

**ARIZONA STATE LODGE**

**Fraternal Order of Police, Inc.**

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President Secretary

Report of Arizona National Trustee

06/08/2011

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Greetings from the Great State of Arizona; Arizona State FOP is very active at our State Capital supporting and opposing the large number of legislative bills that affect law enforcement in Arizona. Legislative Chairman Jim Mann and the Legislative Committee have worked tirelessly to insure that our bills got heard and passed and fought to keep other bills that adversely affect law enforcement form passing. These bills are listed below;

**Attack on Arizona public safety pension.**

Arizona public safety pensions like a lot of other states have also come under attack by our elected state legislators. Arizona State FOP President John Ortolano and the Arizona FOP Legislative Committee worked extremely hard to curtail the worst positions of the proposed changes to Arizona Public Safety Personnel Retirement System and were able to remove or change some of those changes, but in the end what was passed (better than what was proposed) was still not agreed upon by the Arizona FOP or the other public safety labor groups. Below are the changes that have been made by the Arizona State Legislators and signed into law by Governor Jan Brewer against the voices of the public safety labor groups, employee’s, retirees, and the Arizona State Constitution.

Arizona Public Safety Personnel Retirement System Changes this legislative secession.

**Arizona Senate Bill SB 1609 Pension System Reform**

**What changes were made to DROP?**

Officers with 20 years of service as of January 1st of 2012, DROP will remain the same.

Officers with less than 20 years of service will have two changes:

1. DROP participants will be required to make retirement contributions while in DROP. This means you will continue to pay the contributions to PSPRS while in DROP.

2. DROP interest will be no less than 2% and no more than 8%. The interest will be figured by averaging the interest made or lost over the prior 7 year period.

Officers hired after January 1st of 2012, there will be no DROP.

**What changes were made to the PSPRS contribution rate?**

Currently the contribution is 7.65%. The rate will increase through fiscal year 2016 to the maximum rate of 11.65% as follows:

 2011-2012=8.65

 2012-2013=9.55%

 2013-2014=10.35%

 2014-2015=11.05%

 2015-2016=11.65%

**What changes were made to the COLA (Cost of Living Adjustment)?**

In 2011, retirees will get a full COLA increase of $152.84 per month starting in July. In 2012, there will be a full or partial increase. In 2013, the new COLA structure will go into effect which will be an extremely high hurdle to jump and therefore should not be a factor in your planning. The new COLA age will be 55 years; currently there is no age restriction.

**What changes were made for new hires?**

Officers hired after January 1st of 2012, will no longer have a 20 year retirement. Officers must work a minimum of 25 years and be 52 ½ years old to retire and collect benefits. Additionally, the average final calculation for retirement benefits will be a high 5 year average, not a 3 year average.

**Can prior service time be purchased under statute 38.853.01 including military and out of state law enforcement time?**

Yes. The old rule allowed for the purchase of 48 months. The new rule allows for the purchase of 60 months. You must have 10 years in the retirement system before you can purchase your military time.

The law goes into effect July 20th, 2011. Certain portions, like the new DROP process, go into effect

January 1st, 2012.

At this time the Arizona FOP is looking considering at a possible lawsuit to challenge the constitutionality of the new changes to our pension plan. We will keep you informed on any other details as we move forward.

Arizona F.O.P. would like to thank the Boston F.O.P. for holding the National F.O.P. Presidents and National Spring Board Meeting.

**Arizona  
Fraternal Order of Police  
2011 Arizona State Legislative Summary**

**Bills that directly affect Law Enforcement**

Bill Number Summary of select laws effective July 20, 2011

**SB1235 law enforcement officers; disciplinary procedures FOP Bill**

\* After an employer completes an investigation of a law enforcement officer, at the request of the law enforcement officer, the employer shall provide a basic summary, or file copies, of discipline ordered against any other law enforcement officer or probation officer of generally similar rank and experience employed by the employer within the previous two years for the same or a similar violation.

\* The employer shall not take final action and the employer shall not schedule the hearing until the basic summary or file copies are provided to the law enforcement officer. This paragraph does not apply if "court rule" prohibits the release of file copies of disciplinary cases (Probation Officers).

\* Reduces the population threshold for being able to strike a hearing officer. For cases before the office of administrative hearing or if the employer is a county, city or town with a population of less then 65,000 and a county with a population that is less than 250,000 to supply an alternate hearing officer, if requested, by means of an interagency agreement with another city, town or county, upon the first request of a party.

\* Requires the officer to pay half of any additional expenses incurred for securing the alternate inquiry officer.

\* Stipulates that if a different hearing officer is requested, allows for a continuance for an additional 10 days.

\* Allows an appeal for disciplinary actions that result in a suspension for more than eight hours, instead of sixteen hours.

\* Establishes that the discussions between the officer and a critical incident stress management team member is confidential. Prevents the team member from being required to provide confidential info during legal proceeding, trial or investigation - does not apply during criminal investigations.

\* Applies "whistle-blower" protections to law enforcement officers working for cities and towns. Previously, applied only to county and state employees.

**HB2444 Law enforcement officer discipline**

\* Requires that the results of the polygraph examination cannot be the basis of the disciplinary action unless other information or evidence exists.

\* Requires the employer to create an audio recording of any polygraph examination that occurs in its entirety and give a copy of the recording to the officer being examined.

\* Allows the employer to make a law enforcement officer or probation officer submit to a polygraph examination if during an investigator meeting the officer makes a statement that differs from statements previously made and reconciling that the difference is essential to conclude the investigation.

\* Requires the employer to obtain a transcript of the polygraph exam and to give a copy to the officer in question within 10 business days of receipt if the transcript is needed for an administrative hearing.

\* Establishes that unless the truth is found or an admission of guilt is given during the polygraph exam, the allegations that were the basis for administering the polygraph exam must be considered not sustained unless other evidence or information supports the allegations.

\* Authorizes the completion of the investigation to go past 120 business days as long as a “good faith effort” has been used to complete it in the allotted time with exceptions for the following:

* The period can be suspended as described in a written waiver of the limitation by the employee.
* The period can be suspended during the time that any pending prosecution or criminal investigation connected to the alleged misconduct.
* The period can be suspended if the investigation involves an employee who is incapacitated or otherwise unavailable.
* The limitations period can be extended for a reasonable period of time when it is deemed necessary to facilitate the coordination of a multijurisdictional investigation.
* The limitations period can be suspended for emergencies, natural disasters and while the Governor has declared a state of emergency within the jurisdictional boundaries of the employer.

\* Requires the employer to complete the investigation and give notice in writing to the employee concerning intent to proceed with any penalizing action if the employer decides such action is appropriate.

* This writing would need to include the employer’s intent of disciplinary action, type of disciplinary action and length of suspension (if applicable).

\* Requires termination to be reversed if an employee wins an appeal as well as compensation for the employee from the date of the separation to the date of reinstatement, while the employer can exclude any penalty deemed appropriate by the reviewing authority.

\* Requires a notice to the employee from the employer if the investigation goes over the 120 business days.

\* This section does not preempt agreements that supplant, revise or otherwise alter the provisions of this section, including preexisting agreements between the employer and the law enforcement officer or the law enforcement officer's lawful representative association.

**HB2474 Alternative work hours; DPS employees**

\* The Director of DPS may establish alternate work periods. An alternate work period is prohibited from exceeding 28 days or 160 hours.

\* Allows alternate work schedules for all employees of DPS until January 1, 2014.

**SB1233 Peace officers; at will employment**

\* Specifies that protection from disciplinary action does not apply to at will police chiefs or assistant police chiefs.

\* Defines at will employee as a person who may be terminated at the will of either the employee or employer, at any time, with or without cause.

**SB1020 Peace officers; licensure; registration; prohibited**

\* Prohibits DPS from issuing a private investigator license or registration certificate to a peace officer, including a reserve peace officer.

\* Exempts retired peace officers or peace officers who are accident re-constructionists.

**SB1057 Disciplinary action; law enforcement officers**

\* Allows an officer to bring an action in superior court for a new hearing concerning termination if:

* The termination occurred as a result of the chief of the law enforcement agency or the chief executive officer of a city or town reversing the choice or proposal of a civil service board or merit commission; and
* The termination is believed to be without just cause by the officer.

\* Allows an officer to bring an action in superior court to review the agency’s file if the officer is fired by the executive officer of a city or town or the chief of the law enforcement agency and there are no civil service boards or merit commissions to evaluate the termination.

\* Specifies that if the court finds from the review of the file that just cause for the action did not exist, then the officer is entitled to a hearing.

\* Allows the court to award reasonable attorney fees to the prevailing party and requires the court to award that party all costs.

\* Specifies the following results if the superior court finds that just cause for the action against the employee did not exist:

* Requires the officer to be reinstated to the their previous position within the law enforcement agency by court order; and
* Allows the court to reward the officer monetary damages that cannot exceed the officer’s combined wages and benefits lost as a result of the wrongful termination

**SB1365 Paycheck deductions; political purposes**

\*Senator Antennori has expressed his intent to remove the law enforcement exemption in a special session - or next session.

This bill is similar to the model legislation used for the national conservative political agenda, intended to reduce union membership and union political influence.

Arizona Education Association, AFSCME and SEIU filed a lawsuit asking the court to halt this law.

\* For payroll deductions made after October 1, 2011, prohibits a public or private employer from deducting a payment from an employee's paycheck for political purposes unless the employee gives written or electronic authorization on a yearly basis.

\* For payroll deductions made for multiple purposes after October 1, 2011, requires the employer to obtain from each entity, a statement confirming that none of the monies is used for political purposes, or an affirmation that a certain percentage is used for political purposes. Specifically prohibits the employer from deducting anything exceeding the authorized amount for nonpolitical purposes, without annual written or electronic permission.

\* Directs the attorney general to adopt administrative rules for the acceptable forms for employee authorization and entity statements within 90 days of the effective date of the Act.

\* Assesses a minimum $10,000 civil penalty for each violation when an employer knowingly deducts payments from an employee's paycheck for political purposes in violation of these provisions, or when an entity submits an inaccurate statement.

\* Requires the attorney general to collect and deposit each civil penalty for deposit in the State General Fund.

\* Exempts a single deduction for nonpolitical purposes from the provisions of the bill, as well as all of the following payroll deductions:

* Savings or charitable contributions.
* Employee healthcare, retiree or welfare benefits.
* State, local and federal taxes.
* Contributions to a separate segregated fund prescribed by federal or state law that is not considered to be for political purposes.
* Any deduction required by law.

\* Rescinds an authorization when the employer receives the employee’s written notice of resignation from membership in the organization for which previous authorization was given for payroll deduction and gives the employer one pay period to process the paperwork.

\* Excludes public safety employees who are employed by the state or any political subdivision from these provisions, including a peace officer, fire fighter, corrections officer, probation officer or surveillance officer.\*

**HB2477 Witness; representation; law enforcement officers**

\* Requires the employers of a law enforcement officer who is a witness relating to an investigation that could lead to another officer’s dismissal or demotion to allow the law enforcement officer or probation officer to have a representative of the officer present at no cost to the employer during the interview.

\* Stipulates that all information obtained in the interview is considered confidential and shall remain so until the subject of the interview is served with a notice of investigation by the employer and any admonitions ordered by the employer are redacted.

\* Allows the witness officer to discuss the interview with their employee representative or the representative’s legal counsel.

\* Stipulates that if the employee or representative releases information without authorization, the employer may subject the employee who released the information to disciplinary action.

\* Specifies these requirements do not preempt other agreements.

**HB2613 Board; complaints; peace officer misconduct**

\* Allows AZPOST, with respect to officer misconduct, to do the following:

* Receive complaints of officer misconduct from any person, request agencies to conduct investigations and conduct independent investigations into whether an officer is in compliance with the minimum qualifications for officers;
* Deny, suspend, revoke or cancel the certification of an officer who is not in compliance with the qualifications; and
* Receive a complaint of officer misconduct from the President or chief executive officer (CEO) of an AZPOST recognized law enforcement association that represents the interest of certified officers if the association believes that an agency refused to investigate or made findings that are contradictory to prima facie evidence that an officer violated the qualifications.

\* Requires AZPOST to do the following if AZPOST finds that the law enforcement agency refused to investigate or made findings that contradicted prima facie evidence of a violation of officer qualifications:

* Conduct an independent investigation to determine whether the officer is in compliance with the qualifications; and
* Provide a letter of the findings based on the investigation to the President or CEO who made the complaint.

**HB2476 Workers' compensation; certain diseases; exposure**

\* HB 2476 increases the time periods an employee has to establish a prima facie workers’ compensation claim involving exposure to methicillin-resistant staphylococcus aureus (MRSA).

\* Increases time period from ten calendar days to thirty calendar days that an employee has to report in writing to the employer the details of the exposure.

\* Increases time period that an employee must be diagnosed with MRSA from "two to ten days" to "fifteen days" of the possible significant exposure after the report is submitted.

**SB1368 Probation officers; disciplinary actions**

\* Exempts probation officers from disciplinary action unless there is just cause. Specifies that the just cause threshold does not apply to a probation officer who has not completed an initial probationary period or to administrative dismissals including reductions in force.

**Other news from Arizona**

**Arizona Grand Canyon Lodge # 32 runs employee survey**

Arizona Lodge 32 which represents mainly the Arizona Highway Patrol paid for a morale survey to be conducted of department’s employees. This survey was completed by a private company. Over 500 employees participated in the survey and revealed extremely low employee morale and that 40% of them are looking for work elsewhere. The FOP is working with management to improve the subpar agency working conditions which were identified by employees. Lodge 32 has over 70% of the sworn employees as members.

**U.S. Supreme Court's decision to uphold Arizona's employer-sanctions law**

**May. 27, 2011**

A 5-3 decision, the justices ruled that the employer-sanctions law falls within existing federal law and within Arizona's authority to license businesses and that it does not wrongly interfere with the federal government's authority over immigration. "(Arizona's licensing law) falls well within the confines of the authority Congress chose to leave to the states," Chief Justice John Roberts Jr. wrote for the court in Chamber of Commerce vs. Whiting. "Because we conclude . . . that the Arizona regulation does not otherwise conflict with federal law, we hold that the Arizona law is not pre-empted."

### Up next: SB 1070 Support Our Law Enforcement and Safe Neighborhoods Act

Now, legal attention again will shift to SB 1070 Support Our Law Enforcement and Safe Neighborhoods Act. Arizona has asked the U. S. Supreme Court to overturn a lower-court ruling halting several key parts of SB 1070 from going into effect. The high court has not yet decided whether it will hear that case. The U.S. Supreme Court decision on the Arizona Employer-Sanctions Law doesn't directly impact the SB 1070 case but may have some indirect implications “It does recognize that there is a role for states to play,". The ruling also aligns with an argument being made in support of the portion of SB 1070 that requires law enforcement to question an individual's legal status in some circumstances. Federal law already allows officers the discretion to question it; the debate is whether Arizona can take it a step further and require it.

**Arizona Border Issues**

Arizona F.O.P. has also been dealing with the issues of illegal immigration, drop houses, and drug smuggling along our boards and in our cities. As you all know the violence in bleeding across our boards from Mexico weather the National Government wants to admit it or not. Drugs and human smuggling is still at an all time high coming north into Arizona and money and guns keep going south into Mexico. The ATF had some Arizona gun dealers sell weapons to suspects that they knew were going to take the weapons south into Mexico against the concerns of the Arizona dealers. Somehow the investigation went bad and a lot of very powerful weapons made it to Mexico without being monitored and were lost to the Mexican cartels. It is believed that one of these weapons killed Border Patrol Agent Brian Terry, who was killed in a shootout the Mexican drug smugglers just outside of Rio Rico, about 13 miles north of the border at Nogales. His heroic death is a stark reminder of the violence that the Mexican drug cartels are willing to deploy against American law enforcement if confronted.

**Finally, Arizona has also lost several officers in the line of duty over the last couple of months we lost;**

**Buckeye Police Officer Rolando Tirado** 7year veteran (37 years old) was shot and killed during a shootout on May 1, 2011 after stopping a vehicle in a parking lot. He is survived by his wife and two children.

**Border Patrol Agents Eduardo Rojas and Hector Clark** were killed Thursday, May 12, 2011 while assisting agents in pursing suspected illegal immigrants when their vehicle was struck by a train near Gila Bend, Arizona.

Agent Rojas had served with the United States Border Patrol for 11 years. He is survived by his wife and two children. 3

Agent Clark had served with the United States Border Patrol for 10 years. He is survived by his wife and two children. 4

**Globe Police Officer Matthew Schell** (29 years old), was fatally injured in a one-vehicle accident on May 27, the. He served with the Globe Police Department since August 2008.

Arizona F.O.P. would like to thank the Utah State F.O.P. for holding the National F.O.P. 2011 Conference.