ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON WAYS AND MEANS

Minutes of Special Meeting
Thursday, February 17, 2011
House Hearing Room 1 -- 2:30 p.m. or on adjournment of ERA

Chairman Harper called the meeting to order at 6:00 p.m. and attendance was noted by the secretary.

Members Present

Mr. Chabin
Mr. Gray R
Mrs. Lesko
Mr. Mesnard
Mr. Olson
Mr. Vogt, Vice-Chairman
Mr. Harper, Chairman

Members Absent

Mr. Farley
Mr. Gallego

Committee Action

HB2611 - HELD
HB2618 - DP (6-1-0-2)
SB1186 - DP (7-0-0-2)

Chairman Harper stated that Mr. Farley and Mr. Gallego are excused and will not be present for the meeting.

CONSIDERATION OF BILLS

HB2611 - tax audits; statute of limitations - HELD

Chairman Harper announced that HB2611 will be held.

HB2618 - municipal taxes; auditors - DO PASS

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that HB2618 prohibits municipalities from contracting with or employing auditors on a contingent fee basis for the collection, administration, or processing of transaction privilege tax (TPT) or affiliated taxes (Attachment 1).

Mr. Olson asked if HB2618 also prohibits contracting with third parties for collections. Mr. Gonzalez-Plumhoff answered in the negative, stating that HB2618 is missing the provision that was in SB1165. Mr. Olson asked if there are other differences between the two bills. Mr. Gonzalez-Plumhoff stated that is the key difference.

Representative Nancy McLain, sponsor, stated that there are efforts being made to privatize certain governmental services that many believe will save the state money. She continued that HB2618 addresses an area that should not be privatized on a contingent fee basis because of the problems that could be caused for cities as well as the auditors.

Mr. Olson asked if HB2618 allows contracting with a third party for collections and auditing but not auditing based on a contingent fee basis. Representative McLain stated that HB2618 does not address that issue, but refers to the auditing on a contingent fee basis. Mr. Olson stated his concern with contracting out to a third party for collections and auditing, even if not on a contingent fee basis, due to the reasonable expectation that a third-party auditor will recognize the ability to charge for the next contract and how that will reflect the amount of revenue he will discover for the governmental entity he is collecting for. Representative McLain explained that many cities employ third-party auditors including Bullhead City, which has had no complaints. She stated that she does not believe that HB2618 addresses that issue. Mr. Olson rebutted that he does believe that it addresses the issue; discussion ensued.

In response to a question from Mr. Chabin, Representative McLain stated that she does not follow Mr. Olson's line of reasoning and if SB1165 passes through the Senate to the House, the discussion can be continued at that time.

Mr. Chabin stated that rural communities cannot afford to have auditors and asked if it is more advantageous for a small community to hire a firm to perform audits, just as Bullhead City has done. Representative McLain stated that Mr. Chabin mentioned both auditors and collectors and specified that those are not one and the same. She stated that regarding collectors, Bullhead City has found that hiring a firm is advantageous, but regarding auditors, Bullhead City does not have the ability to hire full-time auditing staff to audit the sales tax collections of its retailers. She continued that they have hired outside firms to perform audits, which are not done on a contingent fee basis. Mr. Chabin stated that HB2618 addresses small communities; Representative McLain concurred.

Mrs. Lesko asked if HB2618 would prohibit contingency-based auditing; Representative McLain answered in the affirmative. Mrs. Lesko asked if SB1165 prohibits any third party vendor, and if both bills pass, they are conflicting. Representative McLain stated that she believes Mrs. Lesko's assessment is correct, that there is no conflict and that the wording is exactly the same regarding auditing on a contingency fee basis.

Mr. Olson asked if Representative McLain is willing to amend HB2618 on the Floor to prohibit third-party contracting for collections and auditing notwithstanding whether it is a contract, contingency fee basis or a flat fee. Representative McLain answered in the negative.

Kevin McCarthy, President, Arizona Tax Research Association (ATRA), testified in opposition to HB2611, stating that there are large administrative burdens placed on businesses to comply with the complex Arizona tax system. He stated that if HB2618 passes, ATRA will have to go to court to clarify that the power of taxation cannot be surrendered and contracted out as is stated in the Constitution, which makes HB2618 unconstitutional.

Chairman Harper announced the names of those who signed up in support of HB2618 but did not speak:
John Kelly, Principal, Revenue Discovery Systems
Jim Ogsbury, Legislative Director, League of Arizona Cities and Towns
Jacqueline Walker, Intergov, City of Kingman
Jack Hakim, Mayor, City of Bullhead City
Alison Zelms, Assistant City Manager, City of Sedona
Joseph Brehm, Management Intern, City of Prescott

Chairman Harper announced the names of those who signed up as neutral on HB2618 but did not speak:
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Vogt moved that HB2611 do pass. The motion carried by a roll call vote of 6-1-0-2 (Attachment 2).

SB1186 - 2011 tax corrections act - DO PASS

Daniel Gonzalez-Plumhoff, Majority Research Analyst, stated that SB1186 corrects errors, obsolete language and blending problems within the Arizona Revised Statutes which govern state tax laws (Attachment 3).

Chairman Harper announced that it is customary that nothing substantive be included in the provisions of this type of bill. Mr. Gonzalez-Plumhoff stated that is correct. Chairman Harper stated that he was notified of a problem on HB2001 that passed in Special Session and was not able to go through the corrections that are being requested, so if those corrections are not substantive, they may be added in a Floor amendment to SB1186, as well as other minor technical corrections to the "Jobs Bill".

Vice-Chairman Vogt moved that SB1186 do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 4).

Without objection, the meeting adjourned at 6:23 p.m.

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Charly Laube, Committee Secretary
April 11, 2011

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