PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2448

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:
2 "Section 1. Title 12, chapter 8, article 2.1, Arizona Revised
3 Statutes, is amended by adding section 12-1134.01, to read:
4 12-1134.01. Diminution in value; tax credit for just
5 compensation; applicability
6 A. NOTWITHSTANDING ANY LAW TO THE CONTRARY, IF THE EXISTING RIGHTS TO
7 USE, DIVIDE, SELL OR POSSESS PRIVATE REAL PROPERTY ARE REDUCED BY THE
8 ENACTMENT OR APPLICABILITY OF ANY LAND USE LAW ENACTED AFTER THE DATE THE
9 PROPERTY IS TRANSFERRED TO THE OWNER AND THAT ACTION REDUCES THE FAIR MARKET
10 VALUE OF THE PROPERTY, THE OWNER MAY WAIVE THE OWNER'S RIGHT TO JUST
11 COMPENSATION PURSUANT TO SECTION 12-1134 AND TAKE A CREDIT AGAINST TAXES
12 IMPOSED BY TITLE 43 PURSUANT TO SECTION 43-1077 OR 43-1177 IN AN AMOUNT THAT
13 IS EQUAL TO NO MORE THAN ONE HUNDRED THOUSAND DOLLARS OF THE AMOUNT OF THE
14 JUST COMPENSATION. THE WAIVER UNDER SECTION 12-1134 IS CONTINGENT ON THE
15 ALLOWANCE OF THE TAX CREDIT.
16 B. THIS SECTION DOES NOT APPLY TO LAND USE LAWS THAT:
17 1. LIMIT OR PROHIBIT A USE OR DIVISION OF REAL PROPERTY FOR THE
18 PROTECTION OF THE PUBLIC'S HEALTH AND SAFETY, INCLUDING RULES AND REGULATIONS
19 RELATING TO FIRE AND BUILDING CODES, HEALTH AND SANITATION, TRANSPORTATION OR
20 TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE AND POLLUTION CONTROL.
21 2. LIMIT OR PROHIBIT THE USE OR DIVISION OF REAL PROPERTY COMMONLY AND
22 HISTORICALLY RECOGNIZED AS A PUBLIC NUISANCE UNDER COMMON LAW.
23 3. ARE REQUIRED BY FEDERAL LAW.
24 4. LIMIT OR PROHIBIT THE USE OR DIVISION OF A PROPERTY FOR THE PURPOSE
25 OF HOUSING SEX OFFENDERS, SELLING ILLEGAL DRUGS, LIQUOR CONTROL, OR

PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS DANCING AND OTHER ADULT ORIENTED BUSINESSES IF THE LAND USE LAWS ARE CONSISTENT WITH THE CONSTITUTIONS OF THIS STATE AND THE UNITED STATES.

5. ESTABLISH LOCATIONS FOR UTILITY FACILITIES.

6. DO NOT DIRECTLY REGULATE AN OWNER'S LAND.

7. WERE ENACTED BEFORE DECEMBER 7, 2006.

C. THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE THAT ENACTED THE LAND USE LAW HAS THE BURDEN OF DEMONSTRATING THAT THE LAND USE LAW IS EXEMPT PURSUANT TO SUBSECTION B OF THIS SECTION.

D. THE OWNER SHALL NOT BE REQUIRED TO FIRST SUBMIT A LAND USE APPLICATION TO REMOVE, MODIFY, VARY OR OTHERWISE ALTER THE APPLICATION OF THE LAND USE LAW TO THE OWNER'S PROPERTY AS A PREREQUISITE TO DEMANDING OR RECEIVING JUST COMPENSATION IN THE FORM OF A CREDIT PURSUANT TO THIS SECTION.

E. IF A LAND USE LAW CONTINUES TO APPLY TO PRIVATE REAL PROPERTY MORE THAN SIXTY DAYS AFTER THE DEPARTMENT OF REVENUE SENDS WRITTEN NOTICE TO THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE THAT ENACTED THE LAND USE LAW THAT A JUST COMPENSATION CREDIT HAS BEEN TAKEN BY THE OWNER UNDER SECTION 43-1077 OR 43-1177, THE OWNER IS ENTITLED TO JUST COMPENSATION IN THE FORM OF A CREDIT PURSUANT TO THIS SECTION UNLESS ANY OF THE FOLLOWING OCCURS:

1. THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE AND THE OWNER REACH AN AGREEMENT ON THE AMOUNT OF JUST COMPENSATION TO BE PAID.

2. THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE AMENDS, REPEALS OR ISSUES TO THE LANDOWNER A BINDING WAIVER OF ENFORCEMENT OF THE LAND USE LAW ON THE OWNER'S SPECIFIC PARCEL.

3. THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE MAKES A GOOD FAITH OBJECTION TO THE CLAIM OR THE AMOUNT OF THE CLAIM FOR JUST COMPENSATION IN THE FORM OF A TAX CREDIT AND THAT THE OWNER MAY PURSUE A CLAIM FOR JUST COMPENSATION UNDER SECTION 12-1134. THE OBJECTION SHALL BE IN WRITING, SHALL BE SENT TO THE DEPARTMENT OF REVENUE AND THE OWNER AND SHALL STATE THE SPECIFIC REASONS FOR THE OBJECTION.

F. ANY DEMAND FOR LANDOWNER RELIEF OR ANY WAIVER THAT IS GRANTED IN LIEU OF COMPENSATION RUNS WITH THE LAND.

G. ANY CLAIM FOR JUST COMPENSATION IN THE FORM OF A CREDIT PURSUANT TO THIS SECTION BASED ON DIMINUTION IN VALUE MUST BE MADE OR IS FOREVER BARRED IN THE FIRST TAXABLE YEAR AFTER THE EFFECTIVE DATE OF THE LAND USE LAW, OR THE FIRST DATE THE REDUCTION OF THE EXISTING RIGHTS TO USE, DIVIDE, SELL OR POSSESS PROPERTY APPLIES TO THE OWNER'S PARCEL, WHICHEVER IS LATER.

H. EXCEPT FOR THE RIGHTS UNDER SECTION 12-1134 THAT ARE WAIVED AND COMPROMISED AFTER CLAIMING A CREDIT PURSUANT TO THIS SECTION, THE REMEDY UNDER THIS SECTION IS IN ADDITION TO ANY OTHER REMEDY UNDER THE LAWS AND CONSTITUTION OF THIS STATE OR THE UNITED STATES AND DOES NOT MODIFY OR REPLACE ANY OTHER REMEDY.

I. THIS SECTION DOES NOT PROHIBIT THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE FROM REACHING AN AGREEMENT WITH A PRIVATE PROPERTY OWNER TO WAIVE A CLAIM FOR DIMINUTION IN VALUE REGARDING ANY PROPOSED ACTION BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE OR ACTION REQUESTED BY THE PROPERTY OWNER.

Sec. 2. Section 43-222, Arizona Revised Statutes, is amended to read:

43-222. Income tax credit review schedule

The joint legislative income tax credit review committee shall review the following income tax credits:

1. For years ending in 0 and 5, sections 43-1079.01, 43-1087, 43-1088, 43-1090.01, 43-1167.01, 43-1175 and 43-1182.

2. For years ending in 1 and 6, sections 43-1074.02, 43-1083, 43-1083.02, 43-1085.01, 43-1164.02, 43-1164.03 and 43-1183.

3. For years ending in 2 and 7, sections 43-1073, 43-1079, 43-1080, 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1090, 43-1164, 43-1167, 43-1169, 43-1176 and 43-1181.

4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and 43-1178.

5. For years ending in 4 and 9, sections 43-1076, 43-1076.01, 43-1077, 43-1081.01, 43-1083.01, 43-1084, 43-1162, 43-1162.01, 43-1164.01, 43-1170.01, 43-1177 and 43-1184 and, beginning in 2019, sections 43-1083.03 and 43-1164.04.

Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1077, to read:

43-1077. Credit for just compensation

A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2014, A TAXPAYER WHO WAIVES THE RIGHT TO JUST COMPENSATION UNDER SECTION 12-1134.01 IS ALLOWED A CREDIT FOR EACH CLAIM MADE UNDER SECTION 12-1134.01 AGAINST THE TAXES IMPOSED BY THIS TITLE IN AN AMOUNT EQUAL TO NO MORE THAN ONE HUNDRED THOUSAND DOLLARS OF THE AMOUNT OF THE JUST COMPENSATION.

B. TO CLAIM A CREDIT UNDER THIS SECTION:

1. THE AMOUNT MUST BE UNCONTESTED BY THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE THAT ENACTED THE LAND USE LAW.

2. THE TAXPAYER SHALL SUBMIT WITH THE TAX RETURN THE ADDRESS OF THE REAL PROPERTY, THE NAME AND ADDRESS OF THE POLITICAL SUBDIVISION THAT ENACTED THE LAND USE LAW, THE CITATION TO THE LAND USE LAW THAT CREATED THE CLAIM FOR THE JUST COMPENSATION AND THE AMOUNT OF CREDIT CLAIMED.

C. WITHIN NINETY DAYS OF THE FILING OF A TAX RETURN BY A TAXPAYER CLAIMING A JUST COMPENSATION CREDIT UNDER SECTION 12-1134.01, THE DEPARTMENT SHALL SEND A NOTICE TO THIS STATE OR THE POLITICAL SUBDIVISION THAT ENACTED THE LAND USE LAW. THE NOTICE SHALL INCLUDE THE NAME OF THE TAXPAYER, THE ADDRESS OF THE REAL PROPERTY AND THE AMOUNT OF CREDIT CLAIMED.

D. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN THE NEXT TEN CONSECUTIVE TAXABLE YEARS AS A CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

E. A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN MAY EACH CLAIM ONLY ONE-HALF OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.

F. WITH RESPECT TO ANY COUNTY, CITY OR TOWN THAT ENACTED THE LAND USE LAW FOR WHICH A CREDIT IS CLAIMED PURSUANT TO SECTION 12-1134.01 AND THIS SECTION, THE STATE TREASURER SHALL:

1 1. WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO SECTION
2 42-5029 TO THE AFFECTED COUNTY, CITY OR TOWN THE RESPECTIVE AGGREGATE AMOUNT
3 OF CREDITS CLAIMED UNDER THIS SECTION.
4 2. CREDIT MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE
5 GENERAL FUND AS PROVIDED BY SECTION 42-5029, SUBSECTION D, PARAGRAPH 4.
6 G. WITH RESPECT TO ANY POLITICAL SUBDIVISION OF THIS STATE OTHER THAN
7 THOSE IDENTIFIED IN SUBSECTION F OF THIS SECTION OR ANY STATE AGENCY THAT
8 ENACTED OR ADOPTED THE LAND USE LAW FOR WHICH A CREDIT IS CLAIMED PURSUANT TO
9 SECTION 12-1134.01 AND THIS SECTION, THE STATE TREASURER SHALL:
10 1. WITHHOLD FROM THE DISTRIBUTION OF MONIES FROM THE STATE GENERAL
11 FUND TO THE AFFECTED POLITICAL SUBDIVISION OR STATE AGENCY THE RESPECTIVE
12 AGGREGATE AMOUNT OF CREDITS CLAIMED UNDER THIS SECTION.
13 2. CREDIT MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE
14 GENERAL FUND.
15 Sec. 4. Title 43, chapter 11, article 6, Arizona Revised Statutes, is
16 amended by adding section 43-1177, to read:
17 43-1177. Credit for just compensation
18 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2014, A
19 TAXPAYER THAT WAIVES THE RIGHT TO JUST COMPENSATION UNDER SECTION 12-1134.01
20 IS ALLOWED A CREDIT FOR EACH CLAIM MADE UNDER SECTION 12-1134.01 AGAINST THE
21 TAXES IMPOSED BY THIS TITLE IN AN AMOUNT EQUAL TO NO MORE THAN ONE HUNDRED
22 THOUSAND DOLLARS OF THE AMOUNT OF THE JUST COMPENSATION.
23 B. TO CLAIM A CREDIT UNDER THIS SECTION:
24 1. THE AMOUNT MUST BE UNCONTESTED BY THIS STATE OR THE POLITICAL
25 SUBDIVISION OF THIS STATE THAT ENACTED THE LAND USE LAW.
26 2. THE TAXPAYER SHALL SUBMIT WITH THE TAX RETURN THE ADDRESS OF THE
27 REAL PROPERTY, THE NAME AND ADDRESS OF THE POLITICAL SUBDIVISION THAT ENACTED
28 THE LAND USE LAW, THE CITATION TO THE LAND USE LAW THAT CREATED THE CLAIM FOR
29 THE JUST COMPENSATION AND THE AMOUNT OF CREDIT CLAIMED.
30 C. WITHIN NINETY DAYS OF THE FILING OF A TAX RETURN BY A TAXPAYER
31 CLAIMING A JUST COMPENSATION CREDIT UNDER SECTION 12-1134.01, THE DEPARTMENT
32 SHALL SEND A NOTICE TO THIS STATE OR THE POLITICAL SUBDIVISION THAT ENACTED

THE LAND USE LAW. THE NOTICE SHALL INCLUDE THE NAME OF THE TAXPAYER, THE ADDRESS OF THE REAL PROPERTY AND THE AMOUNT OF CREDIT CLAIMED.

D. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN THE NEXT TEN CONSECUTIVE TAXABLE YEARS AS A CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

E. CO-OWNERS OF A BUSINESS, INCLUDING CORPORATE PARTNERS IN A PARTNERSHIP AND MEMBERS OF A LIMITED LIABILITY COMPANY, MAY EACH CLAIM ONLY THE PRO RATA SHARE OF THE CREDIT ALLOWED UNDER THIS SECTION BASED ON OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL OWNERS OF THE BUSINESS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED FOR A SOLE OWNER OF A BUSINESS.

F. WITH RESPECT TO ANY COUNTY, CITY OR TOWN THAT ENACTED THE LAND USE LAW FOR WHICH A CREDIT IS CLAIMED PURSUANT TO SECTION 12-1134.01 AND THIS SECTION, THE STATE TREASURER SHALL:

1. WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO SECTION 42-5029 TO THE AFFECTED COUNTY, CITY OR TOWN THE RESPECTIVE AGGREGATE AMOUNT OF CREDITS CLAIMED UNDER THIS SECTION.

2. CREDIT MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE GENERAL FUND AS PROVIDED BY SECTION 42-5029, SUBSECTION D, PARAGRAPH 4.

G. WITH RESPECT TO ANY POLITICAL SUBDIVISION OF THIS STATE OTHER THAN THOSE IDENTIFIED IN SUBSECTION F OF THIS SECTION OR ANY STATE AGENCY THAT ENACTED OR ADOPTED THE LAND USE LAW FOR WHICH A CREDIT IS CLAIMED PURSUANT TO SECTION 12-1134.01 AND THIS SECTION, THE STATE TREASURER SHALL:

1. WITHHOLD FROM THE DISTRIBUTION OF MONIES FROM THE STATE GENERAL FUND TO THE AFFECTED POLITICAL SUBDIVISION OR STATE AGENCY THE RESPECTIVE AGGREGATE AMOUNT OF CREDITS CLAIMED UNDER THIS SECTION.

2. CREDIT MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE GENERAL FUND.

1 Sec. 5. Purpose

2 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
3 enacts sections 43-1077 and 43-1177, Arizona Revised Statutes, as added by
4 this act, to provide a landowner with alternative relief in cases of
5 diminution in value of private real property."

6 Amend title to conform

KELLI WARD

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03/18/2014
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C: lrh