STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

ARIZONA PURCHASING REVIEW BOARD

OCTOBER 1982

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 82-5

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

October 25, 1982

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Ms. Sharon Seekins, Chairman
Arizona Purchasing Review Board

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Purchasing Review Board. This report is in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the the Board is found on the yellow pages preceding the appendices.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton

Douglas R. Norton
Auditor General

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Enclosure

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OFFICE OF THE AUDITOR GENERAL

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ARIZONA STATE LEGISLATURE

REPORT 82-6

TABLE OF CONTENTS

	Page
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	5
FINDING	9
The Arizona Purchasing Review Board is no longer necessary and could be terminated.	
CONCLUSION	15
RECOMMENDATIONS	16
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT	

LIST OF TABLES

		Page
TABLE 1 -	Purchasing Review Board Contract Compensation and Expenditures for Fiscal Years 1979-80 through 1981-82	2
TABLE 2 -	Percent of State Political Subdivisions Aware of the Purchasing Review Board and Using Its Standards	15

SUMMARY

The Office of the Auditor General conducted a performance audit of the Arizona Purchasing Review Board in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review process set forth in A.R.S. §§41-2351 through 41-2379.

The Purchasing Review Board was established by the legislature in 1978 to develop energy efficient purchasing standards for the State and its political subdivisions. Its membership consists of 15 public and private sector representatives appointed for one-year terms by the Governor.

Since 1979, the Board has adopted an average of 11 standards a year for the procurement of energy efficient items to comply with Federal and State guidelines. Aproximately 130 Purchasing Review Board handbooks containing energy efficient purchasing standards have been distributed to major State agencies and political subdivisions. In addition to the development and publication of the handbook, the Board conducted several workshops in the past three years to inform local governments of the usefulness of the standards.

Sponsored by the Office of Economic Planning and Development (OEPAD), Arizona Energy Office (AEO), with administrative support provided by the Department of Administration - State Purchasing Office, board operations are 100 percent Federally supported by a grant administered through the U.S. Department of Energy. The Board does not have a full-time staff, however, it was provided with a part-time intern from Arizona State University by OEPAD/AEO.

Our review found that the Arizona Purchasing Review Board has fulfilled its purpose and is no longer needed. Although it has failed to formally adopt the standards it has developed as rules (see page 9), the Board has fulfilled State and Federal requirements and continuation is not required to receive Federal funds. In addition, implementation of centralized purchasing has eliminated the need for the Board at the State

level (see page 13). Finally, although political subdivisions of the State need to be made more aware of Board-developed standards, this function can be fulfilled by the Arizona Energy Office, which conducts educational programs throughout the State (see page 14).

INTRODUCTION AND BACKGROUND

The Office of the Auditor General conducted a performance audit of the Arizona Purchasing Review Board in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review process set forth in A.R.S. §§41-2351 through 41-2379.

The Purchasing Review Board was established by the legislature in 1978 to develop energy efficient purchasing standards for the State and its political subdivisions. Its membership consists of 15 public and private sector representatives appointed for one-year terms by the Governor.

The Board was created as a result of Federal legislation which was designed in part to encourage states to develop energy efficient procurement standards. In 1975, the U.S. Congress enacted the Energy Policy and Conservation Act (EPCA) in response to the nationwide energy crisis. Under Title III, Part C of the Act, funds are provided to states which establish energy conservation plans which meet specific Federal requirements. One of these requirements is the development of energy efficient procurement standards.

Since 1979, the Board has adopted an average of 11 standards a year for the procurement of energy efficient items to comply with Federal and State guidelines. Approximately 130 Purchasing Review Board handbooks containing energy efficient purchasing standards have been distributed to major State agencies and political subdivisions. In addition to the development and publication of the handbook, the Board conducted several workshops in the past three years to inform local governments of the usefulness of the standards.

The Board is sponsored by the Office of Economic Planning and Development (OEPAD), Arizona Energy Office (AEO), and administrative support is provided by the Department of Administration - State Purchasing Office through an interagency agreement with OEPAD. Board operations are 100 percent Federally supported by EPCA funds administered through the U.S.

Department of Energy. The Board does not have a full-time staff, however, it was provided with a part-time intern from Arizona State University by OEPAD/AEO. Table 1 indicates that Board expenditures have declined from $19,383 in fiscal year 1980-81 to an estimated $10,976 in fiscal year 1981-82.

The following table shows the contract compensation and expenditures of the Purchasing Review Board for a three-year period.

TABLE 1

PURCHASING REVIEW BOARD CONTRACT COMPENSATION AND EXPENDITURES FOR FISCAL YEARS 1979-80 THROUGH 1981-82

	1979-80	1980-81	Estimated 1981-82
Contract compensation	$8,500	$20,000	$ 4,618*
Expenditures	5,519	19,383	4,618
Balance of contract	$2,981	$ 617	$

* The contract compensation between OEPAD/AEO and SPO did not include intern salary and employee-related expenses in the amount of $6,358, which were paid for directly by OEPAD/AEO in 1981-82.

Audit Scope and Objective

Our audit of the Purchasing Review Board addressed issues set forth in the 11 Sunset factors contained in A.R.S. §41-2354.

The Auditor General and staff express gratitude to the Arizona Purchasing Review Board and the staffs of the Department of Administration - State Purchasing Office and OEPAD/AEO for their cooperation and assistance during the course of this audit.

SUNSET FACTORS

In accordance with A.R.S. §§41-2351 through 41-2379, 11 factors are considered to determine, in part, whether the Arizona Purchasing Review Board should be continued or terminated.

1. Objective and purpose in establishing the Agency

The intent of the Legislature in establishing the Arizona Purchasing Review Board is set forth in A.R.S. §41-568 which states:

> "A. The Arizona purchasing review board shall adopt rules and regulations establishing the minimum standards for the procurement of energy consumptive products by this state and political subdivisions of this state.
>
> "B. Standards adopted pursuant to subsection A shall be based upon considerations of energy conservation and of life cycle cost to insure adequate and fair price competition."

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

In the past three years, the Board developed 32 standards for the procurement of energy consumptive products by State agencies and political subdivisions of the State. The standards have been distributed to 130 State agencies and political subdivisions, and workshops were held to assist local purchasers in the use of the standards. The standards are currently being used by the State Purchasing Office and some political subdivisions which have received the standards.

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

The Board developed standards for procuring products used by the State and political subdivisions which are more energy efficient. This effort is in the public interest since it is intended to save taxpayer dollars and reduce energy consumption.

4. The extent to which rules and regulations promulgated by the Agency are consistent with the legislative mandate

Our audit revealed that the Board had not fulfilled its legislative mandate to adopt rules and regulations. The Board had not promulgated rules and regulations as required in accordance with administrative procedures (see page 9).

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

The Board encouraged public input through the use of questionnaires and holding workshops in various parts of the State. These workshops also were used to inform the public of Board actions and the impact of those actions.

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

The Board does not receive, investigate or resolve complaints from the public.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

Board-enabling legislation does not define violations nor prescribe penalties. Therefore, no prosecutable actions are specified in the enabling legislation.

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

According to the Board, no deficiencies in the enabling legislation have been addressed.

9. The extent to which changes are necessary in the laws of the Agency to adequately comply with the factors listed in the Sunset law

Our audit revealed that no changes are necessary to comply with sunset factors addressed.

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

Termination of the Board would not 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

This sunset factor is not applicable to the Arizona Purchasing Review Board.

FINDING

THE ARIZONA PURCHASING REVIEW BOARD IS NO LONGER NECESSARY AND COULD BE TERMINATED.

The Arizona Purchasing Review Board has fulfilled its purpose and is no longer needed. The Board completed development of energy efficient procurement standards as required by State law, although it failed to formally adopt the standards as rules. The intent of Federal legislation supporting the Board has also been substantially fulfilled and continuation of the Board is not required to receive Federal funds. In addition, implementation of centralized purchasing has eliminated the need for the Board at the State level. Although political subdivisions of the State need to be made more aware of Board-developed standards, this function can be fulfilled by the Arizona Energy Office which conducts educational programs throughout the State.

Standards Had Been Developed But Were Not Formally Adopted

The Board had fulfilled its statutory purpose by developing energy efficient procurement standards for use by the State and its political subdivisions. However, it has failed to fully comply with law since the standards have not been formally adopted as rules and regulations.

Enabling legislation requires the Board to adopt rules establishing standards for the procurement of energy consumptive products. Arizona Revised Statutes (A.R.S.) §41-568, paragraph A states:

> "The Arizona purchasing review board shall adopt rules and regulations establishing minimum standards for the procurement of energy consumptive products by this state and political subdivisions of this state."

During the past three years, the Board developed 32 standards covering frequently purchased products such as air compressors, commercial restaurant equipment, lamps and vehicles. According to Board officials, the 32 standards apply to those products offering the greatest potential for significant energy savings.

Board members stated that most standards were developed and that the Board should now begin to do more to educate potential users. Further, according to an OEPAD official,

> "It appears the Board has made the largest impact possible now in developing standards. Any more standards developed will probably not have as significant an impact on energy savings."

Moreover, any needed revision of existing standards can be done by the State Purchasing Office (see page 13).

The Board has failed to fully comply with its statutory duty because Board standards have not been formally adopted as rules pursuant to the Administrative Procedures Act (A.R.S. §41-1001 et. seq.). According to the Legislative Council in an opinion dated August 12, 1982,

> "...the Board is subject to the Administrative Procedure Act and must adopt rules and regulations establishing minimum standards pursuant to the provisions of the Administrative Procedure Act....the Board has not conformed to the requirements of the Administrative Procedure Act in its adoption of standards."

According to a member of the Board, the Board has not adopted its standards as rules because the standards have been viewed as internal policy not affecting other entities. The Administrative Procedure Act does not apply if rules are of an internal policy nature not affecting any other entity. However, standards developed by the Board affect several entities such as State agencies <u>and</u> political subdivisions of the State and, therefore, are covered by the Act.

At this point, it may not be necessary to formally adopt the standards. Federal intent regarding procurement standards is to educate potential users rather than enforce their use (see page 12). Further, centralization of purchasing functions by the State in 1982 has eliminated the need for the Board (see page 13).

Federal Guidelines Have Been Met

The intent of Federal legislation supporting the Board has also been substantially fulfilled and continuation of the Board is not required to receive future Federal funds. Mandatory standards for energy efficient procurement were developed as required by the Federal legislation. Federal legislation does not require that such standards be developed through a state board and elimination of the Board would not jeopardize continued receipt of future Federal energy funds.

In 1975, the U.S. Congress enacted the Federal Energy Policy and Conservation Act (EPCA) which made funds available to those states which developed State Energy Conservation Plans (SECP) meeting specific guidelines. One of these guidelines is energy efficient procurement. Public Law 94-163, Part C, Section 362 states:

> "(c) Each proposed State energy conservation plan to be eligible for Federal assistance under this part shall include--
>
> . . . . .
>
> "(3) mandatory standards and policies relating to energy efficiency to govern the procurement practices of such State and its political subdivisions...."

The language of the Act was intentionally broad to allow states flexibility to implement the requirements of the Act. According to a Federal energy official,

> "The government intended that some type of procurement standard, using life cycle cost and energy useage, was to be set up by each state. The language was to be in some form of "must use", however, the method of implementation was left for each state to decide."

To meet this requirement, the Arizona Legislature created the Arizona Purchasing Review Board in 1978 and granted it the authority to develop standards for procurement.

The intent of the Federal legislation has been substantially fulfilled in Arizona. As noted earlier, 32 standards were developed for the State's most frequently purchased energy consumptive products. The standards were adopted as policy by the State Purchasing Office and are currently in use. Although all political subdivisions are not using the standards, the Federal government did not intend to force use of the standards in the states. Instead, it intended that affected jurisdictions be shown how to use the standards to demonstrate their usefulness. Educational workshops on the standards were held throughout the State by the Board and the Arizona Energy Office. According to a Federal EPCA official, these workshops satisfy Federal standards for enforcement.

A statutory state board is not required to implement the intent of the Federal legislation nor to assure continued receipt of Federal energy funds. A survey of states conducted by the Office of the Auditor General revealed that other states have not established state boards to meet the Federal requirement. Ten western states were surveyed to determine the method used to implement energy efficient procurement standards.* In seven states, the state energy offices worked closely with the state purchasing offices developing the required standards. None of the states established separate boards.

Use of Federal energy funds to develop purchasing standards was intended to be a one-time expenditure. According to a Federal energy official, energy efficient standards for procurement are "self-perpetuating." Once the standards are established, states may use Federal energy funds for other purposes.

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* The ten states surveyed include California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

Centralized Purchasing Eliminates Need for the Board

Implementation of centralized purchasing in Arizona has further eliminated the need for the Purchasing Review Board. Under centralized purchasing, State agencies must follow State Purchasing Office (SPO) standards which include the energy efficient procurement standards developed by the Board. In addition, SPO has proposed the establishment of a new advisory council which could assist SPO in assuming responsibility for reviewing and revising board-developed standards as needed.

When the Purchasing Review Board was established in 1978, State agencies were not required to adhere strictly to Department of Administration, State Purchasing Office procurement standards. Part of the Board's role was to develop energy efficient standards and persuade State agencies of their usefulness.

In 1982, however, the Legislature passed Senate Bill 1337 establishing centralized purchasing in Arizona. Standards for procurement are now established by the State Purchasing Office and all State agency procurements must conform to those standards. The SPO's procurement policies include the Arizona Purchasing Review Board's standards for energy consumptive products and are incorporated into all State contracts. Because all State agencies will be using these contracts, it is no longer necessary for the Board to promote use of its standards.

Should the administration of the SPO change, the current policies could also change including use of the Board's standards. To address this potential problem, a State Purchasing Office official suggested changing SPO statutes to require use of energy efficient standards. According to that official, however, any statutory enactment should be broad enough to allow flexibility.

The State Purchasing Office has proposed establishment of a new advisory council which could assist the SPO in assuming responsibility for periodically reviewing and revising Board-developed standards. The administrator of the State Purchasing Office stated:

> "The Purchasing Office is intending to set up a voluntary council of various State agencies, universities and other political subdivisions. The purpose of the council will be to go over various State contracts, create and maintain a good working relationship with all entities involved, and review developed standards for energy efficient purchasing and promote their use."

This council would further eliminate the need for the Board by assuming the responsibility of revising standards as necessary. According to Board members, standards need to be revised as the marketplace changes the quality of products it is offering. There is no set time requirement, however, for revision.

Political Subdivision Awareness Can Be Improved

Political subdivisions need to be made more aware of the standards developed by the Purchasing Review Board. This function, however, could be fulfilled by the Arizona Energy Office* which conducts energy-related workshops throughout the State.

Awareness of Purchasing Review Board standards needs to be improved among political subdivisions of the State. The Office of the Auditor General conducted a survey of counties, cities, and school districts which could benefit from energy efficient purchasing standards. Survey results, shown in Table 2, revealed that approximately half (46 percent) of the jurisdictions surveyed were aware of the Board. Awareness of Board standards was highest among school districts (70 percent), and lowest among cities surveyed (36 percent).

Less than one-third of the jurisdictions (28 percent) reported using the standards. All users, however, found the standards helpful, indicating the value of the standards and need for more awareness of them.

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* The Arizona Energy Office is a division of the Office of Economic Planning and Development and is charged with implementing Arizona's energy policies.

TABLE 2

PERCENT OF STATE POLITICAL SUBDIVISIONS AWARE OF THE PURCHASING REVIEW BOARD AND USING ITS STANDARDS

	Number Surveyed	Percent Aware of Board	Percent Using Board Standards
TOTALS	39	46%	28%
Cities	15	36%	18%
Counties	14	50	14
School Districts	10	70	70

Responsibility for educating political subdivisions about energy efficient procurement standards could be assumed by the Arizona Energy Office which conducts energy-related workshops throughout the State. Considerable Energy Office activity is educational in nature--preparing and distributing pamphlets, organizing and presenting workshops and providing technical assistance to entities for various OEPAD/AEO-sponsored programs.

In the past three years, the Board has held workshops in various locations in Arizona. One of the most recent workshops in 1982 was coordinated by the Arizona Energy Office and incorporated Board procurement standards along with other energy conservation programs, such as solar power. An Auditor General survey of western states revealed that 70 percent of the states sponsor similar workshops on procurement standards through their energy offices. A separate State Board is not needed for this purpose.

CONCLUSION

The Arizona Purchasing Review Board has accomplished its purpose by developing standards for the procurement of energy consumptive products and is no longer necessary. The remaining functions of the Board--revision of existing standards and education of political subdivisions--can be taken over by the State Purchasing Office and the Arizona Energy Office.

RECOMMENDATIONS

1. The Legislature should consider allowing the Arizona Purchasing Review Board to terminate on July 1, 1984.

2. If the Arizona Purchasing Review Board is allowed to terminate, A.R.S. §41-729 should be amended to require the State Purchasing Office to use energy efficient procurement standards.

3. The Arizona Energy Office should continue to sponsor workshops to promote the use of the Arizona Purchasing Review Board standards by political subdivisions.

STATE OF ARIZONA

ARIZONA ENERGY PURCHASING REVIEW BOARD

October 25, 1982

GENERAL

Mr. Douglas R. Norton
The Auditor General
State of Arizona
111 W. Monroe, Suite 600
Phoenix, Arizona

Dear Mr. Norton:

The Arizona Energy Purchasing Review Board has completed its review of the Auditor's General's preliminary report and performance audit. The Board is generally pleased with the words of praise for "a job well done" but would like to offer a few comments. There are some minor inaccuracies which will be addressed by the Board at a later date.

Our Board members do not feel that all sources for new energy efficient procurement standards have been exhausted. As the State's purchasing practices and technology changes, many opportunities will arise to facilitate additions, revisions, or perhaps deletions from the 32 existing standards. We feel that the best way to insure the standards' continued validity is to formalize their use at the State level as recommended. To this end, the Board would like to propose legislation through its ex-officio legislative members at the appropriate time. We also concur that ongoing revision of our existing standards can be achieved by the State Purchasing Office, aided in part by the Arizona Energy Office and the proposed purchasing advisory council.

The Board also takes issue with the narrow interpretation of its purpose as set forth in your preliminary report. The Board is not by law limited solely to the development of procurement standards and conducting of workshops. Our current contract with OEPAD-AEO requires the Board to "prepare an alternative fuel use plan for State vehicles and other projects ... that are conducive to energy conservation." The Board feels this project is of no less importance than the development of procurement standards and may indeed have a more far-reaching impact than the procurement standards themselves.

October 25, 1982

Mr. Douglas R. Norton
The Auditor General

In conclusion, the Arizona Energy Purchasing Review Board generally concurs with the Auditor General's recommendation that the Board be terminated in accordance with the Sunset Review process; provided that use of its procurement standards are formalized and that our tasks are assigned to other relevant agencies to be carried on in future years. Please keep us informed of the review process through our current chairman, Ms. Sharon Seekins, whose address is:

Ms. Sharon E. Seekins, CPPO, C.P.M.
City of Mesa Purchasing Division
PO Box 1466
Mesa, Arizona 85201

Sincerely,

Sharon E. Seekins

Sharon E. Seekins
Chairman,
Arizona Energy Purchasing Review Board