

# ARIZONA STATE SENATE

## RESEARCH STAFF



TO: MEMBERS OF THE SENATE  
GOVERNMENT COMMITTEE

**JASON THEODOROU**  
LEGISLATIVE RESEARCH ANALYST  
GOVERNMENT COMMITTEE  
Telephone: (602) 926-3171

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SUBJECT: Strike everything amendment to H.B. 2471, relating to ACA; reform

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### Purpose

Transfers the powers and duties of the Arizona Commerce Authority (ACA) to other state agencies. Modifies the governance and administration of the ACA statutes. Contains requirements for enactment and becomes effective on the signature or the Governor (Proposition 108).

### Background

In 2011, the Legislature established the ACA with the mission to provide private sector leadership in growing and diversifying the economy of Arizona, creating high quality employment in Arizona through expansion, attraction and retention of businesses and marketing Arizona for the purpose of expansion, attraction and retention of businesses. The ACA has a board of directors consisting of 19 voting members, including the Governor serving as Chairperson, the Chief Executive Officer (CEO) of the ACA and 17 private sector business leaders who are chief executive officers of private, for-profit enterprises. Of the 17 private sector voting members, nine are appointed by the Governor, four are appointed by the President of the Senate (Senate President) and four are appointed by the Speaker of the House of Representatives (House Speaker). The board also has 10 ex-officio members without the power to vote and 9 technical advisors that serve the board to enhance collaboration among state agencies to meet infrastructure needs and facilitate growth opportunities throughout the state. The CEO is appointed by the board and has the statutorily prescribed responsibility for managing, administering and supervising the activities of the ACA. The duties of the ACA include: 1) administering tax credits and incentives for businesses; 2) administering various grants to qualified businesses to enhance economic development, including through the Arizona Competes Fund; 3) managing the State Broadband Office; 4) establishing a program by which entrepreneurs become aware of permits, licenses or other authorizations needed to establish, expand or operate in the state; and 5) establishing and supervising the operations of full-time or part-time offices in other states and foreign countries expanding direct investment and export trade opportunities ([A.R.S. Title 41, Chapter 10](#)).

In 2016, the Legislature established the Office of Economic Opportunity (OEO) to: 1) monitor the state's tax and regulatory competitiveness; 2) serve as the state's workforce planning coordinator and provide economic and demographic research and analysis; 3) provide administrative support to the Arizona Finance Authority; 4) analyze state and local regulatory costs to businesses; and 5) provide analytical support the ACA. The director of the OEO is appointed by the Governor and is responsible for the direction, operation and control of the agency ([A.R.S. Title 41, Chapter 53](#)).

The Senate Government Committee of Reference (COR) held a public meeting on January 17, 2024 to conduct a sunset review of the ACA and recommended that the ACA be revised or consolidated ([COR Report](#)). The ACA is statutorily set to terminate on July 1, 2024, unless legislation is enacted for its continuation ([A.R.S. § 41-3024.31](#)).

Repealing the Arizona Competes Fund and removing the \$3,500,000 annual distribution from the State Lottery Fund may result in an increase to the state General Fund (state GF). If repealing the income tax subtraction for net capital gains derived from investment in a qualified business and changing the outlined income tax credits from refundable to nonrefundable results in a change in income tax collections, there may be an impact to the state GF.

Provisions

*Transfer of Authority*

1. Transfers the powers and duties of the ACA to the OEO.
2. Transfers the State Broadband Office to the Arizona Department of Administration.

*Governing Board & CEO*

3. Establishes a new governing board of directors (Board) to include:
  - a) three Governor-appointed members who are CEOs of small businesses in Arizona with fewer than 50 employees;
  - b) two Governor-appointed members who are from a list of three members submitted to the Governor jointly by the Senate President and the House Speaker;
  - c) four Governor-appointed public members;
  - d) three Senate President-appointed members who are the CEOs of small businesses in Arizona with fewer than 25 employees;
  - e) the Director of the Joint Legislative Budget Committee (JLBC) or the Director's designee;
  - f) one House Speaker-appointed member who is an attorney with experience litigating constitutional cases involving the gift clause;
  - g) one House Speaker-appointed member who is from an organization that represents independent businesses in Arizona;
  - h) one House Speaker-appointed member who represents the homebuilding industry in Arizona; and
  - i) one Senate President-appointed member who represents a tax research organization in Arizona.
4. Requires the Board to establish an advisory council consisting of the following members from the Board:
  - a) the Director of JLBC or the Director's designee;
  - b) the member representing the homebuilding industry in Arizona;
  - c) the member representing a tax research organization in Arizona;
  - d) the member who is an attorney with experience litigating constitutional cases involving the gift clause to serve as the chairperson of the advisory council.
5. Requires the advisory council to survey all businesses in Arizona to assess:
  - a) any factors that are integral to the location of businesses;
  - b) any concerns business owners in Arizona have for continued viability for their businesses; and
  - c) considerations policymakers in Arizona need to analyze to make Arizona more enjoyable and practicable for business.

6. Requires the advisory council, by December 31 of each year, to submit a report summarizing the advisory council's findings and recommendations concerning the assessment to the:
  - a) Governor;
  - b) Senate President;
  - c) House Speaker;
  - d) chairperson of the Board; and
  - e) Secretary of State.
7. Requires the Board to meet quarterly and at the call of the chairperson.
8. Requires the Governor to appoint a chairperson to the Board from among the members.
9. Requires members of the Board to annually submit a complete financial disclosure statement indicating all financial holdings of the member to the CEO and the chairperson of the Board.
10. Requires the Governor with the advice and consent of the Senate to appoint a CEO for the Board from a list of three qualified persons submitted jointly to the Governor by the Senate President and the House Speaker.
11. Requires the CEO to serve at the pleasure of the Governor under the terms of a performance-based contract.
12. Allows all persons serving as members of the current ACA Board on the effective date to continue serving until the expiration of the member's normal terms.
13. Specifies that all subsequent appointments to the Board must be as prescribed by statute.

***Powers and Duties***

14. Requires the Board to submit, by December 31 of each year, a report that identifies the number of jobs created in the state in the previous calendar year and categorizes each job as either a direct job that was created by programs administered by the Board, an indirect job or an induced job to the:
  - a) Governor;
  - b) Senate President;
  - c) House Speaker; and
  - d) Secretary of State.
15. Eliminates the authorization for the Board to employ or retain legal counsel or other consultants as necessary to carry out its statutory purposes.
16. Requires the Board to conduct a written evaluation for each grant it provides that demonstrates compliance with statute.
17. Requires each evaluation to be made publicly available online.
18. Prohibits the Board from providing any grants to an entity in the state unless it determines that the grant is serving a public purpose and the state receives sufficient consideration in exchange for the grant.

19. Grants a taxpayer in the state standing to challenge the Board's compliance with the prescribed requirements relating to providing grants.
20. Prohibits the Board from using state monies to lease or purchase motor vehicles for use by employees to conduct business activities.
21. Allows the Board to participate in the state motor vehicle fleet for any motor vehicles purchased or leased.
22. Allows the Board to purchase, lease or rent motor vehicles using nonstate monies.
23. Requires vehicles purchased, leased or rented to be used by the Board only for its purposes.
24. Eliminates the exemption of the Board from the statutory requirements relating to government competition with private enterprise.
25. Prohibits the Board from hosting CEO forums and engaging in any marketing strategies that require expenditures to be paid to provide attendees lodging, transportation or access for events in the state.

#### ***Funds and Tax Credits***

26. Repeals the Arizona Competes Fund.
27. Repeals the refundable portion of the Research and Development Tax Credit, the associated refund application requirements and the authority to evaluate and certify qualifying taxpayers for the refundable portion of the credit.
28. Removes the income tax subtraction for net capital gains derived from investment in a qualified small business.
29. Deems the individual and corporate tax credits for Motion Picture Production Costs and Qualified Facilities as nonrefundable, rather than refundable, and allows a taxpayer to carry forward any credit amount not used to offset income tax liability for five years.

#### ***Legislative Ratification of Rules***

30. Requires an agency to submit a proposed rule that is estimated to increase regulatory costs in the state by more than \$100,000 within five years after implementation to the OEO for review.
31. Prohibits a proposed rule from becoming effective, if the OEO confirms the proposed rule is estimated to increase regulatory costs by more than \$500,000 within five years after implementation, until the Legislature enacts legislation ratifying the proposed rule.
32. Requires the OEO to submit the proposed rule to the Administrative Rules Oversight Committee (Committee) within 30 days of the next legislative session.
33. Requires the Committee to submit the proposed rule to the Legislature as soon as practicable.
34. Allows any member of the Legislature to introduce legislation to ratify the proposed rule.

35. Prohibits an agency from filing a final rule with the Secretary of State before obtaining legislative approval of the proposed rule through legislation.
36. Requires, if the Legislature does not enact legislation to ratify the proposed rule during the current legislative session, an agency to terminate the proposed rulemaking by publishing a notice of termination in the register.
37. Exempts the proposed rule subject to the legislative ratification requirement from statutorily prescribed timeframes for rulemaking.
38. Allows a person regulated by an agency that is proposing a rule to request the OEO to review the rule.
39. Allows a legislator to also request the OEO to review a proposed rule.
40. Exempts emergency rules from the legislative ratification requirement.
41. Deems, beginning on the general effective date, any rule that increases the regulatory costs by more than \$500,000 as void and unenforceable, unless the Legislature enacts legislation ratifying the rule.
42. Exempts the Arizona Corporation Commission from the legislative ratification requirement.

*Miscellaneous*

43. Defines *direct job* as employment that is created to fulfill the demand for a product or service.
44. Defines *indirect job* as employment that exists to produce goods and services needed by the workers who have direct jobs.
45. Defines *induced job* as employment that is created by the personal spending of both direct and indirect workers in Arizona.
46. Defines *consideration* as an exchange of goods, services or money that is proportional, direct, contractually obligatory and for which an objective fair market value can be readily ascertained.
47. Excludes, from the definition of *consideration*, indirect benefits that are speculative or anticipatory, the promise to employ any persons and the receipt of tax revenue.
48. Defines *public purpose* as an activity that is directly related to a function of government and for which the primary beneficiary is the public as a whole and not a private entity.
49. Excludes, from the definition of *public purpose*, providing aid by subsidy, grant, loan or otherwise to private businesses, individuals or entities for the purposes of economic development.
50. Makes technical and conforming changes.
51. Requires for enactment the affirmative vote of at least two-thirds of the members of each house of the Legislature.
52. Becomes effective on signature of the Governor.