

AMENDED**ARIZONA STATE SENATE**
RESEARCH STAFF

TO: MEMBERS OF THE SENATE
GOVERNMENT COMMITTEE

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

DATE: March 25, 2024

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

Purpose

Terminates the Arizona Commerce Authority (ACA) and transfers its powers and duties to other state agencies. Modifies the governance and administration of the ACA statutes.

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 CEOs 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. Terminates the ACA and transfers its powers and duties to the OEO.
2. Transfers the State Broadband Office from the ACA to the Arizona Department of Administration.

OEO Governing Board & Director

3. Establishes an OEO 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) one House Speaker-appointed member who is an economist;
 - 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 member who is an economist;
 - b) the member representing the homebuilding industry in Arizona;
 - c) the member representing a tax research organization in Arizona; and
 - 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 to develop a scorecard that evaluates and ranks the regulatory and tax burdens of each municipality in Arizona.
7. 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.
8. Requires the Board to meet quarterly and at the call of the chairperson.
9. Requires the Governor to appoint a chairperson to the Board from among the members.
10. Eliminates the ACA CEO position.
11. Requires the OEO Director to:
 - a) manage, administer and supervise the powers and duties transferred from the ACA; and
 - b) negotiate, make, execute, acknowledge and perform contracts and other agreements in the interest of the OEO or to carry out or accomplish the purposes of the powers and duties transferred from the ACA.
12. Requires members of the Board to annually submit a complete financial disclosure statement indicating all financial holdings of the member to the OEO Director and the chairperson of the Board.
13. Requires the Governor to appoint the OEO Director from a list of three qualified persons submitted jointly to the Governor by the Senate President and House Speaker.
14. Requires the OEO Director to serve at the pleasure of the Board under the terms of a performance-based contract, rather than at the pleasure of the Governor.
15. 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.
16. Specifies that all subsequent appointments to the Board must be as prescribed by statute.

Powers and Duties

17. Requires the OEO 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 would not have been created but for programs administered by the OEO, an indirect job or an induced job to the:
 - a) Governor;
 - b) Senate President;
 - c) House Speaker; and
 - d) Secretary of State.

18. Eliminates the authorization for the Board to employ or retain legal counsel or other consultants as necessary to carry out its statutory purposes.
19. Specifies that the requirement for the Board to develop comprehensive long-range economic plans for Arizona must be informed by the annual report provided by the advisory council.
20. Requires the OEO to conduct a written evaluation for each grant it provides that demonstrates compliance with statute.
21. Requires each evaluation to be made publicly available on the OEO's website.
22. Prohibits the OEO 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.
23. Grants a taxpayer in the state standing to challenge the OEO's compliance with the prescribed requirements relating to providing grants.
24. Allows the taxpayer to recover reasonable attorney fees and costs if the taxpayer prevails in the action.
25. Prohibits the OEO from using state monies to lease or purchase motor vehicles for use by employees to conduct business activities.
26. Allows the OEO to participate in the state motor vehicle fleet for any motor vehicles purchased or leased.
27. Eliminates the exemption of the OEO from the statutory requirements relating to government competition with private enterprise.
28. Prohibits the OEO 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.
29. Eliminates the exemption of OEO officers and employees from laws regulating state employment including statutes on:
 - a) state service;
 - b) reimbursement of state employee expenses; and
 - c) health and accident insurance.
30. Prohibits the OEO from expending public or private monies for the employment or contracted employment of a digital equity position.

Funds and Tax Credits

31. Repeals the Arizona Competes Fund.
32. 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.

33. Removes the income tax subtraction for net capital gains derived from investment in a qualified small business.
34. 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

35. 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.
36. 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.
37. Requires the OEO to submit the proposed rule to the Administrative Rules Oversight Committee (Committee) within 30 days of the next legislative session.
38. Requires the Committee to submit the proposed rule to the Legislature as soon as practicable.
39. Allows any member of the Legislature to introduce legislation to ratify the proposed rule.
40. Prohibits an agency from filing a final rule with the Secretary of State before obtaining legislative approval of the proposed rule through legislation.
41. 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.
42. Exempts the proposed rule subject to the legislative ratification requirement from statutorily prescribed timeframes for rulemaking.
43. Allows a person regulated by an agency that is proposing a rule to request the OEO to review the rule.
44. Allows a legislator to also request the OEO to review a proposed rule.
45. Exempts emergency rules from the legislative ratification requirement.
46. 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.
47. Exempts the Arizona Corporation Commission from the legislative ratification requirement.

Miscellaneous

48. Eliminates the definitions for the *ACA* and *CEO*.
49. Defines *office* as the OEO.

50. Defines *director* as the director of the OEO.
51. Redefines *board* to mean the board of directors of the OEO, rather than the board of directors of the ACA.
52. Defines *direct job* as employment that is created to fulfill the demand for a product or service.
53. Defines *indirect job* as employment that exists to produce goods and services needed by the workers who have direct jobs.
54. Defines *induced job* as employment that is created by the personal spending of both direct and indirect workers in Arizona.
55. 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.
56. 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.
57. 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.
58. 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.
59. Requires Legislative Council staff to prepare proposed conforming legislation for consideration in the Fifty-Seventh Legislature, First Regular Session.
60. Makes technical and conforming changes.
61. Becomes effective on the general effective date, retroactive to July 1, 2024.

Amendments Adopted by Committee

1. Adopted the strike-everything amendment.
2. Terminates the ACA.
3. Clarifies that the powers and duties of the ACA are transferred to the OEO, rather than the ACA being placed under the authority of the OEO.
4. Eliminates the ACA CEO position.
5. Clarifies that the OEO Director, rather than the ACA CEO, must:
 - a) manage, administer and supervise the powers and duties transferred from the ACA; and
 - b) negotiate, make, execute, acknowledge and perform contracts and other agreements in the interest of the OEO or to carry out or accomplish the purposes of the powers and duties transferred from the ACA.

6. Eliminates the authorization for the OEO to purchase, lease or rent motor vehicles using nonstate monies.
7. Requires the Board to include one House Speaker-appointed member who is an economist and serves on the advisory council, rather than the JLBC director or the director's designee.
8. Requires the advisory council to develop a scorecard that evaluates and ranks the regulatory and tax burdens of each municipality in Arizona.
9. Specifies that the annual OEO jobs report must include the number of direct jobs that would not have been created but for programs administered by the OEO, rather the number of direct jobs created by programs administered by the OEO.
10. Specifies that the requirement for the Board to develop comprehensive long-range economic plans for Arizona must be informed by the annual report provided by the advisory council.
11. Eliminates the exemption of OEO officers and employees from laws regulating state employment including statutes on:
 - a) state service;
 - b) reimbursement of state employee expenses; and
 - c) health and accident insurance.
12. Requires the OEO Director to serve at the pleasure of the Board under a performance-based contract, rather than at the pleasure of the Governor.
13. Prohibits the OEO from expending public or private monies for the employment or contracted employment of a digital equity position.
14. Eliminates the definitions for the *ACA* and *CEO*.
15. Defines *Director* as the director of the OEO.
16. Defines *office* as the OEO.
17. Redefines *board* to mean the board of directors of the OEO, rather than the board of directors of the ACA.
18. Eliminates the Proposition 108 clause.
19. Applies this legislation retroactively to July 1, 2024.
20. Requires Legislative Council staff to prepare proposed conforming legislation for consideration in the Fifty-Seventh Legislature, First Regular Session.
21. Makes conforming changes.

Senate Action