

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – First Regular Session

**COMMITTEE ON WAYS AND MEANS**

Minutes of Meeting  
Monday, January 24, 2011  
House Hearing Room 1 -- 2:00 p.m.

Chairman Harper called the meeting to order at 2:22 p.m. and attendance was noted by the secretary.

**Members Present**

Mr. Chabin  
Mr. Farley  
Mr. Gallego

Mr. Gray  
Mrs. Lesko  
Mr. Mesnard

Mr. Olson  
Mr. Vogt, Vice-Chairman  
Mr. Harper, Chairman

**Members Absent**

None

**Committee Action**

HB2139 – DISCUSSION ONLY  
HB2201 – DISCUSSED AND HELD  
HB2202 – DPA (7-1-0-1)

HB2207 – DISCUSSION ONLY  
HB2230 – DP (6-3-0-0)  
HCR2006 – NOT ASSIGNED

**CONSIDERATION OF BILLS**

**HB2207 – special health care districts; procurement – DISCUSSION ONLY**

Chairman Harper announced that HB2207 will be discussed only.

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2207 requires certain services under contract with the Maricopa County Special Health Care District (District) to be procured by requests for proposal and a ranking system rather than a process that limits competition or excludes certain binders (Attachment 1).

Mr. Gallego asked if there is a provision in the bill for a threshold that the District is required to meet. Mr. Gonzalez-Plumhoff replied in the negative.

Mr. Gallego asked if there has been any mention about the possible introduction of an amendment to set a threshold. Chairman Harper stated that during discussions with Members, the need for a threshold was identified. Chairman Harper asked Mr. Gonzalez-Plumhoff what the common practice is for a threshold among municipal corporations. Mr. Gonzalez-Plumhoff stated that he would look into the subject.

Mr. Gallego related his concern that health care districts are getting the products that are needed as quickly as possible without adding a layer of bureaucracy that slows that process.

John MacDonald, Maricopa Integrated Healthcare System, testified in opposition of HB2207, stating that the Maricopa Integrated Healthcare System (MIHS) supports transparency but has significant concerns with the legislation. He stated that MIHS is a special health care district authorized by the voters in 2004 in Maricopa County and is governed by a five-member board of directors elected by the citizens of Maricopa County. Mr. MacDonald stated that MIHS is a very large medical provider in the county specializing in high-end care, including a world renowned burn unit that purchases a large amount of goods and services on an annual basis. He explained that the aforementioned purchases are governed by a procurement code similarly utilized by government entities.

Chairman Harper asked if the current MIHS procurement code is less stringent than the Maricopa County procurement code that was in place prior to MIHS. Mr. MacDonald replied in the negative, stating that in his opinion, it is actually more stringent. Chairman Harper stated that he does not recall the County Supervisors awarding multi-million dollar contracts without bids as is current practice for MIHS.

Mr. Mesnard requested more information regarding Chairman Harper's statement about contracts. Mr. MacDonald stated that he would accept the opportunity to meet with Mr. Mesnard and discuss the details of how contracts are awarded by MIHS. Mr. MacDonald explained that if circumstances permit, within the procurement code, a sole-source contract would be appropriate; he provided examples of sole-source contracts. Discussion ensued regarding the circumstances surrounding the awarding of contracts.

In response to discussion regarding procurement, Mr. MacDonald stated that current law requires that procurement notices be placed in a publication of general circulation.

Chairman Harper announced the names of those who signed up in opposition to HB2207 but did not speak:

Michael Fronske, Director of Governmental Affairs, Maricopa Integrated Health System  
Betsey Bayless, Secretary of State, Maricopa Integrated Health Systems

### **HB2139 – property tax valuation; land fraud – DISCUSSION ONLY**

Chairman Harper announced that HB2139 will be discussed only.

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2139 allows property owners petitioning the valuation of their property under a market-based approach to provide evidence that fraudulent sales have artificially inflated real property values in their geographic area (Attachment 2).

Mr. Gonzalez-Plumhoff explained that the five-line Harper amendment defines the term *fraudulent* as a knowing misrepresentation of the truth or concealment of material fact to induce another party to the transaction to act to their detriment (Attachment 3).

Representative Peggy Judd, sponsor, stated that property taxes have increased significantly due to fraudulent residential home sales in certain rural areas, increasing the tax burden on homeowners. Representative Judd provided an example of the fraudulent activity in her district, where a home with a taxable value of \$16,000 dollars was sold, and then sold a few days later for \$220,000. She stated that due to a low number of sales in that area, when properties are assessed for taxable value by the County Assessor's Office, the only sales included are the sales that are significantly higher than the average home price in the area. She explained that as a result, the homes valued at \$16,000 are paying taxes based on the few sales closer to the \$220,000 range. Representative Judd stated that HB2139 provides a remedy for homeowners to appeal the taxable valuation of their properties.

Mr. Gallego asked for clarification of the circumstances that prompted HB2139, stating that in his opinion, what Representative Judd described in her testimony was a "free market transaction" that may have been unscrupulous on the purchaser's part, but not necessarily fraudulent activity. Representative Judd stated that the transaction was technically legal, but "highly unethical and verging on fraud". Discussion ensued regarding what determines a sale to be fraudulent.

Mr. Chabin asked if Representative Judd has been working with the Maricopa County Assessor's Office (CSA) on the bill. Representative Judd stated that she is willing to work with the CSA and offer amendments based on those discussions so that an increased burden is not placed on it.

Chairman Harper announced the names of those who signed up in opposition to HB2139 but did not speak:

Paul Petersen, Attorney and Assessor Representative, Maricopa County Assessor

Tim Carter, Arizona Association of County School Superintendents

Jen Sweeney, Government Affairs Director, Arizona Association of Counties

Keith Russell, Maricopa County Assessor, Maricopa County Assessor

### **HB2201 – private taxpayer rulings; unclaimed property – DISCUSSED AND HELD**

Chairman Harper announced that HB2201 will be discussed and held.

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2201 allows taxpayers to request certain information rulings from the Arizona Department of Revenue (DOR) for unclaimed property tax issues (Attachment 4).

Mr. Gonzalez-Plumhoff stated that the two-line Harper amendment makes clarifying changes to the language of the bill (Attachment 5).

Mr. Farley asked for clarity regarding the term "unclaimed property," stating that it implies that there is no holder of that property. Mr. Gonzalez-Plumhoff deferred to the Department of Revenue.

Sean Laux, Legislative Liaison, Department of Revenue, testified as neutral on HB2201. Mr. Laux addressed Mr. Farley's question, providing an example that an unclaimed property holder could potentially be the holder of an unclaimed safe deposit box where there is no owner or a security bank account.

Mr. Chabin asked what the effect of HB2201 will be. Mr. Laux stated that HB2201 would allow a taxpayer or holder to request or have an anonymous ruling issued by the Department of Revenue (DOR).

Mr. Farley requested an analogy based on the safe deposit box example that Mr. Laux provided so that the bill could be further clarified. Discussion ensued between between Mr. Laux and the Members of the Committee regarding provisions in the bill based on the “safe deposit box analogy”.

Mr. Chabin asked if HB2201 will increase the workload of the DOR. Mr. Laux replied in the negative.

Craig McPike, Arizona Tax Research Association, testified in support of HB2201, stating that the issue being addressed by the bill is whether or not a party can request a ruling to determine the DOR’s interpretation of the unclaimed property law in the situation where the actual party is not identified. Mr. McPike explained that currently an individual, through a representative, requests a ruling from the DOR on a particular set of facts, and if the draft response is acceptable to the party and the party requests that ruling to be binding against them, that party’s identity is revealed to the DOR. He explained that once the DOR is aware of the party’s identity, the ruling from the DOR is binding against the DOR with respect to that party. He stated that if the identity of the party requesting the information has not been provided to the DOR, the DOR is not bound to that ruling with respect to that party. Mr. McPike stated that the issue that HB2201 is trying to address is actually in Title 44, not Title 42 as is currently stated in the bill; he proposed an amendment to correct that error.

Mr. Farley asked if the DOR does not want to be bound to unfavorable rulings, only to favorable rulings. Mr. McPike responded in the negative; discussion ensued regarding the details and appropriateness of anonymous rulings and their purposes.

Chairman Harper announced the names of those who signed up in support of HB2201 but did not speak:

Penny Allee Taylor, Southwest Gas

Kevin McCarthy, President, Arizona Tax Research Association

### **HB2230 – municipal tax exemption; commercial lease – DO PASS**

Alexander Blount, Majority Intern, stated that HB2230 prohibits cities and towns from levying transaction privilege tax (TPT), sales tax, use tax, or any similar tax on certain commercial leases (Attachment 6).

In response to a question from Mr. Farley, Mr. Blount stated that in comparison to 2010 legislation, HB2230 addresses the issue of voting shares of the two corporations involved in the lease having similar shareholders.

Representative John Kavanagh, sponsor, stated that HB2230 simply modifies language from previous legislation and provided examples of leases that would qualify under the provisions of the bill. Representative Kavanagh explained that HB2230 specifically protects a small business placed under a separate corporation to shield it from liability and lawsuits.

Mr. Chabin asked if a fiscal note is available for HB2230. Representative Kavanagh explained that this bill simply clarifies language and he has not requested a fiscal note. Mr. Chabin stated that the cities and towns are currently facing fiscal crisis and that municipalities are being stripped of their authority to obtain revenue by the Legislature; discussion ensued.

In response to an article read by Mr. Farley regarding Wal-Mart Stores, Inc., Representative Kavanagh explained that HB2230 does not apply to Wal-Mart Stores, Inc. due to the requirement that 80 percent of shares must be commonly held by both companies. He further stated that he would be open to amending the bill to exclude large retailers such as Wal-Mart Stores, Inc., etc.

Jim Ogsbury, Legislative Director, League of Arizona Cities and Towns, testified in opposition to HB2230, stating that the League has concerns regarding the potential impact on the municipal tax base. Mr. Ogsbury stated that another concern is that HB2230 creates an unintended loophole for larger corporations.

Tom Johnson, Sales Tax Administrator, City of Peoria, testified in opposition to HB2230 stating that in its current form, Wal-Mart Stores, Inc. could potentially set up corporations within corporations in order to meet the 80 percent common shares as stipulated in the bill. He requested an opportunity to work with the sponsor to address the possible loopholes in the current language.

Representative Kavanagh re-stated that he would be open to an amendment to prevent any unintended consequences.

**Vice-Chairman Vogt moved that HB2230 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 7).**

### **HB2202 – department of revenue closing agreements – DO PASS AMENDED**

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2202 modifies the statutory definition of *affected class* for the purpose of determining whether an extensive misunderstanding or misapplication of Arizona tax laws has occurred (Attachment 8).

Mr. Gonzalez-Plumhoff explained the Harper 24-line amendment (Attachment 9).

Kevin McCarthy, President, Arizona Tax Research Association (ATRA), testified in support of HB2202, providing background information on the bill dating back to 1994. He stated that HB2202, with the amendment, provides clarity as to what was originally intended by the 1994 legislation. Mr. McCarthy cited the definition of *affected class* as taxpayers directly affected by the Department of Revenue's (DOR) position on a tax matter, and explained that the definition is too broad. He stated that DOR is recommending a narrower definition to include taxpayers who directly compete with one another under the same North American Industrial Clarification System Code (SIC).

Mr. McCarthy answered questions regarding the following:

- Sub-categories of retail Transaction Privilege Tax (TPT)

- Requirements to meet the 60 percent required threshold

Sean Laux, Legislative Liaison, Department of Revenue (DOR), addressed a question from Mr. Chabin, stating that DOR's computer systems classify based on classification codes. Mr. Chabin asked how DOR intends to enforce HB2202. Mr. Laux stated that currently DOR is still investigating ways to quantify what qualifies under the 60 percent threshold, so he does not have answers as to the enforcement of the bill at this time.

Mr. Chabin queried if Chairman Harper would consider holding HB2202. Chairman Harper replied in the negative.

Mr. McCarthy returned to the podium stating that it is not the intent of ATRA to increase the burden of DOR and that he would be willing to work with DOR to address any concerns.

Chairman Harper announced the names of those who signed up in support of HB2202 but did not speak:

James Busby, Attorney at Law, Arizona Tax Research Association

Penny Allee Taylor, Southwest Gas

Gretchen Kitchel, Senior Public Affairs Representative, Pinnacle West Capital Corporation

Jaime Molera, Lobbyist, DDC Interlock

Craig McPike, representing self

Michelle Ahlmer, Executive Director, Arizona Retailers Association

**Vice-Chairman Vogt moved that HB2202 do pass.**

**Vice-Chairman Vogt moved that the Harper 24-line amendment dated 1/21/11 (Attachment 9) be adopted. The motion carried.**

Mr. Chabin re-stated his concerns with the bill and discussion ensued between Mr. Chabin and Chairman Harper.

**Vice-Chairman Vogt moved that HB2202 as amended do pass. The motion carried by a roll call vote of 7-1-0-1 (Attachment 10).**

Without objection, the meeting adjourned at 4:14 p.m.

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Charly Laube, Committee Secretary  
February 10, 2010

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)