



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 9, 2009</p>	<p>No. I09-010 (R09-042, R09-043, R09-044)</p> <p>Re: March 2010 School District Override Elections Authorized by H.B. 2011</p>
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To: David Pauole
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You have presented to the Attorney General's Office for review opinions prepared for Glendale Elementary School District, Arlington Elementary School District, Union Elementary School District, Phoenix Union High School District, Flagstaff Unified School District, Nogales Unified School District, and Apache Junction Unified School District analyzing the provisions of 2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 12, § 72(1) ("H.B. 2011") regarding school district override elections procedures for fiscal year 2009-2010. This Office concurs with your conclusion and issues this Opinion to address matters of statewide importance.

Question Presented

May school districts that conducted failed budget override elections in November 2009 conduct another override election in March 2010 pursuant to H.B. 2011, section 72(1)?

Summary Answer

For fiscal year 2009-2010, school districts that conducted failed budget override elections in November 2009 may conduct another override election in March 2010 pursuant to H.B. 2011, section 72(1).

Background

During its third special session, the Legislature adopted H.B. 2011, which the Governor signed on September 4, 2009.¹ 2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 12. House Bill 2011, section 72(1) allows school districts to conduct override elections in March 2010 for fiscal year 2009-2010 and states that notwithstanding any other law, for fiscal year 2009-2010:

A school district may conduct an election on the second Tuesday in March 2010 to submit a proposed budget increase to the qualified electors in an amount of not more than fifteen per cent of the revenue control limit as prescribed in section 15-481, subsection G, Arizona Revised Statutes, as amended by this act. Override elections conducted in subsequent fiscal years shall be as prescribed by statute. An increase of not more than fifteen per cent that is subsequently approved by a majority of the qualified electors of the school district voting in the election shall replace any previously authorized increases approved by the qualified electors voting in the election pursuant to section 15-481, subsection E or F, Arizona Revised Statutes, as amended by this act, and section 15-482, Arizona Revised Statutes, as amended by this act.

¹ The Governor issued a line-item veto for portions of H.B. 2011 that are not at issue in this Opinion.

2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 12, § 72(1).² House Bill 2011 became effective on November 24, 2009. See the Arizona State Legislature's web site, 2009, Forty-ninth Legislature, Third Special Session (www.azleg.gov/GeneralEffectiveDates.asp).

Case law analyzing Arizona's school district override election statutes prior to the promulgation of H.B. 2011 stated that school districts had no legislative authority to conduct more than one override election in any given fiscal year but indicated that the Legislature could provide such authority. *Washington Elementary Sch. Dist. No. 6 v. Maricopa County*, 200 Ariz. 588, 593-94, 30 P. 3d. 655, 660-61 (App. 2001); *Wilson Elementary Sch. Dist. No. 7 v. Superior Court*, 158 Ariz. 339, 341, ¶ 28, 762 P.2d 626, 628 (App. 1988). After the adoption of H.B. 2011, several school districts that had held unsuccessful budget override elections on November 3, 2009, sought this opinion to determine whether H.B. 2011 provides the authority for school districts to conduct a second budget override election in March 2010.

Analysis

In *Wilson Elementary School District*, the school district lost an override election in February 1988 and sought to hold an additional election in the same fiscal year. *Wilson Elementary Sch. Dist.*, 158 Ariz. at 339-40, 762 P.2d at 626-27. The court in *Wilson* analyzed various school district override provisions delineated in A.R.S. § 15-481 as they existed at the time. Specifically, the court indicated that A.R.S. § 15-481(A) required the governing board to call for an override election where the proposed budget included an increase over statutory limits

² House Bill 2011, section 72 also allows school districts that passed a proposed budget increase of not more than ten per cent of the revenue control limit during the November 2009 election or common school districts that had previous overrides that were still in effect on the effective date of H.B. 2011 to hold elections in March 2010 to submit to the qualified electors a proposed budget increase in the amount of not more than five per cent or seventeen per cent of the revenue control limit respectively. 2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 12, § 72(2), (3).

and to prepare an alternate budget that excluded an increase in the budget of more than the amount permitted. It also indicated that A.R.S. § 15-481(R) required the governing board to adopt the alternate budget that excluded the budget increase beyond what was permitted if the voters rejected the proposed budget. *Id.* at 340-41, 762 P.2d at 627-28. The court stated that the “statutory scheme is antithetical to holding more than one override election each budget year” and held that “a district, having lost (or won) an override election, is not entitled to have that school year budget submitted to the voters a second time.” *Id.*

The Legislature subsequently amended A.R.S. § 15-481 and removed the specific language upon which the *Wilson* court based its decision. *Washington Elementary Sch. Dist.*, 200 Ariz. at 591, 30 P. 3d. at 658. Accordingly, the Washington Elementary School District attempted to call for a second override election during the 1999-2000 fiscal year. *Id.* at 589, 30 P. 3d. at 656. Despite acknowledging the intervening statutory changes, the court in *Washington* still concluded that the ultimate holding of *Wilson* remained intact. *Id.* at 592, 30 P. 3d. at 659. The court determined that school districts had no discretionary authority to call an override election under A.R.S. § 15-481(A) and that A.R.S. § 15-481(A) instead imposed a mandatory duty to order an election only when the proposed budget exceeded the aggregate budget limit for the year. *Id.* The court concluded that “the statutory scheme authorize[d] only one school district budget override election for any given year, and then only to the extent required by the provisions of [A.R.S.] § 15-481(A).” *Id.* at 593, 30 P.3d. at 660. However, the court also indicated that the Legislature could change this result by amending A.R.S. § 15-481 to authorize a school district to hold more than one override election during a fiscal year. *Id.*

Section 15-481(A) still requires school districts to order override elections to be held in November when their proposed budget exceeds the aggregate budget limit for the year.³ However, despite this mandate, the Legislature granted school districts the discretionary authority through H.B. 2011, section 72 to conduct an override election for this fiscal year in March 2010 to achieve the increased funding limits that the bill establishes. Specifically, a school district may:

conduct an election on the second Tuesday in March 2010 to submit a proposed budget increase to the qualified electors in an amount of not more than fifteen per cent of the revenue control limit as prescribed in section 15-481, subsection G, Arizona Revised Statutes, as amended by this act.

2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 12, § 72(1). Moreover, H.B. 2011 authorizes school districts to exercise this discretionary authority “[n]otwithstanding any other law.” *Id.*

The primary rule of statutory construction is to find and give effect to legislative intent. *Mail Boxes, Etc., U.S.A. v. Indus. Comm’n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The best and most reliable indicator of legislative intent is a statute’s own words. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). Where the language of the statute is plain and unambiguous, the text must generally be followed as written. *Id.* When the statute’s

³ A.R.S. § 15-481(A) states the following:

If a proposed budget of a school district exceeds the aggregate budget limit for the budget year, at least ninety days before the proposed election the governing board shall order an override election to be held on the first Tuesday following the first Monday in November as prescribed by section 16-204, subsection B, paragraph 1, subdivision (d) for the purpose of presenting the proposed budget to the qualified electors of the school district who by a majority of those voting either shall affirm or reject the budget. In addition, the governing board shall prepare an alternate budget which does not include an increase in the budget of more than the amount permitted as provided in section 15-905. If the qualified electors approve the proposed budget, the governing board . . . shall follow the procedures described in section 15-905 for adopting a budget that includes the authorized increase. If the qualified electors disapprove the proposed budget, the governing board shall follow the procedures prescribed in section 15-905 for adopting a budget that does not include the proposed budget increase. . . .

language is not clear, legislative intent is determined by “reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute’s context, subject matter, historical background, effects and consequences, and spirit and purpose.”

Id.

Here, the plain language of H.B. 2011, section 72(1) allows school districts to hold budget override elections in March 2010 in order to seek proposed budget increases based upon the new limits that the bill establishes. It gives school districts this authority notwithstanding any other law.

“Notwithstanding any other law” is plain and unambiguous. “Notwithstanding” means “despite” or “in spite of.” *Black’s Law Dictionary* 1091 (7th ed. 1999). Consistent with this definition, “notwithstanding any other law” means that statutory provisions containing this phrase operate in spite of any existing or pre-existing law. *See, e.g., Mapoy v. Carroll*, 185 F.3d 224, 229 (4th Cir. 1999) (interpreting “notwithstanding any other provision of law” to mean that all other jurisdictional statutes shall be of no effect); *U.S. v. Fernandez*, 887 F.2d 465, 468 (4th Cir. 1989) (interpreting “notwithstanding any other provision of law” in the Ethics in Government Act to mean that the “conferral of prosecutorial powers [on an independent counsel] should not be limited by other statutes”). Therefore, despite any other law—including A.R.S. §15-481(A)’s provisions that dictate when school districts must hold override elections—school districts have discretion to hold override elections in March 2010 for this fiscal year to seek the increased budget amounts that H.B. 2011, section 72(1) authorizes.

Section 72(2) specifically addresses school districts that passed override elections in November 2009. This section states that if a school district passed a proposed budget increase of

not more than ten per cent of the revenue control limit “in an election conducted on the first Tuesday in November 2009, the school district may subsequently conduct an election on the second Tuesday in March 2010 to submit to the qualified electors a proposed budget increase in an amount of not more than an additional five per cent of the revenue control limit.” 2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 12, § 72(2). Section 72(2) explains how the March 2010 override applies to districts that approved overrides in November 2009. The legislation also does not place any restrictions on districts in which overrides failed to pass in November 2009. Thus, the broad authorization in section 72(1) to conduct override elections in March 2010 applies to all school districts, including those in which voters defeated overrides in November 2009.

Conclusion

For fiscal year 2009-2010, school districts that conducted failed budget override elections in November 2009 may conduct another override election in March 2010 pursuant to HB 2011, section 72(1).

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