

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – First Regular Session

**COMMITTEE ON WAYS AND MEANS**

Minutes of Meeting  
Monday, February 14, 2011  
House Hearing Room 1 -- 2:00 p.m.

Chairman Harper called the meeting to order at 2:55 p.m. and attendance was noted by the secretary.

**Members Present**

Mr. Chabin  
Mr. Farley  
Mr. Gallego

Mr. Gray R  
Mrs. Lesko  
Mr. Mesnard

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

**Members Absent**

None

**Committee Action**

HB2166 - DPA S/E (7-0-0-2)

HB2223 - HELD

HB2279 - HELD

HB2289 - NOT ASSIGNED

HB2332 - DPA S/E (8-0-0-1)

HB2339 - HELD AT REQUEST OF SPONSOR

HB2475 - DISCUSSED AND HELD

HB2509 - HELD

HB2516 - ON RECONSIDERATION DPA S/E (6-3-0-0)

HB2556 - DP (8-0-0-1)

HB2566 - DISCUSSED AND HELD

HB2581 - DPA (6-2-0-1)

HB2597 - DISCUSSED AND HELD

HB2631 - DP (8-0-0-1)

HB2636 - DP (7-2-0-0)

HB2700 - DPA (8-0-0-1)

HB2706 - DP (6-3-0-0)

HB2708 - HELD AT REQUEST OF SPONSOR

HCR2006 - NOT ASSIGNED

**PRESENTATION ON ASSISTED LIVING FACILITY LICENSURE**

Alan Oppenheim, Assistant Director, Division of Licensing Services, Arizona Department of Health Services (ADHS), provided a copy of his presentation to the Members of the Committee (Attachment 1) and related the following definitions for the different levels of care:

- Supervisory care: Mild cognitive deficits, mild physical limitations requiring no hands-on care, may need assistance with self-administration of medications.
- Personal care: Moderate to severe physical limitations, medication administration.
- Directed care: Advanced dementia, severe cognitive deficits.

Mr. Oppenheim provided the following statistics regarding assisted living licensees within the Division of Licensing Services:

- assisted living homes (includes adult foster care homes) - 1,714 licensees
- assisted living centers - 224 licensees
- adult day health care - 23 licensees
- respite - 4 licensees
- total facilities: 1,965 (as of 1/1/2011)
- total licensed beds: 28,861

Mr. Oppenheim related the following information regarding complaints that the Division of Licensing Services has received (Fiscal Year (FY) runs July 1 to June 30):

- number of complaints FY 2006: 473 (173 substantiated)
- number of complaints FY 2007: 546 (149 substantiated)
- number of complaints FY 2008: 585 (207 substantiated)
- number of complaints FY 2009: 642 (total 1,020 allegations; 248 substantiated [132 facilities])
- number of complaints FY 2010: 748 (total 1,204 allegations; 333 substantiated [172 facilities])

Mr. Oppenheim explained that the Division of Licensing Services is facing an increasing number of the following falsified documents, which are found at the time of surveys and complaint investigations:

- fingerprint clearance cards
- manager certificates
- caregiver and manager training certificates
- TB (Tuberculosis) tests
- immunization records

Mr. Oppenheim stated that falsified documents may result in the following:

- civil penalties (fines)
- civil actions (lawsuits)
- loss of manager certification
- loss of ALTCS (Arizona Long Term Care System) contract
- criminal proceedings

Mr. Vogt asked if the documents being falsified include Social Security cards. Mr. Oppenheim replied in the affirmative.

Mr. Oppenheim related the importance of the awareness of restraint and environmental injuries that can occur with patients; he showed slides displaying examples of these injuries (Attachment 1).

Mr. Oppenheim explained that the issue of smoking affects the assisted living facilities and provided the following:

- The Smoke-Free Arizona Act applies to all assisted living facilities.

- Elderly people, especially those with limited mobility or cognitive deficits, are more at risk for burns (smoking with oxygen tanks can be very dangerous).
- Smoking cessation programs are available free of charge: [www.ashline.org](http://www.ashline.org).

Mr. Oppenheim related the top ten most cited deficiencies for centers and homes and stated that when a facility has received a citation, it has 10 days to provide the Division of Licensing Services with a Plan of Correction (POC), stating how the practice will be corrected. He stated that the Division of Licensing Services surveyors will return to each facility to evaluate the implementation of the POC. Mr. Oppenheim stated that an acceptable POC must include at a minimum:

1. How the deficiency is to be corrected, on both a temporary and a permanent basis.
2. The date the correction is and will be implemented.
3. The name, title, and/or position of the person responsible for the correction.
4. A description of the monitoring system used to prevent the deficiency from recurring.
5. An approval signature, and the date the POC was approved.

Mr. Oppenheim stated that all medication and treatment orders must include the following:

- name of the resident
- name, strength, quality, route of administration and directions for the drug
- precautionary statements
- signature of the provider
- date signed by the provider

Mr. Oppenheim stated that as under R9-10-711 Requirements for Service Plans and Health-Related Services, a licensee shall ensure that a resident has a written service plan that:

- is initiated the day a resident is accepted into the assisted living facility
- is completed no later than 14 days after the resident's date of acceptance

Mr. Chabin asked how often a survey is conducted for the licensure of an assisted living facility. Mr. Oppenheim stated that, at a minimum, the Division of Licensing Services has an annual compliance inspection in assisted living and then, if complaints come in, a separate complaint investigation takes place. Mr. Chabin asked how many teams of inspectors the Division of Licensing Services has to inspect all assisted living facilities. Mr. Oppenheim stated that there are three offices of investigation for assisted living facilities located in Phoenix, Tucson and Flagstaff. He stated that these offices include 27 surveyors, 14 leaders, as well as the program manager. Mr. Chabin asked how many of the 27 surveyors are required to conduct a survey in an assisted living facility. Mr. Oppenheim replied that homes with 10 beds and under require only one surveyor, while the centers require at least two surveyors. Mr. Chabin asked if the 27 surveyors can survey all of the facilities within Arizona in one year; Mr. Oppenheim replied in the affirmative and provided the current status of the offices. Discussion ensued regarding the backlog of the offices and their ability to respond to each complaint. He also discussed the tier system applied to complaints to assess the severity of and response time required for each complaint.

Mr. Oppenheim answered questions regarding the following:

- self-funding of the Division of Licensing Services
- tiered fee system

Mr. Gray asked if the Division of Licensing Services investigates complaints for facilities that are not licensed assisted living facilities. Mr. Oppenheim answered in the negative, but provided that if a complaint is received that is detailed enough to provoke investigation of a broken rule or statute, the surveyors will investigate. He provided various requirements to qualify an investigation.

Mrs. Lesko asked if Mr. Oppenheim has received the letters and emails regarding the unlicensed assisted living facility that Mr. and Mrs. Fairall will be addressing. Mr. Oppenheim replied in the negative, but stated that he will be talking to the surveyor who did receive that information.

Mark Fairall and Carol Fairall, representing selves, related their experience while living in the Sun Grove Senior Living LLC, doing business as Sun Grove Resort Village (SGRV), which is an unlicensed assisted living facility. Mr. Fairall provided an outline of his presentation to the Members (Attachment 2).

Mrs. Fairall provided the Members with a brief history of their relationship with each other and its circumstances, which News Channel 12, Storytellers, will be airing and her current state of health. She stated that she is a liver transplant survivor and displayed pictures of black mold in the walls of SGRV, which complicated her liver health, and a chart of her liver function statistics, showing her declining health due to the presence of that mold. She provided Mr. Fairall's health history which includes a stroke and seizures.

Mr. Fairall then related his experiences with SGRV and urged the Committee to take action by initiating legislation that requires all unlicensed assisted living facilities to be licensed. Mr. Fairall expressed that the following are potential benefits of enacting such a law:

- collect \$1 million in lost revenues for unlicensed assisted living facilities
- raise the standard of living for seniors and sick individuals living in Arizona assisted living facilities
- increase economic activities for the assisted living facilities to repair and maintain properties to meet code requirements
- meet competition of other states that protect their seniors and stimulate Arizona's population growth in the new 78 million baby boomer retiree housing market

Chairman Harper asked the address of SGRV. Mr. Fairall cited 10134 W. Mohawk Lane, Peoria, Arizona 85382.

## **CONSIDERATION OF BILLS**

### **HB2223 - income tax rate reduction; corporations - HELD**

**Chairman Harper announced that HB2223 will be held.**

### **HB2279 - water protection; technical correction - HELD**

**Chairman Harper announced that HB2279 will be held.**

**HB2289 - technical correction; elections; special districts - NOT ASSIGNED**

Chairman Harper announced that HB2289 was not assigned and will not be heard.

**HB2339 - commercial, agriculture property assessment reduction - HELD AT REQUEST OF SPONSOR**

Chairman Harper announced that HB2339 will be held at the request of the sponsor.

**HB2509 - transaction privilege tax; services; food - HELD**

Chairman Harper announced that HB2509 will be held.

**HB2708 - homeowner's rebate; primary residence - HELD AT REQUEST OF SPONSOR**

Chairman Harper announced that HB2708 will be held at the request of the sponsor.

**HCR2006 - personal property tax exemption amount - NOT ASSIGNED**

Chairman Harper announced that HCR2006 was not assigned and will not be heard.

**HB2516 - use tax declaration - ON RECONSIDERATION DO PASS AMENDED S/E S/E: same subject**

Vice-Chairman Vogt moved that, having voted on the prevailing side, the Committee reconsider its action of February 7, 2011, whereby the Committee failed to pass HB2516, and the measure be reconsidered immediately. The motion carried.

Alexander Blount, Majority Intern, stated that HB2516 requires individuals to file use tax returns annually on a form provided by the Arizona Department of Revenue (DOR) (Attachment 3).

Mr. Blount explained that the Vogt two-page strike-everything amendment dated 2/10/11 (Attachment 4) requires individuals to declare the annual amount of use tax due on their individual income tax form.

Chairman Harper inquired the effective date that was worked out with the Department of Revenue. Mr. Blount stated that the strike-everything amendment is silent on an effective date.

Representative Matt Heinz, sponsor, stated that the use tax is a current liability for Arizona residents and HB2516 would assist in educating individuals of that liability and allow them to report it conveniently. Representative Heinz stated that the amendment resolves concerns that were addressed in the previous Committee meeting including the following:

- no additional forms included in mailings

- no additional postage required for mailings
- no additional affirmation required

Chairman Harper announced the names of those who signed up in support of HB2516 but did not speak:

Michelle Ahlmer, Executive Director, Arizona Retailers Association

Dana Naimark, President/CEO, Children's Action Alliance

**Vice-Chairman Vogt moved that the Vogt two-page strike-everything amendment dated 2/10/11 (Attachment 4) be adopted. The motion carried.**

**Vice-Chairman Vogt moved that HB2516 as amended do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 5)**

### **HB2566 - native American tribes; revenue sharing - DISCUSSED AND HELD**

Alexander Blount, Majority Intern, explained that HB2566 redirects 50 percent of transaction privilege tax (TPT) and severance tax revenues collected on Indian reservations within Arizona back to each Indian tribe for telecommunication infrastructure and community development projects (Attachment 6).

Representative Albert Hale, sponsor, stated that HB2566 is a duplication of a bill that he has been running for seven years to address inequity and unfairness in the distributing of TPT back to the originating entity. Representative Hale stated that there is a collection of taxes on Indian reservations in the form of sales taxes pursuant to TPT state laws. He stated that these taxes are collected from non-Indian owned businesses operating within Indian reservations. Representative Hale stated that TPT taxes are imposed on the extraction of natural resources from Navajo Indian reservation lands, resulting in approximately \$13.6 million for FY 2009 (Attachment 7). He stated that once all of this collection is made, 25 cents on the dollar goes to incorporated municipalities, which Indian reservations do not have and 38.08 percent of those monies also go back to the counties, but not to the Indian reservations. He stated that this is the inequity that he is attempting to correct with HB2566, so that the money collected in taxes from Indian reservations will go back to those reservations. He provided a list of bills that have been initiated to address requests for money from constituents, beginning with the 46<sup>th</sup> Legislative Session (Attachment 8). Representative Hale referenced a letter of support from the Hualapai Tribe (Attachment 9).

Mr. Chabin asked if, in Representative Hale's experience, he finds that people are surprised to hear that the state collects \$25 million from Indian reservations through TPT. Representative Hale stated that his constituents are very surprised that they pay this amount of taxes to the state and see none returned. He stated that the same services that Indian reservation tax dollars fund for non-Indian reservation areas, the Indian reservations want as well, but do not receive the benefits of the TPT taxes they pay. Discussion ensued.

Chairman Harper announced the names of those who signed up in support of HB2566 but did not speak:

Norris Nordvold, Intergovernmental Programs Director, Inter Tribal Council of Arizona

Pearl Lee, Program Manager, Navajo Nation Telecommunication & Utilities Department  
Virgil Brown, Division Director, representing self  
Sam Polito, representing self and Linda Polito

**Chairman Harper announced that HB2566 will be held.**

**HB2597 - corporate income tax; repeal credits - DISCUSSED AND HELD**

Alexander Blount, Majority Intern, stated that HB2597 reduces the corporate income tax rate to 5.4 percent and repeals all corporate income tax credits beginning in Tax Year (TY) 2012 (Attachment 10).

Representative Chad Campbell, sponsor, stated that HB2597 is a revenue neutral attempt to make the state's corporate income tax rate more competitive with other states and other regions of the country. He stated that HB2597 lowers the current corporate income tax rate to 5.4 percent and removes all corporate tax credits that are currently in place. He stated that the bill would implement a much fairer tax system, would lower the overall rate, would provide no special treatment for any business and would benefit every business in the state. Representative Campbell stated that Arizona is facing a massive revenue shortfall and budget deficit and has a structural tax code problem.

Chairman Harper announced the names of those who signed up in support of HB2597 but did not speak:

Dana Naimark, President/CEO, Children's Action Alliance

Chairman Harper announced the names of those who signed up in opposition to HB2597 but did not speak:

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

Deborah Sheasby, Legal Counsel, Center for Arizona Policy

Kevin McCarthy, President, Arizona Tax Research Association

Lyn White, Manager Government Relations, Freeport-McMoRan Copper & Gold

Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance

**Chairman Harper announced that HB2597 will be held.**

**HB2706 - education; Arizona empowerment accounts - DO PASS**

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2706 establishes Arizona Empowerment Accounts for qualified students, consisting of 90 percent of the State Aid that would otherwise have been computed for the student (Attachment 11).

Mrs. Lesko, sponsor, stated that HB2706 is a win/win because it provides educational choices for students and parents and saves the state money.

In response to a question from Mr. Chabin, Mrs. Lesko stated that HB2706 gives authority to make educational choices to the parents of disabled children who are unhappy with public school services available for their children. Mr. Chabin expressed concern that there is too much freedom for tax dollars to be directed toward programs that are unsafe.

Chairman Harper announced the names of those who signed up in support of HB2706 but did not speak:

Sydney Hay, American Federation for Children and A+ School Recognition Program

Harry Miller, Executive Director, Arizona School Tuition Organization Association

P.J. O'Malley, Americans For Prosperity

Steve Voeller, President, Arizona Free Enterprise Club

Shawna Bolick, representing self

Elizabeth Dreckman, representing self

Dave Kopp, Manager, Americans for Prosperity

Ron Johnson, Executive Director, Arizona Catholic Conference

Deb Gullett, A+ School Recognition Program

Chairman Harper announced the names of those who signed up in opposition to HB2706 but did not speak:

Jennifer Loreda, Arizona Education Association

Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association

Deborah Sheasby, Legal Counsel, Center for Arizona Policy, testified in support of HB2706, provided a brief history of the voucher program, beginning in 2006 to when it was struck down by the Arizona Supreme Court as unconstitutional in 2009. Ms. Sheasby stated that the Court's decision provided clues to assist in the creation of HB2706. She stated that the Court's reasoning was that it constrained parents' choices by limiting the use of the voucher to private school tuition. Ms. Sheasby stated that HB2706 ensures that the only beneficiaries of the program are the parents and the students and not a specific type of school.

Andrea Weck, representing self, testified in support of HB2706, stating that she has a daughter Lexie, who is severely autistic and was previously in the public school system where she was not progressing. Ms. Weck stated that she moved Lexie to a private school where she flourished and began playing with other children. She stated that Lexie participates in the classroom and follows directions and is learning to write etc., where in the public system she would not have been able to do any of these things. Ms. Weck stated that HB2706 gives her the authority to make decisions concerning her daughter's education that she previously did not have.

Dr. Matthew Ladner, Goldwater Institute, testified as neutral on HB2706, providing the history of the aforementioned 2006 legislation that Governor Janet Napolitano signed into law that was based on a Florida law. Dr. Ladner stated that today, only five percent of eligible children are utilizing the Florida program. Dr. Ladner stated that nationwide, only two percent of children with disabilities are enrolled in private schools at public district expense. Dr. Ladner cited statistics from the Florida law regarding public and private school achievements regarding disabled children. He stated that the fundamentally important part of HB2706 is the choice provided to the dissatisfied parents of disabled children.

In response to a question from Mr. Farley, Dr. Ladner stated that there were some targeted increases in educational spending in Florida, which was spent on a high-quality data system, bonuses for teachers and schools for passing Advanced Placement exams. He stated that Florida's educational spending is below average. Mr. Farley asked if educational reform saved

money in Florida. Dr. Ladner stated that the challenges facing Arizona today are greater than the challenges that Florida faced in 1999.

Mr. Chabin asked if any academic or clinical standards are specified in HB2706, regarding where the state money can be spent. Chairman Harper interjected that the Goldwater Institute is a 501(c)(3), not a 501(c)(4) and Dr. Ladner is signed in as neutral on the bill, not to advocate for either position.

Mr. Gallego asked if the Florida bill had any safeguards put into place against problem programs. Dr. Ladner stated that it is possible to remove a private school from participation in Florida's scholarship program for the mismanagement of state funds. Mr. Gallego asked what the process is in Arizona to address the mismanagement of state funds. Mr. Gallego stated that he would be willing to hold his question for the Department of Revenue.

Sean Laux, Legislative Liaison, Department of Revenue (DOR), testified as neutral on HB2706, stating that DOR has many unanswered questions regarding its role and responsibilities moving forward on the program.

Mr. Farley asked for a fiscal note or estimated loss of revenue to the state. Mr. Laux stated that DOR is still analyzing that information, but he is happy to provide any fiscal impact information to Mr. Farley when he receives it.

Mr. Gallego asked if DOR has any methods of accountability for fraud or abuse of the program. Mr. Laux stated that HB2706 includes language permitting DOR to remove a parent or qualified student if there is a misuse of money, but he is not sure how that will be done.

Mr. Vogt stated that existing funds are already being redistributed and there should not be any lost revenue to the state.

Mr. Gallego asked what allotment per student is specified in the bill. Mrs. Lesko stated that each child is different based on a number of criteria and that HB2706 states that each disabled child will receive 90 percent of whatever the public school would have received for that child. She stated that it is actually a savings to the state's General Fund and that included in the bill, is an allotment to the DOR to cover any additional costs.

Chairman Harper announced that Representative Court is present to testify on his bills, and he will then return to HB2706 for a vote.

### **HB2556 - health savings accounts; tax incentives - DO PASS**

Amanda Farmer, Majority Staff Intern, stated that HB2556 establishes new individual and corporate tax credits for employers providing qualified health plans and subtracts individual and corporate contributions to health savings accounts (HSA) from the computation of Arizona Gross Income (Attachment 12).

Representative Steve Court, sponsor, stated that he is a former small business owner who struggled to provide insurance for his employees. He stated that HB2556 attempts to find employers a less costly option to offer employees and incentivizes them to provide a high-

deductible plan that will give employees good coverage for major events as well as giving the employer an incentive to help fund the employees' HSAs to help offset the high-deductible plan.

Mr. Farley asked if there is an equivalent tax credit available for employers who choose to provide a plan other than the HSAs. Representative Court answered in the negative, stating that one of the requirements within the bill is that employers have not already been providing insurance to employees. Mr. Farley asked if Representative Court would be amenable to expanding the bill to include other health insurance plan options other than HSAs. Representative Court replied that he would be willing to discuss the expansion.

Farrell Quinlan, State Director, National Federation of Independent Business, testified in support of HB2556, stating that a number of small business owners do not have the money to pay for health insurance for their employees. He addressed Mr. Farley's question regarding expanding the bill to include other forms of insurance plans, stating that the problem is that the plans are so expensive that small businesses cannot afford them. He stated that the HSA and high-deductible plans are significantly less expensive to fund. He also stated that this bill is a form of a pilot program and he would like to see how it is received among small businesses before any expansions are made.

Mr. Farley asked if sole proprietors are covered under the provisions in HB2556. Mr. Quinlan stated that only businesses with 2 to 250 employees are included in the bill. Mr. Farley asked the reason for sole proprietors not being included in the bill. Mr. Quinlan stated that including sole proprietors would change the target of the bill from group policies to individual policies resulting in underwriting issues, etc. He stated that the immediate goal is to address group policy issues and if the bill is successful, then address sole proprietor health care coverage issues. Discussion ensued regarding sole proprietor health care issues.

Mr. Gallego requested clarification regarding the provision requiring inclusion of two or more individuals and asked if shareholders would qualify in that definition. Mr. Quinlan stated that if a company is eligible to acquire group health insurance that definition would stand and would be applied; if shareholders are presently a qualification, that qualification would remain as is; the bill is not changing any definitions.

Chairman Harper announced the names of those who signed up in support of HB2556 but did not speak:

David Childers, Lobbyist, America's Health Insurance Plans

Walter F. Dudley, Accountant, Arizona Society of Practicing Accountants

Dave Kopp, Manager, Americans for Prosperity

Charles Bassett, Blue Cross Blue Shield of Arizona

Jake Logan, Vice President, UnitedHealth Group, UnitedHealthcare of Arizona

Heather Bernacki, Government Relations Associate, East Valley Chambers of Commerce Alliance

**Vice-Chairman Vogt moved that HB2556 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 13).**

**HB2636 - flat income tax - DO PASS**

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2636 incrementally reduces the individual income tax rate to a flat tax rate of 2.08 percent beginning in Tax Year (TY) 2015 (Attachment 14).

Mr. Farley asked what the fiscal impact of HB2636 will be. Mr. Gonzalez-Plumhoff stated that the fiscal impact is still being analyzed by the Department of Revenue (DOR) and deferred to Representative Court.

Mr. Gallego requested the gradual reduction date. Mr. Gonzalez-Plumhoff stated that the gradual reduction would begin in TY 2015.

Representative Steve Court, sponsor, addressed Mr. Farley's question, stating that the intention of the bill is to maintain revenue neutrality at all times. Mr. Farley stated that his concern is not with revenue neutrality; he asked which end of the scale pays more and which end pays less and how much the average taxpayer will pay. Representative Court stated that the Department of Revenue (DOR) will be a better source to address Mr. Farley's question.

Representative Court continued his testimony on the bill stating that the idea of a flat tax has been of interest to him long before his election to the Legislature. He stated that the idea of equity in a flat tax is appealing in that if an individual makes a lot, he pays a lot, and if an individual makes a little, he pays a little. Representative Court stated that HB2636 simplifies the tax system by reducing not only the multiplication of the current tax system, but also many of the exemptions. He stated that by 2015, when the flat tax is fully implemented, taxes will be calculated based on the federally-adjusted gross income with the exception of a few modifications that the federal government requires on some types of income.

Mr. Chabin asked if Representative Court would consider that a certain percentage of taxes must be paid prior to exemptions and deductions under any set of circumstances. Representative Court stated that by the time HB2636 is fully phased-in, it eliminates all deductions and exemptions, but does not affect any tax credits.

Mr. Vogt thanked Representative Court for offering the bill.

Mr. Chabin asked when the Legislature will begin to eliminate tax credits. Representative Court stated that based on other bills going through the Legislature this Session, it is his opinion that those bills will begin eliminating the need for tax credits one at a time.

Steve Voeller, President, Arizona Free Enterprise Club, testified in support of HB2636, stating that the Arizona Free Enterprise Club supports flat tax and has for many years. He stated that the bill is a step forward but ideally they would like to see the tax code become more neutral regarding exemptions and tax credits and let the market and individuals decide what to do with their incomes after paying taxes.

Mr. Chabin restated his concern that tax credits and exemptions eliminate liability for state taxes and inquired if the bill could eliminate more of those credits and exemptions. Mr. Voeller stated that the Arizona Free Enterprise Club shares the same goal to eliminate exemptions and taxes

and is working toward that goal. He stated that the many various tax credits do not allow tax code neutrality.

Byron Schlomach, Economist, Goldwater Institute, testified as neutral on HB2636, stating that the Goldwater Institute has long recommended a flat tax and commends the efforts put forth in HB2636. He stated that the advantages of a flat tax are efficiency and simplicity. Mr. Schlomach stated that he would recommend keeping the bonus investment tax depreciation that derives from the federal tax code. He also urged the Members to consider adding a charge to the commission charges, which would be revenue neutral.

Mr. Farley asked if it is fair to consider HB2636 as a flat tax proposal while maintaining all of the current tax credits and exemptions. He stated that the credits distort the tax. Mr. Schlomach agreed with Mr. Farley, stating that it is not a pure flat tax with the continuation of tax credits. Mr. Farley asked if Mr. Schlomach would be supporting Representative Chad Campbell's bill that would reduce the corporate tax rate from 7 percent to 5.4 percent and would be paid for by eliminating all of the tax credits. Mr. Schlomach answered in the affirmative, stating that the Goldwater Institute supports the concept of Representative Campbell's bill; he added that the biggest issue with that bill is the Student Tuition Tax Credit that the tax credit saves the state money and is good educational policy.

Walter F. Dudley, Accountant, representing self, testified in opposition to HB2636, stating that in concept he supports the bill's objective but that items on Schedule A of the 1040 tax form would no longer be deductible. He provided a handout to the Members comparing Arizona's income tax using existing rules, and Arizona's income tax using HB2636 flat tax rules (Attachment 15). Mr. Dudley listed the various deductions that would be eliminated with HB2636 and stated that the changes would be significant to those who make significant charitable donations, those who incur business expenses, those who have large mortgages, etc. He stated that he is not opposed to simplification, but that there is inequity in the elimination of the many deductions and itemizations. Mr. Dudley stated that the Department of Revenue posed that HB2636 is revenue neutral, but he asserted that those in the \$250,000 income range would see significant tax increases.

Mr. Olson requested clarification regarding Mr. Dudley's statement that business expenses will not be deducted as they are currently. Mr. Dudley explained that business expenses incurred for W2 employees do not go onto Schedule C, but Schedule A, which would be eliminated. Mr. Olson asked if those expenses are actually business expenses, or expenses that every individual would incur for work. Mr. Dudley stated that those expenses are legitimate business expenses and the only way to list those expenses is on Schedule A, not Schedule C as a sole proprietor might list business expenses. Mr. Olson asked if there will be just as many filers who would pay less tax because of HB2636 as those who would pay more, making it revenue neutral. Mr. Dudley answered that is correct.

Representative Court returned to the podium and stated that Mr. Dudley raised points of concern that he would be willing to work on in the bill and that it was not his intent to eliminate the listing of business expenses for those individuals that do incur expenses for their jobs.

Kevin DeMenna, Arizona Society of Certified Public Accountants, testified as neutral on HB2636, stating that the Society of Certified Public Accountants will be ready to comply with

any legislation that is passed regarding taxes. He urged the Members to keep conformity in mind in regards to the tax base and stated that it is critical for maintaining simplicity.

Chairman Harper announced the names of those who signed up in opposition to HB2636 but did not speak:

Dana Naimark, President/CEO, Children's Action Alliance

**Vice-Chairman Vogt moved that HB2636 do pass. The motion carried by a roll call vote of 7-2-0-0 (Attachment 16).**

### **HB2475 - state capitol restoration; recapture districts - DISCUSSED AND HELD**

Chris Stapley, Assistant Majority Research Analyst Appropriations Committee, explained that HB2475 establishes a tax increment financing plan for the formation of Economic Recapture Districts and state capitol restoration using state transaction privilege tax (TPT) revenues and creates the State Capitol Centennial Restoration Trust Fund (Fund) with monies deposited from increased TPT revenues generated from newly established Economic Recapture Districts (Attachment 17).

Chairman Harper asked if HB2475 adds any new taxes. Mr. Stapley stated that there are not any new specific or direct taxes in the bill. Mr. Harper asked Mr. Stapley to clarify his answer. Mr. Stapley explained that when a new district is created, any new taxes that district collects would be split: half would go to the state and half would go to the State Capitol Centennial Restoration Trust Fund (Fund).

Representative David Gowan, sponsor, stated that HB2475 does not create any new taxes and is not like tax increment financing (TIF).

Chairman Harper asked what would be the result if a convention center that was built in Flagstaff causes the convention center in Tucson to lose revenue. Mr. Gowan stated that Tucson is considering building another convention center, which is another reason that he is sponsoring this bill. He restated that the bill does not increase taxes or negatively affect current businesses. Mr. Harper stated that the Tucson Convention Center was secured in a budget where it gives back TIF monies that have not already been spoken for in bonds.

Barry Aarons, Lobbyist, Arizona Tourism Alliance, testified in support of HB2475, stating that it is not a new concept but was launched four years ago by Speaker Kirk Adams. Mr. Aarons stated that in 2007, the Legislature appropriated \$2 million to the Yuma Welcome Center and then the economy shift took place and the Legislature had to recover the funds. Mr. Aarons stated that the intent of the bill is to create a new provision that makes each city, not the state, responsible to produce the funds necessary to complete a project if another economic shift, for example, takes place. He stated that secondly, the bill assists in renovating the Arizona State Capitol to make it more attractive to organizations that come to the state.

Mr. Farley stated that he has a bill that includes an infrastructure TIF that could be used to fund the renovation of the Arizona State Capitol and stated that Arizona is the only state out of 50 that does not have a TIF in place like the one in his bill. Mr. Aarons stated that in order to implement a property tax TIF, a constitutional amendment is necessary because within the Arizona State

Constitution there is a concept that is known as *equal access to the tax base* for property tax purposes that would have to be changed in order to have a pure tax TIF. Discussion ensued regarding the bill that Mr. Farley is sponsoring.

Mr. Vogt asked if the monies collected through HB2475 would go toward the existing State Capitol or a new capitol design could be chosen. Mr. Aarons explained that decision would be made by those in charge of the restoration of the State Capitol.

Representative Gowan returned to the podium to restate that HB2475 is not a tax TIF and thanked the Committee for hearing his bill.

**Chairman Harper announced that HB2475 will be held.**

**HB2706 - education; Arizona empowerment accounts - DO PASS (continued)**

**Chairman Harper announced that testimony was heard on HB2706 earlier in the meeting and the Committee will immediately vote.**

**Vice-Chairman Vogt moved that HB2706 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 18).**

**HB2581 - STOs; credits; administration - DO PASS AMENDED**

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2581 allows credits to be taken against luxury and severance tax liability for contributions made to school tuition organizations (STOs) for scholarships awarded to low-income and displaced and disabled students and increases the cap on individual contributions to STOs (Attachment 19).

Mr. Gonzalez-Plumhoff explained that the Mesnard two-page amendment dated 2/11/11 (Attachment 20) removes certain administrative duties that have been assigned to the Department of Revenue (DOR), including the preapproval of the total amount of the credit awarded, and makes technical and conforming changes.

Chairman Harper asked which administrative duties are being removed from DOR with the amendment. Mr. Gonzalez-Plumhoff stated that the preapproval process that would have been extended to the DOR for individual and corporate credits taken against the luxury tax is removed by the amendment.

Mr. Mesnard, sponsor, stated that HB2581 is a bill about providing choices for parents to send their children to the school that best fits their needs.

Chairman Harper announced the names of those who signed up in support of HB2581 but did not speak:

Elizabeth Dreckman, representing self

Andrea Weck, representing self

Sydney Hay, American Federation for Children

Joy Staveley, representing self

Deborah Sheasby, Legal Counsel, Center for Arizona Policy

Ron Johnson, Executive Director, Arizona Catholic Conference  
Dave Kopp, Manager, Americans For Prosperity  
P.J. O'Malley, Americans For Prosperity  
Shawna Bolick, representing self

Chairman Harper announced the names of those who signed up in opposition to HB2581 but did not speak:

Jennifer Loreda, Arizona Education Association  
Janice Palmer, Governmental Relations Analyst, Arizona School Boards Association  
Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona  
Dana Naimark, President and CEO, Children's Action Alliance

Harry Miller, Executive Director, Arizona STO Association and TOPS for Kids, testified in support of HB2581, stating that there are 20,000 students that are on a wait list for scholarships who do not have funding and would benefit from the corporate funding allocated in HB2581. Mr. Miller stated that currently, the corporate tax credit has over \$11 million that has not reached the cap, and Lexie's Law (in 2009, the Arizona Legislature passed "Lexie's Law," a law that allows corporations to redirect their tax liability to a state-approved School Tuition Organization (STO), and receive dollar-for-dollar tax credits for their contribution) has roughly \$4.7 million that has not reached the cap to receive the corporate funding needed to help those students. He related an example of a student who attended a school beginning in August and discovered shortly thereafter that the school did not meet his needs and transferred to another school, assuming that the funds would follow him to the next school, but the law prohibited it. He stated that the family lost \$20,000 in funding for that student's education. He stated that HB2581 corrects that problem and requested the Committee's support.

Mr. Chabin stated that his concern with the STO credits is the allowance for administrative purposes and the variability between the different STOs and their capabilities to meet administrative needs at much different rates. He stated that his concerns include the directing of business to themselves, securing contracts and salaries and asked if Mr. Miller shares these concerns and is interested in statutorily correcting the issues. Mr. Miller stated that he cannot speak to the administrative costs of all STOs. He stated that with TOPS for Kids, 91 percent of funding goes toward scholarships for children, but that 4 of the 10 percent allotment for administrative costs is directed to credit card processing fees and merchant fees. Mr. Chabin asked if TOPS for Kids needs all of the 10 percent allotment for administrative needs. Mr. Miller answered in the affirmative. Mr. Chabin inquired the gross amount that is collected from diverted tax income for TOPS for Kids. Mr. Miller stated that in the 2009 reporting, between the corporate and individual, the gross amount was a little over \$2 million. Mr. Chabin asked if Mr. Miller would be supportive of legislation that prohibits an officer of an STO corporation from being an administrator of the organization or from contracting with themselves. Mr. Miller stated that he is not qualified to answer.

**Mr. Mesnard moved that HB2581 do pass.**

**Mr. Mesnard moved that the Mesnard two-page amendment dated 2/11/11 (Attachment 20) be adopted. The motion carried.**

**Mr. Mesnard moved that HB2581 as amended do pass. The motion carried by a roll call vote of 6-2-0-1 (Attachment 21).**

**HB2166 - technical correction; cosmetology schools; contracts - DO PASS AMENDED S/E S/E: low income housing; property tax**

Mr. Chabin stated that he believes he has a conflict of interest with HB2166 and recused himself from discussion and voting on the bill.

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that the proposed Olson five-page strike-everything amendment dated 2/9/11 (Attachment 22) to HB2166 requires county assessors to evaluate certain low-income multifamily residential rental property using an income-based approach, and establishes a capitalization rate of 12.5 percent (Attachment 23).

CHAIRMAN HARPER RECESSED THE MEETING UNTIL RECESS OR ADJOURNMENT OF FLOOR. THE MEETING RECESSED AT 6:09 P.M.

THE MEETING RECONVENED AT 6:19 P.M. ALL MEMBERS WERE PRESENT.

Mr. Olson, sponsor stated that the properties described in the bill are subject to restrictions that other similarly situated properties are not subject to, so the owners of the properties believe they have been improperly assessed. He explained that in many cases the owners have pursued litigation and have won. He stated that the intent of HB2166 is to alleviate the administrative burden on the assessors and the property owners and put into statute a universally applied measure so that property owners do not have to continually request a revaluation of their properties. He explained that his goal is not to give any property taxpayer special treatment but to ensure that equal treatment is given to all property owners.

Jeff Gray, Legislative Liaison, WESCAP Investments, Incorporated, stated his support of HB2166. He provided a brief history of WESCAP Investments, Inc.'s development of properties using the federal Department of Housing and Urban Development (HUD) low-income housing tax credit program. He explained that the program was created to allow developers to sell credits and receive a portion of that sale back towards the equity to develop the affordable housing. In order to use the credits, the developers agree to have rent restrictions on these properties as required by federal law, for upwards of 30 years. In addition to rent restrictions, income restrictions dictate that these properties cannot be rented to anyone above 60 percent of median income. Mr. Gray stated that the issue being addressed by HB2166 is that for a few years, the values of these low-income housing properties have been assessed higher, and property owners believe that the assessments should vary county to county. Due to the improper assessments of these properties, property owners have been suing and going to tax court. Mr. Gray explained that HB2166 will create a form of standardization across all 15 counties and prevent this litigation.

Chairman Harper asked if HB2166 returns to the previous assessment of WESCAP after the judgments and asked for verification that the bill will not change after leaving Committee with amendments. Mr. Gray responded in the affirmative and assured Mr. Harper that the bill will remain as it is. Chairman Harper stated that a bill passed through the Committee previously that

took an assessment for a property owner back to the original assessment, and after it passed, amendments were offered to turn it into a subsidy for an entity.

Keith Russell, Maricopa County Assessor, testified in opposition to HB2166, stating that Arizona has an Ad valorem tax system, meaning that obligations are determined based upon value. He stated that classifications of properties are considered but market value is how the assessors assign responsibility for all of the obligations of the taxing jurisdictions. He stated that he is opposed to any kind of formula that moves assessments away from market value. Mr. Russell stated that the aforementioned developments receive subsidies or tax credits from the federal government in order to get developers involved. He stated that in exchange for the federal government's support, agreements are made that rent prices will be less. Mr. Russell explained that with HB2166 the assessors are not able to consider the tax credits or the lowered rent amounts. He stated that his recommendation to the Legislature is to avoid continually making shifts of tax responsibility from one entity to another because the real estate market is fragile.

Mr. Olson stated that it is not his intention to carve out any special treatment for any taxpayer, but to establish a formula to keep the property owners from going through the appeals process for multiple properties. Mr. Olson asked if there is a backlog for these properties going through the appeals process. Mr. Russell stated that the appeals process takes place annually but litigation did have a backlog, which was mostly in Maricopa County and has been settled. Mr. Olson asked if the formula in HB2166 arrives at the same value that Mr. Russell's office arrived at when settling appeals. Mr. Russell answered in the affirmative, but stated that being in court is not a reason to implement legislation. Mr. Olson agreed, but stated that HB2166 sets a formula in statute that does away with the administrative burden created by the appeals and the litigation. Mr. Olson stated that putting a cap rate into statute is a valid concern of Mr. Russell's and stated that he would be willing to look at that part of the bill and find alternatives to satisfy Mr. Russell's concern. Discussion ensued.

William Spreitzer, Owner, WESCAP Investments, Incorporated, testified in support of HB2166, stating that WESCAP Investments has been contesting property taxes for 15 years with the County Assessor's Office. Mr. Spreitzer stated that HB2166 codifies current practices and formulas used by the County Assessor's Office. He stated that WESCAP Investments files seven to ten lawsuits each year and that after years of litigation, the settlement lines up exactly with the formula specified in HB2166.

Chairman Harper asked if after HB2166 is passed out of Committee an amendment will be added to create a subsidy for WESCAP Investments. Mr. Spreitzer answered in the negative.

**Mr. Olson moved that HB2166 do pass.**

**Mr. Olson moved that the Olson five-page strike-everything amendment dated 2/9/11 (Attachment 22) be adopted. The motion carried.**

**Mr. Olson moved that HB2166 as amended do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 24).**

## **HB2631 - tax; aircraft; foreign governments - DO PASS**

Alexander Blount, Majority Intern, stated that HB2631 modifies the transaction privilege (TPT) and use tax exemptions for aircraft and certain related equipment sold to foreign governments (Attachment 25).

Mr. Olson, sponsor, stated the aircraft mentioned in HB2631 are already exempt from sales tax if a foreign government purchases the aircraft for use outside of the state. He explained that HB2631 allows that foreign government to leave the aircraft in the state and gives them an economic benefit to conduct training with that aircraft within the state.

Mr. Harper asked if the aircraft will be used for commercial purposes to train commercial pilots or if the foreign government that purchased the aircraft would be training its own people. Mr. Olson stated that if the aircraft is sold to a foreign government, it qualifies for the sales tax exemption.

Jim Norton, President of R&R Partners, Arizona Manufacturers Council/Arizona Chamber of Commerce and Industry, testified in support of HB2631, stating that HB2631 aids Arizona in keeping its competitive business edge for companies in the state. He stated that in current statute, TPT and sales tax exemptions for foreign governments purchasing aircrafts and navigational equipment are for use outside of the state only. He explained that HB2631 strikes that portion of statute to allow those governments to leave an aircraft in Arizona for training etc., and not be subject to TPT or use tax. He stated that leaving the aircraft in Arizona provides additional jobs for maintenance, testing, training, etc.

Mr. Gallego asked if, currently, an Apache aircraft was purchased by the Israeli government and taken out of the state immediately, the Israeli government would not be subject to sales tax, but if it leaves the aircraft in Arizona, it does have to pay sales tax. Mr. Norton answered in the affirmative and explained that HB2631 allows the foreign government to leave the aircraft in Arizona and not pay sales tax. Mr. Gallego requested the fiscal impact on Arizona's revenues. Mr. Norton explained that the manufacturer could build that sales tax into the cost of the aircraft or the government that purchases the equipment could take it to their country or to another state so that they would not be subject to sales tax. He stated that no fiscal impact is foreseen, but that leaving the aircraft in Arizona adds economic benefits to the state.

Mr. Gray asked if there would be an economic benefit to passing HB2631. Mr. Norton answered in the affirmative and explained that he believes that there will be some situations in the near future that by leaving aircraft in Arizona the state will benefit with fuel sales and maintenance jobs.

Mr. Chabin asked what other aircraft are being constructed, other than military, that foreign government might be interested in purchasing. Mr. Norton stated that there is a limited population of aircraft that would be sold to a foreign government and he does not have an extensive list. Discussion ensued regarding training of people from foreign governments in Arizona and the effects on the private sector.

Chairman Harper announced the names of those who signed up in support of HB2631 but did not speak:

Lorna Romero, Director of Government Relations, Arizona Chamber of Commerce and Industry

**Mr. Olson moved that HB2631 do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 26).**

**HB2332 - internal revenue code conformity policy - DO PASS AMENDED S/E**  
**S/E: same subject**

Amanda Farmer, Majority Staff Intern, stated that the proposed Harper two-page strike-everything amendment dated 2/10/11 (Attachment 27) to HB2332 prohibits the Arizona Department of Revenue (DOR) from assessing interest or penalties on a nonconformity deficiency under certain conditions when a taxpayer's income tax return must be amended due to changes to the tax statutes adopted under a revised definition of *Internal Revenue Code* (IRC) (Attachment 28).

Chairman Harper stated that last year, this bill did not pass out of the Senate Finance Committee before April 15, 2010, so people who benefited from the COBRA tax benefit, collected unemployment during the year, or paid interest on a new car purchased during 2009, were supposed to pay taxes on those benefits and were not aware because the Legislature passed the Internal Revenue Service (IRS) conformity bill after April 15, 2010. He explained that all of those people had a mistake on their 2009 taxes and so the IRS agreed to forgive interest and penalties if the Legislature passed conformity legislation in a reasonable time.

Farrell Quinlan, State Director, National Federation of Independent Business, testified in support of HB2332, stating that HB2332 states that an individual will not be held liable for not being in conformity with a bill passed after April 15, 2010 by the Arizona State Legislature.

Chairman Harper announced the names of those who signed up in support of HB2332 but did not speak:

Walter F. Dudley, Accountant, Arizona Society of Practicing Accountants

Eric Emmert, East Valley Chambers of Commerce Alliance

Tom Dorn, Lobbyist, East Valley Chambers of Commerce Alliance

Heather Bernacki, Government Relations Associate, East Valley Chambers of Commerce Alliance

**Mr. Farley moved that HB2332 do pass.**

**Mr. Farley moved that the Harper two-page strike-everything amendment dated 2/10/11 (Attachment 27) be adopted. The motion carried.**

**Mr. Farley moved that HB2332 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 29).**

**HB2700 - TNT; rate computation; constant rate - DO PASS AMENDED**

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2700 modifies the computation of a school district's tax rate by multiplying a variable number by the Qualifying Tax Rate (QTR), as adjusted for Truth in Taxation (TNT), multiplied by the assessed valuation of each property in the district to produce a constant tax rate that maintains a district's allowable tax levy limit (Attachment 30).

Mr. Gonzalez-Plumhoff explained that the Mesnard five-page amendment dated 2/11/11 (Attachment 31) makes technical and conforming changes to related sections of statute and designates the variable number as the Truth in Taxation adjustment factor.

Mr. Mesnard, sponsor, stated that his intent for offering HB2700 is to create a set QTR that remains consistent yearly that the Legislature can increase or decrease by adding a variable that offsets property value changes.

Chairman Harper asked, if property values go down, will the fluctuating rate keep elected officials from having to raise the rate. Mr. Mesnard answered in the negative but deferred to Mr. Gonzalez-Plumhoff for explanation.

Mr. Gonzalez-Plumhoff stated that the QTR would remain constant but the effect would be the same because it is being multiplied by an independent variable. Mr. Mesnard explained that right now the QTR is going up, so HB2700 removes the rate from connection with the property value changes because the tax rate is a function of the property value changes. Chairman Harper and Mr. Mesnard discussed the difference between the current system and the changes implemented through HB2700.

Mrs. Lesko asked if HB2700 changes the amount of taxes collected for school districts or the General Fund. Mr. Mesnard stated that the amounts will not change but will continue as they are currently under TNT. Mrs. Lesko asked why the school board etc., would be opposed to HB2700. Mr. Mesnard stated that they have not communicated to him why they are opposed to HB2700. He suggested that the title of the bill appears to freeze the tax rate and that, without the variable, it appears that money will be taken from school districts. He stated that this is not the case and he believes it is a misunderstanding because the bill will not affect school districts' bottom line.

Chairman Harper asked if, because of the QTR being constant, HB2700 will have any affect on who pays the tax burden and how much. Mr. Mesnard answered in the negative, stating that it only applies to those who currently pay. Discussion ensued between Mr. Mesnard, Mr. Gonzalez-Plumhoff and Chairman Harper regarding how the variable number, QTR and TNT works.

**Mr. Mesnard moved that HB2007 do pass.**

**Mr. Mesnard moved that the Mesnard five-page amendment dated 2/11/11 (Attachment 31) be adopted. The motion carried.**

**Mr. Mesnard moved that HB2700 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 32).**

Without objection, the meeting adjourned at 7:37 p.m.

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Charly Laube, Committee Secretary  
March 28, 2011

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