Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 62

HOUSE BILL 2146

AN ACT

AMENDING SECTIONS 9-201, 9-204, 9-219, 9-403, 9-911, 16-104, 35-321 AND 36-1401, ARIZONA REVISED STATUTES; REPEALING TITLE 9, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES; RELATING TO CITIES AND TOWNS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-201, Arizona Revised Statutes, is amended to read:

9-201. Elective officers in cities and towns of less than six hundred voters; duties

A. In cities or towns that are not organized under article ~~2,~~ 3 or 4 of this chapter and in which at the next preceding municipal election less than six hundred votes were cast, the only officers shall be a mayor, a councilman from each district and a marshal or chief of police.

B. The chief of police or marshal ~~shall be~~ IS ALSO ex officio city or town license tax collector, pound-master, street commissioner and fire warden, shall perform all duties as such and shall receive in full compensation for all services ~~a sum not exceeding~~ NOT MORE THAN one hundred twenty-five dollars per month.

Sec. 2. Section 9-204, Arizona Revised Statutes, is amended to read:

9-204. Officers in cities and towns of six hundred to eight hundred fifty voters; terms of office; elections; removal

A. In all cities or towns not organized under article ~~2,~~ 3 or 4 of this chapter, in which at the next preceding municipal election not more than eight hundred fifty nor less than six hundred votes were cast, the only officers shall be a mayor, four councilmen, a chief of police, a recorder who ~~shall~~ IS also ~~be~~ ex officio city auditor and police judge, and a treasurer.

B. The term of office of each officer, except councilmen, ~~shall be~~ IS two years. Each councilman shall hold office for a term of four years. The recorder shall be elected as other city or town officers.

C. Elections shall be held on the third Tuesday in May of each odd-numbered year at which all officers whose terms have then expired shall be elected.

D. The mayor and common council may remove an officer for malfeasance in office.

Sec. 3. Section 9-219, Arizona Revised Statutes, is amended to read:

9-219. General powers of trustees; publication of ordinance; sale of property

A. The board of trustees may:

1. Pass ordinances for the government of the corporation, its officers and the people within its corporate limits not inconsistent or in conflict with the laws of this state.

2. Provide for preserving the peace, and define the punishment by fine~~,~~ OR imprisonment, or both, for the violation of ordinances so passed.

3. Establish a board of health and establish and maintain pest houses, and guard against the introduction or spread of contagious diseases, and preserve a sanitary condition of all places within the corporate limits.

4. Employ legal counsel at a stated salary or fee.

5. Restrain, under penalties, the running at large of cattle or other animals, and provide rules for impounding them, and provide for taxing dogs and penalties for the nonpayment of such taxes, or the killing of dogs running at large in the corporate limits.

6. Prohibit, by fine or imprisonment, or both, any theatrical or other performance, show or exhibition it deems injurious to the morals or good order of the corporation.

7. Fix the amount of license to be paid for carrying on any business, game or amusement, and prescribe the manner of collection or payment of the license for stated periods in advance, and fix penalties for nonpayment by fine~~,~~ OR imprisonment, or both.

8. Regulate, by ordinance, the days and the hours that places where any kind of amusement is carried on shall be closed.

9. Prohibit, with proper penalty, by fine or imprisonment, or both, the sale, furnishing, or giving away of spirituous or malt liquors.

B. The board may, by ordinance, in all cases not enumerated in this section, protect the public health and preserve the public peace, and prescribe punishment by fine or imprisonment, or both, for the violation of such ordinances, and it may designate the place of imprisonment in a jail or prison in the county for violations of the ordinances of the corporation.

C. The board may provide for the deposit of all monies received for licenses and fines to such fund as may be necessary to pay the expenses of the government of the corporation or its indebtedness, or the indebtedness of the disincorporated corporation.

D. Before any general ordinance of the corporation shall take effect, it shall be passed by a vote of a majority of the board of trustees, be recorded by the clerk in a book provided for that purpose, and be published at least once a week for two successive weeks in a newspaper published in the corporation, to be designated by the board. If there is no newspaper published in the corporation, the ordinance shall be published by posting copies thereof in three public places in the corporation two weeks before it shall be operative. Proof of the publication or posting shall be made by affidavit and recorded by the clerk.

E. The board of trustees may sell and convey, lease or rent real or personal property belonging to the corporation for a price and on terms it deems expedient and advantageous to the interest of the corporation, but no sale of any property shall be entered into or made by the trustees until a resolution of intention has been published in some newspaper in the corporation, if there is one, in the manner provided by section 9-402, or by posting a notice in at least three conspicuous public places for a period of two weeks before such sale. FOR THE SALE OF REAL PROPERTY VALUING MORE THAN ONE MILLION FIVE HUNDRED THOUSAND DOLLARS, THE BOARD OF TRUSTEES SHALL COMPLY WITH SECTION 9-403.

F. Before exercising the powers enumerated in paragraphs 3, 4, 5, 6 and 7 of section 9-220, the board shall cause a resolution of intention to be spread on their minutes, and publish it in some daily or weekly newspaper at least two weeks, or post it for the same period, as the board deems to the best interest of the corporation, prior to the time of hearing the petition or ordering such improvement or expenditure.

Sec. 4. Section 9-403, Arizona Revised Statutes, is amended to read:

9-403. Sale of real property valued at more than one million five hundred thousand dollars; special election; sale at auction

A. Real property of a city or town, the value of which exceeds ONE MILLION five hundred thousand dollars, shall not be sold unless first authorized by a special election called for the purpose of submitting to the voters of the city or town the question of selling or not selling the real property proposed for sale. The election shall be held within the corporate limits of the city or town on a date prescribed by section 16-204, and notice shall be given as provided in section 9-402.

B. The ballots shall contain a description of the property proposed for sale and the reason why the governing body desires the property sold. The description and reasons shall be printed in eight-point type and shall contain not more than one hundred words.

C. If a majority of the ballots cast is in favor of selling, then the governing body may sell the property at public auction, after giving the notice required in section 9-402, to the highest bidder for cash, reserving the right to reject any and all bids.

Sec. 5. Section 9-911, Arizona Revised Statutes, is amended to read:

9-911. Definitions

In this article, unless the context otherwise requires:

1. "Board" means the police pension board.

2. "Department" means the police department.

3. "Departmental member" means a member of the police pension board chosen from among the members of the department other than the chief of police.

4. "Fund" means the police pension fund.

5. "Governing body" means the city commission, city or town council~~, board of trustees~~ or other governing body of the municipality.

6. "Member" or "member of the department" means a member of the police department, duly commissioned and sworn as a peace officer with all the powers and duties thereof, and includes all ranks and both sexes. Any person employed in the police department who has actually contributed to the police pension fund ~~prior to~~ BEFORE the first day of January, 1964, and who is not included within this definition, shall be allowed to continue to contribute to the police pension fund and to receive the benefits conferred by this article but all other persons are excluded.

Sec. 6. Section 16-104, Arizona Revised Statutes, is amended to read:

16-104. Registration in incorporated cities and towns

A. ~~The provisions of~~ This chapter, except as it applies to registration of absent electors, ~~are~~ IS applicable to cities and towns incorporated under a ~~board of trustees or~~ common council government.

B. In the registration of electors other than absent electors in a city or town incorporated under ~~a board of trustees government or~~ a common council government, the city or town clerk shall have the same duties as to registration as are imposed ~~upon~~ ON the county recorder by ~~the provisions of~~ this chapter.

Sec. 7. Section 35-321, Arizona Revised Statutes, is amended to read:

35-321. Definitions

In this article, unless the context otherwise requires:

1. "Agency pool participant" means a subdivision or an entity of a subdivision that has monies maintained by the treasurer and that has the authority to draw negotiable instruments on the treasurer or make other disbursements from monies that the treasurer holds for the subdivision or entity.

2. "Board of deposit" means, in the case of a county, the board of supervisors, and in the case of a city or town, the ~~board of trustees or~~ common council.

3. "Capital structure" means the amount of the capital of the eligible depository shown by the latest call statement of condition as defined by rule of the superintendent of financial institutions for the purpose of administration of this article.

4. "Collecting entity" means the entity from which the treasurer receives general funding including the county for collections performed by a county treasurer, the city for collections performed by a city treasurer or the district for collections performed by a district treasurer.

5. "Eligible depository" means any:

(a) Commercial or savings bank or savings and loan association having either a branch in this state or its principal place of business in this state and insured by the federal deposit insurance corporation or its successor or any other insuring instrumentality of the United States according to the applicable federal law.

(b) Credit union that is insured by the national credit union administration or its successor.

6. "Involuntary pool participant" means a subdivision that only receives the principal ratio of the monies collected, for which the principal monies are mandated to be distributed on a specific date and for which the interest earned on the monies between the time of collection and other statutory requirements reverts to the general fund of the collecting entity.

7. "Permissible rate of interest" means a rate of interest ~~which~~ THAT an eligible financial institution is permitted to pay by state or federal law or valid state rules or federal regulations.

8. "Public deposit" means public monies deposited in an eligible depository pursuant to this article.

9. "Public monies" includes subdivision monies.

10. "State monies" means all monies in the treasury of this state or coming lawfully into the possession or custody of the state treasurer.

11. "Subdivision" means any county, noncharter city or town. Cities governed by charter have the option of operating under this article.

12. "Subdivision monies" means all monies in the treasury of a subdivision or coming lawfully into the possession or custody of the treasurer.

13. "Treasurer" includes the treasurer or officer exercising the functions of treasurer of any subdivision but excludes the state treasurer.

14. "Trust funds" means those monies entrusted to a public body or official for preservation and investment, as prescribed by the instrument establishing such funds.

Sec. 8. Section 36-1401, Arizona Revised Statutes, is amended to read:

36-1401. Definitions

In this article, unless the context otherwise requires:

1. "Area of operation" includes all the territory of a city, town or county.

2. "Authority", "public housing authority", "public agency" or "housing authority" means an agency of a city, town or county created and controlled pursuant to this article.

3. "Blighted area" means an area where dwellings predominate that are detrimental to safety, health or morals because they are dilapidated or overcrowded or lack ventilation, light or sanitary facilities.

4. "Bonds" means bonds, notes, interim certificates, debentures or other obligations issued by a public housing authority, city, town or county pursuant to this article.

5. "Clerk" means the clerk of the board of supervisors, the city or town clerk or the officer charged with the duties customarily imposed on the clerk.

6. "Federal government" includes the United States, the United States department of housing and urban development or any other agency or instrumentality, corporate or otherwise, of the United States.

7. "Governing body" means the board of commissioners of a public housing authority, the common council~~, board of trustees~~ or other legislative body of the city or town or the county board of supervisors.

8. "Housing project":

(a) Means any work or undertaking:

(i) To demolish, clear or remove buildings from any blighted area. Such work or undertaking may embrace the adoption of the area to public purposes, including parks or other recreational or community purposes.

(ii) To provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, equipment, facilities and other real or personal property to be used for any necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes and consistent with the provision of housing pursuant to this article.

(iii) To accomplish a combination of the foregoing.

(b) Includes the planning and designing of buildings and improvements, the acquisition or receipt of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

9. "Mayor" means the mayor of the city or town or the officer thereof charged with the duties customarily imposed on the mayor or executive head of a city or town.

10. "Obligee" includes any holder of bonds issued pursuant to this article, trustee or trustees for such bondholders, or lessor demising to a public housing authority, city, town or county property used in connection with a housing project, or an assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to a contract with a public housing authority, city, town or county in regard to a housing project.

11. "Persons of low income" means persons or families who lack the amount of income ~~which~~ THAT is necessary, as determined by the public housing authority, city, town or county undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding.

12. "Real property" includes all lands, including improvements and fixtures on the land, and property of any nature appurtenant to the land, or used in connection with the land, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

13. "State public body" means any public housing authority, county, municipal corporation, commission, district, authority or other subdivision or public body of the state.

Sec. 9. <u>Delayed repeal</u>

Title 9, chapter 2, article 2, Arizona Revised Statutes, is repealed from and after December 31, 2016.

Sec. 10. <u>Intent</u>

It is the intent of the legislature to repeal title 9, chapter 2, article 2, Arizona Revised Statutes, because, pursuant to a 2014 attorney general opinion, some of the voting provisions, although potentially severable, were found to violate the equal protection clause of the Constitution of the United States and election laws of this state.

Additionally, there have been no instances in the history of this state where a county board of supervisors has disincorporated a city or town and established a board of trustees government.

Sec. 11. Effective date

Sections 9-201, 9-204, 9-911, 16-104, 35-321 and 36-1401, Arizona Revised Statutes, as amended by this act, are effective from and after December 31, 2016.

APPROVED BY THE GOVERNOR MARCH 24, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 24, 2016.

Passed the House February 16, 20 16

by the following vote: 57 Ayes,

3 Nays, 0 Not Voting

Speaker of the House

☐ Pro Tempore

Norma Chastain

Asst. Chief Clerk of the House

Passed the Senate March 17, 20 16

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

President of the Senate

Susan Clarke

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____day of

at _____o'clock _____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

H.B. 2146

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

March 23, 2016,

by the following vote: 54 Ayes,

4 Nays, 2 Not Voting

Speaker of the House

Jim Drake Pro Tempore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

23rd day of March, 2016,

at 1:11 o'clock P. M.

Secretary to the Governor

Approved this 24th day of

March, 2016,

at 10:53 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24 day of March, 2016,

at 2:07 o'clock P M.

Michele Reagan

Secretary of State

H.B. 2146