

LEGISLATION PROPOSED/PASSED – 2005 47th Legislature – First Regular Session

Directors and staff of Arizona State Library, Archives and Public Records worked closely with Legislators and Legislative staff on the following bills and attended hearings when called upon to provide testimony or supplied other information specifically requested.

HB2187 – State Library; Recovery of Costs

Sponsor

Representative: Robson

Overview

HB2187 requires governmental units to notify Arizona State Library, Archives and Public Records of reports posted on an Internet web site and requires those units to comply with depository requirement or reimburse any fees for the Library to obtain copies of those reports.

Background

Current law allows the Arizona State Library, Archives and Public Records (Library and ASLAPR) to establish a depository system and exchange program with libraries in the state as well as out-of-state research libraries. The Library may adopt rules for the acquisition, maintenance, access, and preservation of state publications. Additionally, rules may be adopted as to the description of what constitutes a state publication, after consultation with appropriate agencies.

Present law requires governmental units to deliver copies of certain reports and documents to the Library. Through the Library's rules, reports and documents, other than those specifically outlined by law, may be required to be submitted to the Library. HB 2187 mandates governmental units that post reports and documents to the Internet to comply with depository requirement or reimburse the Library for expenses incurred in obtaining copies of those reports and documents.

Provisions

- Requires governmental units to notify ASLAPR of reports and documents posted on an Internet web site and requires those units to pay the fee to ASLAPR for any

expenses the Library incurs while obtaining copies of required documents if the governmental unit refuses the Library's request to provide the documents.

- Authorizes the Director of ASLAPR to establish, upon approval of the Board of ASLAPR, a fee schedule to charge governmental units for services and expenses incurred for obtaining copies of required documents.
- Ensures that the monies obtained will be deposited in the Records Services Fund.
- Clarifies the type and number of documents required by the State Library as those which satisfy the requirements of the state documents program or arrangements or agreements entered into.

Arizona State Library, Archives and Public Records Involvement with HB2187

Richard Pearce-Moses, Director of Digital Government Information, and Janet Fisher, Director of the Law and Research Library Division, provided information requested by Legislative analysts. GladysAnn Wells, Director of Arizona State Library, Archives and Public Records, was asked to clarify issues related to the bill at a Legislative committee hearing.

Outcome of Legislation

HB2187 was signed by the Governor on April 20, 2005, Laws 2005, Chapter 151.

HB2724 – Public Records Recovery

Sponsors

Representatives: Prezelski, Mason

Co-Sponsors

Representative: Brown
Senator: Flake

Overview

HB2724 establishes a method by which a public officer may recover missing records from private parties who are allegedly in possession of the records.

Background

Current law prescribes a Class 6 felony for any private person who steals a public record from the official custodian of the record. However, although there is a penalty, there is currently no outlined method for recovering missing records.

Provisions

- Authorizes a public officer to recover a public record and copies in the possession of a private party and to file for a cease and desist order against any third party to prevent the sale of the public record in an auction.
- Directs the public officer to send to the party believed to be in possession of a public record a certified letter that:
 - Names the record believed to be in the possession of the private party.
 - Alleges that the public record is not in the possession of the official custodian of the record.
 - States the grounds on which the public officer believes the private party is in possession of the record.
 - Demands, within 30 days of receipt of the letter, the recipient bring the public record to the location stated in the letter at the time stated in the letter.
- Requires the public officer to determine if the recovered document is an original or a copy, to then keep any original, duplicate any copy and return a copy to the private party.
- Permits the public officer to file for a civil petition in the county where the documents are allegedly located if the recipient fails to appear or fails to produce the public record and directs the court, upon finding the officer's petition to be true, to order the public record be turned over for recovery or duplication.
- Mandates a certificate, stating the date on which the record was recovered, the name of the party who was in possession of the record and that party's oath to the authenticity of the record, be attached to the recovered record and delivered to the official custodian.
- States that this chapter does not enlarge the rights of a person claiming an interest in real property under a document recovered or make any presumptions as to the authenticity of the recovered document.
- Establishes that the Attorney General may recover any document or public record that the state still has title to or interest in and which has passed out of the official custody of this state or any political subdivision.
- Defines *public officer* as the officer of the official custodian of a public record, and *public record* as any public record required to be kept under law.

Arizona State Library, Archives and Public Records Involvement with HB2724

Melanie Sturgeon, Director of the History and Archives Division, supplied model legislation from other states with replevin laws to the Arizona House of Representatives. Melanie, GladysAnn Wells, Director of Arizona State Library, Archives and Public Records, and Laurie Sletten, Director of the Records Management Division, attended a meeting with a House sponsor of HB2724 and a representative of the American Civil Liberties Union of Arizona to discuss the bill.

Outcome of Legislation

HB2724 was withdrawn from the House Judiciary Committee on February 17th, passed the House Government Reform and Government Finance Accountability Committee on February 23rd but was held in the House Rules Committee.

HB2765 – Capital Outlay; Budget (includes Polly Rosenbaum State Archives and History Building)

Sponsors

Representatives: Boone, Barnes, Burges, Gray, Groe, McClure, Paton, Pearce, Pierce, Reagan, Smith, Tully, Yarbrough and Speaker Weiers.

Co-Sponsors

Representatives: J. Allen, Jones, Knaperek, Konopnicki, Mason, McComish, McLain, Murphy, Nelson, Nichols, Quelland, Robson, Rosati, Stump, J. P. Weiers

Overview

Makes session law changes related to capital outlay necessary to implement the FY 2005-2006 state budget including an appropriation for the construction of the Polly Rosenbaum State Archives and History Building.

Background

All state archives are currently kept by the Arizona State Library Archives and Public Records Agency located at the State Capitol. In 2001, the Joint Committee on Capitol Review recommended 99,500 square feet of storage. A lease-purchase option for the building was approved in the 2001 budget for an annual cost of \$2,000,000 per year for ten years. The budget was repealed in 2002 and the funds that had been appropriated for the building were cancelled. Space on 19th Avenue, just south of Jefferson, has been set aside for the new archives building. In 2003, the State Library and Archives used \$12,000 in existing risk management funds to clear the site and to begin preparing it for construction. Laws 2004, chap. 194 (SB 1079) appropriated up to \$2,000,000 for fiscal year 2004-2005 for the design of and site preparation for a new state archives and history building. This work has been completed.

Provisions

- Appropriates \$15,000,000 in both FY 2005-2006 and FY 2006-2007 from the state General Fund to Legislative Council for construction and related costs for the Polly Rosenbaum State Archives and History Building (Archives Building), and exempts funds from lapsing.

- Requires Legislative Council to submit plans for the request for proposal as well as the scope, purpose and estimated cost of the Archives Building to the JCCR for review prior to taking any action on the Archives Building.
- Transfers the appropriation and oversight responsibilities for the Archives Building from Arizona Department of Administration to the Legislative Council and removes allocation for FTE's.

Arizona State Library, Archives and Public Records Involvement with HB2765

GladysAnn Wells, Director of Arizona State Library, Archives and Public Records, Melanie Sturgeon, Director of the History and Archives Division, architects and others supplied information requested by Legislators and Legislative staff.

Outcome of Legislation

HB2765 was signed by the Governor on May 20, 2005, Laws 2005, Chapter 298.

SB1048 – Birth Certificates; Access

Sponsor

Senator: Johnson

Co-Sponsors

Representative: Anderson
Senators: Soltero, Tibshraeny

Overview

SB1048 requires the Department of Health Services (Department) to provide copies of birth certificates to the Arizona State Library, Archives, and Public Records (ASLAPR) 75 years after a person's birth rather than 75 years after a person's death.

Background

The Director of the Department of Health Services acts as the State Registrar and is responsible for the system of vital records in Arizona. The Office of Vital Records is within the Department and is responsible for maintaining and issuing certified copies of vital records. Vital records include birth, death and fetal death certificates and certificates of birth resulting in a still birth. The statewide system of vital records was created using the recommendations of the federal agency responsible for national vital statistics, the National Center for Health Statistics.

Current law requires the Department to provide safe, secure and permanent preservation of vital records and to submit them to ASLAPR. The law also requires ASLAPR to issue copies and provide access to registered birth certificates and death certificates that are public records. Arizona Revised Statutes (A.R.S.) §36-351 stipulates that a copy of a person's registered birth certificate must be submitted to ASLAPR 75 years after the person's death. However, current law also requires ASLAPR to make birth records available for inspection within 75 years after a person's birth. Therefore, the Department's requirement to submit a copy of the birth certificate and ASLAPR's requirement to make the record available have conflicting filing dates.

Laws 2004, Chapter 117 rewrote and revised Arizona's vital records statutes. Various provisions were reorganized and changed, including the process of submitting records to ASLAPR. Before last year's legislation was enacted, the Department was required to submit a copy of a person's birth certificate to ASLAPR 75 years after the person's birth. Laws 2004, Chapter 117 inadvertently changed this provision and now requires the copy to be submitted 75 years after the person's death.

SB1048 allows ASLAPR to conform to current public records laws by returning the requirement to what it was before the revision of the vital records statutes. The bill stipulates that a copy of a person's birth certificate shall be submitted to ASLAPR 75 years after their birth.

Provision

- Modifies the requirement for the Department to submit a copy of a person's birth certificate to ASLAPR from 75 years after their death to 75 years after their birth.

Arizona State Library, Archives and Public Records Involvement with SB1048

Melanie Sturgeon, Director of the History and Archives Division, and several staff from the Arizona Department of Health Services met with Senator Johnson and staff from Legislative Council to discuss the proposed legislation. Melanie testified at a Legislative committee hearing at the request of Senator Johnson.

Outcome of Legislation

SB1048 was signed by the Governor on April 11, 2005, Laws 2005, Chapter 46.

SB1065 – Historical Advisory Commission; Centennial 2012

Sponsors

Representative: Robson
Senators: Tibshraeny, Bee

Co-Sponsor

Representative: Pearce

Overview

Requires the Arizona Historical Advisory Commission to develop and coordinate a statewide plan regarding Arizona's centennial in 2012.

Background

Arizona will celebrate its 100th anniversary of statehood on February 14, 2012. In May 2004, the Coordinating Committee for the History of Arizona held a workshop with over 90 representatives from every county of the state. During the workshop, the Committee recommended that the Arizona Historical Advisory Commission (AHAC) serve as the coordinating entity for the state's centennial plan.

AHAC is a statutory commission consisting of members appointed by the Director of Arizona State Library, Archives and Public Records who are experts in the disciplines of history, architecture and archaeology, professional librarians and archivists and other individuals who are associated with the interpretation, research, writing, preservation or teaching of the state's heritage. AHAC also includes the Director of the Arizona Historical Society, the Director of the State Museum, the Director of the Arizona State Parks Board and the State Historic Preservation Officer. AHAC advises and makes recommendations to the Legislature and state agencies on matters related to historic preservation and encourages training and education in the field of historic preservation.

Provisions

- Requires AHAC to develop and coordinate a statewide plan regarding the state's centennial in 2012 to include:
 - advising the Legislature and state agencies on centennial history and heritage, arts and culture and related activities.
 - assisting the Governor's countdown to the centennial to support school children learning about the state's history.
 - recommending activities and projects that will ensure lasting legacy accomplishments to commemorate the centennial.
- Allows the Director of the Arizona State Library, Archives and Public Records to accept and spend public and private appropriations, grants, gifts, contributions and devises to assist in carrying out this legislation.

- Requires the State Historic Preservation Officer rather than AHAC to include the performance of state agencies in initiating and satisfying the programmatic management of historic properties in AHAC's annual report.
- Adds experts in the field of arts, culture and the Indian nations' history and heritage to the list of eligible members of AHAC.
- Requires AHAC to:
 - advise the Legislature and state agencies on matters related to the state's history.
 - recommend measures to the Legislature and state agencies to coordinate or improve the effectiveness of activities of state agencies and agencies of the political subdivisions of this state relating to the interpretation, research, writing and teaching of the state's history and heritage, including the Indian nations' history, heritage and preservation.
 - encourage training and education in the field of the interpretation, research, writing and teaching of the state's history and heritage.
- Requires the State Historic Preservation Officer to submit a report of the Historic Sites Review Committee's activities to the Governor and Legislature by September 1 of each year.
- AHAC must interpret, research and teach the Indian nations' history and heritage in regards to Arizona's history
- Makes technical and conforming changes.
- Repeals provisions relating to the Arizona centennial on September 1, 2014.

Arizona State Library, Archives and Public Records Involvement with SB1065

GladysAnn Wells, Director of Arizona State Library, Archives and Public Records, and Melanie Sturgeon, Director of the History and Archives Division, provided assistance with the language of the bill.

Outcome of Legislation

SB1065 was signed by the Governor on February 14, 2005, Laws 2005, Chapter 1.

SB1272 – Court Records; Preservation (WAS: HCSO; Chiropractic Care; Technical Correction)

Sponsor

Senator: Johnson

Overview

SB1272 requires the Clerk of the Superior Court to submit the records designated for destruction to the Director of the Arizona State Library, Archives and Public Records.

Background

A.R.S. § 12-282 requires the Clerk of the Superior Court to keep custody at the county seat, take charge of and safely keep/dispose of (according to court rules) all books, papers and records which may be filed or deposited in custody. The clerk is also directed to destroy all documents, records, instruments, books, papers, depositions, exhibits and transcripts in any action or proceeding in the superior court, or otherwise filed or deposited in custody pursuant to rules established by the Arizona Supreme Court.

Arizona Supreme Court Rule 29 instructs the Supreme Court to adopt retention and disposition schedules identifying the length of time court records must be kept prior to destruction and purge lists identifying documents to be removed from case files before storage or replication. The Superior Court is to follow these schedules except that destruction of case file records shall follow Rule 94, Rules of Civil Procedure and Rule 28, Rules of Criminal Procedure.

The Arizona State Library, Archives and Public Records (Library) is set forth by A.R.S. §41-1331 through §41-1352. The Library provides access to historical and contemporary resources.

Provisions

- Requires the Clerk of the Superior Court to provide records designated for destruction to the Director of the Arizona State Library, Archives and Public Records according to court rules.
- Removes the provision allowing the Library to review and inspect the records designated for destruction and the option of removing these records for storage and retrieval.
- Mandates that the Clerk of the Superior Court shall deposit and the Library shall preserve all permanent superior court case files pursuant to court rules.

Arizona State Library, Archives and Public Records Involvement with SB1272

At the request of staff at the Arizona Supreme Court, Melanie Sturgeon, Director of the History and Archives Division, helped draft this legislation. Wendi Goen, Archivist, attended a Legislative committee hearing about the bill.

Outcome of Legislation

SB1272 was signed by the Governor on April 18, 2005, Laws 2005, Chapter 103.

SB1499 – Office of Public Access Counselor

Sponsors

Senators: Martin, Blendu, Paton

Co-Sponsors

Representatives: Downing, C. Gray, Pierce, Stump

Senators: C. Allen, Arzberger, Bee, R. Burns, J. Garcia, Giffords, Gould, L. Gray, Harper, Huppenthal, Mitchell

Overview

SB1499 appropriates \$185,000 in FY2006 from the state general fund to the Arizona State Library, Archives and Public Records for the establishment of the Office of the Public Access Advisor.

Background

The Arizona State Library, Archives and Public Records (ASLAPR or library) is charged with acquiring and providing access to materials relating to law, economics, sociology, the theory and practice of government, genealogy, and Arizona history. Additionally, the library is to provide a general and legal reference service, records management and archives program, depository programs, library development services, museums, and a service for persons who are unable to use traditional printed materials.

The state library is the central depository of all official books, records, and documents that are not in current use in various state offices, counties, and unincorporated cities and towns. The director establishes standards, procedures and techniques for the effective management of records. The director has the right of reasonable access to all non-confidential public records in the state or any political subdivision based on the historical and research value contained in those records. SB1499 establishes the Office of the Public Access Advisor within the state library to train public officials and educate the public on their rights and responsibilities of public agencies associated with public records and meetings.

Provisions

Office of the Public Access Advisor

- Establishes the Office of the Public Access Advisor (advisor) in Arizona State Library, Archives and Public Records and requires the advisor to be a practicing attorney, work full time on office duties, and not be actively engaged in any other occupation, practice, profession or business.
- Stipulates that under the direction of the ASLAPR director, the advisor shall do the following:

- Establish and administer a training program for public officials and for educating the public on the rights and responsibilities contained in public access laws and permits this duty to be fulfilled through contract.
- Prepare interpretive and education materials/programs.
- Distribute to elected or appointed public officials the public access laws and related materials
- Requires the advisor to respond to informal inquiries and written requests for advisory opinions. The advisor shall not issue opinions concerning a specific lawsuit matter.
- Outlines the procedure by which an advisor shall respond to informal inquiries and written requests, including filing instructions.
- States that a public agency shall cooperate with the advisor in any informal inquiry, written request for an advisory opinion, investigation or proceeding.
- Clarifies that a person is not required to file an inquiry or request for an opinion before filing action under any other law and states that the inquiry or request does not delay the running of a statute of limitation that applies to a related lawsuit or delay the duty of a public agency to comply with public access laws.
- Prescribes the advisor's activities and information to be included in the annual ASLAPR report, which is submitted to the Governor and Legislature.

Terms of Office and Selection Committee

- Establishes a selection committee consisting of seven representatives, including one from each of the following: a county, city/town, school district, newspapers, business, public, and ASLAPR director to nominate a person for the advisor position when there is a vacancy or term expiration. Outlines the committee's process for appointing an advisor.
- Designates the appointed advisor as a public officer, subject to conflict of interest laws with a term lasting five years.
- Prohibits an advisor from serving more than three full terms, unless a successor has not been appointed. The person may serve until a successor is appointed or the person is removed from office by concurrent resolution approved by 2/3 of each legislative house for neglect of duty, conviction of improperly divulging information, misconduct or disability.
- Permits for the forfeit of office by the advisor without legislative action.

Joint Legislative Study Committee on Public Access Law

- Creates the 14-member Joint Legislative Study Committee on Public Access Law to review and report on issues related to access of public meetings and records, civil actions, enforcement, expansion of advisor's powers, court process, privacy and public records. The report shall be made annually by December 31 and submitted to the Governor, Legislature, the Secretary of State, and Director of ASLAPR.
- Repeals the study committee on September 30, 2007.

Miscellaneous

- Defines advisor, director, office, person, public access laws, and public agency.
- Sunsets the Office of the Public Access Advisor on July 1, 2015.
- States that the purpose of the advisor's officer is to train public officials and educate the public on the rights of the public and the responsibilities of agencies under public access laws and to issue advisory opinions interpreting such laws.

- Appropriates \$185,000 from the state general fund in FY 06 to ASLAPR for the purposes of this act, including two full-time employees.
- Contains a delayed effective date of December 31, 2005 for the Office of the Public Access Advisor.

Arizona State Library, Archives and Public Records Involvement with SB1499

GladysAnn Wells, Director of Arizona State Library, Archives and Public Records, Melanie Sturgeon, Director of the History and Archives Division, Laurie Sletten, Director of the Records Management Division, Lisa Maxwell, Records Management Specialist, Richard Pearce-Moses, Director of Digital Government Information, and Janet Fisher, Director of the Law and Research Library Division, provided information to Legislators and Legislative staff relating to this bill.

Outcome of Legislation

SB1499 passed the Senate on March 23, 2005 but failed Third Read in the House on May 11, 2005.