STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

April 28, 2011

The Honorable Ken Bennett
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, Arizona 85007

RE: Senate Bill 1322 (managed competition; city services)

Dear Secretary Bennett,

Today I vetoed Senate Bill 1322. This bill requires the cities of Phoenix and Tucson to provide all municipal services with a cost greater than $500,000 through an open bid contract.

I am a strong proponent of privatization and responsible stewardship in government and have a strong track record in this regard. As Governor, privatization is a key element in my Four Cornerstones of Reform. Under that plan, I have established the Arizona Commerce Authority and its private-sector leadership board as a highly privatized and highly accountable model for the delivery of statewide economic development services. Likewise, I created the Commission on Privatization and Efficiency to identify state services and agencies whose functions can be eliminated, consolidated, streamlined or outsourced to achieve greater operational efficiency in meeting the needs of our citizens.

Unfortunately, Senate Bill 1322, which started with a similar spirit of enhanced privatization and innovation, is riddled with shortcomings including the omission of vital definitions and the parameters by which anticipated cost is to be determined. The language also has potential for jeopardizing the tax exempt bond status of public buildings. Furthermore, local taxpayers expect careful oversight and accountability of justice and public safety functions such as court administration and crime lab staff. These are just a few examples of what would be privatized under this bill. City councils currently have the ability to outsource, and they do that when they determine it is in the best interest of the taxpayer.

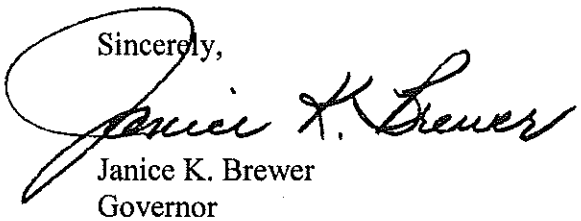
While I can agree that all levels of government must continue to find ways to cut costs, I am becoming increasingly concerned that many bills introduced this session micromanage decisions best made at the local level. What happened to the conservative belief that the most effective, responsible and responsive government is government closest to the people? The citizens of Phoenix and Tucson formed their government and adopted a charter to guide it. This legislation erodes the ability of voters

1700 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007
602-542-4331 • FAX 602-542-7602

to receive services from the government they themselves formed with a responsiveness and accountability from the officials they themselves elected at the local level.

These shortcomings will surely result in unintended consequences to the taxpayer that this very bill declares to be protecting.

Sincerely,



Janice K. Brewer
Governor

cc: The Honorable Russell Pearce
The Honorable Andy Tobin
The Honorable Frank Antenori
Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

House Engrossed Senate Bill

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1322

AN ACT

AMENDING TITLE 9, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 9; RELATING TO MANAGED COMPETITION FOR CITY SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 9, Arizona Revised Statutes, is amended by adding chapter 9, to read:

CHAPTER 9

MANAGED COMPETITION FOR CITY SERVICES

ARTICLE 1. GENERAL PROVISIONS

9-1001. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMPETITIVE SERVICE CITY" MEANS A CITY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS.

2. "MUNICIPAL SERVICES" MEANS ALL SERVICES FURNISHED DIRECTLY OR INDIRECTLY BY A COMPETITIVE SERVICE CITY FOR THE BENEFIT OF THE PUBLIC OR ITS RESIDENTS, INCLUDING ALL RELATED INTERNAL MANAGEMENT SERVICES, TECHNOLOGY SERVICES, PHYSICAL ASSET SERVICES, FACILITIES SERVICES, SUPPORT SERVICES, ENTERPRISE AND FEE-FUNDED SERVICES AND ADMINISTRATIVE SERVICES. MUNICIPAL SERVICES DO NOT INCLUDE THE DUTIES PERFORMED BY THE MAYOR OR CITY COUNCIL, THE CITY MANAGER'S OFFICE, THE CITY CLERK'S OFFICE, MUNICIPAL PROSECUTORS, MUNICIPAL JUDGES OR THE CITY ATTORNEY, IF ANY. MUNICIPAL SERVICES ALSO DO NOT INCLUDE PROFESSIONAL SERVICES, ASSAYER SERVICES, CONSTRUCTION OR CONSTRUCTION SERVICES, DESIGN SERVICES, GEOLOGIST SERVICES OR LAND SURVEYING SERVICES THAT ARE SUBJECT TO ANY PROVISION OF TITLE 34, CHAPTERS 2 THROUGH 6 OR TITLE 41, CHAPTER 23, ARTICLE 5.

9-1002. Competition mandate; municipal services; fee; exemption; state preemption

A. THE LEGISLATURE FINDS THAT THE FURNISHING OF SIZABLE MUNICIPAL SERVICES IS A MATTER OF STATEWIDE CONCERN AND IS NOT SUBJECT TO FURTHER REGULATION BY THOSE POLITICAL SUBDIVISIONS OF THIS STATE THAT ARE SUBJECT TO THIS ARTICLE. NOTWITHSTANDING ANY LAW TO THE CONTRARY, NO LATER THAN THE END OF THE FIRST FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS CHAPTER, EVERY COMPETITIVE SERVICE CITY SHALL FURNISH ALL MUNICIPAL SERVICES WITH AN ANTICIPATED OR ACTUAL COST OF FIVE HUNDRED THOUSAND OR MORE DOLLARS THROUGH A CITY DEPARTMENT OR AN INDEPENDENT CONTRACTOR BY WAY OF A SERVICE CONTRACT THAT HAS BEEN ENTERED INTO THROUGH OPEN AND COMPETITIVE BIDDING. A COMPETITIVE SERVICE CITY MAY ENTER INTO A SERVICE CONTRACT THROUGH OPEN AND COMPETITIVE BIDDING FOR THOSE MUNICIPAL SERVICES THAT HAVE AN ANTICIPATED OR ACTUAL COST OF LESS THAN FIVE HUNDRED THOUSAND DOLLARS. FOR PURPOSES OF ASSESSING THE ANTICIPATED OR ACTUAL COST OF MUNICIPAL SERVICES UNDER THIS SECTION, COMPETITIVE SERVICE CITIES SHALL NOT ENGAGE IN INTENTIONAL EFFORTS TO AVOID FURNISHING MUNICIPAL SERVICES THROUGH OPEN AND COMPETITIVE BIDDING, SUCH AS BY UNREASONABLY DISAGGREGATING RELATED MUNICIPAL SERVICES.

B. ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A MUNICIPALITY OR A DEPARTMENT OF A MUNICIPALITY, A REGIONAL AUTHORITY, A SPECIAL DISTRICT OR A QUASI-GOVERNMENTAL BODY, MAY BID FOR A MUNICIPAL SERVICE CONTRACT PURSUANT TO THIS CHAPTER AS AN INDEPENDENT CONTRACTOR BUT SHALL ALSO COMPLY WITH SECTION 9-1007. IF A MUNICIPAL SERVICE CONTRACT IS AWARDED TO AN INDEPENDENT CONTRACTOR PURSUANT TO THIS CHAPTER, A COMPETITIVE SERVICE CITY SHALL NOT PRECLUDE OR HINDER ITS MUNICIPAL EMPLOYEES FROM

TERMINATING THEIR EMPLOYMENT WITH THE MUNICIPALITY TO ACCEPT EMPLOYMENT WITH THE INDEPENDENT CONTRACTOR UNLESS A CONFLICT OF INTEREST OR CORRUPTION WOULD RESULT. THE OFFICE OF THE CITY MANAGER OF EACH COMPETITIVE SERVICE CITY IS RESPONSIBLE FOR ADMINISTERING AND MONITORING ALL MUNICIPAL SERVICE CONTRACTS WITH INDEPENDENT CONTRACTORS AND CITY DEPARTMENTS.

C. ANY COMPETITIVE SERVICE CITY CONDUCTING OPEN AND COMPETITIVE BIDDING PURSUANT TO SUBSECTION A OF THIS SECTION MUST EMPLOY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES WHEN CONSIDERING BIDS SUBMITTED BY ANY BIDDER. PERMIT APPLICANTS MAY USE THE PROFESSIONAL SERVICES PROVIDER OF THEIR CHOICE FOR PLAN SUBMISSION, PERMITTING AND INSPECTIONS. COMPETITIVE SERVICE CITIES SHALL ONLY CHARGE A REASONABLE FEE FOR PERMITS ISSUED.

D. ANY BIDDER SEEKING TO PERFORM A MUNICIPAL SERVICE PURSUANT TO SUBSECTION A OF THIS SECTION MAY INCORPORATE WITHIN A BID THE USE OF ANY MUNICIPAL FACILITY OR EQUIPMENT THAT A COMPETITIVE SERVICE CITY WOULD USE IN PERFORMING THE SAME MUNICIPAL SERVICE.

E. THIS CHAPTER DOES NOT APPLY TO MUNICIPAL JUDGES, MUNICIPAL PROSECUTORS, CITY ATTORNEYS, POLICE OFFICERS WHO ARE CERTIFIED PEACE OFFICERS, MUNICIPAL FIREFIGHTERS OR 911 OPERATORS OR TAX COLLECTION AND AUDIT ENFORCEMENT FUNCTIONS OF A COMPETITIVE SERVICE CITY OR IF COMPLIANCE WOULD VIOLATE ANY APPLICABLE FEDERAL LAW OR REGULATION.

9-1003. Precompetition assessment

A. NO LATER THAN THREE MONTHS BEFORE THE END OF THE FIRST FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS CHAPTER, AND THEREAFTER AS DETERMINED BY ORDINANCE, THE OFFICE OF THE CITY MANAGER OF EACH COMPETITIVE SERVICE CITY SHALL PREPARE A REPORT PRESCRIBING A WRITTEN STATEMENT OF WORK FOR EACH MUNICIPAL SERVICE TO BE PUT INTO OPEN AND COMPETITIVE BIDDING AND DESCRIBING THE SERVICES TO BE CONTRACTED, THE ANTICIPATED CONTRACT PRICE AND THE PERFORMANCE STANDARDS TO BE INCORPORATED INTO THOSE CONTRACTS. THE OFFICE OF THE CITY MANAGER SHALL TRANSMIT THIS REPORT TO THE CITY COUNCIL, AND THE COUNCIL SHALL CONSIDER THE REPORT WITHIN THIRTY DAYS OF ITS TRANSMISSION. IF APPROVED BY A MAJORITY OF THE CITY COUNCIL, THE STATEMENT OF WORK IS DEEMED ADOPTED BY THE CITY AS ITS FINAL STATEMENT OF WORK FOR EACH MUNICIPAL SERVICE TO BE PUT INTO OPEN AND COMPETITIVE BIDDING. THE CITY SHALL IMMEDIATELY COMMENCE WITH OPEN AND COMPETITIVE BIDDING ON THE MUNICIPAL SERVICES THAT ARE ADOPTED.

B. THE DISAPPROVAL OF A CITY COUNCIL IS ONLY VALID IF THE CITY COUNCIL PROPOSES, BY RESOLUTION, SPECIFIC MODIFICATIONS TO THE STATEMENT OF WORK IN SUFFICIENT DETAIL TO GUIDE THE OFFICE OF THE CITY MANAGER IN IMPLEMENTING AN OPEN AND COMPETITIVE BID. THE OFFICE OF THE CITY MANAGER SHALL INCORPORATE THE SPECIFIC MODIFICATIONS INTO A FINAL STATEMENT OF WORK WITHIN THIRTY DAYS. THE FINAL STATEMENT OF WORK WILL THEN BE DEEMED ADOPTED BY THE CITY COUNCIL AND THE CITY COUNCIL SHALL IMMEDIATELY BEGIN CONDUCTING OPEN AND COMPETITIVE BIDDING FOR THE MUNICIPAL SERVICES THAT ARE ADOPTED.

9-1004. Open and competitive bidding of services

NO LATER THAN ONE MONTH BEFORE THE END OF THE FIRST FISCAL YEAR AFTER THE EFFECTIVE DATE OF THIS CHAPTER, THE CITY COUNCIL, BY ORDINANCE, SHALL PROVIDE FOR STANDARDS AND PROCESSES ENSURING TRANSPARENT, OPEN AND

COMPETITIVE BIDDING BY INDEPENDENT CONTRACTORS AND CITY DEPARTMENTS FOR CONTRACTS TO FURNISH MUNICIPAL SERVICES PURSUANT TO THIS CHAPTER, INCLUDING PROVISIONS TO GUARD AGAINST CORRUPTION AND CONFLICTS OF INTEREST. THE COMPETITIVE SERVICE CITY SHALL REASONABLY TAILOR THE SCALE AND COMPLEXITY OF OPERATIONS TO BE PERFORMED UNDER A MUNICIPAL SERVICE CONTRACT OFFERED FOR COMPETITIVE BIDDING TO GENERATE COMPETITIVE BIDS FROM THE PRIVATE SECTOR THAT OFFER THE HIGHEST QUALITY, LOWEST COST AND MOST RELIABLE PERFORMANCE.

9-1005. Minimum contract standards

A. THE OFFICE OF THE CITY MANAGER OF A COMPETITIVE SERVICE CITY SHALL AWARD CONTRACTS PURSUANT TO THIS CHAPTER TO THE BIDDER WHO IS ABLE TO PROVIDE REASONABLE ASSURANCE OF FULFILLING THE COMPETITIVE SERVICE CITY'S CONTRACT STANDARDS WHILE PROVIDING THE COMPETITIVE SERVICE CITY WITH THE BEST VALUE. NO CONTRACT AWARDED PURSUANT TO THIS CHAPTER MAY HAVE A TERM LONGER THAN FIVE YEARS WITH THREE ONE YEAR RENEWALS BEFORE THE RELATED SERVICES MUST BE OFFERED AGAIN BY THE COMPETITIVE SERVICE CITY THROUGH OPEN AND COMPETITIVE BIDDING PURSUANT TO THIS CHAPTER. A LONGER TERM MAY BE AWARDED ONLY FOR A CONTRACT WITH AN INDEPENDENT CONTRACTOR OR PUBLIC-PRIVATE PARTNERSHIP INVOLVING SIGNIFICANT FIXED CAPITAL INVESTMENTS, WITH A CONTRACT TERM EQUAL TO THE AMORTIZATION SCHEDULE REASONABLE IN THAT INDUSTRY. FOR PURPOSES OF THIS CHAPTER, THE COMPETITIVE SERVICE CITY'S CONTRACT STANDARDS SHALL SPECIFY DESIRED, MEASURABLE PERFORMANCE OUTCOMES FROM THE CONTRACTED WORK, SHALL NOT OVERRIDE THE MANAGERIAL DISCRETION OF INDEPENDENT CONTRACTORS IN DETERMINING HOW BEST TO FULFILL THOSE CONTRACT STANDARDS AND SHALL NOT DICTATE THE AMOUNT OR COMPOSITION OF COMPENSATION TO BE PAID BY INDEPENDENT CONTRACTORS TO THEIR EMPLOYEES OR AUTHORIZED SUBCONTRACTORS IN MEETING THOSE PERFORMANCE OUTCOMES. IF THE COMPETITIVE SERVICE CITY AWARDS A CONTRACT TO A BIDDER THAT DOES NOT OFFER TO FULFILL THE COMPETITIVE SERVICE CITY'S CONTRACT STANDARDS AT THE LOWEST COST TO THE COMPETITIVE SERVICE CITY, THE COMPETITIVE SERVICE CITY SHALL CONCURRENTLY SPECIFY ALL MATERIAL REASONS THAT JUSTIFY NOT ACCEPTING THE LOWER COST BID. AS A CONDITION TO AWARDING ANY CONTRACT TO BE PAID IN WHOLE OR IN PART FROM REVENUES GENERATED BY THE SALE OF TAX EXEMPT MUNICIPAL BONDS, THE COMPETITIVE CITY MAY REQUIRE ADEQUATE ASSURANCE THAT SUCH TAX EXEMPT STATUS WILL BE PRESERVED.

B. THE BIDS OF ANY INDEPENDENT CONTRACTOR PROVIDING SERVICES TO COMPETITIVE SERVICE CITIES SHALL MEET THE FOLLOWING MINIMUM CONTRACT STANDARDS DURING THE TERM OF ANY SERVICE CONTRACT:

1. ALL BIDDERS, PUBLIC OR PRIVATE, MUST BE ABLE TO PROVIDE REASONABLE PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORM OF SECURITY OR A COMBINATION OF ANY OF THESE SECURITIES, THE PENAL SUM OR AMOUNT OF WHICH MAY BE LESS THAN ONE HUNDRED PER CENT OF THE VALUE OF THE CONTRACT INVOLVED BASED ON THE COMPETITIVE SERVICE CITY'S DETERMINATION, MADE ON A FACILITY-BY-FACILITY BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THE COMPETITIVE SERVICE CITY.

2. ALL BIDDERS, PUBLIC OR PRIVATE, MUST MAINTAIN AN ADEQUATE LEVEL OF LIABILITY INSURANCE CONSISTENT WITH THE CITY'S RISK MANAGEMENT REQUIREMENTS. THE COST OF LIABILITY INSURANCE MUST BE INCLUDED IN ALL BIDS SUBMITTED PURSUANT TO SECTION 9-1002, SUBSECTION A.

3. THE INDEPENDENT CONTRACTOR MUST HAVE APPROPRIATE SAFETY POLICIES AND PROCEDURES IN PLACE TO PROTECT THE PUBLIC AND ITS EMPLOYEES IN PROVIDING THE SERVICE.

4. THE INDEPENDENT CONTRACTOR MUST PERFORM BACKGROUND CHECKS ON EMPLOYEES PERFORMING ANY SERVICE FOR WHICH THE COMPETITIVE SERVICE CITY REQUIRES BACKGROUND CHECKS OF MUNICIPAL EMPLOYEES.

5. THE INDEPENDENT CONTRACTOR MUST ACKNOWLEDGE THAT THE COMPETITIVE SERVICE CITY MAY RIGHTFULLY TERMINATE AND RESCIND ANY CONTRACT AWARDED TO THE INDEPENDENT CONTRACTOR IN THE EVENT OF ANY MATERIAL BREACH OF THE CONTRACT.

9-1006. Transparency in bidding and performance

A. ALL BID RELATED COMMUNICATIONS AND SUPPORTING MATERIALS SUBMITTED FOR CONSIDERATION BY COMPETITIVE SERVICE CITIES ARE PUBLIC RECORDS.

B. THE OFFICE OF THE CITY MANAGER AND ALL CITY DEPARTMENTS OF EACH COMPETITIVE SERVICE CITY SHALL PERFORM ANNUAL PERFORMANCE AUDITS FOR CONTRACTED SERVICES, THE COST OF WHICH MUST BE ACCOUNTED FOR AND INCORPORATED INTO ANY BID. THE OFFICE OF THE CITY MANAGER OF EACH COMPETITIVE SERVICE CITY SHALL SEEK AN INDEPENDENT PERFORMANCE AUDIT EVERY FIVE YEARS TO EVALUATE THE ACCURACY AND COMPLETENESS OF THE MUNICIPALITY'S PERFORMANCE AUDITS. ALL PERFORMANCE AUDITS ARE PUBLIC RECORDS.

9-1007. Transparency in the cost of municipal employment

ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A COMPETITIVE SERVICE CITY, A REGIONAL AUTHORITY, A DEPARTMENT OF A COMPETITIVE SERVICE CITY, A SPECIAL DISTRICT, A PUBLIC-PRIVATE PARTNERSHIP THAT INCLUDES MUNICIPAL EMPLOYEES OR A QUASI-GOVERNMENTAL BODY, THAT BIDS ON A MUNICIPAL SERVICE CONTRACT MUST SPECIFICALLY DISCLOSE AND INCORPORATE BUDGETING FOR REASONABLY ANTICIPATED OVERTIME TO BE PAID TO THE BIDDER'S EMPLOYEES, HEALTH CARE BENEFITS OR OTHER FRINGE BENEFITS, AS WELL AS THE PRESENT VALUE OF ANTICIPATED RETIREMENT BENEFITS TO BE PAID TO THE BIDDER'S EMPLOYEES THAT VEST DURING THE TERM OF THE RELATED SERVICE CONTRACT BASED ON THE BIDDER'S AVERAGE EMPLOYEE ATTRITION RATE OVER THE PRECEDING FIVE YEARS.

9-1008. Taxpayer standing

NOTWITHSTANDING ANY LAW TO THE CONTRARY, TAXPAYERS RESIDING IN A COMPETITIVE SERVICE CITY MAY BRING A SPECIAL ACTION IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THIS CHAPTER.

Sec. 2. Existing contracts

This act does not apply to existing vested contractual or intergovernmental agreements for the furnishing of municipal services that have been entered into before the effective date of this act. When the vested contractual or intergovernmental agreements expire, the agreements may only be continued if they are municipal services that are subject to this act and if they are continued or renegotiated pursuant to this act.

Passed the House April 14, 2011,

by the following vote: 34 Ayes,

22 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 14, 2011,

by the following vote: 18 Ayes,

10 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1322

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 20, 20 11

by the following vote: 20 Ayes,

7 Nays, 3 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 12:00 o'clock P. M.

Nicole Bendle
Secretary to the Governor

Approved this _____ day of

_____

VETO

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_____

S.B. 1322

at _____ o'clock _____ M.

_____
Secretary of State