



ATRA

Legislative Review



2022

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ATRA’S 2022 LEGISLATIVE REVIEW

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The ATRA Legislative Policy Committee meets every Friday during the legislative session to review the impact of all proposed legislation on taxpayers and Arizona’s public finance system. ATRA coordinates its advocacy efforts in the Legislature on important public finance and tax bills. Through testimony in committees and dissemination of information to legislators, ATRA serves as the leading statewide taxpayer advocate at the Legislature.

ATRA staff would like to thank the members of ATRA’s Legislative Policy Committee and Chairman Jason Baran for their guidance and combined efforts during the 2022 legislative session. Special appreciation also goes out to members of ATRA’s Tax Policy Committee whose knowledge, under the leadership of Chairman Bill Molina, has consistently proven to be indispensable to this organization’s success during the legislative session and throughout the year.

During the Second Regular Session of the 55th Legislature, 2,003 bills and resolutions were introduced. Of the 1,851 bills introduced, 398 passed and were signed into law and 4 were vetoed by the Governor. Sixteen of the 152 resolutions introduced were adopted by the Legislature. This document summarizes key legislation ATRA supported, opposed, and monitored.

Additionally, ATRA would like to thank ATRA board member Steve Trussell, Executive Director of Arizona Rock Products Association and the Arizona Mining Association, and his staff for not only continuing to host the Legislative Policy Committee meetings at their office, but for providing a hybrid virtual option for ATRA as well.

HIGHLIGHTS OF THE 2022 LEGISLATIVE SESSION

This document summarizes key legislation ATRA actively supported, opposed or monitored during the Second Regular Session of Arizona's 55th Legislature. This year's legislative session lasted through June 25th, just days before the beginning of the new fiscal year.

The 2022 session proved to be another successful year for taxpayers, highlighted by major property tax reform for businesses by further reducing the assessment ratio on class 1 property and reducing the tax burden on newly acquired business personal property. Additionally, tax relief was provided to all property taxpayers with the elimination of the state equalization tax rate (SETR), saving taxpayers over \$300 million annually.

Most of ATRA's Legislative Program ultimately became law. More importantly, ATRA's opposition to several measures either resulted in those proposals being favorably amended or prevented those efforts from ultimately becoming law.

The major legislative issues where ATRA played a key role in their passage included the following measures:

- This year's legislative session was highlighted by the enactment of one of ATRA's long-term property tax reform efforts to reduce the class 1 (business) assessment ratio to 15%, which was led by Sen. J.D. Mesnard under SB1093. As enacted, SB1093 provided tax relief to all property taxpayers through incremental reductions in the SETR; however, subsequent legislation passed under HB2866 entirely eliminated the SETR.
- Sponsored by Rep. Jeff Weninger, HB2822 reduced the compliance and tax burden on locally assessed businesses by taxing newly acquired property at 2.5% of the acquisition price.
- ATRA successfully advocated for the reforms under HB2124 to simplify the K12 financing of high school students from common school districts.

All but two bills ATRA opposed during the legislative session failed to pass, or were favorably amended, and the following are a few examples:

- ATRA successfully opposed the latest effort by the community college districts to pass a statutory amendment that would allow the districts to exceed their constitutional expenditure limits. ATRA argued, and the Arizona Legislative Council concurred, that the proposed statutory authority under SB1374 would be unconstitutional.
- ATRA was successful in stopping a measure that would have dramatically limited the time in which taxpayers could bring a legal challenge under the constitutional gift clause (SB1241).
- ATRA successfully opposed legislation that would have eliminated the option for shopping centers to be valued based on the straight line building residual (SLBR) income method. After much debate with the Maricopa County Assessor's office, SB1266 was favorably amended to leave intact the existing shopping center valuation statutes.
- The two bills ATRA opposed that ultimately became law provided "refundable" tax credits to the motion picture industry (HB2156) and tax and bonding authority to support the Southern Arizona Sports, Tourism and Film Authority (SB1710).

LEGISLATION LISTED BY BILL NUMBER

LEGEND FOR ATRA'S POSITION:

S = Supported FA = Favorably Amended M = Monitored O = Opposed

BILL NUMBER, SHORT TITLE, AND PRIMARY SPONSOR		POSITION	FINAL STATUS/CHAPTER #	PAGE
HB2012	county improvement districts; formation (Kavanagh)	M	Chapter 92	11
HB2034	CTEDs; associate degrees (Udall)	M	Chapter 198	11
HB2063	PSPRS; CORP; reemployment; time period (Blackman)	M	Chapter 24	11
HB2067	county improvement districts; recreation; governance (Blackman)	M	Chapter 93	11
HB2124	common school districts; tuition; elimination (Udall)	S	Chapter 285	6
HB2156	tax credits; motion picture credits (Cobb)	O	Chapter 387 (W/O Signature)	9
HB2180	school facilities; replacement; renovation; funding (Udall)	O	Retained in House COW	8
HB2412	open meetings; digital recordings (Parker)	S	Held in Senate COW	7
HB2455	incorporation; urban areas (Carter)	M	Chapter 108	11
HB2477	elderly assistance fund; appropriation (Carroll)	M	Held in Senate Rules	12
HB2541	deputy sheriff; detention officer; salary (Payne)	O	Held in House 3rd Read	8
HB2587	public records; point of contact (Grantham)	S	Chapter 142	6
HB2609	ambulance services; service areas (Burgess)	FA	Chapter 381	10
HB2685	transportation tax; Maricopa county; election (Carroll)	M	Vetoed	12
HB2699	fire district bonds; merger; consolidation (Martinez)	S	Chapter 84	6
HB2701	TPT; prime contracting; tax base (Biasucci)	M	Struck in Senate Approps	12
HB2749	TPT; prime contracting; exemption; alterations (Cobb)	S	Failed Senate 3rd Read	7
HB2800	concurrent coursework; average daily membership (Diaz)	O	Failed House Approps	8
HB2822	personal property; additional depreciation (Weninger)	S	Chapter 103	6
HCR2015	initiatives; supermajority vote; requirement (Dunn)	S	Proposition 132	6
SB1067	cities; water infrastructure finance authority (Shope)	FA	Chapter 133	10
SB1093	equalization assistance; class one property (Mesnard)	S	Chapter 171	6
SB1095	property tax exemptions; statutory conformity (Mesnard)	S	Chapter 341	7
SB1116	S/E: municipal tax exemption; residential lease (Livingston)	M	Failed Senate 3rd Read	12
SB1173	community colleges; out-of-county reimbursement (Gowan)	M	Chapter 315	12
SB1241	gift clause; violation; statute; limitation (Pace)	O	Held in Senate COM	8
SB1266	property tax; administration; county assessor (Livingston)	FA	Chapter 228	10
SB1267	property; classification; primary residence (Livingston)	M	Chapter 300	13
SB1268	PSPRS; deferred retirement option plan (DROP) (Livingston)	FA	Chapter 351	11
SB1269	S/E: School finance reform (Leach)	S	Held in House Rules	7
SB1371	count salaries; precinct officers (Pace)	O	Held in Senate Final Read	9
SB1374	full-time equivalent student; expenditure limitation (Shope)	O	Struck in House Approps	9
SB1630	school buses; student transportation (Kerr)	S	Chapter 290	6
SB1710	sports; tourism; film authority; appropriation (Gowan)	O	Chapter 364	9
SCR1011	constitutional property tax exemptions (Mesnard)	S	Proposition 130	7
SCR1049	fire districts; funding; TPT increment (Boyer)	M	Proposition 310	13

PASSED LEGISLATION ATRA SUPPORTED

HB2124 common school districts; tuition; elimination (Udall)

Chapter 285

HB2124, sponsored by House Education Chair Michelle Udall, simplifies the K12 financing of high school students from common school districts. Beginning in fiscal year 2024, common school districts will no longer pay tuition for their high school students attending a neighboring high school. Rather, the attending union or unified district will simply count that student in the same manner they currently count all other students attending the district. The common district, in lieu of paying tuition to the attending district, will budget for the costs of educating their high school students based on the average countywide per pupil cost from the preceding fiscal year as calculated by the county school superintendent. The revenues generated by each district for the costs of their high school district students are added to the county aid for equalization assistance to assist in the costs of state aid for all districts in the county.

HB2587 public records; point of contact (Grantham)

Chapter 142

HB2587 requires any entity that is subject to a public records request to provide the name, telephone number and email address of an employee or department that is authorized and able to provide such information and to make the contact information available on the entity's website. Requires the authorized employee or department to reply within five business days acknowledging receipt of the request unless the entity maintains a centralized online portal for submission of public records requests.

HB2699 fire district bonds; merger; consolidation (Martinez)

Chapter 84

If a fire district with outstanding debt is merged or consolidated with another district, the outstanding debt shall not be assumed by the resulting district and must be deemed an ongoing indebtedness of only the portion of the district that originally approved the bonds.

HB2822 personal property; additional depreciation (Weninger)

Chapter 103

Locally assessed personal property that currently receives accelerated depreciation under classes 1, 2, and 6 and that is initially classified or acquired during or after tax year 2022 is valued based on a valuation factor of 2.5%. *See ATRA Position Paper in Appendix.*

HCR2015 initiatives; supermajority vote; requirement (Dunn)

Proposition 132

Proposition 132 increases the threshold to 60% for voter approved initiatives and referendums to approve a tax. Majority voter approval is maintained for all other initiatives and referendums. *See ATRA's Position Paper in Appendix.*

SB1093 equalization assistance; class one property (Mesnard)

Chapter 171

Following last year's tax package that reduced the assessment ratio on class 1 (business) property to 16% through 2025, SB1093 further reduces the assessment ratio in half-percent increments to 15% by Tax Year (TY) 2027. Like other business assessment ratio reduction bills, SB1093 increases the homeowner rebate but frontloads the offset to homeowners beginning in TY 2022 from the current 47.19% to 50%. Additional tax relief was provided to all property taxpayers by reducing the state equalization tax rate (SETR) incrementally over six years; however, the SETR was entirely eliminated under subsequently passed legislation (HB2866, Chapter 317). Lastly, the measure granted Arizona's fire districts tax capacity by increasing the current \$3.25 tax rate cap to \$3.375 in TY 2022, \$3.50 in TY 2023, and \$3.75 in TY 2024. *See ATRA Position Paper in Appendix.*

SB1630 school buses; student transportation; vehicles (Kerr)

Chapter 290

A school district or charter school in Arizona or a privately owned and operated entity that is contracted for compensation with a school district or charter school in Arizona is authorized to use a motor vehicle that is

designed to carry at least eleven and not more than fifteen passengers to transport students to or from home or school on a regularly scheduled basis. The Department of Public Safety is required to adopt rules prescribing minimum standards for the design, equipment, and periodic inspection of these motor vehicles. Establishes requirements for drivers of these vehicles and allows school district governing boards to purchase vehicle liability insurance for the vehicles. School districts are authorized to include route mileage and the number of riders to calculate transportation support level funding for transporting eligible students using motor vehicles.

SCR1011/SB1095 constitutional property tax exemptions (Mesnard)

Proposition 130

The 2022 general election ballot is to carry the question to amend the Arizona Constitution to repeal, replace, and revise the existing property tax exemptions. The amendment reinstates the self-executing property tax exemptions for all federal, state, county and municipal property, public debts, household goods, and raw materials constituting inventory of a retailer or wholesaler. The measure further authorizes the Legislature to exempt property of an educational, charitable or religious association not used or held for profit, personal property used in a trade or business or for agricultural purposes, cemeteries used to inter deceased humans, property of a widow or widower, as well as the property of adults with total and permanent disabilities. Lastly, the amendment restores and revises Arizona’s disabled veteran’s exemption that was struck down by the courts due to unconstitutional residency requirements. *See ATRA’s Position Paper in Appendix.*

FAILED LEGISLATION ATRA SUPPORTED

HB2412 open meetings; digital recordings (Parker)

Held in Senate COW

HB2412 would have required all public bodies to provide and post on its website an audio or audiovisual recording of all meetings, or a direct link recording, and the meeting minutes for public inspection not later than three working days after the meeting and approval of the minutes. Required this information to remain on the website for at least three years instead of one year.

HB2749 TPT; prime contracting; exemption; alterations (Cobb)

Failed Senate 3rd Read

HB2749 was ATRA’s latest effort to simplify MRRA (maintenance, repair, replacement, alteration) projects under Arizona’s prime contracting system. This year’s measure addressed only residential contracts and specified that the contract would be taxable under prime contracting only when adding square footage to the existing structure. All other contracts, such as those to simply remodel a home, would remain taxable under MRRA in which only the materials are subject to tax at retail. Although ATRA and the contracting industry worked together in crafting the final language in which all agreed would simplify the system, a League of Cities representative argued the measure would actually make the system more complicated. Unfortunately, the cities answer to solving the complications in the system is to eliminate MRRA altogether and place all activity back under prime contracting, even though doing so would result in a massive tax increase. Although the bill received bipartisan support in the House, it ultimately failed on the Senate floor. *See ATRA Position Paper in Appendix.*

SB1269 S/E: school finance reform (Leach)

Held in House Rules

SB1269 was a K12 school finance reform measure advocated by ATRA and Great Leaders Strong Schools. ATRA’s efforts to reform school finance are focused on achieving greater equity in the system to ensure funding follows the student to the greatest degree possible. ATRA believes an equitable K12 finance system is a requirement in a state with robust school choice. In addition, it makes the system less ripe for litigation.

A late introduction as a strike-everything amendment, SB1269 increased funding to schools primarily through a 2.5% increase in the base support level and a large increase in transportation funding for both districts and

charters. In addition, the bill created a new State Funding Formula providing an additional funding for district schools that forgo local property tax supported by bonds and overrides.

The increased funding was designed to more than offset reforms designed to eliminate the following inequitable formulas: Teacher Experience Index; Additional Teacher Compensation; and Transportation Revenue Control Limit (TRCL). The elimination of the TRCL would have also reduced an extraordinarily inequitable district property over five years.

The Joint Legislative Budget Committee (JLBC) estimated the net increase in funding to district schools after the reforms at \$100.5 million and \$42 million for charter schools. In addition, JLBC estimated the phased-in cost of the state general fund cost of the new State Funding Formula at \$77.9 million.

Despite the increased funding for schools, SB1269 was opposed by the teacher's union, Arizona School Administrators Association, Arizona Department of Education, Arizona School Board's Association, and a host of other school groups.

FAILED LEGISLATION ATRA OPPOSED

HB2180 school facilities; replacement; renovation; funding (Udall)

Retained in House COW

The list of authorized purposes of monies from the New School Facilities Fund (NSF Fund) would have been expanded to include renovating or replacing a facility or facilities that a school district believes pose a health or safety threat to students and are beyond their useful life. The School Facilities Oversight Board would be required to prescribe a uniform format for use by school district governing boards in developing a capital plan for construction to renovate or replace school facilities. Furthermore established the application process for a school district to receive NSF Fund monies for renovation or replacement of facilities. Projects for which a school district receives monies from the NSF Fund would not be eligible for monies from the Building Renewal Grant Fund.

HB2541 deputy sheriff; detention officer; salary (Payne)

Held Awaiting House 3rd Read

HB2541 would have statutorily set the starting salary for a deputy sheriff to be not less than 5% lower than the average starting salary of law enforcement officers of the two highest paying law enforcement agencies, including the Department of Public Safety, within the same county. Additionally, the starting salary for a detention officer may not be less than 10% lower than the average starting salary of detention and corrections officers of the three highest paying county detention facilities in this state and the state Department of Corrections. *Same as SB1381.*

HB2800 concurrent coursework; average daily membership (Diaz)

Failed House Approps

HB2800 would have increased the maximum average daily membership (ADM) from 1.0 to 1.25 for a full-time high school student who attends concurrent enrollment courses. A student would be required to receive a grade of C or higher in a community college or university course for their enrollment in concurrent coursework to be included in the school district's ADM calculation.

SB1241 gift clause; violation; statute; limitation (Pace)

Held in Senate COM

SB1241 would have dramatically limited the amount of time a taxpayer could bring an action against a public entity or public employee alleging a violation of Arizona Constitution's gift clause. Specifically, the amount of time to bring action of a violation forward would have been reduced from one year to just 30 days after the cause of action accrues. ATRA was opposed to limiting taxpayer's ability to bring an action against a public entity, which would undermine the Gift Clause provision. SB1241 never received a committee hearing.

SB1371 county salaries; precinct officers (Pace)

Held in Senate Final Read

SB1371 would have increased the salaries of county constables by varying amounts depending on the number of registered voters.

SB1374 full-time equivalent student; expenditure limitation (Shope)

Struck in House Approps

For the purpose of calculating state aid, the definition of a "full-time equivalent student" at a community college would have changed student enrollment from 15 community college semester credit units per semester to 12. Beginning in FY2023, the community college district expenditure limitation calculation would be modified to refer to the new definition of full-time equivalent student. Retroactive to July 1, 2021, session law established amounts of state aid to be withheld if a community college district exceeds its expenditure limitation for FY2023 and FY2024. ATRA argued that a statutory amendment to increase the constitutional expenditure limits would be unconstitutional. ATRA’s concerns were echoed by Legislative Council that also stated the new calculation would result in an arbitrary 25% growth in the expenditure limits. The proposal failed when it was struck in House Appropriations with a different subject. *See ATRA Position Paper and Legislative Council memo in Appendix.*

PASSED LEGISLATION ATRA OPPOSED

HB2156 motion picture production; tax credits (Cobb)

Chapter 387

Initially introduced under SB1708 by Senator Gowan, HB2156 was struck in the final days of session to establish “refundable” individual and corporate income tax credits for motion picture production companies. The Arizona Commerce Authority (ACA) is responsible for certifying companies seeking the tax credits. The total amount of tax credits that can be awarded are ramped up over three years, starting at \$75 million in tax year 2023, increasing to \$100 million in 2024, and to \$125 million in 2025 and each year thereafter.

The amount of the tax credits is equal to the percentage of the total qualified production costs spent by a motion picture production company as follows: up to \$10 million, 15%; more than \$10 million but less than \$35 million, 17.5%; over \$35 million, 20%. The company may qualify for another 7.5% in tax credits, in 2.5% increments, for costs associated with production labor costs related to positions held by residents in this state, qualified production facilities used in this state, and other criteria. If the allowable tax credits exceed the income taxes otherwise due, or even if there are no state income taxes due, any amount remaining after any offset is paid to the company in the same manner as a refund.

ATRA opposed the “refundable” nature of the tax credits as they are bad policy and they likely violate the Arizona Constitution’s Gift Clause. The Governor allowed the legislation to become law without his signature. *See ATRA Position Paper in Appendix*

SB1710 sports; tourism; film authority; appropriation (Gowan)

Chapter 364

Establishes the Southern Arizona Sports, Tourism and Film Authority consisting of Greenlee, Graham, Cochise, Santa Cruz, Pima, and Pinal Counties. The qualified electors residing in the boundaries of the Authority may levy a tax for the fiscal needs of the Authority, but the Board and the Authority do not have the authority to levy or otherwise impose any tax or assessment. The Authority may issue revenue bonds and Certificates of Participation but there is no prescribed debt limit. The Board must provide a published notice to the public of its intention to issue bonds within 15 days. On or before May 31st of each year, the Board must hold a public hearing to adopt its annual budget, but the budget may be amended on a finding of good cause. Requires an annual

financial audit to be conducted by an independent certified public accountant within 120 days after the end of the fiscal year (all other entities require 90 days) and requires the Auditor General to conduct a performance audit no later than 2027 and at least every fifth year thereafter.

PASSED LEGISLATION ATRA FAVORABLY AMENDED

HB2609 ambulance services; service areas (Burges)

Chapter 381

As introduced, HB2609 would have upended the current Certificate of Necessity (CON) process that certifies applicants for the delivery of emergency medical services (EMS). Under the current CON process, the Administrative Law Judge (ALJ) conducts a detailed review of the facts and a public hearing is held in which all interested parties may participate. If the ALJ approves the CON, the recommendation goes to the Director of the Department of Health Services (DHS) for a final determination. Initially, the proposed legislation would have allowed the Director of DHS to issue a CON without a public hearing and ALJ review. Only after a CON is issued could an affected CON holder appeal, which would then trigger a public hearing and ALJ review. The bill wasn't clear as to whether a new CON holder could proceed with the delivery of EMS when an existing CON holder appeals. Although the intent of the proponents may have been to expedite the current process, doing so in this manner would have only served to undermine the integrity of the CON process. The bill was amended in the Senate to remove ATRA's opposition. Specifically, language was added to clarify that if the DHS Director's decision to certify a new or amended CON is appealed, the new CON does not go into effect until a final determination is made.

SB1067 cities; water infrastructure finance authority (Shope)

Chapter 133

As introduced, SB1067 would have removed the 150,000 population threshold for a city or town to enter into a loan agreement with the Water Infrastructure Finance Authority (WIFA) without voter approval. ATRA opposed removing voter input on infrastructure projects that can be very costly and that must be ultimately repaid with taxpayer dollars. As a result, the bill was favorably amended to maintain the existing population threshold for WIFA loan agreements but to also allow political subdivisions to enter into financial assistance loan repayment agreements with WIFA without voter approval only if the agreements are financed with funding under the Infrastructure Investment and Jobs Act.

SB1266 property tax; administration; county assessor (Livingston)

Chapter 228

As introduced, SB1266 would have dramatically changed the statutory method for valuing shopping centers. Under current law, the assessor is required to value shopping centers based on the cost approach unless the owner elects to have the property valued based on the straight line building residual (SLBR) income method by September 1 in the year prior to the assessor valuing the property. Although the bill was inaccurately characterized as a "technical cleanup" bill by the proponents, SB1266 would have eliminated the SLBR option for shopping center owners. The measure would have also stripped shopping center owners of their right to appeal the property on the market comparison approach when there is a subject sale, leaving the cost approach as the only method to value shopping centers. Following a stakeholder meeting between ATRA, representatives from the shopping center industry, and the Maricopa County Assessor, the bill was amended to leave the shopping center valuation statutes unchanged.

The remaining unrelated provisions in the bill allows taxpayers the option to submit a notice of claim electronically and requires a tax officer that accepts the notice to provide an electronic acknowledgement of receipt to the taxpayer. SB1266 also requires taxpayers who are claiming a property tax exemption to file the

affidavit signed under penalty of perjury as to the person's eligibility and allows the taxpayer to submit the affidavit electronically.

SB1268 PSPRS; deferred retirement option plan (Livingston)

Chapter 351

SB1268 increases the Public Safety Personnel Retirement System (PSPRS) defined retirement option benefit plan (DROP) participation period from 5 to 7 years. Eligible members are those that became a member of the system prior to January 1, 2012, who are at least 51 years of age that have at least 24.5 years of credited service. However, the measure does allow an employer to approve the extension for any member notwithstanding the age and service requirements. An adopted amendment offered by ATRA and the League of Cities requires the amounts accumulated under DROP over the additional two years to be deposited in a Defined Contribution (DC) Plan for the member.

SELECTED LEGISLATION ATRA MONITORED

HB2012 county improvement districts; formation (Kavanagh)

Chapter 92

Specifies that the petition to establish a county improvement district must be signed by the majority of persons *and* (currently "or) by owners with 51% or more of real property within the limits of the proposed district.

HB2034 CTEDs; associate degrees (Udall)

Chapter 198

Career Technical Education Districts (CTEDs) are authorized to offer associate degrees that are accredited by a regional or national accreditation agency approved by the U.S. Department of Education. CTEDs that offer an associate degree program are required to meet all applicable regional accreditation requirements and state licensure requirements. A CTED that is located in the same county as the main campus of any public university or community college district that is developing an associate degree program must notify the entity at least 60 days before submitting the report to the CTED Board authorizing the program. The university or community college may provide a written response to the CTED within 30 days but cannot prevent the CTED from offering the program. Includes reporting requirements to the Joint Legislative Audit Committee by October 1 within five years after establishing the program, and on December 1 each year to the Governor, Senate President, and Speaker of the House.

HB2063 PSPRS; CORP; reemployment; time period (Blackman)

Chapter 24

Reduces the current one-year return to work requirement under PSPRS and CORP to six months.

HB2067 county improvement districts; recreation; governance (Blackman)

Chapter 93

Allows an existing county improvement district providing recreational improvements in a county with population less than 125k to be governed by a three or five member board of directors rather than the county board of supervisors. Navajo County proposed this measure to allow the special taxing district that supports the White Mountain Lakes County Recreation area to be represented by a local governing board rather than the county board of supervisors.

HB2455 incorporation; urban areas (Carter)

Chapter 108

At least six months before publishing a copy of a petition to incorporate, petitioners shall provide written notice to the board of supervisors of their intention to publish a copy of the petition for incorporation. The written notice must also be published for two consecutive weeks in a newspaper of general circulation. Uninhabited, rural or farm lands may be included in an area to be incorporated if the lands have been platted and approved by the

county board of supervisors for housing or commercial development before filing an incorporation petition, or if the current owner of the lands agrees to include the property and provides a written, notarized statement supporting the inclusion. A planned community association that requests to be excluded from a petition to incorporate shall be excluded if the association notifies the board of supervisors during the period of declarant control.

HB2477 elderly assistance fund; appropriation (Carroll)

Held in Senate Rules

HB2477 would have established the Elderly Assistance Fund (EAF) consisting of \$7 million in annual legislative appropriations beginning in FY 2023 for the purpose of reducing property taxes on a qualified individual's primary residence. The Department of Economic Security (DES) would be required to proportionately distribute the monies in the fund to each area agency on aging (AAA) established pursuant to the Older Americans Act (OAA) of 1965 that chooses to participate in the EAF. Monies in the fund would be used to reduce up to 60% of the property taxes on a qualified individual's or emergency-approved individual's primary residence in that AAA's service area. After receiving approval from the county assessor for the Property Valuation Protection Option, the individual could apply to the participating AAA, which would be required to approve all applications based on the "greatest social need and greatest economic need" as defined under the OAA. This definition of "greatest social need" includes language barriers, cultural, social, or geographical isolation, including isolation caused by racial or ethnic status. The AAA is required to pay the monies to the appropriate county treasurer on behalf of the qualifying individual. The AAA must also develop an emergency approval process for individuals who are not qualified individuals due to extenuating circumstances to apply and receive assistance from the fund for a total of three tax years. An AAA could use a portion of the monies for administrative costs up to 10% for the first year and 5% each year thereafter.

HB2685 transportation tax; Maricopa county; election (Carroll)

Vetoed

HB2685 was struck in the Senate Transportation Committee to extend the existing Maricopa County transportation one-half cent sales tax another 25 years if approved by the voters at the next general election. If approved, the new sales tax would be effective from and after December 31, 2025. The measure would have allocated 52.5% to the regional area road fund, 32.5% to the public transportation fund, and up to 14% for light rail systems. The Governor described a number of factors for his veto, but focused on the proponents' failure to amend the measure to allow more transparency and accountability.

HB2701 TPT; prime contracting; tax base (Biasiucci)

Struck in Senate Approps

HB2701 would have reduced the amount of a contract subject to the TPT prime contracting tax from 65% to 60% for contracts entered into after June 30, 2023 through June 30, 2024, and 55% after June 30, 2024.

SB1116 S/E: municipal tax exemption; residential lease (Livingston)

Failed Senate 3rd Read

SB1116 was struck in House Ways & Means to prohibit a city, town or other taxing jurisdiction from levying TPT on the business of renting or leasing real property for residential purposes. Exceptions to the measure included health care and long-term care facilities or hotel, motel or other transient lodging businesses. SB1116 passed the House 33-25 but failed Senate 3rd Read on a 15-11 vote.

SB1173 community colleges; out-of-county reimbursement (Gowan)

Chapter 315

The amount of state and out-of-county assistance to community colleges is calculated based on the current year primary property tax levy of the district per full-time equivalent students (FTSE) multiplied by the FTSE enrolled in the district in the preceding year. Under current statute, the calculation is based on the resident district's operating budget, which has resulted in higher costs to effected counties, Apache and Greenlee. *SB1173 was held in the House but the language was incorporated into the Higher Education BRB under HB2864.*

SB1267 property; classification; primary residence (Livingston)

Chapter 300

SB1267 specifies that a Rule B calculation to determine the limited property value (LPV) is triggered when a “physical, objectively verifiable” use has occurred on the property. [The percentage under Rule B is established at a level or percentage of full cash value of comparable properties with the same or similar use.] Further specifies that a change in the occupant or classification of a single-family residence is not a change in use, in and of itself. This legislation was in response to the recent court decision under *Qasimyar v. Maricopa County* that a change in classification between class 3 (owner occupied residence) and class 4 (residential rental) is a change in use and therefore triggers a Rule B calculation. ATRA was neutral on the bill since the change to statute was prospective only.

SCR1049 fire districts; funding; TPT increment (Boyer)

Proposition 310

The 2022 general election ballot is to carry the question whether to amend state statute to impose a statewide one-tenth of one percent sales tax rate to fund fire districts from and after December 31, 2022 through December 31, 2042. The State Treasurer must distribute revenues to each fire district based on their proportional share of net assessed value in the district, not to exceed 3% of the total revenues distributed. Any amounts remaining after the initial distribution will be distributed among the districts that are below the 3% distribution cap, but not to exceed 3%. Any final distributions are divided equally among all fire districts.

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ARIZONA TAX RESEARCH ASSOCIATION

2022 LEGISLATIVE PROGRAM

Introduction/State Budget

ATRA's legislative program is developed each year with recognition that the Legislature and Governor's highest priority for the session should be passing a state budget that is balanced and sustainable.

Prior to the coronavirus, Arizona was riding a wave of strong economic growth and the state's fiscal condition was strong. The 2020 legislative session was shortened following the passage of what was referred to as the "skinny" budget. Arizona's strong cash position was replaced with new estimates of billion dollar deficits. The 2021 session saw a reversal of those fortunes with the Arizona economy benefiting significantly from billions in federal stimulus monies and skyrocketing state revenue growth.

Current estimates suggest that the state's cash position continues to outpace budget estimates. The Governor's Office of Strategic Planning and Budgeting (OSP) estimates the current structural surplus this year at \$2.7 billion.

ATRA will provide state budget recommendations to the Legislature after the Joint Legislative Budget Committee and the OSPB have submitted their recommendations for the FY 2023 budget in January.

Taxation

Property tax reform. ATRA has led the effort to reform Arizona's property tax system and reduce the disparity in tax treatment between business and residential property. As a result of previous ATRA-backed legislation passed in 2005, 2007, 2011, and 2021, steady progress has been made in reforming the underlying policies that drive Arizona's high business property taxes. That progress is the direct result of policymakers addressing the root cause of that problem: the shift of taxes from residential property to business through higher assessment ratios on business property.

ATRA achieved a major victory in the 2021 legislative session with the passage of another reduction in the class one assessment ratio. Beginning in FY 2023, the 18% class one assessment ratio will be reduced to 16% over four years.

Most legislative sessions include debates surrounding reforms to Arizona's tax code. ATRA believes any effort to reform Arizona's tax system should include further reductions to the class one assessment ratio with the ultimate goal of 15%.

Prevent greater access to the property tax. For the 2022 session, ATRA will oppose efforts on the part of state and local governments and special districts to increase access to the property tax base.

Despite widespread recognition that Arizona’s business property taxes are a major impediment to economic development, each session is marked by efforts to increase access to the property tax.

In addition, ATRA will advocate for the continued compliance with the state’s Truth-in-Taxation (TNT) law. Since its passage in 1998, the state has consistently complied with the TNT law. For the last seven years, the Qualifying Tax Rate and the State Equalization Tax Rate have fallen as a result of the TNT law. While those rates have both risen and fallen with the fluctuations in the real estate market, ATRA believes adherence to the TNT law is an important principle that has, and will continue to benefit taxpayers over time.

Targeted Property Tax Breaks. For decades, ATRA has steadfastly opposed efforts at the Capitol to rifle-shot property tax breaks to specific industries. ATRA will continue to support policies that provide for equitable treatment among property taxpayers and oppose efforts that undermine that important policy principle.

For the 2022 session, ATRA will pursue the following legislation:

Property Tax

Current state budget surpluses will provide a myriad of policy options for lawmakers in building the FY 2023 budget. One of those policy options should include some form of tax relief. The State Equalization Tax Rate (SETR) is currently \$0.4263 and raises roughly \$316 million annually. A reduction in SETR does not result in reduced K12 spending as any reduction SETR is offset by an increase in K12 formula funding from the state general fund.

Sales Tax

Prime Contracting Simplification

Arizona’s prime contracting tax is generally regarded as the most complex and inefficient area of Arizona’s transaction privilege tax (TPT) system. Some improvement was achieved through TPT Simplification in 2012 that transitioned activities involving maintenance, repair, replacement, and alteration (within certain thresholds) from prime contracting to a tax on materials at the point of sale, now known as MRRA. MRRA simplified tax compliance for most contractors that only work on MRRA projects; however, contractors involved in residential home remodels, for instance, can unknowingly get pulled into prime contracting. For example, tax guidance published by the Arizona Department of Revenue considers moving interior walls or adding a kitchen island as “modification” activity, which will make the entire contract taxable under prime contracting if the cost of the modification activity exceeds 15% of the contract. ATRA will pursue legislation to simplify MRRA by eliminating the current thresholds for alteration projects, and instead, only tax contracts under prime contracting that add or expand square footage.

Public Finance:

School Finance Reform:

For decades, ATRA has advocated for a school finance system that is equitable and reflective of Arizona's K12 system that encourages and promotes parental choice. ATRA has also argued that a more equitable school finance system reduces the state's exposure to the continuous litigation in this area. ATRA will pursue the following school finance reforms in the 2022 session:

Create a state student funding formula. This proposal would allow any school district with no secondary property tax (no bonds or overrides) to switch to a new State Formula Funding formula. Upon the approval of district voters, eligible districts would receive charter level funding (an average of \$1,200 more per pupil) and agree to forgo bond and override funding. In order to offset some of the state general fund impacts of the new state funding formula, district voters would be required to approve an additional property rate tax of \$0.35 for elementary and union districts or \$0.70 for unified districts.

Reform the current district transportation formula. Arizona's long standing formula that provides transportation funding to school districts is both flawed and antiquated. Among other problems, the current system actually provides more per-pupil transportation funding to districts that are losing students and experiencing decreased demand for transportation dollars. What would normally be a rather simple transportation funding system (approved daily route miles multiplied by the per-mile support level) is complicated by a formula that holds districts harmless at their highest historical transportation expenditure.

The formula funding on actual route miles is called the Transportation Support Level (TSL). The historical high water mark is called the Transportation Revenue Control Limit (TRCL). The state is only liable for the actual route miles or the TSL. For districts with higher TRCL's, those dollars are funded through a local district property tax.

ATRA will pursue legislation to phase out the TRCL and transition districts to a more equitable per pupil allotment.

County Flex Language

Beginning in FY 2009, counties were provided the broad authority to shift revenues from their special revenue funds and countywide special taxing districts to their general funds. The initial intent of this broad authority was to offset state cost shifts that began during the Great Recession. This "flexibility" language is provided to counties in state statute as well as session law in the state budget every year. To date, counties have shifted more than \$65 million from their special revenues that were intended for a specific purpose into their general funds to fund any county fiscal obligation. Although the state cost shifts have ceased, this broad authority remains. ATRA will pursue legislation to repeal the authority in state statute and to discourage lawmakers from continuing this practice as they negotiate the FY 2023 state budget.



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ATRA SUPPORTS HB2749

Simplifies Residential Contracts under Prime Contracting

Arizona's prime contracting tax is generally regarded as the most complex and inefficient area of Arizona's transaction privilege tax (TPT) system. Unlike most other states that tax materials at retail, Arizona's prime contracting tax system allows contractors to purchase materials tax-free at retail with the use of exemption certificates, and instead, pay taxes on 65% of the gross proceeds of the contract upon completion of the project. The ability to purchase materials tax-free on an honor system can certainly lead to noncompliance- not an ideal feature of any tax system.

In 2012, Governor Brewer's TPT Simplification Task Force recommended the state "aggressively" transition from the current prime contracting tax to a tax on materials at retail. Although a total elimination of prime contracting was not accomplished, the Legislature did achieve carving out certain activities from the contracting tax to a tax on materials at retail that involved maintenance, repair, replacement, and alteration (within certain thresholds), now known as MRRA.

All maintenance, repair, and replacement activities were moved from prime contracting to retail. However, for "alteration" projects to qualify under MRRA and remain subject to the retail tax, certain thresholds could not be exceeded. For residential property, the contract price for the alteration cannot exceed 25% of the property's full cash value and \$750,000 for commercial property. For either a residential or commercial contract, there is a 25% cushion for changes made to contracts that may initially qualify under MRRA without being pulled back into prime contracting.

While the intent of MRRA was to simplify tax compliance for contractors, there is still much confusion as to which activities are considered an "alteration" to property (subject to the prime contracting tax if the 25% threshold is exceeded) or if the activity is considered "replacement" (subject to tax under MRRA). For example, according to guidance provided by the Arizona Department of Revenue (ADOR), a residential contract to remodel a kitchen that includes replacement of existing flooring and appliances is considered MRRA. However, if the contract also includes the addition of a new kitchen island, the entire contract is then considered an "alteration" and would be subject to the prime contracting tax if it breaches the 25% threshold.

HB2749 will simplify residential MRRA projects under the Prime Contracting class so that residential contracts that do not involve adding or expanding the square footage of the structure will pay tax on the materials at retail rather than be subject to the prime contracting tax.



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ATRA SUPPORTS HB2822

Business Personal Property Valuation Reduction

Sponsored by Rep. Jeff Weninger, HB2822 reduces the compliance and tax burden associated with business personal property taxes by valuing property that is initially acquired during or after tax year 2022 at 2.5% of the acquisition price. The bill applies only to locally assessed personal property and not to the centrally valued personal property of utilities and mines, for example. Since the reduction applies only to newly acquired personal property, the reduction in the overall personal property tax base will be gradual as existing personal property is fully depreciated.

The business personal property tax is one of the most cumbersome taxes for businesses to comply. Businesses are required to annually report all of their personal property to the county assessor based on the type of property and the year in which the property is acquired for each business location. The county assessor then depreciates the personal property according to tables generated by the Department of Revenue to determine the taxable value. The level of compliance required to report and value personal property appears high compared to the revenue it generates, which is why various tax study committees over the years have recommended reducing the personal property tax as well as its full elimination.

In the early 90's, legislation was enacted to accelerate the depreciation of locally assessed commercial and industrial personal property, which was later expanded to include agricultural property and other types of business personal property. In 1996, the Legislature referred to the ballot a measure that was approved by voters to exempt the first \$50,000 in personal property for commercial and agricultural businesses to alleviate the burden on small businesses. Due to a later statutory change in the inflation factor used to adjust the \$50,000 exemption, that amount has now increased to \$207,366 as of tax year 2022.

As a result of the various legislative changes over the last 25 years, the business personal property tax does not account for a significant amount of state and local property taxes. For example, in the early 2000's, the locally assessed personal property generated approximately \$227 million in taxes, or 5.1% of the total tax base. Twenty years later, the taxes generated from the personal property tax have increased only 15% to \$261 million, representing just 3% of the tax base.



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ATRA SUPPORTS SB1093

Class One Assessment Ratio Reductions

Following passage of last year's tax package that reduced the assessment ratio on business property to 16% through 2025, Senator J.D. Mesnard sponsored SB1093 which drops the ratio further to 15% in 2027.

SB1093 Class 1 Property; SETR		
Tax Year	Class 1 A/R	SETR
2026	15.50%	\$0.3295
2027	15.00%	\$0.2871

Like past class one assessment ratio reduction bills, last year's legislation was accompanied by an increase in the homeowner rebate and tax capacity was granted to Arizona's fire districts by increasing their tax rate cap. This year's legislation again granted fire districts rate relief and additional tax reductions were provided across the board by reducing the state equalization tax rate (SETR) in the last two years of the phase down.

Fire District Tax Rate Relief

Tax Year	Rate Cap
2021	\$3.25
2022	\$3.375
2023	\$3.50
2024	\$3.75

As was the case last year, a large business coalition joined forces to advocate for the change including: *Arizona Chamber of Commerce, Building Owners & Managers Association of Greater Phoenix (BOMA), Commercial Real Estate Executives for Economic Development (CREED), East Valley Chambers of Commerce Alliance, Greater Flagstaff Chamber of Commerce, Greater Phoenix Chamber, National Association of Industrial and Office Properties (NAIOP), National Federation of Independent Business (NFIB), and Tucson Metro Chamber.*

Description	Tax Year						
	1980	1985	1990	1995	2000	2011	2016
Mines & Utilities	52%	34%	30%	29%	25%	20%	18%
Telecomm, gas, water, utility, pipeline	44%	34%	30%	29%			
Commercial/Industrial	25%	25%	25%	25%			
Vacant Land/Ag	16%	16%	16%	16%	16%	16%	15%
Residential Owner-Occupied	10%	10%	10%	10%	10%	10%	10%
Residential Rental	18%	17%	14%	10%	10%	10%	10%

The success in achieving greater equity for business property taxpayers comes after decades of consistent advocacy along with a recognition that policymakers, local governments, and other property taxpayers would only accept the reform in small increments over time.

In 1980, the centrally valued property (CVP) of mines and utilities were assessed as high as 52%, 44% for other CVP, and 25% for all locally assessed (LAP) commercial and industrial property. By 2000, the Legislature had successfully collapsed CVP and LAP into the same class and reduced the assessment ratio of mines and utilities to 25%. Even with the reduced assessment ratio, businesses still paid 2.5 times more in property taxes than residential property that is assessed at only 10%.

In 2005, the Legislature made the passage of business property tax reform a major priority and was successful in reducing the business assessment ratio from 25% to 20% over a ten-year period. To address concerns about impacts to residential property, lawmakers balanced each percentage decrease in the class one ratio with a percentage increase in the homeowner rebate from 35% to 40%. During the 2007 legislative session, the ten-year phase-down was accelerated four years to reach the 20% mark by 2011 instead of 2015.

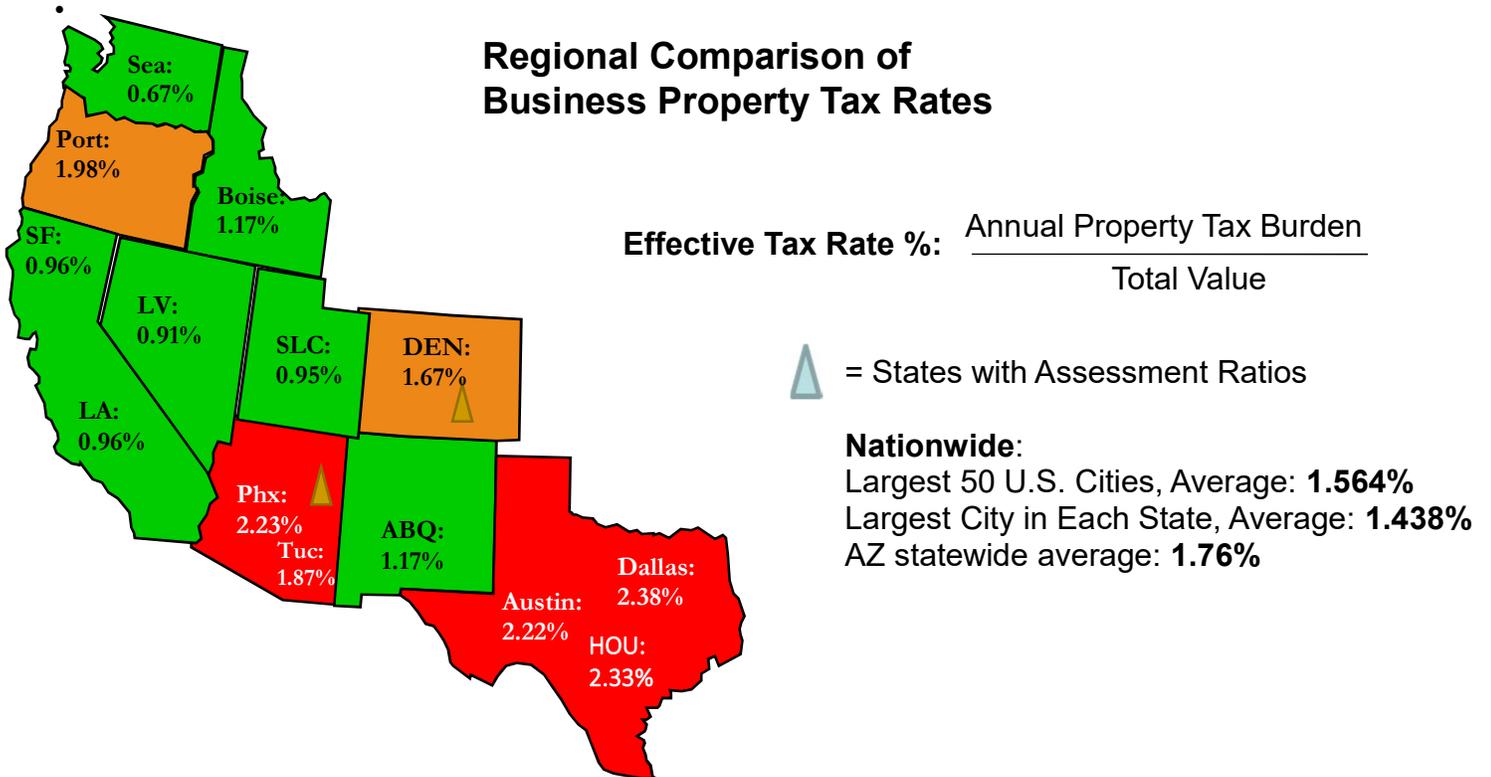
By 2011, Arizona’s national business tax ranking had improved somewhat by dropping from the top five to 15th highest. During that legislative session, the Legislature enacted a recommendation from Governor Brewer that reduced the business assessment ratio to 18% over four years. The same measure included a reduction in the agricultural classification from 16% to 15% in tax year 2016 and again included another increase in the homeowner rebate.

SB1828 Tax Omnibus		
Tax Year	Class 1 A/R	H.O. Rebate
2021	18.00%	47.19%
2022	17.50%	50.00%
2023	17.00%	50.00%
2024	16.50%	50.00%
2025	16.00%	50.00%

THE ARIZONA BUSINESS COMMUNITY SUPPORTS PROPERTY TAX REFORM – SB1093

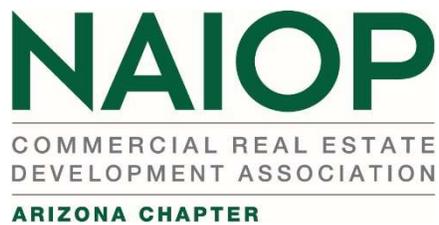
Right Size Arizona’s Business Property Tax

- Lowering the Class 1 Assessment Ratio to 15% moves the state towards a more equitable, sustainable property tax base
- Arizona’s business property taxes are uncompetitive
- AZ ranks high both regionally and nationally in business property taxes
- As opposed to targeted tax breaks for well-connected or new businesses, this policy path creates greater equity for all Arizona businesses



Source: 50-State Property Tax Comparison Study, Minnesota Center for Excellence, Tax Year 2020, comparing medium sized industrial property.

ORGANIZATIONS IN SUPPORT





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HCR2015 - Proposition 132

Initiatives; supermajority vote; requirement

Proposition 132 would increase the threshold for voter approved initiatives and referendums to approve a tax to sixty percent. Arizona has a rich history of establishing important public policy through voter approved initiatives and referendums. Proposition 132 will provided an added degree of protection for Arizona taxpayers regarding future efforts to increase taxes in statewide elections.

In 1992, through the Proposition 108 initiative, Arizona citizens voted overwhelmingly to impose 2/3's voter requirement on tax increases imposed by the Arizona State Legislature. That law has served taxpayers well over the last 30 years.

Adjusted for inflation, Arizona's per capita taxes grew 53% between 1980 and 2020. Our tax system clearly generates ample revenue for state and local governments and efforts to change our tax system at the ballot box run the risk of doing significant long-term damage. Ensuring that future tax increases garner broad public support is good policy and creates needed stability in Arizona's tax code.

SCR1011 – Proposition 130

Constitutional Property Tax Exemptions

ATRA supports Prop 130 because it restores the tax benefit provided to Arizona's disabled veterans that was struck down by the courts due to unconstitutional residency requirements. The exemption is provided to honorably discharged veterans and the amount of the exemption is based on the percentage of the veteran's service or nonservice connected disability as rated by the U.S. Department of Veterans Affairs.

Furthermore, ATRA believes it is good tax policy to move these modest property tax exemptions for veterans, widowers, and business personal property into state statute in order to provide our State Legislature the flexibility to react when circumstances change.



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ATRA OPPOSES HB2156

*Lawmakers Should Question the Policy & Constitutionality of
This Refundable Tax Credit*

HB2156 establishes \$125 million in annual refundable income tax credits for the motion picture industry.

The tax credits are based on a percentage of each company's level of spending. For a motion picture production company that spends \$35 million for instance, the tax credit is equal to 20%, or \$7 million. The tax credits can climb even higher with additional spending. Credits are first used to offset the production company's tax liability, if any. **In the event the production company has no tax liability, the Department of Revenue (DOR) must "write a check" to the company for the outstanding credit.**

ATRA is strongly opposed to the refundable tax credits under HB2156 for several reasons.

Refundable tax credits are the "first draw" on state revenues. These credits appropriate state funds ahead of funding for schools, health care, and prisons, among many other state funding needs. This statutory refundable tax credit allows the beneficiaries to avoid the annual public process of having to compete with others for state appropriations.

Furthermore, a "refundable" tax credit may not be a credit against any tax liability at all. If a company isn't profitable and therefore doesn't have any tax liability, DOR must still issue a check to the company for the full amount of the credit - \$7 million in the example above.

Lastly, ATRA believes these refundable tax credits are unconstitutional under the Arizona Constitution. An analysis by the Goldwater Institute describes how Arizona's Gift Clause prohibits the disproportionate gift of public resources to private enterprises. Goldwater reinforced that "government may only give public resources to a private entity in exchange for direct, obligatory consideration, and that consideration must not be disproportionate to the cost to the public." Under HB2156, the company is only required to satisfy the location requirements for production and filming and any other benefits associated with production activities are "indirect" benefits, and therefore, would not be considered as offsets to the public benefit received by the private entity. Because HB2156 provides significant refundable tax credits to companies without receiving a direct benefit in return, the tax credit scheme under HB2156 would likely be in violation of the Arizona Constitution's Gift Clause (*See also Legislative Council memo on following pages*).

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 13, 2022

TO: Representative Travis Grantham
FROM: Ken Behringer, General Counsel
RE: S.B. 1708; Gift Clause (R-55-119)

BACKGROUND

Senate Bill 1708 would establish an individual and a corporate income tax credit for motion picture production costs. The credit would range from fifteen percent to twenty percent of the production costs. Additional amounts for the credit would be allowed based on labor costs and the use of certain facilities in this state. The amount of the tax credit that exceeds Arizona income tax liability would have to be paid to the motion picture production company within one hundred eighty days after the Arizona commerce authority notifies the department of revenue that the motion picture production company may claim the tax credits. The Arizona commerce authority could not approve more than \$150,000,000 in tax credits in a calendar year.

QUESTION

Would the tax credit that would be established by Senate Bill 1708 violate Constitution of Arizona article IX, section 7 (Gift Clause)?

ANSWER

Whether tax credits provided to a motion picture production company would violate the Gift Clause depends on the facts of each case. The tax credit would violate the Gift Clause if the value of the tax credits provided to the motion picture production company far exceeds the value to the state of the acknowledgement of Arizona in the motion picture credits.

DISCUSSION

The Gift Clause of the Arizona Constitution provides that the state shall not "give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation" Constitution of Arizona article IX, section 7. Giving is upheld when the state action serves a public purpose and adequate

consideration is provided for the public benefit conferred. *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 348-49 (1984).

An initial question is whether a tax credit for motion picture production costs would be a donation or grant of state monies to a motion picture production company that claimed the credit. The Arizona Supreme Court did hold that the tax credit for donations to school tuition organizations (STO) was not a gift to the school for the purposes of the Gift Clause. The Court stated:

This constitutional provision was historically intended to protect against the "extravagant dissipation of public funds" by government in subsidizing private enterprises such as railroad and canal building in the guise of "public interest." . . . Such "evils" do not exist here. Neither do we agree with petitioners that a tax credit amounts to a "gift." One cannot make a gift of something that one does not own.

Kotterman v. Killian, 193 Ariz. 273, 288, ¶ 52 (1999) (citation omitted).

This case is not totally relevant to Senate Bill 1708, however, because it examined whether the state was giving a gift to the school by providing a tax credit to the person who actually contributed to the school. Here the question is whether the taxpayer has received a gift by getting the tax credit.

Another difference between the statute in *Kotterman* and Senate Bill 1708 is the effect of the tax credits. If the credit for a donation to an STO exceeded a taxpayer's tax liability, the credit could only be carried forward for up to five years. Unused tax credits could never be refunded. The tax credit is an adjustment to the taxpayer's tax liability.

If the tax credit in Senate Bill 1708 exceeds the taxpayer's tax liability, the excess must be refunded to the taxpayer. The tax credit is not just an adjustment of the motion picture production company's tax liability but a method of making a payment to the motion picture production company. So, the tax credit could be considered a gift if the payment is not for a public purpose or the state does not receive sufficient consideration for the payment.

The threshold for determining a public purpose is not very high. A public purpose is absent only in those rare cases in which the governmental body's discretion has been "unquestionably abused." *Turken v. Gordon*, 223 Ariz. 342, 349, ¶ 28 (2010) (citation omitted). The purpose and intent of the bill as amended by the House of Representatives Appropriations Committee is:

[T]o create a competitive motion picture production industry presence and market in this state that will develop a substantial motion picture production industry workforce and encourage major capital investment in qualified production facilities in this state, and accordingly the intent of

the legislature is to provide a program that creates long-term economic benefit to this state.

The courts give great deference to the legislature in the determination whether an expenditure is for a public purpose. *Id.* at 346-47, ¶ 14. A court would probably find that the purposes prescribed in Senate Bill 1708 are public purposes.

A finding of a public purpose alone does not satisfy the Gift Clause. *Id.* at 347, ¶ 18. The value received by the state cannot be far exceeded by what it gives up. *Id.*

In determining the adequacy of consideration received by the state, the courts will not consider indirect benefits. *Id.* at 350, ¶ 33. In evaluating sufficiency of consideration:

[A]nalysis of adequacy of consideration for Gift Clause purposes focuses instead on the objective fair market value of what the private party has promised to provide in return for the public entity's payment.

Id.

Indirect benefits can include the economic benefits provided by the activities of the private entity that receives a benefit from the public or the increased transaction privilege tax generated by the private entity. *Schires v. Carlat*, 250 Ariz. 371, 377, ¶¶ 16 and 18 (2021). Items like these provide no bargained-for direct benefit to the state, so they are insufficient under the Gift Clause. *Id.* at 377-78, ¶ 20.

Also, unlike the determination of a public purpose, the courts will not give deference to a legislative determination of the adequacy of the consideration received. *Id.* at 378, ¶ 23. The Court stated:

[D]eferring to the public entity under the second prong is not "appropriate," as the inquiry is an objective one and does not involve subjective policy decisions. . . . In deciding the sufficiency of consideration under the second prong, courts should not give deference to the public entity's assessment of value but should instead identify the fair market value of the benefit provided to the entity and then determine proportionality.

Id. (citation omitted).

Under Senate Bill 1708, a motion picture production company must do all of the following to qualify for the tax credit:

1. Use a qualified production facility in this state to produce the motion picture or, if the production is filmed primarily on location, film the production primarily in this state and do all preproduction, postproduction and editing at a facility in this state, if such a facility is available.

2. Maintain the motion picture production company's production labor positions in this state.

3. Include in the motion picture's credits an acknowledgement that the production was filmed in this state.

The sufficiency of the consideration received by the state compared to what the state provides a private entity depends on the facts of each situation. However, the benefit received by the state by the first two requirements noted above is the general economic impact of producing motion pictures in this state. Therefore, a court would not consider them in determining the application of the Gift Clause because they are not bargained-for direct benefits.

If the state wanted to promote itself through advertisements, it would have to pay for those advertisements. Therefore, the acknowledgement of Arizona in the film credits does have value to this state. How this value compares to the value of the tax credits will vary in each case. Therefore, whether the provision of the tax credit violates the Gift Clause will depend on whether the value of the tax credits far exceeds the value of the acknowledgement of Arizona in the motion picture credits.



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ATRA OPPOSES SB1374

Unconstitutional End Run of College Expenditure Limits

In an attempt to avoid going to their voters for relief from their constitutional expenditure limits, the Arizona Community Colleges are seeking that relief from the Arizona Legislature. An Arizona Legislative Council memo notes the Constitution made clear that any significant change in spending capacity would have to be approved by the voters – the ones that approved their creation. Legislative Council notes **“An interpretation that the legislature has broad authority to overcome the limitation on community college expenditures is contrary to the reasons for adopting the limitation.”**

The change to counting community college FTSE prescribed in SB1374 will cause the expenditure limit of each college to skyrocket 25% - making a complete mockery of these voter approved limits. College lobbyists have argued that these limits are old and archaic. We would hope everyone would agree there is no shelf life for the Constitution. As Pima Community College did in 2000, the only legal relief for the colleges to exceed their expenditure limits is with the voters.

ATRA Strongly Encourages Lawmakers to Vote NO on SB1374!

ARIZONA LEGISLATIVE COUNCIL

MEMO

March 1, 2022

TO: Representative Ben Toma
FROM: Ken Behringer, General Counsel
RE: Senate Bill 1374; Expenditure Limitation (R-55-95)

BACKGROUND

Senate Bill 1374 would amend Arizona Revised Statutes (A.R.S.) section 15-1401¹ to add to the definition of "full-time equivalent student" for community college purposes. The definition of full-time equivalent student for the purposes of calculating the community college district expenditure limitation would be student enrollment for twelve community college semester credit units per semester. A.R.S. section 15-1401, paragraph 9, subdivision (a). For all other purposes, the definition would remain student enrollment for fifteen community college semester credit units per semester. *Id.*, subdivision (b).

Senate Bill 1374 would also change how the economic estimates commission calculates the expenditure limitation for community college districts. Currently, the number of full-time equivalent students for the fiscal year for which the limitation is being determined (limitation year) is divided by the number of full-time equivalent students for the 1979-1980 fiscal year as part of the total calculation for the expenditure limitation. A.R.S. section 41-563, subsection B, paragraph 4 (current statute). Full-time equivalent students for both parts of this calculation are based on enrollment for fifteen community college semester credit units per semester. *Id.*

This calculation would be changed beginning in fiscal year 2022-2023. Full-time equivalent students for the numerator (i.e., the limitation fiscal year) would be defined as students earning twelve community college semester credit units per semester. A.R.S. section 41-563, subsection B, paragraph 4, subdivision (b). Full-time equivalent students for the denominator (i.e., fiscal year 1979-1980) would be defined as students earning fifteen community college semester credit units per semester. *Id.*, subdivision (a).

¹ References to statutes are to the statutes as they would be amended by the bill unless it is otherwise noted.

QUESTION

Would the calculation of the expenditure limitation for community college districts under Senate Bill 1374 violate Constitution of Arizona, article IX, section 21, subsection (1)?

ANSWER

Yes.

DISCUSSION

The Arizona Constitution prescribes limits on the expenditures by community college districts as follows:

The expenditure limitations shall be determined by adjusting the amount of expenditures of local revenues for each such district for fiscal year 1979-1980 to reflect the changes in the student population of each district and the cost of living. The governing board of any community college district shall not authorize expenditures of local revenues in excess of the limitation prescribed in this section, except in the manner provided by law.

Constitution of Arizona, article IX, section 21, subsection (1).

The economic estimates commission may adjust the expenditure limitation for a community college district in part based on the change in the student population of the district from the 1979-1980 base fiscal year to the limitation fiscal year.² Student population for these purposes is "the number of actual, full-time or the equivalent of actual full-time students enrolled in the school district or community college district determined in a manner prescribed by law." *Id.*, subsection (4), paragraph (e).

The Legislature implemented this provision by enacting A.R.S. section 41-563, subsection B. In the current statute, the student population for the 1979-1980 base fiscal year and the limitation fiscal year is based on the definition of full-time equivalent student in A.R.S. section 15-1401, which is calculated based on enrollment for fifteen semester credit units per semester. A.R.S. section 41-563, subsection B, paragraph 4, subdivisions (a) and (b) (current statute). The legislature recognized that it might change the fifteen-semester credit unit provision of the definition of full-time equivalent student. Therefore, if this number changes, the economic estimates commission must recalculate the student population for the 1979-1980 fiscal year using the same number of units. *Id.*,

² This provision also requires adjustments in the expenditure limitation for changes in the cost of living. The determination of the change in cost of living is made separately from the change in student population. Therefore, while the economic estimates commission must make adjustments for changes in the cost of living, I have addressed only the change in student population in this memorandum.

subdivision (a). This requirement ensures that the comparison between the fiscal year 1979-1980 student population and the limitation fiscal year student population reflects only the change in student population.

As noted above, Senate Bill 1374 would amend this statute to mandate that the economic estimates commission use different definitions for full-time equivalent students for the calculations for the 1979-1980 fiscal year and the limitation fiscal year. The limitation fiscal year definition would use students earning twelve community college semester credit units per semester instead of the fifteen credit units used in determining the fiscal year 1979-1980 student population.

The constitution only allows consideration of the change in student population in the calculation of the community college expenditure limitation. The calculation in Senate Bill 1374 would go well beyond this requirement. This calculation would reflect growth in student population and an arbitrary twenty-five percent growth in the expenditure limitation based on the use of the different definitions for full-time equivalent student. While the legislature can prescribe the manner of determining full time equivalent students, that manner must be consistent with the mandates of the constitution. The determination may reflect only the actual growth in student population and may not be based on arbitrary factors.

The constitution does allow the legislature to prescribe the manner in which a community college may exceed the expenditure limitation. Constitution of Arizona, article IX, section 21, subsection (1). Senate Bill 1374 does not fall within this authority, however. The bill directs how the economic estimates commission must calculate the expenditure limitation. It does not provide a method for a community college to exceed the expenditure limitation calculated by the economic estimates commission.

CONCLUSION

Senate Bill 1374 would violate Constitution of Arizona, article IX, section 21, subsection (1) because it would require the economic estimates commission to consider a factor other than the actual growth in student population in determining an expenditure limitation for a community college district.