GOVERNOR.**

SB1615 (Chapter 27) BUDGET; TRANSFER OF CAPITOL POLICE

SB1013 failed to get a hearing in the House, so its provisions were included in a budget bill. Transfers Capitol Police to the Dept of Public Safety; **SIGNED BY GOVERNOR.**

Anti-Union Bills:

SB1365 (Chapter 251) PAYCHECK DEDUCTIONS; POLITICAL PURPOSES

[Capitol Reports Summary] 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. **SIGNED BY GOVERNOR.**

SB1325 UNION DUES; POLITICAL PURPOSES **FAILED TO GET HEARING**

[Capitol Reports Summary] 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.

SB 1329 PUBLIC EMPLOYEES; LOBBYING; POLITICAL ACTIVITIES **VETOED**



[Capitol Reports Summary] A public employee paid in whole or in part from taxpayer monies would have been prohibited from engaging in political activity or lobbying a governmental entity during the employee's hours of employment unless the person took unpaid leave or used vacation, compensatory time or release time. Persons registered as authorized public lobbyists or as designated public lobbyists would have been exempt from the restriction against lobbying. Public entities would have been prohibited from using taxpayer monies to fund any part of a rally, protest or lobbying effort. A candidate for public office would have been authorized to request information as to whether a public employee may have been in violation, and the custodian of public records would have been required to furnish the information within 10 days. **VETOED BY GOVERNOR**. Her veto message stated that statute already prohibits public resources from being used for political purposes, and by a lack of clarity, this bill threatens to muddy the waters significantly.

SCR1028 PAYCHECK DEDUCTIONS; POLITICAL PURPOSES; REQUIREMENT **FAILED TO GET HEARING**

[Capitol Reports Summary] 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, slate 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. **PASSED SENATE, FAILED TO GET HEARING IN HOUSE**.