



2019 Legislative Session Wrap

- Days of Session **135**
- Bills Posted **1318**
- Bills Passed **331**
- Vetoed **7**
- Signed **256**
- Memorials Resolutions Posted **100**
- Memorials Resolutions Passed **21**

General Transportation Provisions in the 2020 Legislative Budget Signed by the Governor:

A repeal of the Highway Safety Fee (\$32) on July 1, 2021

\$8.7 million in transportation funding transfers, significantly down from the roughly **\$100** million last year.

\$85 million in one-time General Fund revenues for highway and road projects statewide, **\$10** million for airports, and **\$700,000** for a cold inspection facility at the Mariposa Port of Entry in Nogales.

\$130 million in State Highway Fund revenues for I-17 improvements over the next three years, including **\$40** million for the upcoming year. Unlike the funding for other projects listed above, the I-17 improvements utilize existing transportation revenues rather than added General Fund monies. The Governor's original intent was to use the additional State Highway Fund revenue that would be available due to the cessation of the HURF transfers. This expectation resulted from the creation of the Highway Safety Fee.

Key ARPA Bills

H2009: Navigable Stream Adjudication Commission: Extension (ARPA Supported)

Prime Sponsor: Representative Gail Griffin, LD 14

Overview

Extends the Arizona Navigable Stream Adjudication Commission (Commission) through June 30, 2024.

H2109: County Transportation: Excise Tax (ARPA Supported)

Prime Sponsor: Representative TJ Shope, LD 8

Overview

Increases the county transportation excise tax to no more than 20% when alone or together with any tax imposed for the county transportation excise tax.

History

Current law allows a county transportation excise tax rate of not more than 10%. Rate changes must be approved by qualified electors at a countywide election. (A.R.S. § 42-6106)

Provisions

Increases the county transportation excise tax rate, if approved by the qualified electors voting at a countywide election, to no more than 20% when alone or combined with any tax imposed for the county transportation excise tax for roads, of the rate prescribed under: the transaction privilege classification rates, the jet fuel excise tax rate, or on the use or consumption of electricity or natural gas customer subject to use tax.

H2453: Land Use Plans: Contents: Aggregates “Mears Act” (ARPA BILL)

Prime Sponsor: Representative Gail Griffin, LD 14

Overview

Requires the Arizona Geological Survey to keep an annually updated database relating to existing mines in Arizona and requires the plans of municipalities and counties to include that information.

History

The planning agency and governing body of each municipality is required to prepare and adopt a comprehensive, long-range general plan for the development of the municipality (A.R.S. § 9-461.05).

The Arizona Geological Survey is established within the University of Arizona and serves as the primary source of geological information in Arizona. The main objectives of the Arizona Geological Survey are to provide information, advice and assistance regarding Arizona's geologic character, hazards, limitations, mining and mineral resources and encourage wise use of lands (A.R.S. § 27-106).

Provisions

1. Requires each municipality's general plan and each county with a population of over 125,000 persons comprehensive plan to include:
 - a) Information on how to locate existing mines from the Arizona Geological Survey;
 - b) Consideration of existing mining operations; and
 - c) Suitable geological resources.
2. Requires the Arizona Geological Survey to keep an annually updated database relating to existing mines in Arizona that would allow municipalities and counties to identify areas with mineral and aggregate mines.

3. Makes technical changes.

HB2492: State Highway Workzones: Accidents

Prime Sponsor: Representative Bolding, LD 27

Overview

Applies the same penalties imposed on individuals causing serious physical injury or death by a moving violation to individuals who commit a violation in a state highway work zone, resulting in injury or death.

History

A person is guilty of causing serious physical injury or death by a moving violation if the person violates certain statutorily outlined traffic laws and the violation results in an accident causing serious physical injury or death to another person.

A person who commits a violation is required to attend and successfully complete traffic survival school. In addition, the court may order the person to perform community restitution. The court is required to report a conviction for a violation to the Arizona Department of Transportation. For a first violation, a person's license may be suspended for no more than 180 days if the violation resulted in serious physical injury or no more than a year if the violation resulted in death. For a second violation within a 36-month period, a person's license is suspended for 180 days if the violation resulted in serious physical injury or a year if the violation resulted in death.

Restitution awarded as a result of a violation is prohibited from exceeding \$100,000. A prosecution must be commenced within two years after actual discovery of the offense or discovery that should have occurred with the exercise of reasonable diligence, whichever occurs first. A person who commits a violation is guilty of a class 1 misdemeanor (up to 6 months/up to \$2,500 plus surcharges) (A.R.S. § 28-672).

A person is prohibited from driving at a speed greater than the speed allowed by traffic control devices in a state highway work zone, whether there are workers present or not. A person who commits a violation when workers are not present is subject to a maximum civil penalty of \$250. For a violation when workers are present, the civil penalty is doubled (A.R.S. § 28-710).

Provisions

1. Subjects a person who commits a state highway work zone safety violation that results in serious physical injury or death to the penalties imposed on individuals guilty of causing serious physical injury or death by a moving violation. (Sec. 1)
2. Cites this Act as the "Jarvis K. Crenshaw Act." (Sec. 2)
3. Makes technical and conforming changes. (Sec. 1)

HB2748: Budget: Capital Outlay: Appropriations: 2019-20 (ARPA Supported)

Prime Sponsor: Representative Rusty Bowers, LD 25

Provisions

Makes various appropriations for capital expenditures for FY2019-20, including **\$393.4** million from the State Highway Fund to the Department of Transportation (DOT) for state highway construction, **\$3.88** million from the general fund to the Department of Emergency and Military Affairs to construct a readiness center, **\$1.25** million from the State Parks Revenue Fund for construction of a new pedestrian bridge at the Tonto Natural Bridge State Park, and **\$2.4** million from the Board of Fingerprinting Fund to the Department of Public Safety for remote housing replacement. Appropriates **\$6.9** million from the State Highway Fund in FY2019-20 to DOT to construct new maintenance buildings and facilities in Seligman, Williams and Wickenburg. Appropriates the following amounts from the State Highway Fund to DOT to expand Interstate 17 between Anthem and Black Canyon City: **\$40** million in FY2019-20, **\$45** million in FY2020-21, and **\$45** million in FY2021-22. Appropriates **\$10** million from the general fund in FY2019-20 to DOT for deposit in the State Aviation Fund to plan, construct develop and improve county and municipal airports as determined by the State Transportation Board. Appropriates the following amounts from the general fund in FY2019-20 for the following highway projects: **\$20** million for distribution to the City of Kingman to construct new Interstate **40** traffic interchanges, **\$28** million to DOT to expand U.S. Route 95 between Yuma and the Yuma proving ground, and **\$18** million for distribution to counties and municipalities in specified amounts.

HB2757: Tax Provisions: Omnibus “Conformity” (ARPA Supported)

Prime Sponsor: Representative Ben Toma, LD 22

Overview

Provides for the adoption of provisions under the transaction privilege and use tax statutes for the taxation of retail sales into Arizona by marketplace facilitators and remote sellers. Additionally, it provides for an economic presence test and safe harbor and undue burden provisions.

Conforms Arizona's income tax calculation to the changes made to the internal revenue code effective on January 1, 2018 and reforms sections of the income tax code for taxable years beginning from and after December 31, 2018.

History

On June 21, 2018, the United States Supreme Court, in the Wayfair v. South Dakota case, reversed the long-standing Quill case (1992) that required a physical presence test for a state to impose a sales tax on a remote seller. The Wayfair decision said that South Dakota's tax system appears designed to prevent undue burdens upon interstate commerce. This decision resulted from three main findings. First, South Dakota applies a safe harbor to sellers that have limited business in the state. Second, South Dakota is not applying their tax retroactively. Third, South Dakota has adopted the Streamlined Sales and Use Tax Agreement, which standardizes taxes to reduce administrative and compliance costs. Current Arizona law taxes the sale of tangible personal property under the retail classification, A.R.S. §42-5061, while cities and towns tax retail sales under the Model City Tax Code. Also, nexus is established by a physical presence test.

Current A.R.S. §43-105 does not conform to current internal revenue code, as amended, and in effect on January 1, 2018, including provisions effective in 2017, the bipartisan act of 2018

and the consolidated appropriations act of 2018. Generally, each year changes are made to the internal revenue code that Arizona must choose to conform to.

Provisions

1. Prohibits a city or town from requiring a person to obtain a business license to conduct business with purchasers in that city or town if the person is required to pay tax in this state only because the person's business exceeds the prescribed threshold in A.R.S § 42-5043.
2. Updates the definition of the *internal revenue code* (IRC) as of January 1, 2019 to include provisions that became effective during 2018 but to exclude changes enacted after January 1, 2019.
3. Removes the definition of *electronic portal*.
4. Defines *marketplace*, *marketplace facilitator*, *marketplace seller* and *remote seller*.
5. Adds marketplace facilitator and remote seller to the definition of *person*.
6. Adds transactions facilitated by a marketplace facilitator on behalf of a marketplace seller to the definition of *sale*.
7. Exempts a marketplace facilitator or remote seller from a municipal privilege tax license fee and license renewal fee that is only required to obtain a transaction privilege tax license pursuant to A.R.S. § 42-5043.
8. Establishes that a marketplace facilitator is not liable for failing to pay the correct amount of transaction privilege tax for a marketplace seller's sales if the facilitator and the seller are unaffiliated and:
 - a. The marketplace seller gave the marketplace facilitator incorrect information; or
 - b. The failure to pay the correct amount of tax was due to an error other than an error in sourcing the sale.
9. Prohibits the liability relief for a marketplace facilitator from exceeding:
 - a. Five percent of the total tax due on taxable sales facilitated by the marketplace facilitator for calendar year 2019;
 - b. Three percent of the total tax due on taxable sales facilitated by the marketplace facilitator for calendar year 2020; and
 - c. Zero percent of the total tax due on taxable sales facilitated by the marketplace facilitator for calendar year 2021 and thereafter.
10. Establishes the liability relief for a remote seller that failed to pay the correct amount of tax due to an error other than an error in sourcing may not exceed:
 - a. Five percent of the total tax due under this chapter on taxable sales for calendar year 2019;
 - b. Three percent of the total tax due under this chapter on taxable sales for calendar year 2020; and
 - c. Zero percent of the total tax due under this chapter on taxable sales for calendar year 2021 and thereafter.
11. Permits the Department of Revenue (DOR) to waive penalties and interest if the marketplace facilitator or remote seller seeks liability relief, the department rules that reasonable cause exists, and the marketplace facilitator or marketplace seller paid tax on sales during the period for which relief is sought.
 - a. 12.
12. States that a taxpayer may file a refund claim or appeal a refund denial pursuant to current law.
13. States that an audit of a marketplace facilitator may not automatically cause an audit of a marketplace seller.

14. Defines *affiliated person* for this section as a person that, with respect to another person, either:
 - a. Has an ownership interest of more than five percent, whether direct or indirect, in that other person; or
 - b. Is related to the other person because a third person, or a group of third persons that are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons. (Sec. 6)
15. Requires a remote seller, not facilitated by a marketplace facilitator, to pay transaction privilege tax on retail sales of tangible personal property if their gross proceeds or gross income with customers in this state pursuant to ARS § 42-5061 is more than the following:
 - a. \$200,000 for calendar year 2019;
 - b. \$150,000 for calendar year 2020; and
 - c. \$100,000 for calendar year 2021 and thereafter.
16. Requires a marketplace facilitator to pay transaction privilege tax on retail sales of tangible personal property if their gross proceeds or gross income with customers in this state pursuant to ARS § 42-5061 is more than \$100,000.
17. States that for the purpose of determining whether a person meets the economic nexus threshold, all affiliated persons shall be aggregated.
18. States that a person must obtain a transaction privilege tax license from the DOR once the threshold is met, even if it is met partway through the calendar year and must begin remitting the tax on the first day of the month that starts at least thirty days after the threshold is met.
19. States that if a person does not meet the threshold in the next calendar year, the person is not required to remit transaction privilege tax for the following calendar year and may cancel the transaction privilege tax license.
20. Permits the DOR to adopt rules to carry out A.R.S. § 42-5043.
21. Requires a marketplace facilitator to report the tax due from transactions facilitated on behalf of marketplace sellers.
22. Allows a marketplace facilitator to report the tax due on transactions facilitated on behalf of a marketplace seller and transactions made directly by the marketplace facilitator on a combined or separate return.
23. Defines, for A.R.S. 42-5043, *affiliated person*.
24. Adds municipal taxation as a condition to the taxation of food.
25. Excludes sales of tangible personal property by a marketplace seller that are facilitated by a marketplace facilitator in which the marketplace facilitator has remitted or will remit the tax to the DOR from the tax imposed on the retail classification.
26. States a city or town may exempt proceeds from fine art if such works of fine art are sold by the original artist.
27. Establishes A.R.S. § 42-5061 supersedes all county, city or town ordinances.
28. States the municipal tax rate for businesses selling tangible personal property at retail for marketplace facilitators is in effect at the rate on September 30, 2019, until the city or town changes the rate.
29. Allows a city or town to levy a transaction privilege tax on the gross proceeds of sales or gross income derived from:
 - a. The business of selling food at retail;
 - b. A bookstore selling textbooks that are required by any state university or community college;

- c. The sales of livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption used for specific consumption purposes;
 - d. The sale of nonmetalliferous mined materials at retail; and
 - e. The sale of works of fine art.
 - f. The sale of a motor vehicle to a nonresident and an enrolled member of an Indian tribe under specific conditions.
30. Allows a city or town to continue to levy an existing transaction privilege tax, that was levied on or before May 1, 2019, on the gross proceeds of sales or gross income derived from the sales of:
- a. Propagative materials to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.
 - b. Implants used as growth promotants and injectible medicines for livestock or poultry of persons who are engaged in producing livestock, poultry, or livestock or poultry commercially or who are engaged in producing feeding livestock or poultry commercially.
 - c. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock.
31. Provides that the municipal taxation, as outlined in Provision 31, does not apply and that a city or town may not continue to levy a transaction privilege tax after December 31, 2019 for a city or town with a population of more than 50,000 persons and after June 30, 2021 for a city or town with a population of 50,000 persons or less.
32. Allows a city or town to exempt from transaction privilege, sales, use or other similar tax the sale of paintings, sculptures or similar works of fine art, if such works of fine art are sold by the original artist.
33. Defines *food*, *marketplace facilitator* and *remote seller*.
34. States that *poultry* includes ratites.
35. States what is included as *propagative materials*.
36. Defines the IRC, for taxable years beginning from and after December 31, 2018, as the IRC of 1986, as amended, in effect on January 1, 2019, including those provisions that became effective during 2018 with the specific adoption of all retroactive effective dates, but excluding any changes to the code enacted after January 1, 2019.
37. Includes the Bipartisan Budget Act of 2018 and the Consolidated Appropriations Act, 2018 to the definition of *internal revenue code* during taxable years beginning from and after December 31, 2017 through December 31, 2018.
38. Removes the definition of *internal revenue code* for taxable years beginning from and after December 31, 2007 through December 31, 2008.
39. Includes A.R.S. § 43-1073.01 in the income tax credit review schedule.
40. Requires the DOR to prescribe a short form or may prescribe a simplified form for individual taxpayers that claim the optional standard deduction but not for the increased amount for charitable deductions.
41. States the tax for a single person or a married person filing separately for taxable years beginning from and after December 31, 2018 is:
- a. 2.59% of taxable income between \$0 - \$26,500;
 - b. \$686, plus 3.34% of the amount over \$26,500 for taxable income between \$26,501 - \$53,000;
 - c. \$1,571, plus 4.17% of the amount over \$53,000 for taxable income between \$53,001 - \$159,000; and
 - d. \$5,991, plus 4.50% of the amount over \$159,000 for taxable income of \$159,001 and over.

42. States the tax for a married couple filing a joint return or a person who is a head of household for taxable years beginning from and after December 31, 2018 is:
 - a. 2.59% of taxable income between \$0 - \$53,000;
 - b. \$1,373, plus 3.34% of the amount over \$53,000 for taxable income between \$53,001 - \$106,000;
 - c. \$3,143, plus 4.17% of the amount over \$106,000 for taxable income between \$106,001 - \$318,000; and
 - d. \$11,983, plus 4.50% of the amount over \$318,000 for taxable income of \$318,001 and over.
43. States the Department of Revenue shall adjust the income dollar amount for each rate bracket prescribed in statute according to the average annual change in the metropolitan Phoenix consumer price index published by the United States Department of Labor for each taxable year beginning from and after December 31, 2019.
44. States the revised dollar amounts shall be raised to the nearest whole dollar and may not be revised below the amounts prescribed in the prior taxable year.
45. Removes the subtraction from gross income of prizes or winnings less than five thousand dollars in a single taxable year from any of the state lotteries.
46. Removes the \$2,300 tax exemption for each dependent of the taxpayer.
47. Changes the heading of title 43, chapter 10, article 4 from "DEDUCTIONS AND PERSONAL EXEMPTIONS" to "DEDUCTIONS".
48. Increases the optional standard deduction to \$12,200 for a single person or a married person filing separately.
49. Increases the optional standard deduction to \$18,350 for a single person who is a head of a household.
50. Increases the optional standard deduction to \$24,400 for a married couple filing a joint return.
51. Applies inflation to the Arizona optional standard deduction in the same way the Federal basic standard deduction is calculated for each taxable year beginning from and after December 31, 2019.
52. Allows 25% of a taxpayer's charitable donations to be added to the standard deduction beginning for taxable years from and after December 31, 2018.
53. Repeals A.R.S § 43-1043 personal exemptions; annual adjustments.
54. States the amount of credit for increased transaction privilege or excise taxes paid for education shall not exceed \$25 for each person who is a resident of this state and who is either the taxpayer, the taxpayer's spouse who does not file a return or a dependent and shall not exceed \$100 for all persons in the taxpayer's household.
55. States the family income tax credit is \$40 for each person who is a resident of this state and who is either the taxpayer, the taxpayer's spouse who does not file a return or a dependent and may not exceed \$240 in the case of a married couple filing jointly or a single person who is a head of household and \$120 in the case of a single person or a married couple filing separately.
56. Creates a dependent tax credit of \$100 for each dependent who is under 17 years of age and \$25 for each dependent who is 17 years of age or older at the end of the taxable year for a single person, a married person filing separately or a head of household whose federal adjusted gross income is less than \$200,000 or a married couple filing a joint return whose federal adjusted gross income is less than \$400,000.
57. Reduces the dependent tax credit by \$100 minus 5% for each \$1,000, or fraction thereof, for each dependent who is under 17 years of age or \$25 minus 5% for each \$1,000, or fraction thereof, for each dependent who is 17 years of age or older at the end of the taxable year for taxpayers whose federal adjusted gross income \$200,000 or more for a

- single person, a married person filing separately or a head of household or is \$400,000 or more for a married couple filing a joint return.
58. Apportions the dependent tax credit for nonresident and part-year resident taxpayers.
 59. Modifies the apportionment of deductions in computing Arizona taxable income for a nonresident.
 60. Modifies the apportionment of exemptions provided in A.R.S. § 43-1023 for blind persons and persons 65 years of age or older.
 61. Includes specific income to dividend income from foreign corporations as a subtraction from Arizona gross income to calculate corporate taxable income.
 62. Exempts the Department of Revenue from rulemaking requirements for one year after the effective date of this act.
 63. Contains a legislative intent clause.
 64. States the purpose of this act is to mitigate the costs incurred by taxpayers who care for dependents.
 65. Applies prospectively to taxable periods beginning from and after September 30, 2019 for ARS §§ 42-5001, 42-5005, 42-5159, 42-6002, 42-5061, 9-491.02, 42-5042, 42-5043 and 42-6017.
 66. Applies retroactively to taxable years beginning from and after December 31, 2017 for ARS §§ 42-1001 and 43-105.
 67. Applies retroactively to taxable years beginning from and after December 31, 2018 for ARS §§ 42-1108, 43-222, 43-323, 43-945, 43-1001, 43-1011, 43-1021, 43-1022, 43-1023, 43-1024, 43-1041, 43-1072.02, 43-1073, 43-1095, 43-1098, 43-1121, 43-1122, 43-1073.01 and 43-1043.
 68. Contains a conditional enactment.

SB1227: State Drought Contingency Plan (ARPA Supported)

Prime Sponsor: Senator Karen Fann, LD 1

Overview

This bill establishes the Arizona System Conservation Fund to be administered by the Director of the Department of Water Resources (Director) and appropriates \$30 million from the general fund in FY2019-20 to the Fund. The Director is authorized to spend monies from the Fund to contract with Colorado River water users in Arizona that hold entitlements to Colorado River water under the decree in Arizona v. California to forgo water deliveries or diversions for the purpose of creating system conservation. System conservation created through the use of the Fund is required to provide for Colorado River water to be conserved in Lake Mead through a verified reduction in existing consumptive use in order to decrease the likelihood of lake elevations dropping to levels that could result in reductions to Arizona's Colorado River allocation. Beginning July 1, 2021 and each July 1 after, the Director is required to submit a report to the Governor and the Legislature on expenditures from the Fund during the previous fiscal year and the volume of water that was conserved in Lake Mead. The Fund self-repeals April 1, 2027.

Prohibits a water banking fee from being levied in the Pinal Active Management Area (AMA) during calendar years 2020 through 2026. In the Pinal AMA during calendar years 2020 through 2026, the Director is required to set the annual groundwater withdrawal fee in an amount of up to \$2.50 per acre-foot per year for groundwater and irrigation efficiency projects. Monies from this fee are required to be used only to finance projects for the

construction and rehabilitation of wells and related infrastructure for the withdrawal and efficient delivery of groundwater by irrigation districts in the Pinal AMA.

Monies from this fee are deposited in the newly established Temporary Groundwater and Irrigation Efficiency Projects Fund (TGIEP Fund), and requirements for the TGIEP Fund are established. Appropriates \$7 million from the general fund in FY2018-19 to the TGIEP Fund. The TGIEP Fund self-repeals April 1, 2028. Establishes requirements for recovery of water that was effluent stored at a managed underground storage facility that qualifies as an "existing effluent managed underground storage facility" (defined) that has not been designated as a facility that could add value to a national park, national monument or state park.

Long-term water storage credits may be used to demonstrate an assured water supply or an adequate water supply only if the managed underground storage facility qualifies as an existing effluent managed underground storage facility and the long-term storage credits were accrued before the effective date of this legislation.

By December 31, 2019, the Arizona Water Banking Authority is authorized to enter into agreements to exchange long-term water storage credits accrued or purchased in one AMA with monies collected from specified groundwater withdrawal fees for long-term storage credits held by other persons in another AMA, on request of the Director, if the Director determines that the exchange is beneficial to water management in Arizona and that the exchange will not substantially impair the Authority's ability to meet its firming obligation to firm Indian settlement water.

The term of any agreement entered into under this authorization is prohibited from extending beyond December 31, 2026. The Authority is permitted to distribute or extinguish long-term storage credits obtained by exchange. An exchange of long-term storage credits under this authorization is exempt from any fee established by the Dept for an assignment of long-term storage credits.

A \$2 million appropriation in FY2018-19 is redirected from the Dept to the TGIEP Fund, and a \$2 million appropriation in FY2019-20 is redirected from the Dept to the Augmentation and Conservation Assistance Fund. Requires the Director to report to the Governor and the Legislature on agreements related to drought contingency plans. Contains a legislative intent section. Severability clause. Emergency clause.

SB 1256: School Districts: Procurement Practices: Auditors (ARPA Supported)

Prime Sponsor: Senator Rick Gray, LD 21

Overview

Removes restrictions on a school district auditing and consulting services, and repeals procurement contracts awarding the lowest qualified bidders. Establishes the School

History

Cycling Audit Firms

Laws 2018, Ch. 285, §4 (HB 2663) amended statute to prevent school districts from hiring the same auditor or auditing firm for more than three consecutive years and prohibits the auditor or auditing firm from receiving consulting fees from that school district (A.R.S. §§ 15-213(Q) and (R)).

School District Procurement Rules

A.R.S. § 15-213 requires the State Board of Education (SBE) to adopt rules for the procurement by school districts of any materials, services, goods, construction and construction services. These rules are established in A.A.C. R7-2-1001. Laws 2018, Ch. 285, §§ 5 and 32 (HB 2663) amended this statute by specifically requiring the SBE to adopt rules that school districts award contracts based on the lowest qualified bidder by June 30, 2019.

School Facilities Board

The School Facilities Board (SFB) provides services and funding for school districts through administration of Building Renewal Grants Fund (A.R.S. § 15-2032), New School Facilities Fund (A.R.S. § 15-2041) and the Emergency Deficiencies Correction Fund (A.R.S. § 15-2022). The SFB Executive Director is responsible for analyzing applications for SFB monies and reviewing or auditing the expenditure of monies by a school district for deficiencies corrections and new school facilities (A.R.S. § 15-2002).

Provisions

Cycling Audit Firms

1. Removes prohibitions for a school district to hire the same auditor or auditing firm for more than three consecutive years and removes prohibition on an auditor or auditing firm hired by school district from receiving consulting fees from that school district.

School District Procurement Rules

2. Repeals the requirement that the SBE adopt rules for school district procurement requiring contracts for materials, services, goods, construction or construction services to be awarded based on the lowest qualified bidder.

School District Procurement Pilot Program

3. Requires the School Facilities Board (SFB) to select three school districts with ongoing or planned procurements of construction services using alternative project delivery methods either as a SFB-approved project or as a locally procure project by September 1, 2019.
4. Specifies that one selected school district must have an average daily membership (ADM) between 2,000 and 8,000, and two selected school districts must have an ADM of less than 2,000.
5. Directs the SFB to provide technical assistance and procurement consulting to the selected school.

6. Mandates the SFB to submit a report of its findings to the Governor, President of the Senate and Speaker of the House of Representatives, the chairpersons of the Senate Education Committee and House of Representatives Education Committee, or their successor committees, and provide a copy to the Secretary of State, by September 1, 2020.
7. Defines construction for purposes of the Program.
8. Repeals the Program on February 16, 2021.

SB 1271: Purchaser Dwelling Actions; Notice; Complaints (ARPA Supported)

Prime Sponsor: Senator Karen Fann, LD 1

Overview

Modifies construction defect notification and purchaser dwelling action procedures, and limits indemnity provisions in or relating to construction contracts involving dwellings.

History

A purchaser of residential property may bring a dwelling action against a seller for any construction defects related to that seller's work, but only after following proper procedures (A.R.S. §§ 12-1361, 12-1362, 12-1363).

A *seller* is a designer, builder, or seller of the property, including any *construction professionals* (A.R.S. § 12-1361(10)). A *construction professional* is an architect, contractor, subcontractor, developer, builder, builder vendor, supplier, engineer, or inspector who performed or furnished the design, supervision, inspection, construction, or observation of the construction of any improvement to the property (A.R.S. § 12-1361(5)).

A *construction defect* is any material deficiency in the design, construction, manufacture, repair, alteration, remodeling, or landscaping that is the result of a construction code violation, use of defective materials, components, or equipment, or the failure to adhere to the community's generally accepted workmanship standards (A.R.S. § 12-1361(4)).

Unless the construction defect creates an immediate threat to safety, the purchaser must first notify the seller by certified mail, specifying in reasonable detail the basis for the dwelling action (A.R.S. §§ 12-1362(A), 12-1363(A)). The seller may then inspect the dwelling, and has 60 days from the date of notice to notify the purchaser of its intent to repair or replace, or to pay for the repair or replacement of, any of the alleged construction defects, describing in reasonable detail which defects it will repair or replace and the date by which the repairs and replacements will be made (A.R.S. §12-1363(B),(C)). If the seller does respond, the seller or the seller's construction professional has the later of 35 days, or 10 days after the receipt of any necessary building permits, to make the repair or replacement (A.R.S. § 12-1363(E)). The purchaser may request that someone other than the original construction professional conduct the repair or replacement.

The purchaser may bring the dwelling action either if the seller does not respond to the notice of defect within 60 days, or after the seller makes its intended repairs and replacements (A.R.S. § 12-1363(D),(E)). A purchaser may only bring a dwelling action

against a party with which it has privity, and this typically prevents a purchaser from bringing an action directly against a subcontractor (*Yanni v. Tucker Plumbing, Inc.*, 233 Ariz. 364, 367–68 (Ct. App. 2013)).

The purchaser must follow similar procedures even for construction defects identified after the original notice is sent or after commencing the dwelling action (A.R.S. § 12-1363(H),(I)).

The statutory time periods for inspection, notice, and repair may be extended by written agreement between the parties (A.R.S. § 12-1363(K)).

Provisions

Bifurcation of Purchaser Dwelling Actions (Sec. 1).

1. Requires the trier of fact in a dwelling action to first determine, according to Arizona Rules of Court, whether a construction defect exists, the amount of damages caused by the defect, and everyone who is responsible for the defect.
2. Requires that any nonparty construction professionals who the trier of fact determines are responsible for a construction defect must, if feasible, be joined to the action as third-party defendants pursuant to Arizona Rules of Court.
3. Requires the trier of fact to thereafter determine, in a bifurcated proceeding, the relative degree of fault each defendant bears for the defect.
 - a. Permits the court to choose not to bifurcate when it determines bifurcation is inappropriate.
4. Requires the trier of fact to allocate pro-rata liability based upon relative degree of fault.
5. Specifies that the purchaser has the burden of proof to demonstrate the existence of a construction defect, the amount of damages caused by the defect, and everyone who is responsible for the defect.
6. Specifies that the seller has the burden to prove the pro rata share of liability of any third-party defendant.
7. Contains a legislative finding and intent clause.

Right to Repair (Secs. 1–2)

8. Requires a seller who receives a notice of a construction defect to forward a copy to the last known address of each construction professional the seller reasonably believes is responsible for the alleged defect (Sec. 2).
 - a. Permits the seller to forward a copy of the notice by electronic means.
9. Requires a purchaser's notice of construction defect to include:
 - a. Sufficient detail to allow the seller or seller's construction professional to identify the alleged defect; and
 - b. The street address of each dwelling that is the subject of the notice

10. Grants a construction professional a right, but not an obligation, to repair or replace an alleged construction defect.
11. Permits a construction professional notified by the seller to inspect and repair a construction defect in the same way and within the same time period as a seller notified by a purchaser (Sec. 2).
 - a. Requires the purchaser to make the dwelling available for inspection within 10 days of the construction professional's request for inspection.
 - b. Requires the construction professional to provide reasonable notice before the inspection, and to conduct it at a reasonable time.
 - c. Permits the construction professional to use reasonable measures to determine the nature and cause of the defects and nature and extent of any necessary repairs or replacements.
 - d. Requires the construction professional who conducts testing to restore the dwelling to its condition before testing.
 - e. Permits the seller to include in its response to the purchaser's notice a notice by the construction professional of its intent to repair or replace, or to pay for the repair or replacement of, an alleged defect.
 - f. Requires the construction professional's notice of intent to repair or replace to describe those repairs or replacements in reasonable detail and to provide a reasonable estimate of a date by which those repairs or replacements will be made.
 - g. Provides that a construction professional's repair or replacement efforts are admissible in evidence and are not considered settlement communications or offers.
 - h. Grants construction professionals a reasonable time to inspect any additional defects alleged in an amended notice of defect provided to the purchaser before a dwelling action, or sufficient time to inspect additional defects alleged in a supplemental list provided during the pendency of a dwelling action, and thereafter grants construction professionals the same rights and provides the same procedures for inspecting, repairing, and replacing those defects as for the defects alleged in the original notice.
12. Provides that a substitute contractor or subcontractor not involved in the construction or design of the building but who performs a repair or replacement is only liable to the seller or purchaser for the contractor's or subcontractor's scope of work (Sec. 2).
13. Provides that a substitute contractor or subcontractor may be named in an amended notice of defect or in a corresponding dwelling action (Sec. 2).

Indemnity (Secs. 2, 4)

14. Provides that any statute of limitations or statute of repose that applies to a seller's claim indemnity or contribution claim against a construction professional is tolled

from the date the seller receives notice of the applicable construction defect until nine months after the purchaser serves the seller with a purchaser dwelling action complaint or arbitration demand (Sec. 2).

15. Applies the following indemnity restrictions and limitations to construction and architect-engineer professional service contracts involving a dwelling and entered into between private parties:
 - a. Voids as against public policy any provision in, collateral to, or affecting a construction or architect-engineer professional service contract involving a dwelling that indemnifies the promisee from liability for loss or damage resulting from the promisee's negligence, or the negligence of its indemnitees, employees, subcontractors, consultants, or agents other than the promisor.
 - b. Permits a contractor responsible for the performance of a construction contract to fully indemnify a person for whom the contract is not being performed and who enters into an agreement with the contractor allowing the contractor to enter on or adjacent to its property to perform the construction contract.
 - c. Provides that an additional insured endorsement issued pursuant to an agreement or collateral to a construction contract involving a dwelling does not obligate the insurer to indemnify the additional insured for that insured's percentage of fault.
 - i. Provides that this limitation does not limit an insurer's duty to defend pursuant to the terms and conditions of the endorsement.
 - d. Limits a provision in, collateral to, or affecting a construction or architect-engineer professional service contract that requires the promisor to defend the promisee to the defense of claims arising out of or related to the promisor's work (Sec. 4).
16. Exempts from these indemnity restrictions and limitations:
 - a. An agreement to which the state or a political subdivision is a party;
 - b. Certain agreements involving agricultural improvement districts;
 - c. An agreement for indemnification of a surety on a payment or performance bond by its principal or indemnitors;
 - d. An agreement between an insurer and its named insured under an insurance policy;
 - e. A provision in an agreement between an insurer and its additional insureds, that is in, collateral to, or affecting a construction or architect-engineer professional service contract and that requires the promisor to defend the promisee beyond claims arising out of or related to the promisor's work;
 - f. A provision in an agreement between an insurer and its insureds under a single insurance policy or contract for a defined project or workplace that is in, collateral to, or affecting a construction contract and that requires the promisor

to defend the promisee beyond claims arising out of or related to the promisor's work; and

- g. A public service corporation rule, regulation, or tariff approved by the Arizona Corporation Commission (Sec. 4).

17. Defines, for the purpose of these indemnity provisions:

- a. *Architect-engineer professional service contract* as an agreement relating to the survey, design, design-build, construction administration, study, evaluation, or other professional services furnished in connection with any actual or proposed construction, alteration, repair, maintenance, moving, demolition, or excavation of any structure, street or roadway, appurtenance, or other development or improvement to land;
- b. *Construction contract* as an agreement relating to the actual or proposed construction, alteration, repair, maintenance, moving, demolition, or excavation of any structure, street roadway, appurtenance, or other development or improvement to land; and
- c. *Dwelling* as a single or multifamily unit designed for residential use and common areas and improvements that are owned or maintained by an association or by members of an association, including the systems, other components, and improvements that are part of a single or multifamily unit at the time of construction (Sec. 4).

Attorney Fees (Sec. 3)

18. Permits a court to award the prevailing party with respect to a contested issue in a contested dwelling action reasonable attorney fees and taxable costs.

19. Provides that the prevailing party with respect to a contested issue is:

- a. The purchaser if the relief obtained by the purchaser for that contested issue, exclusive of any fees and taxable costs, is more favorable than the repairs or replacements and offers made by the seller before the purchaser filed the dwelling action.
- b. The seller if the relief obtained by the purchaser for that contested issue, exclusive of any fees and taxable costs, is not more favorable than the repairs or replacements and offers made by the seller before the purchaser filed the dwelling action.

20. Limits attorney fees to the amount of fees actually and reasonably incurred with respect to the contested issue for which the party is deemed the prevailing party.

21. Requires the court, in determining whether the fees actually incurred with respect to a contested issue are reasonable, to consider:

- a. The offer made by the seller before the purchaser filed the dwelling action;
- b. The purchaser's response to the seller's offer;

- c. The relation between the fees incurred over the duration of the dwelling action and the value of the relief obtained with respect to the contested issue;
 - d. The amount of fees incurred in responding to any unsuccessful motions, claims, and defenses.
22. Permits the court to award the prevailing party with respect to a contested issue reasonable expert witness fees if the dwelling action involves only one purchaser and is not consolidated with any other dwelling action.
- a. Requires the court to determine the reasonableness of expert witness fees using the same criteria as for attorney fees.
 - b. Provides that the expert witness fees are in addition to taxable costs.
23. Defines *contested issue* as an issue that relates to an alleged construction defect and that is contested by a purchaser following the conclusion of notice, repair, and replacement procedures.
24. Defines *purchaser* as any person or entity, including the current owner of the dwelling who files a dwelling action during the statutorily required time period.

Miscellaneous (Secs. 1-4)

25. Requires a purchaser who files a contested dwelling action to file an affidavit with the complaint stating, under penalty of perjury, that the purchaser has read the entire complaint, agrees with all the allegations and facts therein, and unless authorized by statute or rule is not receiving and has not been promised anything of value in exchange for filing the dwelling action (Sec. 2).

26. Extends the repeal date of the Construction Liability Apportionment Study Committee from July 1, 2019, to October 1, 2020 (Secs. 5-6).

Makes technical and conforming changes.

SB1304: Mechanics Liens; Notice; Applicability “Coughlin Act” (ARPA Bill)

Prime Sponsor: Senator Livingston, LD 22

Overview

Increases the threshold at which a preliminary 20-day notice is required to be updated from 20% to 30% of the estimated total cost.

History

A preliminary 20-day notice is one or more written notices from a claimant that are given prior to the recording of a mechanic's lien (A.R.S. § 33-992.01).

An owner is a person or the person's successor in interest, who causes a building, structure or improvement to be constructed, altered or repaired, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee, or other interest or estate less than fee (A.R.S. § 33-992.01).

The preliminary 20-day notice must be delivered within 20 days of first furnishing services, labor or materials to the owner, prime contractor, construction lender and the party who hired the noticing party. The notice serves as a necessary prerequisite to later recording a valid mechanic's and materialman's lien. The notice must contain the following: 1) a general description of the labor, professional services, materials, machinery or tools furnished or to be furnished; 2) an estimate of the total price; 3) the name and address of the person furnishing labor or services; 4) the name of the person who contracted for the purchase of labor or services; 5) a legal description or address of the jobsite; and 6) a statutorily-mandated warning. A subsequent notice is required if the estimated total price for labor, services or materials furnished exceeds the total price in any prior original notice by more than 20% (A.R.S. § 33-992.01).

A person required to give a preliminary 20-day notice is entitled to enforce the lien rights only if the person has given such notice and has made proof of service (A.R.S. § 33-981).

Provisions

1. Increases, from 20% to 30%, the estimated total price that labor, professional services, materials, machinery, fixtures or tools furnished cannot exceed the original notice price before an updated preliminary 20-day notice is required. (Sec. 1)
2. Specifies that the 30% threshold is applicable on January 1st, 2020. (Sec. 2)
3. Makes technical and conforming changes. (Sec. 1)

HM2001: Method 9 Certification; Training; Frequency (ARPA Supported)

Prime Sponsor: Representative Blackman, LD 6

Overview

Urges the Administrator of the United States Environmental Protection Agency (EPA) to require annual field training for EPA Method 9 certification

History

Various industries are required to follow federal opacity standards and have a trained visible emission observer determine the level or frequency of visible emissions. These emissions are usually in the shape of a plume. Method 9 involves the determination of plume opacity by qualified observers and includes procedures for the training and certification of observers. To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes. The certification is valid for 6 months after which the observer must repeat the qualification test to retain certification. (epa.gov)

Provisions

1. Urges the Administrator of the EPA to implement steps to require annual, rather than biannual, field training during the winter months for EPA Method 9 certification.