

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-fourth Legislature - Second Regular Session

CAUCUS AGENDA #18

May 21, 2020

| Bill Number | Short Title | Committee | Date | Action |
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|-------------|-------------|-----------|------|--------|

Committee on Government

Chairman: John Kavanagh, LD 23

Vice Chairman: Kevin Payne, LD 21

Analyst: Stephanie Jensen

Intern: Jeremy Bassham

[SB 1303](#)^(BSI) annexation of territory; requirements

SPONSOR: PRATT, LD 8

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|-----|-----------|----|------------|
| GOV | 5/21/2020 | DP | (11-0-0-0) |
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[SB 1354](#)^(BSI) public retirement systems; prefunding plan

SPONSOR: LIVINGSTON, LD 22

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| GOV | 5/21/2020 | DP | (11-0-0-0) |
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Committee on Judiciary

Chairman: John M. Allen, LD 15

Vice Chairman: Walter J. Blackman, LD 6

Analyst: Lauren Cook

Intern: Samantha Fagerburg

[SB 1556](#)^(BSI) civil asset forfeiture; conviction; procedures

SPONSOR: FARNSWORTH E, LD 12

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|-----|-----------|----|-----------|
| JUD | 5/20/2020 | DP | (6-4-0-0) |
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(No: ENGEL, DEGRAZIA, PAWLIK, RODRIGUEZ)

Committee on Land & Agriculture

Chairman: Timothy M. Dunn, LD 13

Vice Chairman: Travis W. Grantham, LD 12

Analyst: Paul Bergelin

Intern: Mackenzie Nintzel

[SB 1083](#)^(BSI) agriculture department; livestock loss board

SPONSOR: ALLEN S, LD 6

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| LAG | 5/21/2020 | DP | (6-0-0-1) |
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(Abs: CHÁVEZ)

Committee on Rules

Chairman: Anthony T. Kern, LD 20

Vice Chairman: Thomas R. Shope, Jr., LD 8

Analyst: Tim Fleming, Krystle Fernandez

Intern: Nick Ansel, Julie Lauria

[HB 2912](#)^(BS1) COVID-19; civil liability; evidence; penalties
SPONSOR: KAVANAGH, LD 23 HOUSE

[HB 2913](#)^(BS1) supplemental appropriations; child care facilities
SPONSOR: UDALL, LD 25 HOUSE



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

Senate: GOV DP 7-0-0-0 | 3rd Read 29-0-1-0

House: GOV DP 11-0-0-0

SB 1303: annexation of territory; requirements

Sponsor: Senator Pratt, LD 8
Caucus & COW

Overview

Prohibits a city or town from annexing territory if the result is the unincorporated territory being surrounded by a combination of the annexing city or town and other cities or towns.

History

Current statute outlines the procedures required in order to extend and increase the corporate limits of a city or town by annexation. A city or town must file a blank petition in the office of the county recorder of the county in which the annexation is proposed. The petition must outline a description and accurate map of the exterior boundaries of the territory contiguous to the city or town that is proposed to be annexed.

Territory is not contiguous unless the following are true: 1) it adjoins the exterior boundary of the annexing city or town for at least 300 feet; 2) at all points, it is at least 200 feet in width, excluding rights-of-way and roadways; and 3) the distance from the boundary of the annexing city or town where it adjoins the territory being annexed to the furthest point of the annexed territory from that boundary is not more than twice the maximum width of the annexed territory ([A.R.S. § 9-471](#)).

Provisions

1. Prohibits a city or town from the annexation of territory if the unincorporated territory is completely surrounded by a combination of the annexing city or town and other cities or towns as a result. (Sec. 1)
2. Specifies that the statutory contiguousness requirements do not apply to territory that at the time of annexation was already completely surrounded by the same city or town or a combination of cities and towns. (Sec. 1)
3. Makes technical changes. (Sec. 1)

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|--|--|---|--------------------------------------|
| <input type="checkbox"/> Prop 105 (45 votes) | <input type="checkbox"/> Prop 108 (40 votes) | <input type="checkbox"/> Emergency (40 votes) | <input type="checkbox"/> Fiscal Note |
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ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

Senate: FIN DPA 10-0-0-0 | 3rd Read: 27-0-3-0

House: GOV DP 11-0-0-0

SB 1354: public retirement systems; prefunding plan

**Sponsor: Senator Livingston, LD 22
Caucus & COW**

Overview

Establishes the Arizona employers' pension prefunding plan and outlines requirements for prefunding plans.

History

The State Board of Investment (Board) is established in statute and consists of the State Treasurer, the Director of the Arizona Department of Administration, the Director of the Department of Insurance and Financial Institutions and two individuals appointed by the State Treasurer. The Board is required to hold regular monthly meetings, review investments of treasury monies, serve as trustees of the permanent state land funds and serve as trustees of any endowments. The State Treasurer is required to furnish the Board with a report of the performance of current investments and must make these reports available for public inspection ([A.R.S. § 35-311](#)).

Provisions

Pension Prefunding Plan Investment Accounts

1. Authorizes the State Treasurer to invest and reinvest pension prefunding plan monies in equity securities for pension prefunding plan investment accounts. (Sec. 2)
2. Stipulates that all pension prefunding plan monies must be accounted for separately from all other funds. (Sec. 2)
3. Prohibits any monies from being taken from one investment account for deposit in another investment account. (Sec. 2)
4. Requires all monies in pension prefunding plan investment accounts to be invested in prudent equity securities and safe interest-bearing securities. (Sec. 2)
5. Specifies that the earnings, interest, dividends and realized capital gains and losses from the investment of each investment account must be credited to that account. (Sec. 2)
6. Establishes that pension prefunding plan monies are for the purpose of prefunding the required pension contributions of an employer that provides a defined benefit pension plan to their employees. (Sec. 2)
7. States that pension prefunding plan monies are an integral part of this state and its political subdivisions and perform an essential governmental function. (Sec. 2)
8. Stipulates that the investments of pension prefunding plan monies are supposed to be structured and administered in a manner that results in the tax-exempt status of the income of the plan. (Sec. 2)
9. Authorizes the Board to adopt policies, rules and procedures as it deems necessary to ensure that the income of the prefunding plan is not subject to federal income tax. (Sec. 2)
10. Allows the governing body of an employer to authorize and request that the State Treasurer invest pension prefunding plan monies in a pension prefunding plan investment account and set the terms of the distributions from the investment account for the employer. (Sec. 2)
11. Specifies that the pension prefunding plan investment accounts and monies are separate and apart from the Arizona employers' pension prefunding plan and its assets, receipts, earnings and income. (Sec. 2)

Arizona Employers' Pension Prefunding Plan

12. Establishes the Arizona employers' pension prefunding plan as a special trust fund in order to allow participating employers that provide a defined benefit pension plan to prefund the employer's required pension contributions. (Sec. 3)
13. States that the prefunding plan and the assets held in the plan are separate and apart from the following:

- a) Any other fund, program or plan administered by the Board including the public safety personnel retirement fund; and
 - b) Any pension prefunding plan investment accounts and any pension prefunding plan monies. (Sec. 3)
14. Stipulates that the prefunding plan is an integral part of Arizona and of the political subdivisions of this state, performs an essential governmental function and is an entity with the power to sue and be sued. (Sec. 3)
15. Provides that the prefunding plan is supposed to be administered and structured in a manner that results in the tax-exempt status of the income of the prefunding plan. (Sec. 3)

State Board of Investment

16. Establishes that the Board has sole and exclusive control of the administration and investment of the prefunding plan. (Sec. 3)
17. Directs the Board to administer and invest the prefunding plan. (Sec. 3)
18. Requires the Board to offer investment options to each participating employer for monies in the prefunding plan that consist of diversified, cost-effective investment portfolios in publicly traded investment options that do not exceed the risk and return profiles established by the Board and that are consistent with their fiduciary duty. (Sec. 3)
19. Specifies that the provisions in current statute related to the administration and investment of PSPRS, including delegation of authority to the administrator and other people, supplement this Act. (Sec. 3)
20. Allows the Board to keep assets of the prefunding plan separate or commingle those assets in one or more group trusts, subject to the crediting assets, earnings and receipts and charging of payments to the appropriate employer. (Sec. 3)
21. Stipulates that all assets and income of the prefunding plan must be credited to the prefunding plan. (Sec. 3)
22. Instructs each participating employer to pay the reasonable administrative costs that are determined by the Board. (Sec. 3)
23. Mandates that the Board deposit all monies received by the Board in the prefunding plan for the administrative costs. (Sec. 3)

Employer Participation

24. Authorizes the Board to allow an employer to participate in the prefunding plan, pursuant to the terms and conditions set by the Board. (Sec. 3)
25. Allows an employer who is authorized by the Board to elect to participate in the prefunding plan if the following occur:
- a) The employer's governing body adopts a resolution requesting to participate in the prefunding plan;
 - b) The employer submits a written request to the administrator of the Board that requests their participation in the prefunding plan with the resolution; and
 - c) The employer's governing body enters into a contract with the Board that outlines the terms and conditions of their participation in the prefunding plan, including reflecting or incorporating the requirements of this Act and addressing expenditures and funding and actuarial, accounting, reporting and investment considerations. (Sec. 3)

Transfer of Monies

26. Permits the Board to authorize a participating employer to transfer monies into the prefunding plan. (Sec. 3)
27. Requires a transfer of monies into the prefunding plan to comply with the following:
- a) The transfer satisfies the terms of the contract between the participating employer and the Board;
 - b) The transfer satisfies the requirements under applicable governmental accounting standards; and
 - c) The transfer does not jeopardize the tax-exempt status of the income of the prefunding plan. (Sec. 3)
28. Prescribes that transferred monies are irrevocable and may not be refused by the Board or refunded or returned to the participating employer. (Sec. 3)

Transfer of Assets

29. Allows the Board to authorize a participating employer to transfer assets out of the prefunding plan if the transfer complies with the following:
- a) The transfer satisfies the terms of the contract between the participating employer and the Board;
 - b) The transfer satisfies the requirements under applicable governmental accounting standards; and
 - c) The transfer does not jeopardize the tax-exempt status of the income of the prefunding plan. (Sec. 3)
30. Stipulates that, except as otherwise provided in statute:

- a) The prefunding plan assets must be used exclusively for the purpose of paying pension contributions and the administrative costs and may not be used for any other purpose; and
 - b) A transfer of assets out of the prefunding plan must be made only for the purpose transferring assets to the system to discharge the participating employer's pension contributions to the appropriate defined benefit pension. (Sec. 3)
31. Specifies that the prefunding plan assets and any transfer of assets are not subject to garnishment, execution, attachment, the operation of bankruptcy or insolvency laws or other process of law and are not unassignable. (Sec. 3)
32. States that an employee, member, beneficiary or other individual does not have any right, title or interest in the prefunding plan or assets. (Sec. 3)

Termination of Employer's Participation

33. Allows the Board to terminate the participation in the prefunding plan of a participating employer if any of the following applies:
- a) The Board determines that all obligations of a participating employer to pay the required contributions have been satisfied in full by payment or defeasance with no remaining risk;
 - b) A participating employer elects to cease participation in the prefunding plan;
 - c) The Board has determined that the participating employer has failed to satisfy the terms required by Board rules or the contract; or
 - d) The prefunding plan is terminated by the Board or is otherwise terminated. (Sec. 3)
34. Requires any assets to be transferred to the system to pay the participating employer's required pension contributions if the Board terminates the participation of a participating employer in the prefunding plan. (Sec. 3)
35. Directs any remaining monies to be transferred to the participating employer only if both of the following apply:
- a) The transfer does not jeopardize the tax-exempt status of the income of the prefunding plan; and
 - b) The transfer complies with the requirements under the applicable governmental accounting standards. (Sec. 3)
36. States that the assets attributable to a participating employer's transfers into the prefunding plan are transferred to the system to pay the required pension contributions if the prefunding plan is terminated by the Board. (Sec. 3)
37. Stipulates that any remaining monies will be transferred to the participating employer if certain requirements are met. (Sec. 3)

Annual Financial Statements

38. Instructs the Board to cause the annual financial statements of the prefunding plan to be prepared according to the applicable governmental accounting standards. (Sec. 3)
39. Requires an audit to be conducted of the financial statements by a qualified independent certified accounting firm for each fiscal year according to the governmental accounting standards that apply. (Sec. 3)
40. Directs a total asset amount made up of the sum of the assets in the prefunding plan and the assets of the defined benefit pension to be used in the calculation of the unfunded pension liability and the annual actuarial required contribution amount. (Sec. 3)

Nontaxable Status

41. Exempts the assets transferred into or out of or held in the prefunding plan and investment income on assets from state, county and municipal taxes. (Sec. 3)
42. States that the Legislature intends the income of the prefunding plan to not be subject to federal income tax. (Sec. 3)
43. Allows the Board to adopt additional rules, policies and procedures to fulfill the intent of the Legislature that the income not be subject to federal income tax. (Sec. 3)

44. Specifies that the portion of this Act that causes the disqualification does not apply if the Board receives notification from the United States Internal Revenue Service that this Act will jeopardize the tax-exempt status of the income of the prefunding plan. (Sec. 3)

Board Rules and Procedures

45. Authorizes the Board to adopt rules, policies and procedures regarding the prefunding plan as the Board deems necessary to implement this Act. (Sec. 3)

46. Allows the Board to employ services, including legal services, that are necessary to defend, protect or advance the prefunding plan. (Sec. 3)

47. States that the Board has full discretionary fiduciary authority to determine questions that arise in connection with the administration and investment of the prefunding plan. (Sec. 3)

48. Requires any determination, authorization, approval, request, requirement or other action, election or decision to be made in the sole and absolute discretion of the Board relating to the prefunding plan. (Sec. 3)

49. Specifies that the Board, individual trustees, the administrator, deputy or assistant administrators and employees do not guarantee the prefunding plan against loss or depreciation and are not personally liable of any claim arising from any act or failure to act made in good faith. (Sec. 3)

50. Authorizes the Board to appear before and maintain an action in political subdivisions of Arizona, courts and other forums through a representative or counsel appointed by the Board to defend and protect the prefunding plan and the Board. (Sec. 3)

51. Stipulates that a trustee or member of the Board is entitled to rely on information, opinions, reports or statements in connection with the prefunding plan by any of the following:

- a) The administrator, deputy or assistant administrator or employee of the system that they deem reliable and competent in the matters presented;
- b) Legal counsel, public accountants or other people they deem are within the professional or expert competence of the person; or
- c) A committee of the Board that they are not a member of that they believe merits confidence. (Sec. 3)

52. Maintains that a trustee or Board member is not liable for any action taken or any failure to take any action if the duties were performed in compliance with statute. (Sec. 3)

53. Specifies that a trustee or Board member has the defenses and presumptions ordinarily available in any legal proceeding or other forum. (Sec. 3)

54. States that a trustee or Board member is presumed to have acted, failed to act or otherwise discharged their duties in accordance with statute. (Sec. 3)

55. Asserts that the burden is on the party challenging the act, failure to act or other discharge of duties by a trustee or Board member to establish clear and convincing evidence that rebut the presumption. (Sec. 3)

Miscellaneous

56. Requires the Board to serve as trustees of any pension prefunding plan investment accounts. (Sec. 1)

57. Defines the following terms:

- a) administering and investing;
- b) board;
- c) defined benefit pension;
- d) employer;
- e) participating employer;
- f) prefunding plan;
- g) required pension contributions;
- h) system;
- i) tax-exempt status of pension prefunding plan's income; and
- j) trustee. (Sec. 2, 3)

58. Contains a severability clause. (Sec. 4)

59. Makes technical changes. (Sec. 1)



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

Senate: JUD DPA 7-0-0-0 | 3rd Read 30-0-0-0

House: JUD DP 6-4-0-0

SB 1556: civil asset forfeiture; conviction; procedures

**Sponsor: Senator Farnsworth E, LD 12
Caucus & COW**

Overview

States for property to be subjected to forfeiture, the owner of the property must be convicted of an offense where forfeiture applies, with exceptions, and the state must establish by clear and convincing evidence that the property is subject to forfeiture.

History

Racketeering is any act that is chargeable or indictable under the laws of the state or country, punishable by imprisonment for more than a year and includes such acts as homicide, robbery and extortion if committed for financial gain ([A.R.S. § 13-2301](#)). Statute also provides a method for the state to seek civil remedies. All proceeds traceable to a racketeering offense and other property used or intended to be used to facilitate the commission of the offense may be subject to a forfeiture proceeding ([A.R.S. § 13-2314](#)).

All interests in property are subject to forfeiture unless the owner can establish that he or she is within the enumerated exemptions ([A.R.S. § 13-4304](#)). A trial court may grant summary judgment or, if there are contested facts, conduct a hearing to determine by clear and convincing evidence whether the property is subject to forfeiture and whether the owner's interest is within one of the exemptions. An *in rem action* against the person's property may take place before a conviction for the offense that is linked to the property to be forfeited ([A.R.S. § 13-4311](#)).

There may be a fiscal impact to the state General Fund in FY 2021 associated with the proposed prohibition against funding full-time equivalent Attorney General (AG) employees with Anti-Racketeering Revolving Fund monies.

Provisions

State and County Anti-Racketeering Revolving Funds

1. Prohibits the AG from using monies from the ARRF for any full-time equivalent positions in the AG's office beginning August 27th, 2020. (Sec. 2)
2. Requires the AG's report on forfeiture monies and expenditures to include whether a claim was filed by an owner or interest holder and the net amount of proceeds received from the forfeiture. (Sec. 2)
3. Requires any monies or property received from forfeiture by the state, a political subdivision or the federal government *must* be deposited in the ARRF or the county ARRF. (Sec. 3)
4. Requires the county attorney to deny an application for monies from an agency or agencies responsible for a seizure or forfeiture if the application requests monies for an unauthorized purpose. (Sec. 3)
5. Requires the county attorney's ARRF report on forfeiture monies and expenditures to detail whether a claim was filed by an owner or interest holder and the net amount of proceeds received from the forfeiture. (Sec. 3)
6. States all proceeds traceable to a drug offense committed for financial gain *and that resulted in a criminal conviction* are subject to seizure and forfeiture. (Sec. 4)
7. Specifies the monies in any anti-racketeering revolving fund can be used for payments reimbursing any federal, state or local agency for expenditures relating to *investigative, storage and maintenance functions associated with the property held by the seizing agency*. (Sec. 23)

Forfeiture and Seizure

8. Requires the person or people seeking a search warrant, and the judicial officer issuing the warrant, to have probable cause for believing the grounds exist. (Sec. 5)
9. Requires an officer taking property under a warrant give an *itemized* receipt for the property taken. (Sec. 6)

10. States an officer must leave the receipt at the place where the property was found if *it is not possible to give the receipt to a person*. (Sec. 6)
11. Requires all property seized by a law enforcement agency be returned to the owner, if known, within 10 business days after the property's seizure, unless any of the following applies:
 - a) The owner has been arrested and charged with a criminal offense subject to forfeiture;
 - b) The property is intended to be used as evidence;
 - c) The property is illegal for the owner to possess; or
 - d) The property was seized for forfeiture, in which case the property can be returned. (Sec. 7)
12. Requires a magistrate to deliver a copy of the inventory to the person whose property was taken and to the applicant for the warrant. (Sec. 8)
13. States all property, with certain exceptions, is subject to forfeiture if both of the following apply:
 - a) The owner is convicted of an offense in which forfeiture applies; and
 - b) The state establishes, by clear and convincing evidence, the property is subject to forfeiture. (Sec. 12)
14. Prohibits a common carrier vehicle from forfeiture, even following a conviction, unless the state provides clear and convincing evidence that the owner or operation was a consenting party or knew of the act giving rise to forfeiture. (Sec. 12)
15. Allows a court to order a person to forfeit any of the following after conviction of an offense in which forfeiture applies:
 - a) Property, the person, acquired through the commission of the offense;
 - b) Property directly traceable to property acquired through the commission of the offense; or
 - c) Any property or instrumentality the person used in the commission of the offense or to facilitate the offense. (Sec. 12)
16. Permits the court to waive the conviction requirement if the prosecuting authority shows by clear and convincing evidence that the following apply:
 - a) There is no known owner of the seized property;
 - b) Diligent efforts have been made to identify the owner of the seized property, and no person has asserted an ownership interest in the seized property, or that before conviction, the defendant or alleged criminal:
 - i. Died;
 - ii. No longer resided in the US or was deported;
 - iii. Was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;
 - iv. Fled the jurisdiction of this state; or
 - v. Abandoned the property. (Sec. 12)
17. States a plea agreement approved by a court or other agreement does not prevent the property from being forfeited. (Sec. 12)
18. States a person who claims to be an innocent owner, has the burden to show the following:
 - a) Held a legal right, title or interest in the property seized at the time the illegal conduct that gave rise to the seizure of the property occurred; or
 - b) Acquired a legal right, title or interest in the property subject to forfeiture after the commission of the crime that gave rise to the seizure of the property. (Sec. 12)
19. Requires the state to prove by clear and convincing evidence that an innocent owner had actual knowledge of the underlying crime when pursuing a forfeiture proceeding. (Sec. 12)
20. Requires the court to find a person an innocent owner, and order the state to relinquish all claims of title to the property and return the property, if the state is unable to prove the person is not an innocent owner. (Sec. 12)
21. Allows a peace officer to make a seizure for forfeiture if the officer has probable cause to believe the property is subject to forfeiture and any of the following apply:
 - a) The property relates to a lawful arrest or a lawful search;
 - b) The property is subject to seizure from a prior judgment; or
 - c) The officer believes the property is subject to forfeiture and that delaying to obtain a court order may result in the removal or destruction of the property. (Sec. 12)
22. Removes language relating to constructive seizures. (Sec. 13)
23. Removes language stating money or negotiable instruments found in proximity to contraband cannot be assumed to have been used, or intended to be used, for the commission of an offense. (Sec. 13)

24. States the presence or possession of US currency, debit or credit cards, without other indicators of a crime that subjects property to forfeiture, may not be considered probable cause for seizure. (Sec. 13)

Notice of Pending Forfeiture and Commencement of Proceedings

25. Requires, within 60 days after making a seizure or simultaneously while filing a related criminal indictment, the state to file a notice of pending forfeiture proceeding or return the property. (Sec. 15)

26. States the notice of pending forfeiture must include the following:

- a) A description of the property seized;
- b) The date and place of seizure of the property;
- c) The name and address of the law enforcement agency making the seizure; and
- d) The specific statutory and factual grounds for the seizure. (Sec. 15)

27. States, if real property sought to be forfeited, the attorney for the state can file a lis pendens or a notice of pending forfeiture concerning the property with the county recorder of the county where the property is located. (Sec. 15)

28. Maintains the notice of pending forfeiture proceeding must also be served to the person's attorney of record and all people known or reasonably believed by the state to claim an interest in the property. (Sec. 15)

29. Allows an owner or interest holder of the property to file a claim against the property at any time within 60 after the notice or 60 days before a criminal trial, whichever is later, requesting a hearing to adjudicate the validity of the claimed interest in the property. (Sec. 15)

30. Prohibits an owner or interest holder from being charged a filing fee or other charge for filing the claim. (Sec. 15)

31. Directs copies of the claim be mailed to the seizing agency and the attorney for the state. (Sec. 15)

32. Requires the claim to be signed by the claimant under penalty of perjury and include the following:

- a) The caption of the proceeding as set forth on the notice of pending forfeiture or complaint and the name of the claimant;
- b) The address where the claimant will accept future mailings from the court or the attorney for the state;
- c) The nature and extent of the claimant's interest in the property;
- d) All facts supporting the claimant's claim in the property and its return to the claimant; and
- e) The precise relief sought. (Sec. 15)

33. States the attorney for the state must determine whether it is probable that the property is subject to forfeiture and if so, may initiate judicial forfeiture proceedings *by filing a complaint if a claim has been filed*. (Sec. 16)

34. Prohibits the state from initiating forfeiture proceedings before a criminal conviction for an offense to which forfeiture applies unless no claims for the seized property were timely filed or the court waived the conviction requirement. (Sec. 16)

Post-Deprivation Hearing

35. Repeals statute relating to uncontested forfeiture. (Sec. 17)

36. Allows a defendant, or another person, to claim an interest in the seized property by filing a motion with the court for the return of the property within 60 days after the notice or 60 days before a criminal trial, whichever is later. (Sec. 18)

37. Requires a filed motion to include facts to support the person's interest in the property. (Sec. 18)

38. States a person who makes a timely motion for the return of property has a right to a hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding and within 30 days after the date that the motion is filed. (Sec. 18)

39. Requires the state, within 10 days of a hearing on a filed motion, to file an answer or response that includes the reasons why the state is entitled to retain possession of the property. (Sec. 18)

40. Requires the court to grant the motion of the claimant if the court finds any of the following applies:

- a) The final judgment will likely require the state to return the property to the claimant;
- b) The property is not reasonably required to be held for evidentiary reasons;
- c) The property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding. (Sec. 18)

41. Allows the court to order the return of money or property sufficient to obtain legal counsel, but less than the total amount seized, and the court can require an accounting. (Sec. 18)

42. Permits the court, in lieu of ordering the return of property, to order the following:

- a) The state to give security or written assurance for satisfaction of any judgment, including damages, that can be rendered in a related forfeiture action; or
- b) Any other relief the court deems just. (Sec. 18)

Judicial Forfeiture Proceedings

- 43. Requires a person who claims an interest in seized property to file an answer to the complaint of forfeiture within 30 days after service of the forfeiture complaint. (Sec. 19)
- 44. States the answer must include facts to support the claimant's alleged interest in the property. (Sec. 19)
- 45. Prohibits the clerk of court from charging a person who claims ownership or to be an interest holder a filing fee or any charge for filing the answer. (Sec. 19)
- 46. Stipulates the court must enter a judgment of forfeiture and the seized property must be forfeited to the state if the state proves by clear and convincing evidence that the following apply:
 - a) The property is subject to forfeiture;
 - b) The criminal prosecution related to the seized property resulted in a conviction or the court waived the requirement for a conviction;
 - c) There is no innocent owner or third-party interest holder to whom the property should be delivered; and
 - d) The value of the property to be forfeited does not unreasonably exceed the following:
 - i. The pecuniary gain derived or sought to be derived by the crime;
 - ii. The pecuniary loss caused or sought to be caused by the crime; or
 - iii. The value of the convicted owner's interest in the property. (Sec. 19)
- 47. States a person is not jointly and severally liable for orders for forfeiture of another person's property; if ownership of property is unclear, a court can order each person to forfeit the person's property on a pro rata basis or by another means that the court deems equitable. (Sec. 19)
- 48. States any property or proceeds transferred to any person are subject to forfeiture and thereafter must be ordered forfeited if the state proves by clear and convincing evidence that the following occurred:
 - a) The transferee had actual knowledge the property was subject to forfeiture; and
 - b) The transferee was not a bona fide purchaser for value not knowingly taking part in an illegal transaction. (Sec. 19)
- 49. Allows an injured person to submit a request for compensation from forfeited property to the court at any time before the earlier of the entry of a final judgment or an application for an order of the forfeiture of the property; or if a hearing is held, not less than 30 days before the hearing. (Sec. 19)
- 50. Instructs the request be signed by the requestor under penalty of perjury and set forth all the following:
 - a) The caption of the proceeding as set forth on the notice of pending forfeiture or complaint and the name of the requestor;
 - b) The address where the requestor will accept future mailings from the court or parties to the action;
 - c) The property subject to forfeiture from which the requestor seeks compensation;
 - d) The nature of the economic loss sustained by the requestor;
 - e) All facts supporting each such assertion;
 - f) Any additional facts supporting the request; and
 - g) The amount of economic loss the requestor seeks compensation for. (Sec. 19)
- 51. States if a proper request for compensation from forfeited property is timely filed, the court must hold a hearing to establish whether there is a factual basis for the request. (Sec. 19)
- 52. Designates the requestor as having the burden of establishing by a preponderance of evidence that the requestor is an injured person who sustained economic loss. (Sec. 19)
- 53. Requires the hearing on a claim to held 60 days after all parties have complied with disclosure required. (Sec. 19)
- 54. Allows the court to consolidate the hearing on the claim with a hearing on any other claim concerning the same property. (Sec. 19)
- 55. Permits the claimant to testify, present evidence and witnesses on the claimant's own behalf and cross-examine witnesses who appear at a hearing. (Sec. 19)
- 56. Allows the state to present evidence and witnesses, and cross-examine witnesses who appear at the hearing. (Sec. 19)
- 57. Specifies the state has the burden of establishing, by clear and convincing evidence, that the property is subject to forfeiture at the hearing. (Sec. 19)

58. States any claimant who has previously established by preponderance of the evidence that the claimant is an owner of or interest holder in the property is exempt from forfeiture. (Sec. 19)
59. Stipulates, after a hearing, the court must order an interest in property returned or conveyed to a claimant, if any, who has established by a preponderance of the evidence that the claimant is an owner of or interest holder in the property if either of the following applies:
 - a) The state has failed to establish by clear and convincing evidence that the interest is subject to forfeiture; or
 - b) The claimant has established by a preponderance of evidence that the interest is subject to forfeiture. (Sec. 19)
60. Mandates after a hearing the court must order all other property, including all interests in the property, forfeited to the state and proceed according to statutory requirements. (Sec. 19)
61. States, after a hearing, if the court finds that a requestor is an injured person, the court must determine the amount of the injured person's economic loss caused by the conduct giving rise to the forfeiture of the designated property and must require the following:
 - a) If the designated property is not contraband and is not altered or designed for use in conduct giving rise to forfeiture, the attorney for the state must sell the property and must apply the resulting balance to compensate the injured person's economic loss in the amount found by the court;
 - b) If the balance is insufficient to compensate the economic loss of all injured people, the attorney for the state must distribute the balance among the injured people according to a method determined by the court;
 - c) After compensating all injured people, the attorney for the state must transmit 10 percent of the remaining balance, if any, to the state treasurer for deposit in the victim compensation and assistance fund; and
 - d) The attorney for the state must deposit the remainder of the balance, if any, in an appropriate ARRF. (Sec. 19)

Judicial in rem Forfeiture Proceedings

62. States if a forfeiture is authorized by law, it *can* be ordered by a court on an action in rem brought by the state pursuant to a notice of pending forfeiture or a verified complaint for forfeiture. (Sec. 20)
63. Establishes judicial in rem forfeiture proceedings are in the nature of an action in rem and are governed by the Arizona Rules of Civil Procedure unless a different procedure is provided by law. (Sec. 20)
64. Allows a civil in rem action to be brought by the state if the prosecutor shows by clear and convincing evidence there is no known owner of the seized property, diligent efforts have been made to identify the owner of the seized property and no person has asserted an ownership interest in the seized property; or that, before or after the conviction, the following apply:
 - a) The defendant or alleged criminal died;
 - b) The defendant or alleged criminal no longer resides in the US or was deported;
 - c) The defendant or alleged criminal was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;
 - d) The defendant or alleged criminal fled the jurisdiction of this State; or
 - e) The defendant or alleged criminal abandoned the property. (Sec. 20)
65. States a temporary restraining order can be entered on application of the state without notice or an opportunity for a hearing if the state demonstrates both of the following:
 - a) *The seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the state has probable cause to believe that the property with respect to which the order is sought would, if a conviction occurs, be subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property, and*
 - b) Provision of notice will jeopardize the availability of the property for forfeiture; a temporary restraining order expires within 10 days after the date it is entered unless the party against whom it is entered consents to an extension for a longer period *or unless the state can demonstrate the property is being held as evidence in a criminal case.* (Sec. 21)

Miscellaneous

66. Defines *abandoned property*. (Sec. 10)
67. Expands the definition of *seizure for forfeiture* to include a peace officer's seizure of property with no evidentiary value. (Sec. 10)
68. Prohibits the attorney for the state from transferring a title to either of the following:
 - a) An officer or employee of the agency that seized the property or a person who is related to the officer or employee by blood or marriage; or

b) The attorney for the state or any individual working in the same office or any person related to the authority or individual by blood or marriage. (Sec. 22)

69. Makes technical and conforming changes. (Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24)

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| <input type="checkbox"/> Prop 105 (45 votes) | <input type="checkbox"/> Prop 108 (40 votes) | <input type="checkbox"/> Emergency (40 votes) | <input type="checkbox"/> Fiscal Note |
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ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

Senate: WAG DPA 7-0-0-0 | 3rd Read 29-0-1

House: LAG DP 6-0-0-1

SB 1083: agriculture department; livestock loss board

Sponsor: Senator Allen S, LD 6

Caucus & COW

Overview

Authorizes the Livestock Loss Board (Board) to use the Livestock Compensation Fund (Fund) to compensate those who implement avoidance measures to prevent wolf predation on livestock.

History

The Board was created to address wolf depredation on livestock operations and consists of members from the Arizona Department of Agriculture, the Arizona Game and Fish Department (Department), the livestock industry, the wildlife conservation and management community and the state's universities ([A.R.S. § 17-491](#)). The Board sets requirements for lessees and livestock operators to demonstrate wolf depredation and to apply and receive compensation for any depredation. Additionally, the Board determines compensation rates, but it is not required to compensate landowners, lessees or livestock operators for wolf depredation. Finally, the Board can coordinate with the Department to investigate wolf depredation on livestock and any corrective measures taken to alleviate property damage caused by wolves ([A.R.S. § 17-492](#)).

The Fund compensates landowners, lessees and livestock operators for wolf depredation on livestock and can also be used to compensate these parties if they allow wolves on their private property and accept potential wolf depredation. It consists of federal monies, legislative appropriations, public and private grants and private donations. Monies in this fund must supplement, and not supplant, monies appropriated by the Department ([A.R.S. § 17-493](#)).

Provisions

1. Authorizes the Board to compensate landowners, lessees or livestock operators for implementing avoidance measures to prevent wolf predation on livestock. (Sec. 1)
2. Allows the Fund to be used for implementing avoidance measures to prevent wolf depredation on livestock. (Sec. 2)
3. Defines *avoidance measures* as nonlethal actions taken or education provided by livestock owners to reduce the likelihood of livestock depredation. (Sec. 1 and 2)
4. Makes technical and conforming changes. (Sec. 1 and 2)

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

HB 2912: COVID-19; civil liability; evidence; penalties

**Sponsor: Representative Kavanagh, LD 23
Caucus & COW**

Overview

Limits enforcement actions and civil liability during the state of emergency declared by the Governor relating to the COVID-19 outbreak.

History

On March 11, 2020, Governor Ducey issued a [declaration of emergency](#) and an [executive order](#) to provide health officials and administrators with tools and guidance necessary to combat the continued spread of COVID-19.

Governor Ducey, on March 19, 2020, issued an [executive order](#) limiting the operations of certain businesses to slow the spread of COVID-19. On March 30, 2020, the Governor issued an [executive order](#) limiting activities outside of the home, increasing physical distancing measures and defining essential activities for individuals.

A violation of an order, rule or regulation pursuant to a state of emergency order is a class 1 misdemeanor ([A.R.S. § 26-317](#)).

Provisions

1. Prohibits charging, adjudicating or convicting a person of an act prohibited or required by executive order.
 - a) Applies only to the executive orders issued during the Governor's state of emergency and relating to the COVID-19 outbreak.
 - b) Contains a retroactivity clause of March 11, 2020. (Sec. 1)
2. Places, beginning March 11, 2020, a civil penalty not to exceed \$100 on a person who knowingly fails or refuses to obey an executive order if the person is notified of the violation and does not remedy the violation within 24 hours of receiving the notice.
 - a) Applies only to the executive orders issued during the Governor's state of emergency and relating to the COVID-19 outbreak.
 - b) Contains a retroactivity clause of March 11, 2020. (Sec. 1)
3. Prohibits, beginning March 11, 2020, the state or any political subdivision issuing a business, service, or professional license or permit in its jurisdiction from suspending or revoking a license or permit based on actions directly prohibited or required by executive order.
 - a) Applies only to the executive orders issued during the Governor's state of emergency and relating to the COVID-19 outbreak.
 - b) Contains a retroactivity clause of March 11, 2020. (Sec. 1)
4. Exempts a school or person from being liable, except in cases of gross negligence, to an individual who contracts COVID-19 during the state of emergency order related to the COVID-19 outbreak, including after the individual enters or remains on the premises of the school or person.
 - a) Expands the definition of a *person* to include an individual who owns or operates a business, corporation, limited liability company, church, religious institution or nonprofit organization.
 - b) Defines *school* as a public, charter or private school providing K-12 instruction, a university, a community college, an accredited private postsecondary institution, a vocational program, or a vocational education program. (Sec. 2)
5. States the burden of proof in a civil action is based on the plaintiff contracting COVID-19 and clear and convincing evidence the school or person acted with gross negligence.
 - a) Specifies the burden of proof standard applies to all causes of actions accruing before, on or after the effective date. (Sec. 2)
6. Contains a severability clause. (Sec. 3)
7. Contains an emergency clause. (Sec. 4)

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

HB 2913: supplemental appropriations; child care facilities
Sponsor: Representative Udall, LD 25
Caucus & COW

Overview

Appropriates \$85,005,835 from the Child Care Development Fund (CCDF) in FY 2020 to the Department of Economic Security (DES) to provide forgivable loans to child care facilities. Appropriates \$3,000,000 in FY 2020 from the CCDF in FY 2020 to the Department of Health Services (DHS) to provide waivers of licensure renewal fees for child care facilities.

History

The federal Coronavirus Aid, Relief, and Economic Security ([CARES](#)) Act, signed into law on March 27, 2020, includes supplemental appropriations for the Child Care and Development Block Grant (CCDBG) to prevent, prepare for and respond to the coronavirus disease 2019. Arizona's formula-based allocation of CARES Act supplemental CCDBG funding is \$88,005,835.

Federal law requires state legislatures to appropriate CCDBG funds ([P.L. 104-193, Section 901](#)). The [FY 2021 General Appropriations Act](#) appropriated \$181,251,300 in CCDBG monies from the CCDF to DES and \$882,600 to DHS.

Provisions

1. Appropriates \$85,005,835 from the CCDF in FY 2020 to DES to provide forgivable loans to licensed child care facilities that provide child care services for at least six months after receiving a loan and that spend the monies for any of the following:
 - a) Reopening the child care facility and providing child care services;
 - b) Continuing to operate the child care facility and providing child care services;
 - c) Making past and future rental or lease payments for the child care facility; or
 - d) Purchasing sanitation supplies and personal protective equipment for the child care facility and the facility's staff. (Sec. 1)
2. Requires DES to:
 - a) Base each loan amount on a per child basis using February 2020 enrollment; and
 - b) Prorate the loan repayment on a monthly basis for any licensed child care facility that does not remain in operation for at least six months after receiving the loan. (Sec. 1)
3. Appropriates \$3,000,000 from the CCDF in FY 2020 to DHS to provide a waiver of licensure renewal fees for each licensed child care facility. (Sec. 1)
4. Allows DES and DHS to spend the appropriated monies in FY 2020 and FY 2021. (Sec. 1)
5. Requires DES and DHS to report to the Joint Legislative Budget Committee by August 1, 2020, February 1, 2021 and August 1, 2021 on each of the following:
 - a) Total expenditures by each department;
 - b) If applicable, expenditure by each department categorized by:
 - i. Type of licensed child care facility;
 - ii. County of each child care facility;
 - iii. How the monies were spent by each child care facility; and
 - c) From DES, the amount and county of the loan that was repaid by each licensed child care facility that received a loan and did not remain operational for at least six months after receiving the loan. (Sec. 1)
6. Exempts DES and DHS from rulemaking provisions for purposes on this section for one year after the effective date of this act. (Sec. 1)

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note