

4-27-07

Re: HB 2020

Information points:

THE UNDERLYING BILL:

- HB 2020 as amended by the strike everything in NRRA creates a process to shine a light on RR siting activities in Arizona.
- Arizona is the #1 growth state, and we need to know what the RR's are doing, where they are doing it, and why.
- And because there has been a gross lack of consideration on the part of Union Pacific for private property rights, as well as local and state economic and natural resource impacts in the siting of major pieces of rail infrastructure, we need a process to assess these issues in a public review.
- That's what HB 2020 provides.

THE SENATE FLOOR AMENDMENT:

- *The Senate floor amendment improved the bill in two ways:*
- 1. To avoid constitutional roadblocks it modified the corporation commission's oversight to simply give the Commission the power to require the RR to go through a process that requires the RR to hire qualified 3rd parties to deliver key assessments on impacts relative to chosen infrastructure sites. With this amendment the Commission may, in its discretion, only suggest alternatives. This change was necessary to avoid federal preemption problems (under the process created by the bill) with respect to the siting of railroad infrastructure.
- 2. The Senate floor amendment also provides for the RR to pay a fee to provide the necessary resources for the Corporation Commission to conduct the hearings and assessments needed to create a public record on the impacts to property rights, water supplies, other natural resources, major industries and other vital issues connected with sites chosen by the RR.

IN GENERAL:

- The bill with the Senate floor amendment puts in full public view the dealings of RR entities that have a tremendous affect on well planned growth in our state, impacts on vital natural resources (including precious water supplies) and the use or threatened use of condemnation power by a private for profit company for its own benefit.
- Especially as to the latter point, Arizona voters made clear in Prop 207 last November that they do not want governments taking one private landowner's land to benefit another private party.
- Why would we allow a private RR company to act like a government in a completely unreviewed and unchecked manner by threatening to take businesses and property away from other private citizens just so that its own profit margin isn't lowered?
- That should be an affront to everyone.
- This bill as amended would end the RRs divide and conquer bullying approach and force them to be seen for what they are doing when they choose bullying over a cooperative review of viable and less onerous alternatives.
- In a free market, no private company should wield the power of government simply to protect itself from lower profits at the expense of (*and even the destruction of*) other businesses -- at least not without it being made part of an evaluation and a record for all to see.
- At that point it becomes very difficult for the RR to justify or explain to the media and a well informed public that it is going forward to construct at a poorly chosen and highly problematic site.

- And to the extent there is even involvement by the federal Surface Transportation Board regarding a specific site, it will become very difficult for federal regulators to simply ratify and rubber stamp sites on behalf of the RRs as so often happens now.

Several additional points post Senate passage (by 26-0-4 vote) on 4-26-07

- To the RRs argument that this will cause the RRs to do business outside of Arizona -- this is at best a bluff since they are here working on projects because it behooves them to do so financially. It is, at worst, blackmail for the notion that if Arizona does not stand idly by while the RRs abuse its citizens and its natural resources, then the RRs will go else where (accept of course if other states see this pioneering legislation succeed...in which case the RRs may just have to stop bullying and start working with people everywhere it does business).

- To the media contrived notion that the Senate floor amendment “gutted” the bill.....:

* Why are the RRs saying it could cause them to leave Arizona if it has no teeth?

* Why are the RRs working so hard against the bill if it has no teeth?

* The fact is (as noted in the general points above) the HB 2020 process will cause the RRs to actually have what they are doing examined on the record and in detail for all to see in a process that can demonstrate in many, if not all, situations, the RRs are abusing private property rights and businesses and/or endangering vital state resources while ignoring viable, less intrusive alternatives.

*** It is simply the strongest measure possible given the federally controlled regulatory framework within which the RRs operate. This bill disrupts the cocoon the RRs have enjoyed for too long without running afoul of it constitutionally.**

- Finally, to the argument that even with the Senate floor amendment’s key change the RR will still claim the measure is preempted and institute a costly suit against the state...:

* First, this measure has been crafted to avoid the preemption problem and the RRs would be taking a big risk that they may not prevail in such a suit and thereby truly open the floodgates to this sort of a process being adopted in many states.

* Second, the cost of defending a constitutional challenge would pale by comparison to the cost of fouling major water supplies, severely damaging a multi-Billion dollar Ag industry, constructing poorly planned and ill-conceived major pieces of infrastructure throughout the nation’s fastest growing state, the destruction of scores of vibrant businesses, etc.

*****HB 2020 should be passed by the House, signed by the Governor, and supported by all Arizonans who favor due process, private proerty rights and well-planned growth over the omnipotence of any entity.*****