

# UNDERSTANDING ARIZONA'S PROPOSITIONS: 2012 SERIES

## Prop 204 – Quality Education and Jobs Act

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Proposition 204, also known as the Quality Education and Jobs Act, is a citizen initiative that would make permanent a 1-cent sales tax increase Arizona voters approved in 2010 as a temporary measure. The 2010 referendum raised the state sales tax rate to 6.6 percent, from 5.6 percent. The higher levy, which would remain the same under Prop 204, is set to expire in 2013.<sup>1</sup>

Beginning in fiscal year 2014, the permanent sales tax – projected to raise at least \$1 billion annually – would earmark funds for education programs, human services and infrastructure projects related to public transportation.<sup>2</sup> However, about 80 percent of the sales tax would go to education.<sup>3</sup>

Specifically, Prop 204 would require the Legislature to increase certain components of the school finance formula each year<sup>4</sup> and mandate the following:

### Arizona sales tax rates

The Arizona sales tax rate for retail purchases is 6.6 percent (effective June 1, 2010). However, the average combined sales tax in Arizona at the start of 2012 – adding up state, county, city and tribal taxes – was 9.12 percent, second only to Tennessee's average rate of 9.45 percent.

Source: Arizona Department of Revenue

- Funding levels for K-12 schools and state universities cannot be reduced below the levels for fiscal year 2011-12 or 2012-13, whichever is greater.
- Limits on school district bonds and overrides cannot be below those in effect for 2012.
- Vehicle license tax and related highway user revenues cannot be diverted for any other purpose.
- Sales tax base cannot be adjusted in a way that causes the amount of sales tax collected to be less than the amount collected in the prior year, plus 6 percent, unless there is a corresponding change in the tax base that results in no reduction in the amount of sales tax collected.

- The Legislature cannot adjust the new tax increase disbursements under any circumstances.
- An independent third-party audit of fund distributions must be conducted every five years for all distributions.<sup>5</sup>

Prop 204 would proportionally distribute the first \$1 billion of the sales tax revenue to seven designated “funds” annually, plus up to \$125 million to the state general fund for inflation adjustments needed by the K-12 school system.

Projected fund allocations are:

- \$500 million for the “quality education and performance fund” to assist K-12 schools comply with assessment and accountability rules
- \$100 million for the “state infrastructure fund” to boost public transportation and road-building projects
- \$100 million in federal matching funds for the “family stability and self-sufficiency fund” to support families living below the federal poverty level
- \$90 million for the “education accountability and improvement fund” (an existing program) to help K-12 schools meet academic performance and teacher training requirements
- \$50 million to the “university scholarship, operations and infrastructure fund” to assist resident students with tuition costs and state universities with infrastructure expenses.<sup>6</sup>
- \$10 million to the “education learning and accountability fund” to modernize a statewide database system to track student and teacher performance
- \$25 million to the “children's health insurance program fund” (an existing program) to defray costs for publicly funded health care programs aiding poor children under age 19

After allocating the first \$1 billion, surplus monies would be distributed as follows:

- 33 percent to K-12 schools based on the of children in reduced price lunch programs
- 23 percent to community colleges and Indian tribal postsecondary institutions to support scholarship and technical training programs
- 9 percent to joint technical education districts to support career and vocational training
- 2 percent to fund adult education programs
- 22.5 percent to the “university scholarship, operations and infrastructure fund,” and 11 percent to the “state infrastructure fund.”<sup>7</sup>

Proponents of Prop 204 include Democratic legislators, public school groups, and a coalition of business contractors. Opponents to the initiative include Republican legislative leaders, tax reform advocates, and conservative pro-growth advocacy groups.<sup>8</sup>

Supporters argue that the measure would provide dedicated revenues for educational institutions,

prevent the Legislature from cutting K-12 funding, ensure continued support for public safety personnel and projects, and create jobs by subsidizing public transportation infrastructure projects. Supporters also say Prop 204 will encourage governmental transparency and performance-linked accountability through its mandated five-year audit cycle.

Opponents call Prop 204 “ballot-box budgeting” and regard the permanent levy as both unwieldy and unwise since it can only be altered by referendum.

Critics, including Governor Jan Brewer, also say the measure handcuffs the Legislature in deciding how to budget and set spending priorities under constantly evolving economic conditions. Moreover, some opponents question the constitutionality of Prop 204 because it potentially interferes with the state’s budget-making process.

### **Yes on Proposition 204**

Proponents of Prop 204 include most Democratic legislators, Democratic candidates for state office, public school advocacy groups, business alliances (primarily contractor and builder groups), and university student associations. Agitation for the initiative stemmed in large part from the perceived inability of lawmakers to adequately fund K-12 education due to shortsightedness and misguided priorities.

Backers note that Arizona has led the nation in cuts to K-12 schools in every year since 2008, eliminating some \$1 billion in funding.<sup>9</sup> In their view, Arizona lacks a long-term, dedicated, stable revenue source for education. Moreover, proponents believe Arizona's economy hinges on a competitive workforce that only a well-financed, accountable education system can produce. To this end, supporters say Prop 204 would prevent cuts to education by creating a funding floor that the Legislature cannot reduce.<sup>10</sup>

“This initiative will provide something we haven’t had in this state, which is a dedicated source of revenue for education,” said Quality Education and Jobs Act chairwoman Ann-Eve Pedersen. “I think this is a once-in-a-generation opportunity to provide for our students and our families in Arizona.”

Pedersen added that unlike Prop 100, which did not designate funds specifically for education, Prop 204 would ensure “funding will go exactly where voters say it’s going to go.”<sup>11</sup>

<b>Arizona per pupil spending</b>	
	Arizona / National Average)
Total:	\$7,848 / \$10,615
Instruction:	\$4,381 / \$6,478
Support services:	\$3,060 / \$3,711
State aid per \$1,000 of state personal income: \$15 / \$22	
Local aid per \$1,000 of state personal income: \$19 / \$22	
Source: 2010 figures from U.S. Census Bureau	

Supporters say the measure also tackles other critical issues in the educational realm they believe legislators have neglected or mishandled. This includes heavy investment in K-12 reading proficiency programs, teacher training and instructional reforms, improvement plans for failing schools, vocational programs, college scholarships, university infrastructure, and new technology tools that enhance classroom environments and track performance.

Prop 204 supporters also argue that the initiative would help fund many reforms pushed by Governor Brewer, including the statewide performance database that the governor desires. Pedersen noted \$10 million would be earmarked for that project under Prop 204. “We want to make sure there are resources to support some of the rigorous reforms that have already come online or are coming online,” Pedersen said.<sup>12</sup>

Although about 80 percent of sales tax proceeds would go to education, Prop 204 supporters say the rest will be allocated to help fund the state’s social safety net and shore up critical infrastructure projects. Proponents argue that this two-pronged approach, linked to education, is key to job creation and Arizona’s economic growth.

Specifically, Prop 204 would restore funding to KidsCare (a health insurance program aimed at children living in poverty) and create a “Family Stability Fund” to help children who are hungry, homeless or not safe at home. Backers say these programs will help kids of the working poor come to school healthy and ready to learn.

Additionally, proponents argue that the permanent penny tax would generate needed revenues for transportation infrastructure – road, rail, and public transit – thereby making Arizona “more competitive in attracting companies and jobs that require a high-quality work force.”<sup>13</sup> Specifics include funding for highway improvement as well as transportation-related bonding, public-private partnerships, wildlife improvement projects and environmentally sensitive designs.

## **No on Proposition 204**

Opponents to Prop 204 include Republican legislative leaders, Republican candidates for state office, a business-backed taxpayers group and conservative pro-growth advocacy groups. Although opponents object to the initiative on multiple fronts, their principal worry concerns earmarking tax revenues outside of the normal legislative appropriations process. Opponents argue that governance by plebiscite handcuffs lawmakers’ ability to respond to the state’s changing demands.

Critics such as the Arizona Tax Research Association (ATRA) charge that “ballot box budgeting” puts the state on a slippery slope since the tactic overrides the main function of both the Legislature and Governor – establishing “budget priorities within available revenues and economic conditions.”

Further, ATRA Chairwoman Lyn White noted that “removing policymakers’ authority to make changes to the various statutes governing K-12 school finance presumes there will never be a legitimate policy reason to change those laws. That is both shortsighted and irresponsible.”<sup>14</sup>

Prop 204 would in fact remove legislative discretion over vehicle license tax and related highway user revenues, and checks the Legislature’s authority to make changes in K-12 funding levels, school overrides and bonds in perpetuity.<sup>15</sup>

One liberal-leaning observer noted: “I broadly support the goals of this initiative, but deplore the method. . . . How were (Prop 204 disbursement) amounts decided? Did the stakeholders have any input? I sincerely doubt it. And that’s the problem with budgeting by initiative: lack of

transparency and responsiveness to changing conditions and (constituent or state) needs. ... Every time a change is made (decision makers will) end up in court or asking the voters for more input.”<sup>16</sup>

Indeed, most opponents applaud the goal of reforming education and find it worrisome that Arizona ranks near the bottom of all states in spending per pupil – \$7,848 versus \$10,615 nationwide, according to the U.S. Census Bureau. However, critics doubt Prop 204 will be a “game changer” and argue that it simply throws money at the problem without providing accountability for results.

“To permanently cut a check of about a billion dollars a year without meaningful accountability safeguards is not the best way to proceed,” argued Glenn Hamer, Arizona Chamber President and CEO. “I think reform works best when dollars are tied to (student or teacher) performance. There is no real distinction between high and low-performing schools in this proposal.”

Pedersen, who chairs the initiative effort, conceded that Prop 204 would distribute most funds regardless of performance.<sup>17</sup>

Many opponents also question the wisdom of essentially freezing the sales tax base in a state already burdened with a high average combined sales tax rate (currently at 9.12 percent). On top of the permanent tax hike, critics fear the loss of fiscal flexibility since the Voter Protection Act of 1998 is viewed by some as giving Prop 204 the practical effect of a constitutional amendment.<sup>18</sup> Moreover, tax reform advocates say the measure could create a barrier to efforts to fix what they regard as an antiquated sales tax code.

Lastly, some observers are skeptical about the constitutionality of Prop 204. They note that the Arizona Constitution (Article IV, Part 1, Section 1) does not allow a law to be referred to the voters if it is “immediately necessary ... for the support and maintenance of the departments of the state government and state institutions.”<sup>19</sup> In *Wade v. Greenlee County* (1993), the Arizona Court of Appeals interpreted this provision as prohibiting citizens from referring a tax increase that was necessary to the functioning of state government, according to the *Verde Independent*.<sup>20</sup>

## Impact

A “yes” vote would make permanent a 1-cent state sales tax increase that Arizona voters approved in 2010 as a temporary measure. The current rate of 6.6 cents on the dollar would remain the same.

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<sup>1</sup> Proposition 100, approved by special referendum in May 2010, temporarily raised the Arizona state sales tax by 1 cent per dollar to resolve a budgetary crisis. Proceeds went to education, social services, and public safety via the state general fund. The state sales tax was raised to 6.6 percent, up from 5.6 percent, until 2013, at which point it would be automatically repealed per Article IX of the Arizona Constitution. See Pitzl, Mary Jo (5/19/10), "Early election results point to passage of Prop 100". See also Garrett, Linda (4/12/10), "Big crowd shows up to debate prop 100," KGUN 9.

<sup>2</sup> Initiative Measure I-16-2012, filed to Arizona Secretary of State, 3/9/12. Also see Legislative Council Analysis I-16-2012. An initiated state statute is a proposed law by citizens that a state can adopt via the ballot initiative process. In Arizona, groups collect the required number of signatures and submit the measure to the Secretary of State for vetting. Once certified, it is placed on the ballot for a general vote. Arizona is one of 22 states that allow citizens to proposed new state statutes via initiative.

- <sup>3</sup> Quality Education and Jobs Supporting I-16-2012. [www.qualityeducationandjobs.com/the-facts/](http://www.qualityeducationandjobs.com/the-facts/)
- <sup>4</sup> The State Equalization Formula is used to determine state funding to school districts and Charters. The formula serves two purposes: the state aid payment calculation and the budget expenditure limit for districts. See "The Equalization Formula for Funding School Districts and Charters in the State of Arizona," Department of Education, 12/20/2010. [www.ade.az.gov/schoolfinance/FAQs/Funding/Equalization%20Formula%20Funding.pdf](http://www.ade.az.gov/schoolfinance/FAQs/Funding/Equalization%20Formula%20Funding.pdf)
- <sup>5</sup> According to the Legislative Council analysis there is no state audit required for the children's health insurance program fund, the family stability and self-sufficiency fund, the state general fund and to Indian tribal postsecondary educational institutions.
- <sup>6</sup> The proposition fails to define who qualifies as a "resident" for purposes of the scholarships, according to the Legislative Council. See JBLC analysis, *supra*, note 1.
- <sup>7</sup> Legislative Council Analysis, *supra*, note 2.
- <sup>8</sup> "Arizona ballot measure for 1-cent sales tax headed to court," Associated Press, 8/13/12.
- <sup>9</sup> Howard Fischer, "Report: Arizona 48th in education spending," *East Valley Tribune/Capitol Media Services*, June 22, 2012. Also see "Public Education Finances: 2010," G10-ASPEF, Governments Division Reports (Mark Dixon), issued June 2012. <http://www2.census.gov/govs/school/10f33pub.pdf>. The census data show that Arizona spent \$420 per pupil on administrative expenses, compared to the national average of \$774 in 2010.
- <sup>10</sup> Fact Sheet, Quality Education and Jobs in Support of Prop 204: [www.qualityeducationandjobs.com/the-facts/](http://www.qualityeducationandjobs.com/the-facts/)
- <sup>11</sup> Editorial, "Initiative seeks to extend tax increase," *Daily Wildcat*, University of Arizona, 3/21/12.
- <sup>12</sup> QEJA fact sheet, *supra* at note 10.
- <sup>13</sup> Jeremy Duda, "Group files ballot measure for 1-cent sales tax hike," *Arizona Capitol Times*, 3/9/12.
- <sup>14</sup> "ATRA Opposes Sales Tax Initiative," press release, Arizona Tax Research Association, 6/18/12.
- <sup>15</sup> Legislative Council Analysis, *supra*, note 2.
- <sup>16</sup> Michael Bryan, "Ballot Propositions and Referenda for 2012 Voter Guide," Blog for Arizona, 7/28/12.
- <sup>17</sup> Howard Fischer, "State chamber voices opposition of 1-cent sales tax ballot," Capitol Media Services, 7/14/12.
- <sup>18</sup> The Voter Protection Act, also known as Proposition 105, appeared as a ballot measure to "Amend the Constitution Relating to Initiative and Referendum" (Article IV, Part 1, Section 1) for the 1998 election, where it was approved. The measure was intended to prevent the legislature or governor from tampering with laws created by the voters through the citizen initiative. See Arizona Voter Protection - Proposition 105 (1998), Lucy Burns Institute (Ballotpedia), 20 April 2012. See also 1998 Ballot Propositions, Arizona Secretary of State: [www.azsos.gov/election/1998/General/ballotmeasures.htm](http://www.azsos.gov/election/1998/General/ballotmeasures.htm). See also Briefing Paper: Majority Rule (Prop 105), Arizona Tax Research Association, Retrieved 8/12/12. [http://www.arizonatax.org/sites/default/files/publications/ballot\\_measures/2008prop105.pdf](http://www.arizonatax.org/sites/default/files/publications/ballot_measures/2008prop105.pdf)
- <sup>19</sup> Arizona Constitution, Article IV, Part 1, Section 1, ¶ 2-3. To wit: Referendums may not repeal laws "immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the state government and state institutions."
- <sup>20</sup> Steve Ayers, "Camp Verde tax referendum not referable, says town," *Verde Independent*, 6/4/12: *Wade v. Greenlee County*, involved a sales tax enacted by Greenlee County Board of Supervisors to cover existing government programs. In 1993, the appeals court (upholding a lower court) held that the state constitution does not allow a law to be referred to the voters if it is "immediately necessary" for the "support" of state government. The court reasoned that if referendums were permitted for laws meant to "support" state government, and that once the referendum was filed the law could be put on hold for over a year, then the 5 percent of the voters who signed petitions could effectively bring government to a halt until the next election. "That risk of abuse has led our courts to construe strictly the requirement necessary to require referral," wrote Chief Judge C. J. Livermore. See also *Wade v. Greenlee County* (1993), 844 P. 2d 629, 173 Ariz. 462 - Arizona Court of Appeals, 2nd Div.

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