



ARIZONA STATE SENATE
RESEARCH STAFF

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TO: JOINT LEGISLATIVE AUDIT COMMITTEE
DATE: January 3, 2008
SUBJECT: Law Enforcement Merit System Council

Attached is the final report of the sunset review of the Law Enforcement Merit System Council, which was conducted by the Senate Judiciary and House of Representatives Natural Resources and Public Safety Committee of Reference on December 12, 2007.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Timothy S. Bee

Speaker of the House of Representatives
Representative Jim Weiers

Senate Members
Senator Chuck Gray, CoChair
Senator Chevront
Senator Gould
Senator Miranda
Senator Waring

House Members
Representative Judy Burges, CoChair
Representative John Kavanagh
Representative Barbara McGuire
Representative Lynn Pancrazi
Representative Jerry Weiers

Law Enforcement Merit System Council
Office of the Auditor General
State Library, Archives & Public Records

Chief Clerk
House Republican Staff
House Democratic Staff
House Research Staff

Secretary of the Senate
Senate Republican Staff
Senate Democratic Staff
Senate Research Staff
Senate Resource Center

COMMITTEE OF REFERENCE REPORT:

LAW ENFORCEMENT MERIT SYSTEM COUNCIL

Background

Pursuant to A.R.S. § 41-2953, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Law Enforcement Merit System Council (Council) to the Senate Judiciary and House of Representatives Natural Resources and Public Safety Committee of Reference.

The Council has been in existence in some form for 59 years and provides a classification and compensation plan for all covered positions within the Arizona Department of Public Safety (DPS) and the Arizona Peace Officer Standards and Training Board (AzPOST) personnel. In accordance with A.R.S. § 41-3008.01, the Council terminates on July 1, 2008, unless renewed.

According to the Council, its purpose is to ensure that Arizona has a statewide law enforcement agency free from political influence. Pursuant to A.R.S. § 41-1830.12, the Council is required to do the following:

- a) create a classification and compensation plan for all positions and for establishing standards and qualifications for all classified positions within DPS and AzPOST;
- b) establish a plan for fair and impartial selection, appointment, probation, promotion, retention and separation or removal from service by resignation, retirement, reduction in force or dismissal of all classified employees;
- c) provide a performance appraisal system for evaluating the work performance of employees of the agencies;
- d) establish procedures for the conduct of hearings of employee grievances that are brought before the council relating to classification, compensation and the employee appraisal system; and
- e) adopt procedures for hearings on appeals from an order of the director of the employing agency in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee.

According to the Joint Legislative Budget Committee, the total operating budget for the Council in FY 2008 is \$74,200 from the General Fund. The Council has one full time equivalent position (FTE); other expenses include in-state travel, equipment, and other employee-related and operating expenditures.

Committee of Reference Sunset Review Practices

The Committee of Reference held one public hearing on Wednesday, December 12, 2007, to review the Council's response to the sunset factors as required by A.R.S. § 41-2954, subsections D and F, and to receive public testimony. Members of the public testified and DPS provided a letter of support. See minutes for complete listing.

Committee of Reference Recommendations

The Committee of Reference recommended the following:

1. The Legislature consider increasing the Council membership from three members to five members.
2. The Council be continued for seven years.

Attachments

1. Letter from Senator Chuck Gray requesting the Council's response to the sunset and agency factors.
2. The Council's response to the sunset and agency factors pursuant to A.R.S. § 41-2954, subsections D and F.
3. Excerpt from DPS Annual Report.
4. Letter from Roger Vanderpool, Director, Department of Public Safety.
5. Meeting Notice.
6. Meeting Minutes.

**REQUEST FOR SUNSET &
AGENCY FACTOR RESPONSES
FROM THE COUNCIL**

SENATOR CHUCK GRAY
1700 WEST WASHINGTON, SUITE S
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 926-5288
CAPITOL FAX: (602) 417-3161
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DISTRICT 19 - MESA

COMMITTEES:
TRANSPORTATION, VICE-CHAIRMAN
JUDICIARY
NATURAL RESOURCES & RURAL
AFFAIRS

LEGISLATIVE COUNCIL

June 11, 2007

Commander C.H. Johnston, Business Manager
Law Enforcement Merit System Council
2102 W. Encanto Blvd., Suite 290
P.O. Box 6638
Phoenix, AZ 85005-6638

Dear Commander Johnston:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by a legislative committee of reference. On completion of the sunset review, the committee of reference recommends to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the Law Enforcement Merit System Council to the committee of reference comprised of members of the Senate Judiciary Committee and the House of Representatives Judiciary Committee.

Pursuant to A.R.S. § 41-2954, the committee of reference is required to consider certain factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your response to those factors as provided below:

1. The objective and purpose in establishing the agency.
2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency has operated within the public interest.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.
7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.
9. The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.
10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Additionally, please provide written responses to the following:

1. An identification of the problem or the needs that the agency is intended to address.
2. A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency and its anticipated accomplishments.
3. Identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the matter in which the agency avoids duplication or conflict with other such agencies. Please be thorough.
4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

In addition to responding to the factors in A.R.S. § 41-2954, please provide the committee of reference with a copy of your most recent annual report. Your response should be received by September 1, 2007 so we may proceed with the sunset review and schedule the required public hearing by October 15, 2007. Please submit the requested information to:

Christina Estes-Werther
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

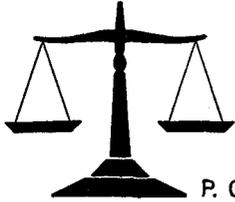
Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 602-926-5288 or Christina Estes-Werther, the Senate Judiciary Committee Research Analyst, at 602-926-3171.

Sincerely,

Senator Chuck Gray
Arizona State Senate
Mesa - Legislative District 19

CG/sas

COUNCIL'S RESPONSE TO THE SUNSET & AGENCY FACTORS



LAW ENFORCEMENT MERIT SYSTEM COUNCIL



P. O. BOX 6638 Phoenix, Arizona 85005-6638 (602) 223-2286 FAX: (602) 223-2096

August 28, 2007

Chairman
Joint Legislative Audit Committee
Arizona State Legislature
Phoenix, AZ 85007

RE: Sunset Review of the Law Enforcement Merit System Council

Dear Chairman:

The following are submitted in response to your letter dated June 11, 2007:

1. **The objective and purpose in establishing the agency.**

The Arizona Highway Patrol Merit System Council was formed by initiative of the voters on November 2, 1948, to guarantee that the citizens of Arizona had a statewide law enforcement agency free from political influence. At the time it was the only merit system in Arizona.

With the anticipated creation of the Arizona Department of Public Safety, the Law Enforcement Merit System Council was created from the old Arizona Highway Merit System Council on July 1, 1967. At that time, the Council was responsible for three agencies (Arizona Highway Patrol, the statewide narcotics enforcement arm of the Attorney General's Office, and the enforcement arm of the State Liquor Department). On July 1, 1969, these three entities merged into a single agency - the Arizona Department of Public Safety.

The Law Enforcement Merit System Council establishes rules for the personnel management of the Department of Public Safety. Specifically, the Council provides:

A classification and compensation plan for all covered positions in the Department of Public Safety and establishes standards and qualifications for all classified positions;

A plan for fair and impartial selection, appointment, probation, promotion, retention, and separation or removal from service by resignation, retirement, reduction in force, or dismissal of all classified employees;

A performance appraisal system for evaluating the work performance of employees of the Department of Public Safety;

Procedures for the conduct of hearings of employee grievances brought before the Council relating to classification, compensation and the employee appraisal system;

Procedures for the conduct of hearings on appeals from an order of the Director of the Department of Public Safety and the Executive Director of the Arizona Peace Officer Standards and Training Board in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee;

Establishes rules for hours of employment, annual and sick leave and special leaves of absence, with or without pay or with reduced pay;

Hears and reviews appeals from any order of the Director of the Department of Public Safety and the Executive Director of the Arizona Peace Officer Standards and Training Board in connection with suspension, demotion, reduction in pay, and loss of accrued leave time or dismissal of a classified employee.

The selection of employees for a major, statewide law enforcement agency is a unique and rigorous process. Both sworn and civilian employees of the Department of Public Safety have access to extremely confidential information concerning a wide variety of law enforcement activities. Many department employees have unsupervised access to illegal drugs, large sums of money, and other contraband acquired as evidence in criminal investigations. It is imperative that the Department of Public Safety's selection process screen out individuals who are proven, either by past actions or by the results of a polygraph examination, to be unsuitable for the high level of public trust required.

Members of the Department of Public Safety must meet admission and retention standards that are more rigid than those for the majority of state employees. The Council mandates, controls, and monitors aptitude testing, rigorous background checks, and polygraph examinations for all Department of Public Safety Employees. Commissioned employees additionally must meet physical fitness standards and pass medical and psychological examinations.

2. **The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.**

The Council feels, based on 59 years of successful and meaningful service, that there is a continuing need to serve as a Law Enforcement Merit System Council for the Department of Public Safety due to the unique responsibilities the Department's employees have to provide for the safety of the citizens of Arizona.

In the area of appeals, it is important to have a Council who can both hear and review highly confidential and criminal matters which are unique to employees of a statewide law enforcement agency. Decisions are normally made the same day the hearing concludes, eliminating backlogs. If one member is unable to attend a meeting, the other two members constitute a quorum. All appeals are announced via electronic media and public bulletin board, and open to the public. Background materials are shared with the employee organization representatives and listed on announcements as being available for review in the business office during normal business hours.

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The selection of employees for a major, statewide law enforcement agency is a unique and rigorous process. Both sworn and civilian employees of the Department of Public Safety have access to extremely confidential information concerning a wide variety of law enforcement activities. Many department employees have unsupervised access to illegal drugs, large sums of money, and other contraband acquired as evidence in criminal investigations. It is imperative that the Department of Public Safety selection process screen out individuals who are proven, either by past actions or by the results of a polygraph examination, to be unsuitable for the high level of public trust required.

In 1980, a Governor's Commission on Merit System Reform found the following:

1. "The Department of Public Safety enjoys a highly successful personnel program which contributes to the achievement of critical agency objectives. The Commission feared that diminishing the effectiveness of the program in any way would decrease services to the public."
2. "Having considered the benefits and liabilities of placing the Department of Public Safety and the three universities under the merit system operated by the Personnel

Division, the Commission decided that such a move would not be in the best interest of state government at the present time. The Personnel Division (now DOA Personnel Division) is straining to meet the needs of those agencies presently served, and despite an infusion of resources, would be incapable of extending services to such a considerable degree.” (This is still true today.)

The commission made the following recommendations:

“The Department of Public Safety and the Personnel Division should continue their own merit systems.”

SEE ADDENDUM A

3. **The extent to which the agency has operated within the public interest.**

The Law Enforcement Merit System Council, at all times, attempts to balance the interests of the Department of Public Safety, the employees of the Department of Public Safety, and the people of the State of Arizona.

The interests of the general public are served in that the Council prescribes and approves the personnel practices of the Department of Public Safety which are unique to a Department whose primary responsibility is law enforcement related. Not only does the Council prescribe rules applicable to the employment of the employees of the Department, it also provides for dismissal of employees who demonstrate they should not be in law enforcement work. Through these rules, the Director of the Department of Public Safety is better able to control the actions of the employees and guarantee fairness to the public. Public respect and confidence enjoyed by the Department of Public Safety is indicative of the Council's impact on its personnel process.

By holding meetings and hearings in a timely manner, and in an open forum, the Council provides a public, non-political forum for employees or other interested parties to be heard.

4. **The extent to which rules adopted by the agency are consistent with the legislative mandate.**

A.R.S. 41-1830.11 through 41-1830.15 comprises the Council's legislative mandate. Administrative Rules R13-5-101 through R13-5-804 defines the merit principles and operating guidelines prescribed by the Council. The existing rules and regulations are consistent with the legislative mandate.

The Council recognizes that its rules need to be continuously reviewed for update. The most recent revision of these rules was approved by the Governor's Regulatory Review Council (GRRC) in 2006. Because of statute changes that were made in 1995, the Council was able to make necessary changes. The Rules Revision Advisory Committee, consisting of representation from the Council, the Department of Public Safety, and employee organizations, continues to play an integral role in keeping the rules current. This committee meets when a determination is made that a significant revision to the rules is required. The result of this committee's efforts keeps the rules fully in compliance with the legislative mandate.

The Rules Revision Advisory Committee currently consists of the following representation:

Chair/Co-Chair

Commander Iven T. Wooten, Business Manager, LEMSC
Jennie Edwards, Administrative Services Officer, LEMSC

Members

Lieutenant Kelly Heape, Executive Officer, Director's Office
Ms. Pamela Christofferson, Human Resources Manager, DPS
Lieutenant Jenna Mitchell, Research and Planning, DPS
Mr. Charles LeBlanc, Finance, DPS
Commander Michael Orose, Chief of Staff, Highway Patrol, DPS
Ms. Sandy Sierra, AZ Peace Officer Standards and Training Board, POST
Lieutenant Lynn Ideus, Fraternal Order of Police, Lodge #32
Ms. Sue LeHew, Fraternal Order of Police, Associate Lodge #32
Sergeant Jimmy Chavez, Associated Highway Patrolmen of Arizona
Lieutenant Victor McCraw, Latino Peace Officer's Association

5. **The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

In those instances when changes have been effected, the rule-making process required of all State agencies has been followed. The process provides for public meetings regarding the changes and requires approval by GRRC in open meeting. During the development process, the Council's staff solicits input from the Department and from various employee organizations (as evidenced by the make-up of the Rules Revision Advisory Committee). Prior to submission to GRRC, the Law Enforcement Merit System Council discusses in open meeting(s) and encourages Department, employee, and public input. During the rule-making process, an impact statement is prepared and submitted to the GRRC.

All meetings of the Law Enforcement Merit System Council are open to the public. Notices of meetings are posted according to law; on a designated bulletin board and on agency-wide electronic media. Minutes of meetings are available for inspection by the public during regular business hours.

The Council takes great effort to balance the interests of all involved. The public benefits from the quality and integrity of DPS employees due in large part to the integrity of the Law Enforcement Merit System Council Rules under which the Department operates.

6. **The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.**

The investigation and resolution of grievances is provided for in A.R.S. 41-1830.12.D and Rule 13-5-602 B and E. Through the hearing process, any interested party, whether a state employee or private citizen, may bring issues before the Council. If these issues fall within the statutory authority of the Council, they may act on them and cause changes to be made. It may be necessary, in order to comply with the Open Meeting Law, to schedule the issue for another meeting when it can be properly noticed before action can be taken.

On a daily basis, the Business Manager and staff respond to inquiries regarding personnel matters. In most instances, the staff investigates and renders a decision as to the appropriateness of a proposed course of action. Such decisions are based on interpretation of the Rules and previous rulings of the Council. In all instances, the philosophy of fairness and merit principles of public employment are paramount in reaching a final decision. If a concerned party is not satisfied with a decision by the staff, or if the staff feels the issue should be referred to the Council, the matter is brought to the Council for resolution. The authority of the Business Manager to act on behalf of the Council is provided for in A.R.S. 41-1830.12.D.

Perhaps the most substantive issue that has come before the Council in recent years is the Classification and Compensation Maintenance Review (CCMR) process that is aimed at bringing salaries of department employees more in line with the market value. This is essential in order to retain good employees and not have the Department serve as a training ground for private enterprise. The Council completed a total of eight years under CCMR I and CCMR II. All employees have not been happy with the results of the audits of their positions, but all have had an opportunity to come before the council with their concerns, which the Council has thoroughly investigated.

In addition to CCMR, the Council has approved a pay parity plan. This plan is to eventually bring all department employees' salaries to market. However, until such time as funding allows market to be achieved, the plan provides for internal parity wherein the attempt is to have all employees at the same level of pay behind market. This goal has been reached for the commissioned ranks, however, it has not been accomplished for civilian employees. While commissioned personnel are currently at 93% of market, civilian employees are at 88.1% or less relative to market.

7. **The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

A representative from the Transportation Division of the Attorney General's office provides legal advice and representation to and for the Council.

In disciplinary hearings before the Council, the Department of Public Safety is represented by an attorney from the Civil Division of the Attorney General's office.

The enabling legislation does not specifically provide for prosecutorial action on behalf of the Council.

As with other state agencies, any litigation on behalf of or against the Council is handled by the Council's representative from the Transportation Division of the Attorney General's office.

The Council and its staff are subject to being prosecuted by the Attorney General's office for any act that would require prosecution under the statutes.

8. **The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.**

As a result of a 1995 concentrated effort between the Council, the Department of Public Safety and all employee organizations, deficiencies contained in the enabling statutes were changed and this made it possible for the council to revise its rules. The first major revision occurred in May 2000. Since that time, additional changes have occurred in November 2000, November 2001, July 2003, March 2004 and July 2006.

The Rules Revision Advisory Committee (mentioned in Item #4) plays an instrumental part in assisting the Council with constantly reviewing and identifying needed changes to the rules.

9. **The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.**

With the revisions in the statutes that were achieved in 1995, the laws affecting the agency are adequate in their present state.

10. **The extent to which the termination of the agency would significantly harm the public health, safety or welfare.**

Current and prospective employees of the Department of Public Safety are held to higher standards of integrity and performance than most other State employees and are subject to more serious sanctions for misconduct. It is felt that the unique responsibilities and standards of conduct imposed on the Department's employees create the need for a specific personnel system to deal with them. Eliminating the Law Enforcement Merit System Council would have the potential to adversely affect the quality of personnel hired by the Department of Public Safety, and subsequently the quality of services provided by those individuals and the Department.

During investigations and hearings, the Council may review and be privileged to highly confidential matters and criminal investigations which must remain secure without the chance of being co-mingled with other files. Promotional examinations must be kept under secure circumstances without the possibility of being compromised by theft, copying, etc. Additionally, during the hearing of appeals, the Council, as a quasi-judicial body, is required to take custody of and store evidence used in the proceedings. Should a matter be appealed to Superior Court, most of the rules of evidence that apply in criminal cases would be applicable in regard to chain-of-custody, secure storage, availability, documentation, etc.

Termination of the agency would be counter-productive to the best interests of the Department of Public Safety, its employees, and the public. As an independent agency, the Council gives interested parties the benefit of review by the entire body rather than a hearing officer. This approach provides a fair and impartial forum in which the parties can address the Council members directly.

11. **The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.**

The Rules Revision Advisory Committee has discussed this question to great lengths. There are some who feel the Council should exercise a greater amount of control over the Director of the Department of Public Safety, and some who feel this control should be reduced. The Council shifted all testing processes to the Human Resources Bureau of the Department and retained only final approving authority at the Council level. This shift was made out of the concern some committee members had that a person appealing a Council process must appeal to the same Council that administered the process.

The Rules Revision Advisory Committee has also discussed limiting the scope of the Council's authority to change the disciplinary action taken by the Director against an employee. They have felt that the Council should limit the scope of its hearing to whether the Director had ample cause to take the action and either to uphold or overturn the action. They have considered limiting this authority to change the amount of discipline only to those cases where it can be shown that the Director was arbitrary and capricious in his actions. There are plenty of arguments for both sides of this issue. The committee has most recently discussed limiting the contents of an employee's personnel record by using the provisions contained in ADOA's personnel rules as a guideline.

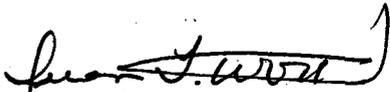
These preceding instances are mentioned to demonstrate that the level of regulation exercised by the Law Enforcement Merit System Council over the Department of Public Safety is constantly under review.

The current levels of regulation have been in effect for nearly 60 years and have not presented any great problems. We will continue to review them to see that they do provide the level of service needed for the Department of Public Safety, its employees, and the public.

12. **The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

Through the Department of Public Safety, the Council sometimes utilizes private contractors for professional services in test development. The Council has expended budgeted funds in the past for outside professional services for qualified members of Qualification Appraisal Boards. However, since testing processes have been turned over to the Department of Public Safety, the expense is now borne by that agency. The Council routinely contracts for audio recording and other related equipment.

If you have any questions, please contact our office at 223-2286.



Iven T. Wooten, Commander
Business Manager

Enclosure

ADDITIONAL RESPONSES

1. **An identification of the problem or the needs that the agency is intended to address.**

The biggest issue facing the Council is the need for adequate funding. With funding of only one FTE, over 92% of the allocated funds must go toward salary and ERE. This leaves very little leeway to draw from other operating funds to cover unforeseen and additional expenses.

2. **A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency and its anticipated accomplishments.**

The objectives that have been adopted by the Council are those in support of the goals which in turn address the agency's statutory mandate. Statistical data below are three-year totals.

- **To provide a plan for proper classification of all covered positions under the Council's jurisdiction.**

In order to address the preceding objective there have been a total of 33 classifications reviewed to ensure they have the appropriate job description and reflect the compensation market value; there have also been 13 position audits conducted to ensure they are properly classified; and 31 job descriptions reviewed to ensure proper classification.

- **To create and maintain a compensation plan that will move employee salaries closer to market.**

The Classification and Compensation Maintenance Review (CCMR) process is aimed at bringing salaries of Department employees more in line with the market value. This is essential in order to retain good employees and not have the Department serve as a training ground for private enterprise. However, because this process is longitudinal, the time between reviews is excessive. Therefore, salaries tend to lag far behind the market. The Council completed a total of eight years under CCMR I and CCMR II. All employees have not been happy with the results of the audits of their positions, but all have had an opportunity to come before the council with their concerns, which the Council has thoroughly investigated. In addition to CCMR, the Council recently approved a pay parity plan. This plan is to eventually bring all Department employees' salaries to market. However, until such time as funding allows market to be achieved, the plan provides for internal parity wherein the attempt is to have all employees at the same level of pay behind market. There is currently a disparity between the place relative to market between civilian employees and commissioned employees.

The Governor agreed to support for five years and the legislature is allocating the funds to move officer salaries closer to market value. At the beginning of FY 2008, commissioned personnel are at 93% of market.

Further study and work needs to be accomplished in order to address the salaries of civilian employees of the Department. Currently, civilian parity lags that of commissioned employees at 88.1%, and in numerous cases less, relative to market.

- **To review and allocate positions to their proper classification based on position audits.**

This objective addresses proper selection, retention and dismissal. This has resulted in the review of 126 test plans for selection and promotional processes and the dismissal of 15 covered employees.

- **To ensure appeal hearings are held as expeditiously as possible.**

There have been 16 appeals and grievances filed, however, some have been withdrawn prior to their scheduled date. As a result, only 12 hearings were actually conducted. The average number of days from the receipt of an appeal until the Council issued a final order is 167 and the average cost is \$669.

- **To provide a plan to the Department of Public Safety Human Resources Bureau detailing the necessary steps in the development of a promotional examination.**

This objective is in place in an attempt to prevent or lessen challenges filed regarding the make-up of examination processes. Of the 106 promotional examinations conducted, there have been 36 challenges filed which resulted in 8 changes to the examination or the scoring thereof.

- **To closely monitor the development of all promotional examinations to ensure that Human Resources follows the proper steps in the development of the examination.**

All examination plans are reviewed by the Business Manager on behalf of the Council prior to their approval. All those containing some type of error are not approved until the error is corrected.

3. **Identification of any other agencies having similar, conflicting, or duplicate objectives, and an explanation of the matter in which the agency avoids duplication of conflict with other such agencies.**

Merit System Councils for Law Enforcement Officers established under A.R.S. 38-1002 may have some similar objectives but only for commissioned officers. The State Personnel Board also has similar objectives but only with respect to administrative hearings. However, the objectives of this agency apply to all Department of Public Safety personnel and the Arizona Peace Officer Standards and Training Board. This agency's objectives are farther reaching than those of the State Personnel Board. The Council, in addition to discipline and appeal hearings, also adopts Classifications, Compensation Plans, and Examination Plans for employment and promotion, and performance evaluation plans. The objectives are not in conflict with any other agency and in most instances are more defined and/or stringent than those of like agencies.

There is no duplication or conflict as the purview of this agency extends only to the entities previously identified. None of the employees for whom this agency oversees are under the auspices of any other merit system council or personnel board.

In those instances where a legal interpretation has indicated that the agency must comply with a mandate other than the enabling legislation, those requirements have been incorporated into the agency's administrative rules.

4. **An assessment of the consequences of eliminating the agency or of consolidating it with another agency.**

Current and prospective employees of the Department of Public Safety are held to higher standards of integrity and performance than most other state employees and are subject to more serious sanctions for misconduct. It is felt that the unique responsibilities and standards of conduct imposed on the Department's employees create the need for a specific personnel system to deal with them. Eliminating the Law Enforcement Merit System Council or merging personnel practices with the Personnel Division of the Department of Administration, would have the potential to adversely affect the quality of personnel hired by the Department of Public Safety, and subsequently, the quality of services provided by those individuals and the Department.

During investigations and hearings, the Council may review and be privileged to highly confidential matters and criminal investigations which must remain secure without the chance of being co-mingled with other files. Promotional examinations must be kept under secure circumstances without the possibility of being compromised by theft, copying, etc. Additionally, during the hearing of appeals, the Council, as a quasi-judicial body, is required to take custody of and store evidence used in the proceedings. Should a matter be appealed to Superior Court, most of the rules of evidence that apply in criminal cases would be applicable in regard to chain-of-custody, secure storage, availability, documentation, etc.

Termination of the agency or merging it with the Personnel Division of the Department of Administration would be counter-productive to the best interests of the Department of Public Safety, its employees, and the public. As an independent agency, the Council gives interested parties the benefit of review by the entire body rather than a hearing officer. This approach provides a fair and impartial forum in which the parties can address the Council members directly.

**EXCERPT FROM DPS'
ANNUAL REPORT**

Annual Report

This agency does not have a separate annual report. Any items of significance are included in the Department of Public Safety's annual report.

STATE OF ARIZONA DEPARTMENT OF PUBLIC SAFETY



2006



Annual Report

JANET NAPOLITANO
GOVERNOR

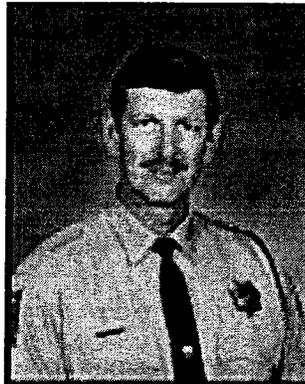
ROGER VANDERPOOL
DIRECTOR

Office of the
Director

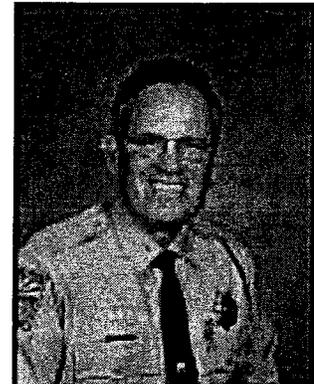
Office of the Director



The director of the Arizona Department of Public Safety, Roger Vanderpool, establishes the Department's goals, policies, procedures and organizational structure. He directs and controls the activities of the Department and is responsible for accomplishing its mission. The director is assisted by deputy director, David A. Felix.

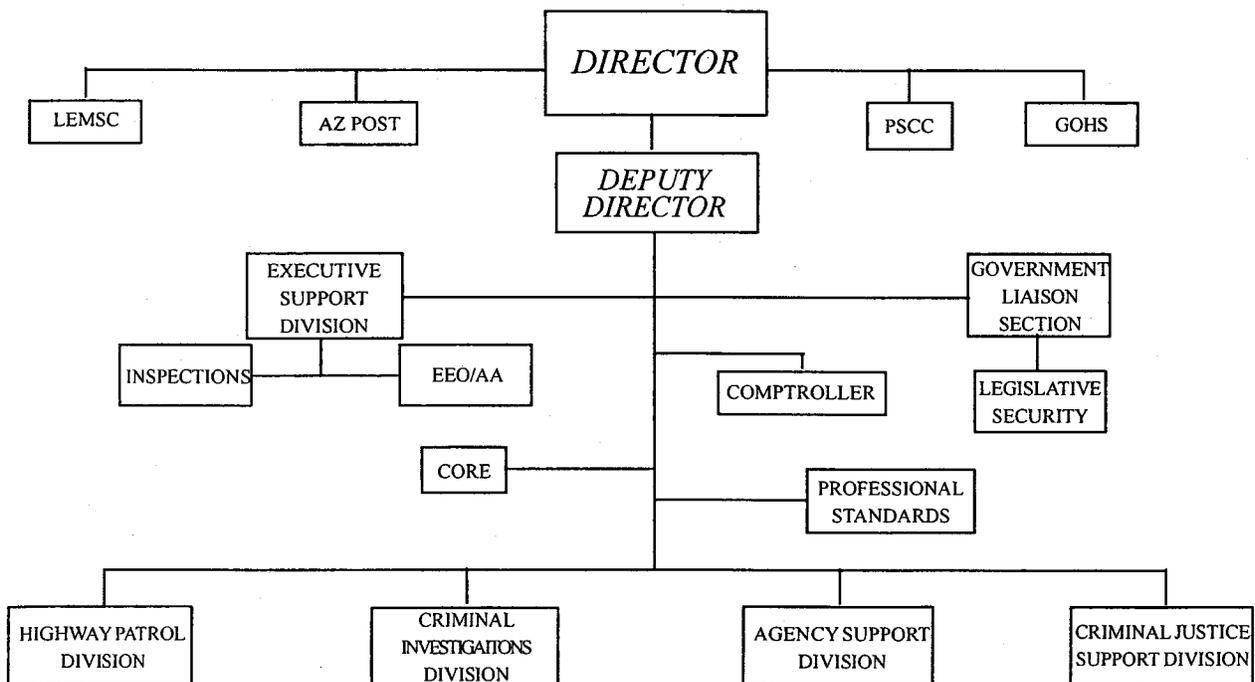


Roger L. Vanderpool
Director



David A. Felix
Deputy Director

The Director's Office oversees the objectives of the executive officer, government liaison, community outreach & education, comptroller and professional standards. The Governor's Office of Highway Safety (GOHS), the Arizona Peace Officer Standards and Training board (AZ POST), the Law Enforcement Merit System Council (LEMSC) and the Public Safety Communications Advisory Commission (PSCC) are administratively supported by the Director's Office.





Office of the Director

Overview of the Director's Office:

Executive Officer

- Manages the personnel and functions of the director's staff, provides staff support to the director and is the agency ombudsman.
- Oversees and supervises the EEO/AA and the Inspections and Control Units.

Inspections and Control

- Performs section and district inspections to enhance effectiveness and efficiency.

Equal Employment Opportunity / Affirmative Action (EEO/AA)

- Administers the Department's EEO/AA Programs.
- Ensures compliance with Equal Employment Opportunity/Affirmative Action guidelines.
- Conducts preliminary inquiries into EEO complaints.
- Assists with the preparation of written responses to charges filed with the U.S. Equal Employment Opportunity Commission.

Government Liaison

- Monitors proposed legislation pertaining to the criminal justice system.
- Oversees and supervises security for the Arizona Senate and House of Representatives.
- Ensures cooperative relations between the Department and local, county, state and federal criminal justice agencies.

Community Outreach and Education Program (CORE)

- Serves as the Department's primary media liaison and central source of information.

Professional Standards

- Conducts internal investigations to insure the integrity and professionalism of the Department.

Comptroller

- Acts as the Department's chief financial officer.
- Serves as liaison to the Governor's Office and Arizona Legislature on financial matters.

Office of the Director



Governor's Office of Highway Safety (GOHS)

- Administers federal highway safety funds on behalf of the governor.
- Serves as the governor's highway safety representative and spokesperson on highway safety-related issues, including liaison with the legislature.
- Receives proposals, evaluates and awards federal highway safety grants to local jurisdictions and state agencies as designated in the annual Highway Safety Plan. Awards are based on problem-identification and performance-based goals and objectives.
- Provides assistance in the form of seed monies to local governments in the development and operation of community highway safety programs.
- Executes highway safety contracts on behalf of the governor with the federal government, state agencies and political subdivisions of the state.

Law Enforcement Merit System Council (LEMSC)

- Consists of three members appointed by the governor who each serve six-year terms. Members are chosen on the basis of experience in and sympathy with merit principles of public employment. Members shall not have held elective public office within one year before appointment and shall not hold any other political office while serving on the LEMSC.
- Adopts rules it deems necessary for establishing: (a) a classification and compensation plan for all covered positions in the Department and establishing standards and qualifications for all classified positions; (b) a plan for fair and impartial selection, appointment, probation, promotion, retention and separation or removal from service by resignation, retirement, reduction in force or dismissal of all classified employees; (c) a performance appraisal system for evaluating the work performance of DPS employees; (d) procedures for the conduct of hearings of employee grievances brought before the LEMSC relating to classification, compensation and the employee appraisal system; (e) procedures for the conduct of hearings on appeals from an order of the director of DPS in connection with suspension, demotion, reduction in pay, loss of accrued leave, or dismissal of a classified employee.

Arizona Peace Officer Standards and Training Board (AZ POST)

- Establishes rules and regulations governing the conduct of all business coming before the board.
- Prescribes minimum qualifications for officers appointed to enforce the laws of the state.
- Recommends curricula for advanced courses and seminars for law enforcement training in universities, colleges and junior colleges in conjunction with the governing body of the educational institutions.
- Determines whether political subdivisions of the state are adhering to the standards for recruitment and training.
- Approves a state correctional officer training curriculum and establishes minimum standards for correctional officers.



Office of the Director

- Approves allocations from the Peace Officers Training Fund to provide law enforcement training, and to provide grants to cities, towns and counties for law enforcement training.
- Provides training and related services to assist state, tribal and local law enforcement agencies to better serve the public.

Public Safety Communications Commission (PSCC)

- Promote real-time, interoperable communications between local, county, state, tribal, and federal public safety entities in the state of Arizona to effectively protect lives and property.
- Promote the development and adoption of user based, standards-based systems.
- Capitalize on opportunities to share resources and leverage existing infrastructure.
- The PSCC staff will foster, recommend and develop technical standards; oversee conceptual and detailed design efforts; and pursue funding to build out and maintain a statewide system for use by all local, state, tribal and federal public safety entities in Arizona.

Sunset Review

Law Enforcement Merit System Council

August 28, 2007

ADDENDUM

LETTER OF SUPPORT FROM DPS

ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000



JANET NAPOLITANO
GOVERNOR

ROGER VANDERPOOL
DIRECTOR

August 24, 2007

Joint Legislative Audit Committee
Arizona State Legislature
Phoenix, AZ 85007

Dear Committee Members:

I have recently been made aware of the Sunset Review process that is beginning with the Law Enforcement Merit System Council.

The Law Enforcement Merit System Council establishes rules for the personnel management of the Department of Public Safety (DPS) and Arizona Peace Officer Standards and Training Board (POST). Specifically, the Council provides:

- 1) a classification and compensation plan for all covered positions in DPS and establishes standards and qualifications for all classified positions from a list of necessary employees that is prepared by the Director of DPS and the Executive Director of POST;
- 2) a plan for fair and impartial selection, appointment, probation, promotion, retention and separation or removal from service by resignation, retirement, reduction in force or dismissal of all classified employees; from a list of necessary employees that is prepared by the Director of DPS;
- 3) a performance appraisal system for evaluating the work performance of employees of these agencies;
- 4) procedures for the conduct of hearings of employee grievances brought before the Council relating to classification, compensation, and the employee appraisal system;
- 5) procedures for the conduct of hearings on appeals of an order of the Director of DPS or the Executive Director of POST in connection with suspension, demotion, reduction in pay, loss of accrued leave time, or dismissal of a classified employee;

- 6) established rules for hours of employment, annual and sick leave and special leaves of absence, with or without pay or with reduced pay; and hears and reviews appeals from any order of the Director of DPS or the Executive Director of POST in connection with suspension, demotion, reduction in pay, loss of accrued leave time or dismissal of a classified employee.

The selection of employees for a major, statewide law enforcement agency is a unique and rigorous process. Both sworn and civilian employees of DPS have access to extremely confidential information concerning a wide variety of law enforcement activities. Many Department employees have unsupervised access to illegal drugs, large sums of money, and other contraband acquired as evidence in criminal investigations. It is imperative that DPS' selection process screen out individuals who are proven, either by past actions or by the results of a polygraph examination, to be unsuitable for the high level of public trust required.

Employees of DPS must meet admission and retention standards that are more rigid than those established for the majority of other state agencies. The Council mandates, controls, and monitors rigorous background checks, physical fitness standards, psychological and aptitude tests, medical examinations, and polygraph examinations for all DPS employees.

The Council provides a service to DPS that would not be available from the Personnel Division and the State Personnel Board.

It is very important that the Law Enforcement Merit System Council continue to provide the service to the Department of Public Safety that they have provided in the past. I strongly support the retention of the Law Enforcement Merit System Council as an agency of the State of Arizona.


For Deputy
Roger Vanderpool
Director

**SUNSET REVIEW HEARING
MEETING NOTICE**

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE JUDICIARY AND HOUSE NATURAL RESOURCES AND PUBLIC SAFETY COMMITTEE OF REFERENCE

Date: Wednesday, December 12, 2007

Time: 9:00 A.M.

Place: SHR 1

AGENDA

1. Call to Order
2. Roll Call
3. Law Enforcement Merit System Council
 - Presentation
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
4. Adjournment

Members:

Senator Chuck Gray, Co-Chair
Senator Ken Chevront
Senator Ron Gould
Senator Richard Miranda
Senator Jim Waring

Representative Judy Burges, Co-Chair
Representative John Kavanagh
Representative Barbra McGuire
Representative Lynne Pancrazi
Representative Jerry Weiers

11/13/07
br

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602)926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

**SUNSET REVIEW HEARING
MEETING MINUTES**

ARIZONA STATE LEGISLATURE

**SENATE JUDICIARY AND HOUSE NATURAL RESOURCES AND PUBLIC SAFETY
COMMITTEE OF REFERENCE**

**Minutes of the Meeting
Wednesday, December 12, 2007
9:00 a.m., Senate Hearing Room 1**

Members Present:

Senator Chuck Gray, CoChair
Senator Ken Chevront
Senator Ron Gould
Senator Richard Miranda
Senator Jim Waring

Representative Judy Burges, CoChair
Representative John Kavanagh
Representative Barbra McGuire
Representative Lynne Pancrazi
Representative Jerry Weiers

Staff:

Christina Estes-Werther, Senate Judiciary Research Analyst
Jessica Ripplinger, Assistant Senate Judiciary Research Analyst

Cochairman Gray called the meeting to order at 9:12 a.m. and attendance was taken.

Law Enforcement Merit System Council

Jessica Ripplinger, Assistant Senate Judiciary Research Analyst, gave an overview of the Law Enforcement Merit System Council.

Commander Iven T. Wooten, Arizona Department of Public Safety, testified in support of the Law Enforcement Merit System Council and answered questions posed by the Committee.

Tom Hammarstrom, Executive Director, Arizona Peace Officer Standards and Training Board, testified in support of the Law Enforcement Merit System Council's continuation and answered questions posed by the Committee.

Lynn Ideus, Arizona Fraternal Order of Police, Lodge 32, testified in support of the Law Enforcement Merit System Council's continuation and answered questions posed by the Committee.

Dale Norris, Executive Director, Arizona Police Association, testified in support of the Law Enforcement Merit System Council's continuation.

Commander Wooten answered questions posed by the Committee.

Recommendations by the Committee of Reference

Representative McGuire moved that the Senate Judiciary and House Natural Resources and Public Safety Committee of Reference recommend the consideration of increasing the members of the Law Enforcement Merit System Council from three members to five members. The motion passed by voice vote.

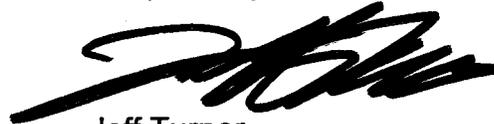
The Committee held discussion on the option of decreasing the recommended continuation of the Council to less than ten years.

Representative Burges moved that the Senate Judiciary and House Natural Resources and Public Safety Committee of Reference recommend the continuation of the Law Enforcement Merit System Council for five years. The motion failed by voice vote.

Representative Kavanagh moved that the Senate Judiciary and House Natural Resources and Public Safety Committee of Reference recommend the continuation of the Law Enforcement Merit System Council for seven years. The motion passed by voice vote.

There being no further business, the meeting was adjourned at 10:07 a.m.

Respectfully submitted,



Jeff Turner
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)