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ARIZONA TAX RESEARCH ASSOCIATION

NEWSLETTER

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2-year deseg freeze passes House 52-7

Identical bill passes Senate Education 4-3

House Bill (HB) 2550, placing a two-year freeze on school district desegregation property taxes, passed the House 52-7 on February 12. Two days later, Senate Bill (SB) 1213 was amended in the Senate Education Committee to be identical to HB 2250 and received a "do pass" recommendation by a vote of 4-3.

Sponsored by Representative Steve Huffman and 47 other members of the

Arizona House and Senate, HB 2250 freezes until 2004 the currently unlimited spending allowed by state law intended for school districts that have run afoul of federal laws dealing with racial discrimination.

The bill also establishes two opportunities for the legislature to examine this issue in depth. First is a "joint legislative committee on desegregation expenses" that will report its findings by December 1, 2002. Then a "sunset review of the funding mechanisms for desegregation expenditures" will be conducted and will report its recommendations by December 1, 2003.

Under A.R.S. §15-910 (G-J), school districts may levy unlimited property taxes in excess of the state's limits without voter approval if the district has either a court order of desegregation or an administrative agreement with the U.S. Department of Education's Office for Civil Rights (OCR).

This exemption from the limits may continue even after the court order is lifted or the OCR agreement expires. In addition, districts may also have multiple and overlapping agreements.

Currently, 19 school districts levy outside their budget limits for deseg. However, only two school districts are under court order to desegregate: Tucson Unified School District (TUSD); and Phoenix Union High School District (PUHSD).

The remaining districts have either current or even expired OCR agreements allowing them unlimited access to the property tax.

Legislative update: *Bills to keep an eye on*

As always, numerous bills affecting public finance and taxation have been or will be heard in legislative committees this year.

The following is a selected list of proposed legislation that ATRA is either opposing, supporting or monitoring this session.

ATRA OPPOSES

SB1132 Schools; override elections (Hellon) Allows school districts increased flexibility in their use of capital outlay overrides. *Held in Senate Ed.*

SB1160 Arts facility authority (Cirillo) SB1160 would allow a county, community college, city or town, without voter approval, to form an Arts Facility Authority. Once formed, the Authority would have the power to sell unlimited revenue bonds, again without voter approval. Currently, counties and municipalities are required to receive voter approval before selling revenue bonds.

In addition, the bonds issued by the authority are not considered a legal debt of the state, city or town, community college or county while the authority is in existence. However, upon termination of the authority all outstanding assets, liabilities, and obligations will become the responsibility of the State.

ATRA is opposed to allowing this new jurisdiction to acquire debt without voter approval. *Failed 3rd Read (13-17) - Motion to reconsider granted.*

SB1218 Schools; transportation support level (Smith) Increases the number of days in the district transportation formulas. Quirks in the transportation funding formulas contribute significantly to high property tax rates in many school districts in rural Arizona such as Hayden-Winkelman Unified (see *ATRA Newsletter* for October 2001). *Held in Senate Ed.*

Mark Your Calendars

ATRA invites you to a luncheon featuring
ARIZONA'S GUBERNATORIAL CANDIDATES

*Betsy Bayless
Randall Gnant
Alfredo Gutierrez
Richard Mahoney
Janet Napolitano (invited)
Matt Salmon
Carol Springer*

MASTER OF CEREMONIES:
*Former House Minority Leader
Art Hamilton*

THURSDAY, MARCH 14, 2002

11:30 a.m. Registration
12:00 Luncheon/Forum

The Heard Museum
2301 N. Central Ave. in Phoenix
*Call the ATRA office for details and
reservations*

602-253-9121

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HB 2550 a necessary first step

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A 1990 special study by the Auditor General found that “expenditures budgeted outside of the revenue control limits for desegregation programs are growing” and that “some costs categorized as desegregation expenditures do not appear to be related to desegregation orders and agreements.”

Despite the report’s recommendations that the Legislature take a more active role in strengthening accountability for desegregation programs, no such action was ever taken.

In addition, an Independent Citizens Committee has been tracking desegregation spending in TUSD and has been highly critical of the district’s continued misuse of desegregation funds.

Even a TUSD governing board member has written a detailed report critical of TUSD’s unlimited spending under the flag of desegregation.

During FY 1990-1991, the year in which the Auditor General’s report was released, 10 districts levied \$47.3 million under this provision. For FY 2001-2002, 19 districts levied \$193.8 million. That represents a 309.7% climb over the 10-year period.

Many more districts have OCR agreements that could make them eligible under current statute. Glendale Elementary’s administration has been using their OCR agreement to persuade their governing board to adopt a deseg levy.

HB 2550 will not have an immediate impact on closing the equity gap between districts, but it will put the brakes on the deseg wedge that has been widening the gap with each passing year. “Deseg” levies are budget overrides requiring no voter approval that result in inequities in per-pupil expenditures between districts. Through §15-910.G,

Phoenix Union has a 53.5% override of its revenue control limit that other districts do not have. Non-deseg districts find that they are at a competitive disadvantage in teacher salaries compared to “deseg” districts.

Deseg levies also result in inequities to taxpayers. An actual taxpayer in TUSD is paying as much as 73% more in school district primary property taxes than a similarly valued property would pay in an adjacent district.

§15-910.G has been used to increase property taxes to compensate for the loss of voter-approved overrides. TUSD and, most recently, Washington Elementary provide examples (see *ATRA Newsletter*, May 2000).

Whatever challenges face school districts levying for “deseg” or OCR agreements, they are not unlike challenges facing other Arizona school districts.

HB 2550 will hold relatively constant the impact deseg levies have on the general fund. Deseg levies result in uncontrolled and unappropriated state general fund expenditures through the 35% homeowner rebate and the constitutional one-percent cap.

While there are problems left unaddressed in HB 2550, it is a necessary first step. The Legislature deserves credit for taking it.

Michael Hunter

A TUSD TAXPAYER



The primary school district property taxes levied on this strip mall in the Tucson Unified School District increased 25% in just one year. The owner paid \$6,138 in primary taxes this year to TUSD on this property valued at \$303,534.

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Legislative update

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HB2235 Domestic wastewater improvement districts; formation (Binder) Allows a county board of supervisors with a population less than 800,000 to form or increase the size of a Domestic Wastewater Improvement District without approval of the property owners if the Water Quality Appeals Board enters an order finding that the area in the proposed district has a significant need for wastewater improvements to protect or enhance the quality of drinking water or the public health and safety within the district. *Discussed and Held in Retirement & Government Operations.*

HB2409 Comprehensive transaction privilege tax (Camarot) In an attempt to expand Arizona's already broad transaction privilege tax (TPT) base, HB2409 repeals several TPT and use tax exemptions and adds professional services. Some examples include:

- ◆ Sales of tangible personal property (TPP) by various nonprofit organizations.
- ◆ TPP used in environmental response or remediation activities.
- ◆ Coal, petroleum, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer.
- ◆ Sales of TPP to be incorporated or installed as part of environmental response or remediation activities.
- ◆ Machinery, equipment or transmission lines used directly in producing or transmitting electrical power and machinery or equipment used directly to drill oil or extract oil or gas for commercial purposes.
- ◆ Pipes or valves 4 inches in diameter or larger used to transport oil, natural gas, water or coal slurry, etc.
- ◆ TPP used to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunication information.
- ◆ Sales of ancillary services, electric distribution, generation, and transmission services, and other related services related to providing electricity to a retail electric customer located out of state.
- ◆ Sales from a contract for site preparation, constructing, furnishing or installing

machinery in response to a release or suspected release of a hazardous substance.

HB2409 also seeks to expand the sales tax base by adding professional services, such as automotive repairs, legal services, pest control, environmental consulting, health clubs, cable television services, and much more. In addition, this bill adds both secondary and postsecondary sports events to the tax base. A fiscal note on the size of the proposed tax increase has not yet been made available. *Awaiting committee meeting.*

HB2197 New construction; valuation (Binder) Extends the Assessor's property valuation deadline on all new construction, additions, deletions, splits or consolidations, and changes in property use from September 30 to December 31 (three months). Also pushes the appeals calendar forward from the third Friday in November to the third Monday in February, which extends beyond the February 10 deadline for Assessor's to deliver the final values to state and local governments.

According to the current schedule, assessors are required to submit their net assessed values to all cities, towns, community colleges, and the state by February 10 of each year so that these agencies can begin the budgeting process, which includes the adoption of tax rates. Although the February 10 data includes estimates for personal property, it is considered final and used for Truth in Taxation hearings at the state and local level.

If passed, HB 2197 would dramatically undermine the integrity of the values used for both the Truth in Taxation and budgeting processes. *Awaiting Ways & Means Committee meeting.*

HB2378 Parks and recreation district (McClure) Allows a county board of supervisors to form a Parks and Recreation District upon voter approval. Once formed, the district may levy a maximum transaction privilege tax rate of 5% of the TPT rate in affect on January 1, 2001.

In addition to the continued carving up of county government into special districts, ATRA is opposed to providing more access to the sales tax base than is currently provided. *Held in Public Institutions and Rural Affairs.*

ATRA SUPPORTS

HB2165 school districts; bonding; computers; prohibition (Gray) Students FIRST legislation prohibited school districts from using bond debt to purchase "soft capital." Examples of soft capital found in statute include "short-term capital items . . . such as technology, textbooks, library resources, instructional aids, pupil transportation vehicles, furniture and equipment." Despite this prohibition, at least some districts have nevertheless purchased computer hardware with the proceeds from 20-year bonds. This bill clarifies that school districts shall not use bond proceeds to purchase computer hardware. *Passed the House 33-26. Next to Senate Ed.*

HB2196 Government budgets; summary estimates (Binder) Provides that the governing body of each county, city or town is required to publish only a summary rather than detailed estimation of expenses. *Retained in COW.*

HB2243 Contract auditors; contingent fees; prohibition (May) Restricts the Department of Revenue from hiring auditors on a contingency basis to conduct audits of any TPT or use tax levied by the entity. *Awaiting Commerce & Economic Development.*

HB2244 Tax court; direct appeals (May) Allows a taxpayer to file an income, TPT or use tax appeal directly to tax court within 30 days of receiving the decision from the Department. *Held in Ways & Means.*

HB2246 Public health service districts; elections (May) Repeals the portion of law that allows a county board of supervisors to establish a public health services district without voter approval. *Awaiting Health Committee meeting.*

See Legislation, page 4

Legislation worth noting

Continued from page 3

SB1114/HB2250 Secondary property tax; assessment percentage (Daniels, May)

Changes the assessment ratio for all classes of property to 10% of the secondary value for the payment of principal, interest, and redemption charges on bonded indebtedness and other long-term obligations for school districts, community college districts, cities, towns, and counties authorized by the voters after December 31, 2002. *SB1114 – Awaiting Senate Finance, HB2250 – Retained in COW.*

HB2300 Direct use tax payments (May)

Creates a use tax direct payment permit to allow a business to self assess and pay TPT taxes directly to the Department and cities and towns. *Awaiting Rules.*

HB2510 Schools; random ADM audits (Knaperek)

Requires the Arizona Department of Education to conduct random on site audits of reported student counts. *Awaiting House Ed.*

HB2521/SB1416 Schools; excess utilities; cap (Knaperek/Bennett)

Prop. 301 enacted laws that, after FY 2009, eliminates the ability for school districts to exceed their budget limits and levy property taxes for excess utilities. However, Prop. 301 did not cap excess utilities or phase it out. Meanwhile, budgeted excess utilities expenditures have increased from approximately \$60 million last year to \$67.8 million in FY 2002. This legislation simply caps excess utilities budgets at the FY 2002 level. *Awaiting House Energy, Utilities and Technology. Failed in Senate Ed 3-4.*

HB2522 Joint technological education districts; moratorium (Knaperek)

Authority for special taxing jurisdictions called Joint Technological Education Districts (JTEDs) was created in the early 1990s to provide for efficiencies in the delivery of capital intensive technological education by centralizing the effort of neighboring school districts. However, there has been a shift away from this “centralized” model to what has been described as a “satellite model” in which existing school district and community college facilities

(through dual enrollment) are used for the JTED classes. There are currently eight JTEDs involving 39 school districts, not to mention numerous community colleges. This bill prevents new JTEDs from forming until 2007 and establishes a study committee to revisit the reasons for these special districts. *Held in House Ed.*

HB2523 Schools; Medicaid reimbursements (Knaperek)

Requires the school districts to spend Medicaid reimbursement revenue for special education purposes and requires the Arizona Department of Education to include this revenue in their biennial special education cost study report. *Held in House Ed.*

SB1071 Internal revenue code conformity (Bundgaard)

Arizona’s cross-references to the federal internal revenue code are revised to refer to the laws in effect as of January 1, 2002. Tax filing extensions are extended to taxpayers located or serving in disaster areas or combat zones. This year’s conformity increases in importance because of the change made at the federal level with the Economic Growth and Tax Relief Reconciliation Act of 2001. Fiscal impact: FY 2002: \$6.23 million; FY 2003: \$33.2 million; FY 2004: \$55.4 million; FY 2005: \$79 million. *Held in Republican Caucus.*

ATRA IS MONITORING

SB1220/HB2313 county jail tax; extension (Solomon, Blendu)

Upon voter approval, extends the current one-fifth of one percent jail tax 20 years beyond the current 9-year/\$900 million sunset, without a cap on total collections. Expands the use of collections to include not only the construction but also the renovation of jail facilities, which is redefined to include related support facilities, and to implement “other programs” designed to reduce the expense of adult and juvenile jail facilities. *SB1220 – Awaiting Finance Committee, HB2313 – Held in Counties & Municipalities.*

ATRA opposed SB 1220 prior to the amendment reinstating the maintenance of effort provision.

SCR1002 Property tax increase; notice; hearing (Bundgaard)

If passed by the voters in the next general election, the legislature is required to enact a law requiring a community college district, city, town or county that proposes to increase primary property taxes to hold a public hearing and submit the proposed levy increase to voters. *Held in Finance on 2/11/02. Striker to be proposed in Senate Finance on property tax indexing.*

HB2186 Income tax credit review (May)

Establishes a Joint Legislative Income Tax Credit Review Committee to include members from the House Ways & Means and Senate Finance Committees and the Department of Revenue. The commission will be required to determine the purpose of existing income tax credits and establish a standard for evaluating and measuring the success or failure of the tax credits. Allows the committee to utilize staff from JLBC, DOR, and Legislative Council for assistance. Establishes a review schedule for various income tax credits between 2002 and 2006.

In addition, HB 2186 requires that any new income tax credit enacted by the legislature include the year in which the credit will be reviewed and a purpose clause that explains the rationale and objective of the credit. The committee is required to report its findings and recommendations to the President of the Senate, the Speaker of the House, and the Governor by December 15 of the year that the credit is reviewed. *Awaiting Rules.*

SB1228 TPT and use tax exemption review (Bundgaard)

Reestablishes the Joint Legislative Tax Committee to analyze the state tax structure, tax burdens on individuals and businesses, and tax incentives for businesses. The committee will be responsible for evaluating and measuring the success or failure of exemptions. Also establishes a review schedule for the committee to review all TPT and use tax exemptions over a five-year period.

As introduced, SB1228 would have sunset several TPT exemptions beginning in tax year 2005. ATRA opposed those sunset provisions and they were amended out of the bill in Senate Finance. *Awaiting COW.*

Arizona's Expenditure and Revenue Rankings

They're not what you've been told . . .

Following a recent report that Arizona ranks last in per capita state and local spending, ATRA received numerous requests for the actual U.S. Census Bureau data.

On a per capita basis Arizona ranks 41st nationally.

However, on a personal income basis (a more meaningful measure for comparative purposes) Arizona ranks 33rd.

As for the revenue side, again according to data published by the U.S. Census Bureau, Arizona ranks 25th in terms of the percentage of personal income remaining after state and local taxes have been extracted.

Source: U.S. Census Bureau, State and Local Government Finance, 2001, ATRA calculations.

	TOTAL EXPENDITURES: STATE & LOCAL GOVERNMENT				Per capita income remaining after all state & local taxes	
	Per \$1,000 personal income		Per Capita		FY 1999	Ranking
	FY 1999	Ranking	FY 1999	Ranking		
Alaska	470.98	1	13,041	1	89.7%	12
Wyoming	296.02	2	7,379	3	88.7%	33
New Mexico	288.13	3	6,079	14	87.8%	44
New York	274.93	4	8,844	2	86.0%	50
Utah	264.13	5	5,807	20	88.3%	41
North Dakota	260.54	6	5,967	18	88.5%	39
Mississippi	259.68	7	5,164	39	88.9%	29
Oregon	257.18	8	6,608	8	90.0%	6
West Virginia	255.97	9	5,196	37	88.3%	41
Montana	252.67	10	5,367	33	89.1%	25
Washington	246.70	11	6,980	4	88.9%	29
Hawaii	244.82	12	6,573	10	87.7%	46
South Carolina	244.45	13	5,445	31	89.5%	13
Louisiana	244.17	14	5,446	30	89.2%	20
Alabama	242.87	15	5,350	34	90.9%	3
Maine	237.21	16	5,557	28	86.1%	49
California	235.83	17	6,576	9	88.6%	36
Nebraska	232.43	18	5,992	17	89.2%	20
Kentucky	232.20	19	5,155	40	88.9%	29
Wisconsin	231.10	20	6,033	15	87.3%	48
Idaho	229.56	21	4,948	45	88.7%	33
Tennessee	229.50	22	5,587	27	91.2%	1
Vermont	228.85	23	5,643	24	87.8%	44
Minnesota	228.58	24	6,674	6	87.7%	46
Iowa	227.04	25	5,625	26	89.2%	20
Delaware	222.19	26	6,484	11	88.8%	32
Rhode Island	221.80	27	6,192	13	88.4%	40
United States	220.21		5,963		89.0%	
North Carolina	219.70	28	5,515	29	89.4%	18
Arkansas	217.78	29	4,607	50	88.7%	33
Michigan	216.74	30	5,784	22	88.6%	36
Ohio	215.88	31	5,639	25	89.0%	28
Pennsylvania	215.28	32	5,894	19	89.3%	19
ARIZONA	213.63	33	5,036	41	89.1%	25
Oklahoma	211.54	34	4,670	49	89.5%	13
Nevada	208.71	35	5,997	16	89.8%	8
Georgia	205.72	36	5,272	36	89.2%	20
South Dakota	204.25	37	4,846	48	90.5%	4
Florida	200.92	38	5,338	35	90.0%	6
Massachusetts	199.75	39	6,637	7	89.1%	25
Indiana	198.57	40	4,971	44	89.5%	13
Colorado	198.32	41	5,795	21	89.8%	8
Texas	197.25	42	5,005	43	90.3%	5
Kansas	197.19	43	5,036	41	89.2%	20
Missouri	192.46	44	4,862	47	89.8%	8
Illinois	191.51	45	5,713	23	89.5%	13
New Jersey	184.57	46	6,296	12	88.6%	36
Virginia	184.48	47	5,165	38	89.8%	8
Connecticut	181.64	48	6,783	5	87.9%	43
Maryland	176.55	49	5,402	32	89.5%	13
New Hampshire	167.36	50	4,904	46	91.2%	1

ATRA to file *amicus* brief in Navajo County appeal

The ATRA Board of Directors voted unanimously to file an *amicus* brief in the case of *Navajo County v. The Property Tax Oversight Commission* (PTOC).

In tax year 2000, Navajo County exceeded its levy limit by \$275,000 to pay for settlements from hospitals that provided healthcare to indigent residents during the years 1994 through 1999. The county contended that these settlements were actually “involuntary obligations” in which the constitutional levy limits should not apply. On December 15, 2000, the PTOC ruled that the settlements were in fact subject to constitutional levy limits. The PTOC’s decision, in turn, precipitated an appeal to Tax Court by Navajo County.

The Tax Court decision, filed on September 20, 2001, upheld the PTOC decision that the payments were not “involuntary payments” and as such were subject to the constitutional levy limit.

In finding in favor of the PTOC, the court held that, in order to exceed the constitutional levy limit, the county must demonstrate that the indigent healthcare costs were “unpredictable, extraordinary, and which could not have been planned for or adequately foreseen.” Instead, the court found that the county lacked competent evidence to support their case.

The court concluded that the county did not show that there were catastrophic or unusual healthcare events that took place or that there was a substantial increase in the number of indigent residents requiring healthcare during this time that would have prevented the county from budgeting for such services.

In addition, the court addressed other options that were available to the county that the county chose to ignore, such as building a county hospital, contracting with

healthcare providers for indigent healthcare at reduced rates, or purchasing insurance to cover the expenses of anticipated indigent healthcare.

Finally, the court decided that the county could have easily projected its indigent healthcare costs for the specified time frame or that the county could have even deferred some of its current payments and budgeted for additional payments in future fiscal years.

As Navajo County exhausts the appeals process by taking the next step before the Court of Appeals, they continue to exceed the levy limit for the second year by \$215,041, bringing the total excess levy to \$490,041.

ATRA’s *amicus* filing is being handled by Michael Galloway from the law firm Quarles & Brady Streich Lang LLP.

Jennifer Schuldt