



LA 4-12-05

# Arizona House of Representatives House Majority Research MEMORANDUM

Diana Clay O'Dell  
Legislative Research Analyst  
(602) 926-3745

1700 West Washington  
Phoenix, Arizona 85007  
FAX (602) 417-3097

**To: JOINT LEGISLATIVE AUDIT COMMITTEE**  
Representative Laura Knaperek, Co-Chair  
Senator Robert Blendu, Co-Chair

**RE: SUNSET REVIEW**  
Industrial Commission of Arizona  
Related Advisory / Review Boards

**Date: December 1, 2005**

Attached is the final report of the sunset review of the Industrial Commission and the related advisory/review boards, which was conducted by the House of Representatives Commerce and the Senate Commerce and Economic Development Committee of Reference. 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 Ken Bennett

**Senate Members**

Senator Barbara Leff, Co-Chair  
Senator Ken Chevront  
Senator Richard Miranda  
Senator Jay Tibshraeny  
Senator Jim Waring

**Speaker of the House of Representatives**

Representative James P. Weiers

**House Members**

Representative John McComish, Co-Chair  
Representative Bill Konopnicki  
Representative Debbie McCune-Davis  
Representative Robert Meza  
Representative Michele Reagan

Arizona Industrial Commission of Arizona and Related Advisory / Review Boards  
Office of the Auditor General  
Department of Library, Archives & Public Records  
Office of the Chief Clerk and Secretary of the Senate

Senate Republican Staff  
Senate Research Staff  
Senate Democratic Staff

House Majority Staff  
House Research Staff  
House Democratic Staff

# **COMMITTEE OF REFERENCE SUNSET HEARING**

House of Representatives Committee on Commerce  
Senate Committee on Commerce and Economic Development

## **INDUSTRIAL COMMISSION OF ARIZONA**

**BOILER ADVISORY BOARD**

**EMPLOYMENT ADVISORY COUNCIL**

**OCCUPATIONAL SAFETY AND HEALTH  
ADVISORY COMMITTEE**

**OCCUPATIONAL SAFETY AND HEALTH  
REVIEW BOARD**

**FINAL REPORT  
DECEMBER  
2005**

**COMMITTEE OF REFERENCE REPORT**

*House of Representatives Committee on Commerce and  
Senate Committee on Commerce and Economic Development*

**INDUSTRIAL COMMISSION OF ARIZONA  
AND RELATED ADVISORY/REVIEW BOARDS**

**To: JOINT LEGISLATIVE AUDIT COMMITTEE**  
Representative Laura Knaperek, Co-Chair  
Senator Robert Blendu, Co-Chair

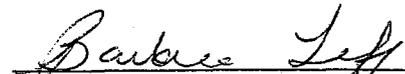
**Date: November 9, 2005**

Pursuant to Title 41, Chapter 27, Arizona Revised Statutes, the Committee of Reference, after performing a sunset review and conducting a public hearing, recommends the following:

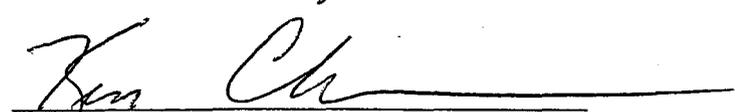
- The Industrial Commission be continued for ten years.*
- The Boiler Advisory Board be continued for ten years.*
- The Employment Advisory Council be continued for ten years.*
- The Occupational Safety and Health Advisory Committee be continued for ten years.*
- The Occupational Safety and Health Review Board be continued for ten years.*

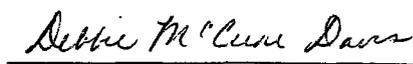
**COMMITTEE OF REFERENCE**

  
Representative John McComish, Co-Chair

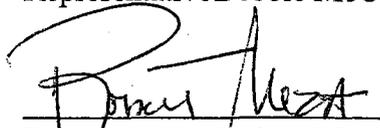
  
Senator Barbara Leff, Co-Chair

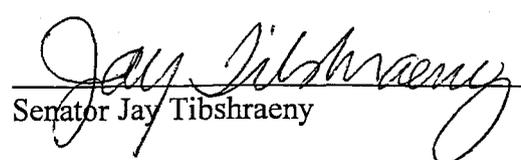
  
Representative Bill Konopnicki

  
Senator Ken Cheuyront

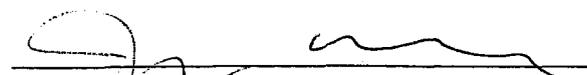
  
Representative Debbie McCune-Davis

  
Senator Richard Miranda

  
Representative Robert Meza

  
Senator Jay Tibshraeny

  
Representative Michele Reagan

  
Senator Jim Waring

# COMMITTEE OF REFERENCE

*House of Representatives Committee on Commerce and  
Senate Committee on Commerce and Economic Development*

## **Industrial Commission of Arizona and the Industrial Commission Advisory/Review Boards**

### **Final Report**

#### **I. Background**

Pursuant to §41-2953, Arizona Revised Statutes, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Industrial Commission of Arizona (ICA) and its related advisory/review boards to the House of Representatives Commerce and the Senate Commerce and Economic Development *Committee of Reference*. [Attachment A]

#### **II. Committee of Reference Sunset Review Procedure**

The Committee of Reference held one public hearing on Wednesday, November 9, 2005, to review the performance audit of the ICA, the Boiler Advisory Board, the Employment Advisory Council, the Occupational Safety and Health Advisory Committee, and the Occupational Safety and Health Review Board and to receive public testimony. [Attachment B]

At the public hearing, the Committee heard testimony from the following:

- Larry Etchechury, Director, Industrial Commission of Arizona
  - Laura McGrory, Chief Counsel, Industrial Commission of Arizona
  - Diana Clay O'Dell, Research Analyst, House Committee on Commerce
  - Willie Johnson, Constituent
- 
- Larry Etchechury, Director, presented information regarding the ICA and its related advisory boards, including various statutory responsibilities. Mr. Etchechury summarized internal organization and management issues that have been addressed in order for the agency to function more effectively in the public interest.
  - Laura McGrory, ICA's General Counsel, answered technical questions.
  - Diana Clay O'Dell, Legislative Staff, provided testimony regarding the Occupational Safety and Health Review Board, which hears administrative appeals of orders by Administrative Law Judges at the Arizona Division of Occupational Safety and Health.
  - Willie Johnson, Constituent, testified that his son was killed in an accident while working as a forklift operator. Mr. Johnson recommended that the family be included in discussions and hearings involving serious injury or loss of life. Additionally, Mr. Johnson suggested that the ICA *not* reduce fines/penalties when an employer is found to be negligent.

### ***Industrial Commission of Arizona***

The Industrial Commission of Arizona (ICA) was legislatively created in 1925 as a regulatory agency to implement the constitutional requirement to establish a workers' compensation program for benefits to be paid in the event of the worker's injury or death. The ICA is charged to administer and enforce all laws for the protection of life, health, safety and welfare of employees. The agency has evolved and expanded over the years to now include various related programs such as occupational safety and health, regulation of youth employment, resolution of wage disputes, vocational rehabilitation, education and training, benefits for claims when the employer is uninsured, including expanded regulatory authority over such employers. Additionally, the ICA oversees settlement agreements and authorizes self-insurance of individuals as well as groups of employers, bankruptcy cases and issues involving the proceedings when insurance carriers or self-insureds become financially insolvent.

The five-member Commission is the policy-setting body appointed by the Governor, and confirmed by the Senate. The agency director oversees the daily operations, which include approximately 300 employees within the following divisions: Legal Division; Administration Division; Claims Division; Administrative Law Judge Division; Division of Occupational Safety and Health, Labor Division, and the Special Fund Division. The ICA has an operating budget of \$17.7 million, based on a three percent annual tax levied against premiums paid to insurers and premium equivalents of self-insurers. The Special Fund consists of approximately \$280 million, but has gone from an \$80 million surplus in 2001, to a current \$190 million deficit because of 16 insurance carriers that became insolvent. The ICA and the Department of Insurance are working to rectify the situation, but the issue of insolvencies is on-going. The Special Fund shares the responsibility for certain awards when there is a loss of earning capacity, provides vocational rehabilitation benefits and continuing medical benefits for pre-1973 workers' compensation claims.

### ***Boiler Advisory Board***

Title 23, Section 474, Arizona Revised Statutes, requires the Commission to establish a Boiler Advisory Board to assist the ICA in drafting standards and regulations. The Board serves in an advisory capacity and is comprised of industry personnel, owners/operators, labor and public members who are knowledgeable in the industry. The current seven-member Board meets at least annually in an open public forum.

### ***Employment Advisory Council***

The Employment Advisory Council consists of seven members representative of the executive, managerial, commerce and Arizona industry who are appointed by the Industrial Commission to serve three-year terms. Title 23, Section 522.02 directs the Council to inquire into the needs of the employment agency industry and make such recommendations as necessary for the public health, welfare and progress of the state and industry. Other duties include conferring with the ICA, advising them on employment agency related issues and making recommendations regarding licensure, legislative and rulemaking issues.

### ***Occupational Safety and Health Advisory Committee***

Title 23, Section 409, Arizona Revised Statutes, directs the Commission to create the Occupational Safety and Health Advisory Committee to assist the commission in drafting standards and regulations. Further, the Advisory Committee must recommend names for consideration by the governor to serve as members of the Occupational Safety and Health Review Board. The Advisory Committee is appointed by the Commission and composed of a reasonably balanced representation of regulated industries, including agriculture, labor and others knowledgeable in safety and health. Members meet quarterly, and are paid their reasonable and necessary standard travel/other expenses.

### ***Occupational Safety and Health Review Board***

The purpose of the Occupational Safety and Health Review Board is to hear and decide administrative appeals of orders of the Industrial Commission's Arizona Division of Occupational Safety and Health. The Review Board's charge is to hear and rule on appeals of Administrative Law Judge (ALJ) decisions, and may remand the case to the ALJ for further evidence, correction or action, affirm, reverse, modify or supplement the decision as it deems appropriate. This federally-approved forum provides a final appeal step in the administrative law process before filing with the Arizona Court of Appeals.

The 2005 fiscal year General Fund appropriation of \$4,800 provides for the services of a contract attorney to assist the Review Board. The Review Board consists of five members appointed by the governor to five-year terms. The Occupational Safety and Health Advisory Committee must submit the names of qualified persons to the governor.

During the five-year periodic review of administrative rules, the Governor's Regulatory Review Council informed the Review Board that it does not have the statutory authority to adopt rules; therefore, the Review Board will seek that specific authority through future ICA legislation.

## **III. Committee Recommendations**

The Committee of Reference recommends the following:

- The Industrial Commission of Arizona be continued for ten years.
- The Boiler Advisory Board be continued for ten years.
- The Employment Advisory Council be continued for ten years.
- The Occupational Safety and Health Advisory Committee be continued for ten years.
- The Occupational Safety and Health Review Board be continued for ten years.

## **IV. Statutory Report Pursuant to Section 41-2954, Arizona Revised Statutes**

[Attachment C]

## **V. Attachments**

- A. Meeting Notice
- B. Minutes of Committee of Reference Hearing
- C. Agency Reports

Interim agendas can be obtained via the Internet at <http://www.azleg.state.az.us/InterimCommittees.asp>

## ARIZONA STATE LEGISLATURE

### INTERIM MEETING NOTICE

### OPEN TO THE PUBLIC

SENATE COMMERCE AND ECONOMIC DEVELOPMENT AND HOUSE OF  
REPRESENTATIVES COMMERCE COMMITTEE OF REFERENCE  
FOR THE SUNSET REVIEW OF:  
INDUSTRIAL COMMISSION OF ARIZONA,  
BOILER ADVISORY BOARD  
EMPLOYMENT ADVISORY COUNCIL  
OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE  
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD  
ARIZONA STATE BOARD OF TECHNICAL REGISTRATION  
ARIZONA POWER AUTHORITY

**Date:** Wednesday, November 9, 2005

**Time:** 8:30 a.m.

**Place:** House Hearing Room 3

### AGENDA

1. Call to Order
2. Opening Remarks
3. Presentation of Performance Audits:
  - Larry Etchechury, Executive Director, Industrial Commission of Arizona
    - **Industrial Commission of Arizona**
    - **Boiler Advisory Board**
    - **Employment Advisory Council**
    - **Occupational Safety and Health Advisory Committee**
  - Diana Clay O'Dell, Research Analyst, House Committee on Commerce
    - **Occupational Safety and Health Review Board**
4. Public Testimony
5. Discussion
6. Recommendations by the Committee of Reference
7. Presentation of Performance Audit
  - Ronald W. Dalrymple, Executive Director, Board of Technical Registration
    - **Arizona State Board of Technical Registration**
8. Public Testimony

9. Discussion
10. Recommendations by the Committee of Reference
11. Presentation of Performance Audit
  - Joseph W. Mulholland, Executive Director, Arizona Power Authority
    - **Arizona Power Authority**
12. Public Testimony
13. Discussion
14. Recommendations by the Committee of Reference
15. Adjourn

**Members:**

Senator Barbara Leff, Co-Chair  
Senator Ken Chevront  
Senator Richard Miranda  
Senator Jay Tibshraeny  
Senator Jim Waring

Representative John McComish, Co-Chair  
Representative Bill Konopnicki  
Representative Debbie McCune Davis  
Representative Robert Meza  
Representative Michele Reagan

10/24/05  
jmb

**People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.**

ARIZONA STATE LEGISLATURE  
Forty-seventh Legislature – First Regular Session

SENATE COMMERCE AND ECONOMIC DEVELOPMENT AND HOUSE OF  
REPRESENTATIVES COMMERCE COMMITTEE OF REFERENCE  
FOR THE SUNSET REVIEW OF  
INDUSTRIAL COMMISSION OF ARIZONA  
BOILER ADVISORY BOARD  
EMPLOYMENT ADVISORY COUNCIL  
OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE  
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD  
ARIZONA STATE BOARD OF TECHNICAL REGISTRATION  
ARIZONA POWER AUTHORITY

Minutes of Meeting  
Wednesday, November 9, 2005  
House Hearing Room 3 -- 8:30 a.m.

Chairman McComish called the meeting to order at 8:40 a.m. and roll call was taken by the secretary.

**Members Present**

Senator Chevront  
Senator Tibshraeny  
Senator Waring  
Senator Leff, Cochair

Representative Konopnicki  
Representative McCune Davis  
Representative Meza  
Representative Reagan  
Representative McComish, Cochair

**Members Absent**

Senator Miranda

**Speakers Present**

Larry Etchechury, Director, Industrial Commission of Arizona  
Laura McGrory, Chief Counsel, Industrial Commission of Arizona  
Diana Clay O'Dell, House Majority Research Analyst, Commerce Committee  
Willie Johnson, representing self  
Ronald Dalrymple, Executive Director, Arizona State Board of Technical Registration  
Canan D'Avela, representing self  
Joseph Mulholland, Executive Director, Arizona Power Authority

## Industrial Commission of Arizona

Larry Etchechury, Director, Industrial Commission of Arizona (ICA), said he believes the ICA is efficient and effective in fulfilling its statutory responsibilities. The ICA was established in 1925 to implement the constitutional provisions creating the worker's compensation system in Arizona. The duties of the agency have been expanded over time to include occupational safety and health issues, regulation of child labor, resolution of wage disputes, vocational rehabilitation for injured workers, and other activities. The ICA has 313 employees, an operating budget of approximately \$17.7 million, and is funded by a three percent tax on worker's compensation premiums. The policy-setting body is a five-member commission appointed by the Governor and confirmed by the Senate. The members serve five-year staggered terms.

Mr. Etchechury related that the agency has four major focuses, three of which are regulatory in nature, and the fourth is almost an insurance function. He reviewed the responsibilities of the Claims Division and the Administrative Law Judge (ALJ) Division, noting that the average time to adjudicate a case in 2005 was 118 days. There is a significant amount of concern that the time frame should be less. Trying to accommodate the schedules of physicians, in particular, to make live testimony is extremely difficult, and in some cases, may not be necessary, so the agency is working with the attorney community about being more selective as to when and where a doctor's testimony is needed as opposed to written reports. He provided an overview of the Arizona Division of Occupational Safety and Health (ADOSH), which involves the Compliance Program, the Consultation/Training Program and the Boiler and Elevator Programs (Evaluation Report from the U.S. Department of Labor from October 1, 2003 through September 30, 2004, Attachment 1).

He related that the Commission has an Occupational Safety and Health Advisory Committee, an Elevator Advisory Board, a Boiler Advisory Board, and an Employment Advisory Committee, which are typically composed of industry representatives, both labor and management, to assist in adopting standards. The Occupational Safety and Health Advisory Committee is appointed by the ICA, and in addition to assisting in adoption of standards, provides input to the Governor's Office for appointments to the Occupational Safety and Health Administration (OSHA) Review Board. The Committee can also be used in other areas. For example, several years ago, fatalities occurred involving excavations, so the Occupational Safety and Health Advisory Committee helped develop a comprehensive program that eradicated fatalities for about a five-year period.

Mr. Etchechury reviewed the responsibilities of the Labor Department in relation to wage disputes, youth employment laws, licensing of employee paid employment agencies, and the Employment Advisory Council whose members are appointed by the ICA for three-year terms. The Employment Advisory Council reviews new or existing licensees and advises the ICA on matters involving employment agencies. A number of years ago a request was made to the Legislature to delete this function from the ICA's jurisdiction, but the industry testified as to the benefits of the Council as a regulated element. In reviewing jurisdictions in other states, much fraud was found, particularly in career counseling and some employment agencies, so the Legislature decided to retain the Council as part of the jurisdiction of the ICA, which has prevented fraud from occurring in Arizona.

Mr. Etchechury said the fifth function is the Special Fund, which consists of about \$280 million, to provide insurance for uninsured claimants and continue worker's compensation benefits for claimants of insolvent carriers and insolvent self-insured employers. In 2001, the Special Fund had an \$80 million surplus, but now there is a \$190 million deficit because about 16 insurance companies became insolvent from 2001 to 2005. Last year, the Legislature provided the authority to revert excess monies from the Administrative Fund to the Special Fund at the end of the year, which provided a cushion to meet annualized expenses; however, it is not known how much insolvency may occur in the future. He noted that the Arizona Department of Insurance (DOI) has deposits on file for insurance carriers regarding liabilities, but those deposits are not sufficient; however, if the deposits were not on file, as in most states, the deficit would be much larger. The ICA is working with DOI on that issue. He added that the Special Fund also shares the responsibility with insurance carriers or self-insured employers for a portion of liabilities for certain loss of earning capacity awards, provides vocational rehabilitation benefits, and provides continuing medical benefits for pre-1973 worker's compensation claims. (For more details see Attachment 2).

He advised Senator Leff that the Special Fund is funded by a 2.5 percent assessment against employers, which is the maximum amount and became effective in 2004. He indicated that he does not desire to increase the assessment.

Mrs. McCune Davis asked if the insolvencies are a backlash to what happened in California. Mr. Etchechury responded that a few elements took place. In the early 1990s, everyone recognized that all kinds of money could be made in the market. Insurance carriers marketed to get business and let down some protections. Suddenly, the market began tightening up and reversals started to take place. At that point, people were in the system that were at much larger risk and not paying those risks. For example, Reliance Insurance Company reported three quarters of a billion dollar loss in the third quarter of operations, and at the same time, asked DOI for a deviation from the insurance rates.

He advised Senator Leff that the penalty for a company that does not carry workmen's compensation insurance ranges from \$1,000 to \$10,000, and depending upon the repetitiveness, the ICA can go to Superior Court and obtain an injunction to keep the company from operating. Collecting the money is difficult because many times companies declare bankruptcy and go through the federal bankruptcy process, which is extremely difficult and onerous. The collection rate is about 20 percent. If the ICA finds that a company declared bankruptcy and has not paid the penalty, the injunctive process is used whereby a superior court judge rules that the company cannot operate or the owner will be sent to jail. Unfortunately, some companies are probably still in operation that the ICA is not aware of because when bankruptcy is declared, the owner can change the name of the company and start again.

When Mr. Konopnicki asked for further details about the increase in insolvencies, Mr. Etchechury related that from 1970 to 2001 the Special Fund had about 350 open claims. From 2001 to the present there are in excess of 1,200 open claims. When an insurance carrier obtains a license, financial reports are filed with DOI, and based on those reports, a deposit is made with DOI that is supposed to be sufficient to cover potential liabilities. In reality, the deposits were not adequate by about 50 percent.

Mr. Etchechury explained that as an example, the domicile insurance carrier in California knew the Freemont Insurance Company was in trouble long before bankruptcy was declared, so the company was under a restitution process to resolve problems. In the process, their companies were consolidated into one company, and DOI had deposits for each of the companies. The domiciliary said any assets associated with the companies must be given to the domiciliary for that one company. DOI must have good reason to keep the deposits and did not because the outcome is not known, so the domiciliary can legally do that. The ICA then calculated what the deposit would be for the one company, which, in reality, would be the same, but in this particular case, it was not, so there was a major hit to the Special Fund. Other elements were also involved, but he was told that DOI did everything possible to sustain the deposits.

Mr. Konopnicki said he would like the name of the person involved from DOI.

Laura McGrory, Chief Counsel, Industrial Commission of Arizona, agreed that carriers are required to make a deposit with DOI. Carriers file an annual financial statement with DOI on an annual basis and fill out a form regarding prior losses, premiums written, and reinsurance credits. There is a present value discount, but the formula calculates a number that becomes the statutory deposit. The statute says what is required to be posted, so if the number is lower according to the formula, DOI may be required to return some deposit money to align with the formula. In the Freeman scenario, a merger occurred and the companies, which may or may not have been in conjunction with the domiciliary because they were in some type of receivership, indicated to DOI that they came up with a lower number so DOI was holding excess deposit money that should be returned. An enormous amount of dialogue went on between DOI and California, but ultimately, the deposit money was returned. There were some difficulties afterward with the nature of the security DOI accepted, which essentially declined in value. It was some type of Fannie Mae mortgage-based security, so the Special Fund is left with a deficiency as the liabilities are higher than the deposit.

Senator Leff submitted that the deposit then is meaningless. Ms. McGrory answered that when an insurance company sees the writing on the wall, an attempt is made to marshal assets in order to have as much money as possible to facilitate the process of drawing things down, so DOI frequently receives requests for release of deposit money. When DOI knows a company is in trouble, everything possible is done to hold on to the money. There is a current situation in which an insurance carrier is headed for insolvency and the carrier and domiciliary are asking for money to help the company. DOI has worked hard to retain the deposit by having an actuarial analysis to justify the numbers. Because of what happened in the past, more dialogue goes on between DOI and the ICA. DOI no longer releases deposit money without asking the ICA if there is a problem.

Senator Leff then questioned the purpose of the deposit. Ms. McGrory agreed that is a concern, noting that the ICA is reviewing ways to strengthen the ability to keep deposit money or increase the deposits. Multiple things are occurring with credits for reinsurance and a present value discount of six percent, so elements are decreasing the deposit.

Senator Leff asked if credit for reinsurance goes away since the money is supposed to be there to reinsure the money. Ms. McGrory replied that the benefits of reinsurance are not necessarily realized when a carrier goes into liquidation because reinsurance deposits are considered an asset of the estate. Although the deposit decreases because of the credit for reinsurance, the liquidator marshals the reinsurance proceeds, and to the extent the proceeds are recovered, a pro-rata distribution is made amongst creditors, so there is not a dollar-for-dollar benefit from the reinsurance posting.

Senator Leff noted that good employers are paying the maximum 2.5 percent assessment, partly because of this and wondered why the employer community is not upset about what the reinsurance community is doing. Mr. Etchechury responded that the ICA supported legislation dealing with different elements, but even though the employer community was aware, there was no involvement on their part.

Mr. Konopnicki said as an employer in Arizona he did not know about the situation, which is a major problem. He recommended referring the matter to the Attorney General. Mr. Etchechury indicated that employer representative organizations, such as the Chamber of Commerce, the National Federation of Independent Business and others, were made aware, but he does not know what was done with the information. He submitted that it is easy to say all that has to be done is change the formula and make sure deposits are adequate; however, if that were done right now, there may be insurance companies on the brink of disaster, so asking for an increase in deposits by 50 percent could potentially create additional insolvencies.

Senator Leff suggested retaining the amount rather than increasing the deposit. Mr. Etchechury responded that would not entirely solve the problem. What happened with the Freemont Insurance Company is one particular situation, but there are other companies like Reliance Insurance Company where the deposit was inadequate. Multiple issues created the problem, such as large deductibles. For example, an employer may want a large deductible policy for \$1 million and the premium is calculated accordingly. When the deposit is calculated, the \$1 million is not considered in terms of liability, which would be counted beyond the \$1 million. Therefore, when the whole house of cards goes down there is the potential not only for liability of the insurance, but also, the large deductible employer. An entity has been created that is not even addressed in statute. A number of large deductible employers currently not identified are acting as self-insured employers with no oversight whatsoever in terms of processing claims, which was created with the insolvency debacle. He said the agency is becoming involved in insurance law when it previously was not.

Mrs. McCune Davis asked if DOI and the ICA are notified when a company is going into receivership and questioned if tools are in place to freeze deposits. She wondered if action is being taken or legislation is needed to protect existing assets. Mr. Etchechury replied that legislation was introduced to codify insolvency processes at DOI that were normally accepted, but were challenged by others not necessarily involved in the process. That has helped, but there is more to be done. The agency is working closely with DOI to address some issues, but it is very complex.

Senator Leff remarked that she understands the deficit is over the lifetime payment and wondered if the fund can be brought back into balance. Mr. Etchechury said he hopes so, without affecting the principle in terms of existing investments. ICA is able to meet annualized expenditures. In the long term, he hopes to resolve the issue so this does not reoccur, but the number of potential insolvencies is not known.

Senator Leff commented that is why it was so important to some legislators not to privatize the State Compensation Fund, which probably would have been severely diminished. Mr. Etchechury acknowledged that the State Compensation Fund is a key element of the worker's compensation system.

Mr. Konopnicki contended that major problems exist, not of the ICA's making, but due to legislation and DOI. It is the responsibility of the Committee to offer legislation to solve these problems, but he is hesitant to recommend a 10-year extension of the agency. Senator Leff submitted that legislation should be introduced to address the problems, but there is no reason not to extend the agency for 10 years.

Mr. Etchechury related to Chairman McComish that funding from the three percent tax paid by employers is adequate. Currently, 2.5 percent is used to fund the agency and the additional one-half percent is administrative money that goes into the Special Fund to meet annualized expenditures. If the Special Fund becomes fiscally sound, the rate can only be sufficient to fund the agency, so it is a floating rate on the administrative side, and any extra goes into the Special Fund.

Chairman McComish asked if employer paid agencies are licensed. Mr. Etchechury replied that those were taken out of the statute several years ago and are no longer licensed. There have not been any problems associated with employer paid agencies because the market dictates; therefore, he does not believe regulation is necessary.

Mrs. McCune Davis noted that fines charged to employers as the result of accidents that occur in the workplace go into the General Fund and questioned if adequate money is available for safety programs or some of that money should be directed for that purpose. Mr. Etchechury responded that the question arises periodically in the Legislature. The money could be used to enhance safety and health programs, but it is up to the Legislature. There have been some efforts, including providing bilingual health and safety training programs.

Diana Clay O'Dell, House Majority Research Analyst, Commerce Committee, advised that the purpose of the OSHA Review Board is to hear administrative appeals regarding orders of the Industrial Commission's Arizona Division of Occupational Safety and Health (ADOSH). This forum provides a final appeals step in the administrative law process before filing with the Court of Appeals. The OSHA Review Board consists of five members appointed by the Governor to five-year terms. Current law mandates one representative of management, one of labor and three public members. The OSHA Review Board operates with only a contract employee who is an attorney. Following discussions with the Governor's Regulatory Review Council (GRRC) prior to the OSHA Review Board's routine five-year rule-making process, the OSHA Review Board discovered that it does not have the statutory rule-making authority necessary to adopt rules;

therefore, the rule-making authority will be sought through future ICA legislation. The OSHA Review Board historically meets every quarter; however, since more cases are now mediated before going to a formal hearing, only one meeting was held in the past two years. A meeting will be held on November 30, 2005.

Chairman McComish related that Lisa Gervase, the contract attorney for the OSHA Review Board, could not attend the meeting (for more details about the OSHA Review Board, see Letter from Ms. Gervase, Attachment 3).

Senator Leff questioned why the Board has separate review authority. Ms. O'Dell responded that ALJs under the authority of the ICA make the initial decision, so these are appeals to a separate independent review board to avoid a conflict of interest.

Senator Leff stated that in working with the Registrar of Contractors a constituent was heard by a second judge for an appeal, not an ALJ. Mr. Etchechury replied that the OSHA Review Board was created to mirror the appeals process at the federal level through an OSHA Review Board that is totally separate from the U.S. Department of Labor. During creation of the OSHA Review Board on a local level, the Legislature and Governor's Office wanted a mechanism whereby an employer could go before a lay board without incurring the expense of hiring an attorney. An ICA ALJ makes the initial determination, which can be appealed to the OSHA Review Board, then the Court of Appeals and Supreme Court. He understands the Registrar of Contractors uses the hearing division set up by the Legislature as part of the appeals mechanism, but he is not sure if the Registrar of Contractors can overrule that decision.

Senator Leff said the Registrar of Contractors can overrule the decision, so the constituent went back for another hearing. Mr. Etchechury indicated that the ICA does not have that. The appeals process should be separate from the ICA because a determination is already made at a divisional level in terms of ADOSH and an ALJ, so this is a separate appeals process that should be separate.

Chairman McComish said it sounds like ICA does a good job providing mediation, so perhaps there is less need for the OSHA Review Board today than when it was created. Mr. Etchechury responded that is possible as the number of cases heard is minimal, i.e., one case in the last two years and one case is currently pending. The Review Board is funded from a non-reverting General Fund account. This means there is a certain amount of funding, but no appropriation for the next two years, so expenditures for the contract attorney will only be with respect to that one case and will not be monumental. He indicated to Senator Leff that he believes the OSHA Review Board should be continued.

Ms. O'Dell advised Senator Leff that the procedural rule in place related to what needs to be done to file paperwork. When the agency was told there is no specific statutory authority for rule-making, the decision was made to allow the procedure to repeal, seek statutory authority, and reinstate the rule.

Willie Johnson, representing self, testified that his son, Daryl Wayne Johnson, was killed on October 28, 2003 while working in the warehouse at Accurate Cargo Delivery when the forklift

he was operating fell on top of him crushing his chest. While Mr. Johnson was in the emergency room of St. Joseph's Hospital, no one from the company arrived to console the family or check on his son's condition. During the field investigation that same day by the investigator from OSHA, the owner was only concerned about the possibility of being sued. The OSHA investigator interviewed a few employees, one of which indicated that the owner brags about making \$250,000 per year, but cannot provide safety training for employees.

Mr. Johnson stated that another accident involving a forklift occurred on January 2002 that was not reported to OSHA, but the individual involved wrote a sworn document to OSHA concerning the incident. The individual indicated that no forklift training was ever provided and his supervisor told him to drive the forklift faster. About an hour after the incident occurred, the owner and general manager showed up and asked the individual if he was okay. The individual said he was, so the owner and general manager left, but the individual was not told to go to the emergency room to be checked. The person stated in the report that the company does not believe in safety, hires young inexperienced warehouse men, and pays the workers a low salary.

Mr. Johnson stated that while going through the procedure with OSHA and State Compensation, he tried to obtain a professional opinion on how to hold the owner accountable. He was advised by counsel that the ICA covers that and there is nothing that can be done. Many employees who worked for the company told him the company does not care about employee safety. He gave the information to OSHA, and as time went on, found that several violations were issued to the company totaling \$35,000. He personally thought some incidents should have been willful, but OSHA did not. The penalty was eventually reduced to \$21,000 because the company agreed to pay, but he does not know if the penalty was paid. He recommended that any time a hearing is held to negotiate a settlement offer or plea agreement for a company that is negligent resulting in a serious injury or loss of life, the family should be allowed to attend hearings and voice opinions instead of being shut out. He would also like to see the procedures changed so fines are levied without reductions.

Mrs. McCune Davis conveyed that she asked Mr. Johnson to testify. She expressed concern that sometimes it is more expeditious for employers not to follow safety rules, and unless fines are at an appropriate rate, some employers would rather pay the fines and not follow safety rules. This young man with a promising future is the reason the rules were implemented. She added that she attended a press conference the day before on the west side about two young men killed at a Subway facility. The employer was present and paid for the funerals, which is quite a contrast.

Senator Leff asked if a company can be shut down or something for negligence as opposed to a monetary penalty. Mr. Etchechury replied that in this particular case, an investigator looked at every allegation that was made and found serious violations. For willful or repeat violations where it appears there are egregious elements, cases can be referred to the Attorney General's Office for prosecution.

Senator Leff noted that someone was harmed at Accurate Cargo Delivery in a similar accident and wondered why that was not considered. Mr. Etchechury said in that incident the forklift operator was backing out of a semi onto the loading dock. The driver of the semi did not realize someone was in the truck and drove away from the dock, so the forklift fell off the truck down

below the dock. The circumstances were different. Violations were found and the employer did not have an effective safety and health program or the citations would not have been issued. There is typically a 25 percent reduction in the penalty to expedite the settlement process and close the citation. He pointed out that Arizona statute allows a \$25,000 penalty to be paid by the employer to the family (widow and any individuals solely dependent upon the person injured), which the Committee may want to extend or expand to cover serious violations.

Mr. Etchechury indicated to Senator Waring that a willful violation occurred in Yuma where individuals were prosecuted. Employees were entering a sewer system. The company had been instructed on provisions to follow to make sure the air was clean and breathable, but did not follow-up, and two individuals died. The case was referred to the Attorney General's Office where criminal negligence was found on the part of the employer. In another situation, a student attending the University of Arizona on a wrestling scholarship was working for the summer for a contractor on an excavation. An Arizona Public Service employee working in an adjacent area told the foreman that people cannot go into the cut without adequate protection and shoring in place. The contractor continued to work and the excavation caved in killing the individual. That was considered a willful violation so there was a criminal indictment. He clarified that if there is a follow-up investigation and the safety rules were ignored by supervision, even though no injury occurred, it would be considered a willful violation and a fine of \$70,000 would be assessed.

Ms. Reagan asked if there is some type of follow-up on violations. Mr. Etchechury responded that every serious violation is followed up through periodic visits, which is required by statute. Prosecution of cases only occurs for willful and repeat violations, not serious violations, which could be included.

He advised Senator Leff that violations were issued to Accurate Cargo Delivery because of lack of safety training, speeding and no supervision on the part of the employer to prohibit speeding, propane canisters on the vehicle were not adequately secured, and the seat belt issue.

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the Industrial Commission be continued for 10 years. The motion carried by a roll call vote of 9-0-0-1 (Attachment 4).**

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the Boiler Advisory Board be continued for 10 years. The motion carried by a roll call vote of 9-0-0-1 (Attachment 5).**

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the Employment Advisory Council be continued for 10 years. The motion carried by a roll call vote of 9-0-0-1 (Attachment 6).**

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the Occupational Safety and Health Advisory Committee be continued for 10 years. The motion carried by a roll call vote of 9-0-0-1 (Attachment 7).**

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the Occupational Safety and Health Review Board be continued for 10 years. The motion carried by a roll call vote of 9-0-0-1 (Attachment 8).**

### **Arizona State Board of Technical Registration**

Ronald Dalrymple, Executive Director, Arizona State Board of Technical Registration, said the Board regulates nine different practices. As of this week, there are 21,895 licensees ranging from engineers (60 percent of the registered population), architects (23 percent), land surveyors (8 percent), landscape architects (2 percent), geologists (3 percent), home inspectors (4 percent), certified drug laboratory site remediation supervisors and workers (1.2 percent) and assayers (1/10 of 1 percent) (For more details, see Attachments 9 and 10).

He informed the Members that the Arizona Department of Environmental Quality (ADEQ) recently repealed the rule covering the Certified Remediation Specialist Program that was developed in 2001 by ADEQ as part of the Greenfields Program, which created a new category of registration for certified remediation specialists. Ten people are in the program and the rule goes into effect in 2008, so perhaps the Legislature should consider modifying the Board's statutes to eliminate regulation of certified remediation specialists. He indicated to Senator Leff that he agrees with ADEQ. It is an ADEQ program, and apparently, during the four years of existence there has not been a project where a certified remediation specialist was used.

Mr. Dalrymple reported that there are 32 registered assayers in the state and Arizona is the only state that regulates the profession. The assayer examination needs to be revised, which would probably cost about \$30,000. Every time a sunset occurs by the Auditor General's Office, the question arises as to whether the agency should continue to regulate assayers. He predicted some problems if the regulation continues because the agency is trying to develop programs that are self-sufficient, since there is such a diverse group of professions, so if one is taken out of the loop there is no negative impact on the agency or others. He advised Senator Leff that assayers were originally regulated primarily because of mining activity in Arizona.

Referring to Page 6 of the handout (Attachment 9), Chairman McComish noted that the number of days for complaint resolution increased in the last few years. Mr. Dalrymple responded that investigators make between \$28,000 and \$30,000 per year, and in the main investigative body there are five investigators, including the manager. The agency generally ends up hiring younger, less experienced investigators or older retired police officers or other individuals. After receiving training and having two or three years of experience, the younger people leave for larger agencies with more money in the budget for investigative salaries. The more experienced investigators move after a short period of time to the Arizona Department of Corrections, the Department of Racing, etc., since many are former police officers and find the work dull. The only investigator with a lot of experience is the manager with 15 years, and the next is three years. Because of training time to bring new investigators up to speed, the work falls behind.

Mr. Dalrymple indicated to Chairman McComish that he would like more money for investigators so employees can be retained. The number of investigators is sufficient and the

workload can be handled once the investigators get up to speed. Investigations take about 25 hours, but two investigators are currently being trained by the investigation supervisor.

Mr. Dalrymple advised Senator Leff that the Board is a 90-10 agency and self-supporting. Sufficient money is provided from fees, but the Legislature is keeping more than 10 percent, which happens with many 90-10 agencies. He advised Chairman McComish that the Board has 19 authorized FTEs and 18 are filled, but one is being interviewed this week. Turnover in the agency is 34 percent. He clarified that the 10 certified remediation specialists are licensed engineers, geologists or chemists, so those individuals would continue their present jobs and would not be impacted by eliminating the regulation.

Canan D'Avela, representing self, revealed that he is one of the few registered assayers in the state. Virtually everything assayers do is behind the scenes, but the work generally involves things upon which some operations in the U.S. are based. For example, in a recent request for an investigation, he coordinated with the U.S. Mint Headquarters Office and Fort Knox Office on certain information that needed to be confirmed or denied. He does work nationally and internationally on the basis of metals, commodities, precious metals and other materials not normally heard about, some that are somewhat exotic and used by the National Aeronautics and Space Administration. Assayers are basically analytical chemists who test ores and minerals to determine the value and composition.

He related to Senator Leff that because Arizona is the only state that regulates the field, other states, national organizations and international companies ask assayers in the state for assumptions. If the regulation is removed, the basis of those standards would be eliminated. He advised that assayers write the examination, which is sent to a psychometrician who specializes in psychology examination writing to make sure the format is acceptable to the standards for test procedures.

Mr. Dalrymple related that much study was done on licensure examinations in the past 15 years. Psychometric standards were adopted for examinations because if someone fails and is denied a license, it may be necessary to defend the failure of that person. It costs about \$20,000 to \$30,000 to write an examination. The assayer examination has not been reviewed since 2000, so it is time for a review. Information may change depending on developments in the field. For example, Mr. D'Avela said assayers are analytical chemists, so the examination may need to be expanded to encompass chemical analyst activities. The purpose of reviewing examinations is to ensure that the examination is current, asks the right questions, and whether it is the proper basis for denying or granting someone a license to practice. The agency has never been sued and is trying hard not to be sued. The problem is that only one assayer has been licensed in the last five years.

Chairman McComish pointed out the statement on Page 8 of the handout (Attachment 9) that certification of assayers would be a more appropriate level of regulation than the current registration program. Mr. Dalrymple responded that in many cases, certification programs are developed where there is no examination, but instead, education, prior experience and personal references are taken into consideration. It is not given quite the same weight as a license, but it is a method for a state to restrict people who can practice in a field to those who meet certain

criteria. The practice is similar to how professional societies certify members and it is a lesser form of regulation. He indicated to Senator Leff that some national companies may come to Arizona to use a licensed assayer, but there is probably much activity in other states where assayers do the work without a license.

(Letters in favor of continuation of the agency from the National Association of State Boards of Geology [Attachment 10], American Society of Home Inspectors [Attachment 11], Arizona Home Inspectors Coalition [Attachment 12], and the Chairperson of the Home Inspector Rules and Standards Committee for the State Board of Technical Registration [Attachment 13]).

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the State Board of Technical Registration be continued for 10 years. The motion carried by a roll call vote of 8-0-0-2 (Attachment 14).**

### **Arizona Power Authority**

Joseph Mulholland, Executive Director, Arizona Power Authority, gave a slide presentation explaining that the Authority was established by the Legislature in 1944 to acquire and market Hoover power and other renewable resources on behalf of the state. Five commissioners are appointed by the Governor to serve six-year non-concurrent terms, and those individuals have extensive experience in Arizona power, water and agricultural issues. The Authority purchases 377,000 kilowatts of power and approximately 1 billion kilowatt hours of energy generated at Hoover Dam under contracts with the federal government that terminate in 2017, and purchases transmission service from the federal government to bring power from Hoover Dam to load centers, primarily in the Phoenix area.

He stated that Hoover generators were overhauled and uprated in 1987. The Authority paid its share of the uprating with \$90 million in revenue bonds that extend through 2017. There is \$55 million outstanding with an average interest rate of 3.5 percent. In addition to the contracts with the federal government, the Authority has power sales contracts through 2017 for sale of Hoover power to 30 customers and a scheduling entity agreement with Salt River Project (SRP) through 2011 to receive power from Hoover Dam to deliver to customers. The Authority is currently preparing a Wind-Hydropower Integration Feasibility Study for the National Renewable Energy Laboratory.

Mr. Mulholland indicated that the Authority is coordinating with the Energy Office to implement the Governor's Executive Order whereby all new state-funded buildings constructed after February 11, 2005 must derive at least 10 percent of energy from renewable resources, comply with state energy efficiency standards, and meet or exceed "silver" Leadership in Energy and Environmental Design standards (Copy of Slide Presentation, Attachment 15). He noted that the Members were provided with copies of the Authority's 46th Annual Report (Attachment 16) and Response to Sunset Review Inquiries (Attachment 17).

Senator Leff noted that a bill was passed several years ago stating that all boards, commissions and agencies can no longer prepare and distribute fancy annual reports, but instead, make the information available on the Internet. Mr. Mulholland responded that the Authority's bonds are

SENATE COMMERCE AND ECONOMIC DEVELOPMENT  
AND HOUSE OF REPRESENTATIVES COMMERCE  
COMMITTEE OF REFERENCE FOR THE SUNSET REVIEW  
OF THE INDUSTRIAL COMMISSION OF ARIZONA, ETC.

rated by national rating agencies. The Annual Reports are primarily sent to bondholders and people that buy the bonds, and it costs \$19,000 to produce the report.

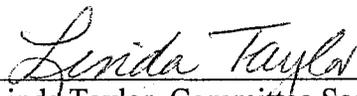
Senator Chevront asked the life span of hydroelectric facilities. Mr. Mulholland replied that hydroelectric facilities last much longer than fossil and nuclear-type plants where the life expectancy is 30 to 40 years, and then technology is outdated. Hoover Dam is upgraded and modified continually, so the project is a very important part of the power program in the southwestern U.S. Barring some tragedy, the life span is probably hundreds of years.

Chairman McComish asked how much of the total power in Arizona is generated by the Authority. Mr. Mulholland answered that the total is about 12,000 megawatts and the Authority generates about 400, so 24 percent. What makes Hoover power so valuable is that it is a peaking resource, unlike Palo Verde units, which run all the time. The Hoover unit runs only during peaks and can accelerate very quickly because it only involves putting water through the unit. Accelerating with a fossil unit or even a gas turbine is like accelerating with a car where there is much wear and tear on the car and fuel efficiency is reduced. Hydro units do not suffer from those same problems, which is why the Authority entered into the agreement with SRP to take advantage of that ramping capability.

Chairman McComish recalled that it is more cost effective for SRP than other sources. He asked how more electricity can be obtained. Mr. Mulholland said that is on the agenda. There will be a reallocation of power in 2017 among the states of California, Nevada and Arizona, and he would like to see Arizona receive a larger share than in the past.

**Senator Leff moved that the Committee of Reference recommend to the Legislature that the Arizona Power Authority be continued for 10 years. The motion carried by a roll call vote of 8-0-0-2 (Attachment 18).**

Without objection, the meeting adjourned at 11:38 a.m.

  
\_\_\_\_\_  
Linda Taylor, Committee Secretary  
November 18, 2005

(Original minutes, attachments and tape are on file in the Office of the Chief Clerk).

# **COMMITTEE OF REFERENCE**

House Of Representatives Committee On Commerce  
Senate Committee on Commerce and Economic Development

## **PERFORMANCE AUDIT**

PURSUANT TO TITLE 41, CHAPTER 27  
ARIZONA REVISED STATUTES

### **INDUSTRIAL COMMISSION OF ARIZONA**

BOILER ADVISORY BOARD

EMPLOYMENT ADVISORY COUNCIL

OCCUPATIONAL SAFETY AND HEALTH  
ADVISORY COMMITTEE

OCCUPATIONAL SAFETY AND HEALTH  
REVIEW BOARD

DECEMBER  
2005

## INTRODUCTION AND BACKGROUND

The Industrial Commission (ICA) is a regulatory agency that was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers' compensation system.

In 1969, the workers' compensation system was reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the ICA and established as a separate agency responsible for providing workers' compensation insurance. The ICA retained its authority as the file of record for workers' compensation claims and its regulatory authority to oversee the processing of workers' compensation claims. The licensing authority for insurance carriers and the rate setting for workers' compensation insurance was given to the Department of Insurance.

Since that time, the ICA's authority has been expanded to cover other occupationally related issues such as occupational safety and health, regulation of youth employment laws, resolution of wage disputes, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, expanded regulatory authority over uninsured employers, approval authority for compromise and settlement agreements, authority to grant self-insurance to individual employers and to groups of employers, bankruptcy and issues arising out of proceedings involving insolvent insurance carriers and self-insured employers.

The policy setting body for the ICA is a five-member Commission whose members are appointed by the Governor and confirmed by the Senate to staggered five-year terms. The Commission typically meets every Thursday. The meetings are publicly noticed and are conducted in accordance with the state's open meeting laws. All Commission agendas are posted in advance of each meeting on the agency website ([www.ica.state.az.us](http://www.ica.state.az.us)). Additionally, a summary of the minutes of each meeting are also posted on the ICA's website. The Commission members and their affiliations are listed as follows:

Chairman, Jean Pierre Angelchik, M.D., surgeon and inventor  
Vice Chairman, Joe Gosiger, CWA Staff Representative for AZ, NM, and Utah  
Commissioner Brian Delfs, Captain, Tucson Fire Department  
Commissioner Louis Lujano, Sr., Senior Field Representative AFSCME  
Commissioner Marcia Weeks, Business owner

The Commission oversees an Agency with 313 employees and an operational budget of approximately \$17,700,000. As a non-general fund Agency, the Industrial Commission is funded by an annual tax that cannot exceed 3%. The tax rate currently is set at 3%. (See Tab 1 for Examples of Commission agendas and minutes, a budget summary and an organizational chart of the ICA)

## **1. OBJECTIVE AND PURPOSE OF ESTABLISHING AGENCY**

The objective and purpose of establishing the Agency is found in Chapter 1 of Title 23 of Arizona Revised Statutes, specifically A.R.S. §23-107 and §23-108.03.

Under A.R.S. §23-107 the Commission has full power, jurisdiction and authority to:

1. Administer and enforce all laws for the protection and life, health, safety and welfare of employees under every law when such duty is not specifically delegated to any other;
2. Act as a regulatory agency insuring that workers' compensation carriers are processing claims in accordance with the provisions of Chapter 6 of this title;
3. Promote the voluntary arbitration, mediation, and conciliation of disputes;
4. License and supervise the work of private employment offices;
5. Upon petition of any person that any employment is not safe or injurious to the welfare of any employee, the commission has power and authority to conduct an investigation;
6. Collect, collate, and publish statistical and other information relating to employees, employers and places of employment; and
7. Formulate and adopt rules and regulations for affecting the purposes of this article.

Under A.R.S. §23-108, it states that the powers and duties prescribed by law to the Commission under Chapters 1 (Industrial Commission), 2 (Employment Practices), and 6 (Workers' Compensation) and Article 2 of Chapter 3 (Private Employment Agents) of Title 23 may be delegated to the director or any of its department heads or assistants except:

1. Making rules and regulations
2. Commuting awards to a lump sum
3. Licensing self-insurers

## **2. EFFECTIVENESS IN MEETING ITS OBJECTIVES AND PURPOSE**

The objectives and purpose of the ICA are accomplished by the five member Commission and through the major divisions of the Agency.

## Claims Division

The Claims Division has 84 FTE's. Under Chapter 6 of Title 23 of the Arizona Revised Statutes, the Claims Division has the responsibility for ensuring that 550 insurance carriers/third party processors and 125 self-insured employers are processing workers' compensation claims appropriately.

Since 1925 the Claims Division has been the file of record for approximately 6 million claims. In 1991, the Claims Division's computer system was overhauled and the ICA implemented new software and a paperless optical disk and document processing system. Because of that system, we were able to immediately see significant increases in productivity.

As a result of that system, the Claims Division is able to process 6,000 documents per day and has ready access to over 40 million documents stored in the system. Action documents are electronically forwarded to the appropriate workstation and are brought up on a computer screen on an oldest date basis first. Claims Division personnel, as well as other Agency personnel, have multiple electronic access to the same file at the same time. Utilizing the optical disk system, our Claims personnel are able to answer approximately 150,000 telephone inquiries annually and are able to provide current information regarding an individual's workers' compensation claim. Equally important, supervisors are able to monitor the work of their subordinates from their individual computers and are able to monitor the individual's productivity and ensure that backlogs are avoided. With this system in place, we are able to make in excess of 31,000 official determinations per year. The major areas for those determinations are as follows:

**Average Monthly Wage Awards (A.R.S. §23-1061 F)** - The Claims Division establishes the average monthly wage for claimants who have been injured in excess of 7 days. To make this determination the Claims Division gathers wage data from the insurance carrier and the claimant. In FY '05 the Claims Division issued 16,479 wage awards. Of this amount, 1,082 insurance carrier recommendations were disapproved. Statutorily, the Claims Division has 30 days to make a determination, and our average for this period was 37 days.

**Leave the State Requests (A.R.S. §23-1071 A)** - A claimant that is undergoing medical treatment is not permitted to leave the state for more than two weeks unless the claimant has written approval from the Claims Division. In FY '05, the Claims Division processed 402 requests to leave the state. The average time frame to process a request was 19 days.

**Requests to Change Doctors (A.R.S. §23-1071 B)** - A claimant cannot change his/her treating physician without the permission of the insurance carrier, physician or the Claims Division. In FY '05, the Claims Division made 1,942 determinations. On average, a request to change a physician was made in 17 days.

**Permanent Facial Disfigurement and Loss of Teeth Awards [A.R.S. §23-1044(B)(22)]** - For permanent disfigurement of the head or face, which includes injury to

or loss of teeth, the Claims Division has authority to award compensation for a period of 18 months. In FY '05, the Claims Division issued 539 awards. On average, an award was issued in 55 days.

**Loss of Earning Capacity (LEC) Determinations (A.R.S. §23-1047)** - The Claims Division is responsible for determining the loss of earning capacity for claimants who have incurred a permanent impairment that results in an unscheduled injury. In FY '05, the Claims Division issued 3,201 LEC Awards. Statutorily, the Claims Division has 90 days to issue an award, and the average for FY '05 was 100 days.

**Petitions for Rearrangement (A.R.S. §23-1044 F)** - Based upon changes either in the physical condition or in the earning capacity of the injured worker, a claimant or the insurance carrier can petition for a rearrangement of an LEC award. In FY '05, the Claims Division issued 364 awards regarding rearrangements. Even though there is no statutory time frame, the average time for these determinations was 81 days.

**Training [A.R.S. §23-107 (A)(6)]** - The Claims Division, as a part of its regulatory effort, provides instruction and training to insurance carriers, self-insured employers and third party processing companies. Annually, the Claims Division conducts two large claims seminars. In the summer of each year the Claims Division conducts a two-day seminar that provides hands-on training for claims processors, attorneys, and other interested parties. This seminar is held in Arizona and is attended by approximately 1,100 participants. A detailed claims seminar manual is prepared and is utilized by the attendees and those that could not attend as a primer regarding the appropriate processing of Arizona workers' compensation claims. The Claims Division also puts on a claims seminar in California in the spring of each year to educate those out of state processing companies regarding Arizona's workers' compensation system. This has proven to be an invaluable tool in reducing the number of processing errors.

Additionally, as a part of our regulatory effort, if we are continuing to have problems with a particular carrier or self-insured employer, the company is required to undergo a mini-seminar for their personnel. This training is provided by one of our Claims personnel at the company's location and covers all of those processing Arizona's claims. The travel and per diem costs associated with this training are borne by the company receiving the training.

Because the system is demanding and a claimant can lose benefits if they fail to comply with the statutes, the Claims Division expends significant resources in educating the claimant to ensure that they are aware of their obligations under the law. First, a computer-generated letter is mailed to each claimant when their claim is filed with the Division. This letter gives the claimant basic information regarding their obligations under the workers' compensation system. The Claims Division also provides a pamphlet that explains the system in layman's terms. The pamphlet will be mailed to those that cannot get a copy at our Phoenix and Tucson offices. Additionally, the ICA provides information on our website that addresses and answers the most frequently asked questions.

In FY '05, the Claims Division conducted 13 mini-seminars, assisted 696 individuals at the front counter, sent 121,000 computer-generated letters, answered 150,000 telephone inquiries, and had 180,000 hits on our website.

Additionally, another mechanism to assist claimants is our Ombudsman's Office, which was created by A.R.S. §23-110, to assist recipients of workers' compensation benefits and to provide information to injured workers regarding the workers' compensation system. In FY '05, the Ombudsman's Office answered 2,796 telephone inquiries, answered 49 written inquiries, and assisted 433 claimants in person.

In September of 2004, the Workers' Compensation Research Institute (WCRI) published the results of a study it conducted of Arizona's workers' compensation system. This independent, non-partisan, and not for profit research organization conducted a yearlong study of the Industrial Commission's role in Arizona's workers' compensation system. The WCRI study determined that "most observers commented favorably on the State agency's active role in educating and assisting system participants". The study also determined that the Claims Division's active administrative role was responsible for the lower litigation rates. (See Tab 2 for the executive summary and selected tables of the WCRI study).

#### **Administrative Law Judge Division (ALJ)**

The Administrative Law Judge Division (ALJ) is authorized to conduct hearings and resolve legal disputes in the areas of workers' compensation, occupational safety and health and youth employment. The ALJ Division has 55 FTE's. It employs 17 administrative law judges in Phoenix and 4 administrative law judges in Tucson. All judges are appointed by the five-member Commission and are active members of the State Bar of Arizona. Each judge must have a minimum of 5 years experience in workers' compensation, labor and employment law or a related field.

The Administrative Law Judge Division is sensitive to its role as being an unbiased adjudicator, which is especially difficult when claimants choose to represent themselves (pro se). Based upon input we have received from unrepresented claimants, we have developed instructional materials through the ICA's website. Additionally, each judge has been instructed to conduct a pre-hearing conference with the parties whenever there is an unrepresented claimant to ensure that there is a clear understanding regarding the procedures and the evidentiary burdens that are the responsibilities of the parties.

Currently, the ALJ Division is working with the State Bar Association in developing an instructional video for unrepresented claimants.

The judges have been trained in mediation techniques and utilize those techniques in the administrative resolution of disputes.

## **ALJ Performance Issues:**

Workers' compensation claims are filed and processed in the Claims Division. If a dispute develops among the interested parties (injured worker, employer, insurance carrier, or Special Fund), a request for hearing is filed and the case is forwarded to the ALJ Division for resolution. Among the issues that may arise over the life of a claim are compensability, temporary disability benefits, continuing benefits, supportive medical maintenance benefits, permanent disability benefits (loss of earning capacity), reopening based on a new, additional or previously undiscovered condition, and rearrangement of benefits based on a change in the injured workers' earning capacity.

OSHA cases are referred to the ALJ Division when employers found in violation of workplace safety and health requirements formally contest a citation received from the ICA.

In FY '05, 8,001 workers' compensation cases were referred to the ALJ Division. ADOSH forwarded 124 safety and health cases. Cases are assigned to an ALJ who serves as the presiding ALJ for the duration of the hearing process on the issues raised in the request for hearing and any other substantive issues that arise before the hearing record is closed. The presiding ALJ sets the initial hearing between 60-90 days from the date the case was received in the division. This period provides the parties with time to complete discovery, schedule evaluative medical examinations, conduct additional investigation, and to explore settlement possibilities.

Generally, informal conferences with unrepresented injured workers are held a few weeks before the first hearing. In FY '05, 4,265 informal conferences were conducted. The timing of an informal conference depends upon the nature of the case, the complexity of the issues, as well as the ALJ's assessment of whether earlier intervention will encourage settlement or appears necessary to help the injured worker understand and prepare for the hearing process. Informal conferences are also held at the request of the parties, for example, when a discovery or procedural issue arises that the parties are unable to resolve themselves.

The venue for hearings is the county in which an injured worker resided at the time of the injury or such other place as selected by the ALJ (A.R.S. §23-941(D)). In FY '05, the ALJ Division held 6,593 hearings. Ninety percent of them were held in either Phoenix or Tucson. The remaining 10% were held around the state in such locations as Flagstaff, Prescott, Lake Havasu City, Yuma, the White Mountains, Casa Grande, Sierra Vista, and Nogales.

Workers' compensation cases often require multiple hearings to take testimony from all necessary witnesses. Injured workers and lay witnesses usually testify at the initial hearing. Further hearings are held for the parties' medical experts and labor market consultants. Coordinating the schedules of all parties, their representatives, the expert witnesses, and the ALJ's can take several weeks to several months. Further hearings for medical experts are conducted telephonically. This allows doctors to participate without

traveling to the Commission offices or remote sites for out of town hearings. The ALJ Division relies on written medical evidence in cases where live medical testimony is purely duplicative and the parties waive their right to cross-examine the author of submitted documents. Most parties do not waive this right.

At the conclusion of all hearings, the record is closed and no new evidence is accepted. Written decisions, containing the ALJ's findings, legal analysis and conclusions, are issued in all cases. In FY '05, the ALJ Division issued 7,774 awards. The average number of days to bring a disputed workers' compensation case to resolution was 118.5 days in FY '05.

An interested party disagreeing with an award may request review. In OSHA cases, the request is forwarded to the Occupational Safety and Health Review Board, an independent body outside of the Industrial Commission, and the ALJ Division has no further involvement in the case. In workers' compensation cases, a request for review is considered by the presiding ALJ. All parties are given an opportunity to participate in the review process. The ALJ issues a Decision Upon Review that may affirm, reverse, modify and/or supplement the original award. If a party disagrees with the Decision Upon Review, the party may seek appellate review by filing a Petition for Special Action in the Arizona Court of Appeals. The Court of Appeals must either affirm the ALJ's decision or set it aside; it lacks the authority to modify the decision.

Mediation is available in workers' compensation cases on a voluntary basis. It is offered to employers in all OSHA disputes. All parties must agree to mediate and, with rare exception, all parties must be represented by counsel, or, in OSHA cases, by an authorized representative. Upon request for mediation, the presiding ALJ refers the case to one or two ALJ's who serve as third party neutrals. If the dispute is resolved, an agreement is submitted to the presiding judge for approval. If it is not resolved, the case is returned to the hearing process. Mediation is confidential. The parties agree they will not share information outside the process. The mediators do not divulge information unless authorized by the parties and they do not discuss the case or what occurred during the mediation with the presiding judge whether or not the case is resolved.

### **Arizona Division of Occupational Safety and Health (ADOSH)**

The Arizona Division of Occupational Safety and Health (ADOSH) operates under an approved plan with the U.S. Department of Labor's Occupational Safety and Health Administration. ADOSH has 70 FTE's and is partially funded through two federal grants. Arizona is one of 26 states that has been determined to be "as effective as" federal OSHA.

The Arizona Division of Occupational Safety and Health has essentially four programs - compliance occupational safety and health, consultation/training, boiler, and elevator.

**Compliance Program** - Under the occupational safety and health compliance program, compliance safety and health officers conduct unannounced inspections using procedures

adopted by the Commission and approved by the U.S. Department of Labor. An unannounced inspection begins with an opening conference with management in which the scope of the inspection is discussed. This can be a wall-to-wall inspection of the entire jobsite, or it can be limited or focused on certain types of hazards such as trenching or fall hazards, or it can be focused only on complaint items. The employer is invited to accompany the compliance officer or have a representative accompany the compliance officer during the inspection. If a labor organization represents employees, we may ask that a representative of that labor organization also accompany us. If no labor organization is present, the compliance officer will interview a representative sampling of employees. This is done with a minimum of disruption. During the course of the inspection, violations found are pointed out to the representatives.

The types of inspections conducted by compliance officers fall into three categories: scheduled inspections, complaint inspections, and fatality/accident inspections. Generally, scheduled inspections may be any programmed inspection. This can be a planned inspection that is based upon type of industry, or it can be focused on specific issues or hazards like trenching, lead exposures or fall hazards. Complaint inspections are those inspections that are generated by complaints from the public or employees. Fatality/accident inspections are those inspections that are generated by occupational fatalities or accidents that result in serious injuries, which could have become fatalities or multiple hospitalizations.

In FY '05, occupational safety and health compliance officers conducted 1,135 scheduled inspections, 297 complaint inspections and 53 fatality accident investigations.

During the course of these types of inspections, compliance officers determine whether there are violations of adopted occupational safety and health standards and regulations or generally accepted industry practice. The data regarding inspections that occurred in FY '05 are:

- 997 willful/serious or repeat violations (with penalties)
- 2,228 non-serious violations (no penalties)
- \$2.09 million assessed
- \$1.32 million collected and deposited in state's general fund
- 44.3% of inspections are in compliance with no violations

**Consultation Program** - The consultation and training program is designed to provide assistance and information to employers and employees. Any employer can request assistance regarding a specific safety and health issue or can ask for an evaluation of an entire jobsite. Consultants conduct inspections and report by letter the results of that inspection. As long as there is agreement by the employer that all serious safety and health violations found will be corrected, then no penalties or citations are issued.

In FY '05, consultation activity is listed as follows:

- 1,080 consultation surveys conducted

- 2,367 hazards found during consultation surveys

**Training** - The training officers for the division conducted 390 training sessions and trained 6,034 employees and 2,844 employer representatives.

**Award Programs** - The consultation program also evaluates employers for two types of awards programs. The voluntary protection program is a national program in which Arizona participates. This program is recognized nationally as the Malcolm Baldrige equivalent for safety performance. These are corporate programs in which management has demonstrated a commitment to their employees by providing a safety program, which has significant employee participation that has resulted in injury/illness experience data that is 50% lower than the average for their industries. To date, 13 corporations and one city have received this recognition. The other program is the Safety and Health Achievement Recognition Program, which is designed to recognize smaller employers who have safety and health programs that have resulted in injury and illness experience data well below their industry peers. To date there are 36 companies that have received this award.

### **Boiler**

Within the Arizona Division of Occupational Safety and Health (ADOSH) is the Boiler Section. Arizona Revised Statutes, Title 23, Chapter 2, Article 11 created this boiler program. Under the program, boilers are inspected annually. If a boiler is found to be in violation of national standards that have been adopted by Arizona, then a notice of violation is issued with no penalties. If the boiler violations have been corrected and the boiler is found to be free of violations, then an operational certificate is issued. If the violations have not been corrected, then a cease and desist order will be issued.

Inspections of boilers are conducted by boiler inspectors from ADOSH and by authorized "special inspectors", which are private individuals usually in the employ of mines, utility companies and insurance companies that qualify as special inspectors under A.R.S. § 23-485. Special inspectors provide their inspection reports to the Boiler Section, and based upon those reports certificates of operations are issued. In FY '05, 2,666 boilers were inspected and 377 deficiencies were noted.

It is important to note that nothing in the Boiler law prohibits a political subdivision from asserting jurisdiction over boilers if it is determined by the Commission that the political subdivision has adopted standards and regulations that are equal to the standards and regulations adopted by the Commission. No political subdivision has currently asserted jurisdiction over boilers.

By statute, A.R.S. §23-474(2), the Commission is required to establish a Boiler Advisory Board. This Board is required to meet at least annually and is composed of members knowledgeable in the industry and shall be reasonably balanced in representation in terms of industry, owner/operators, labor and public. These meetings are duly noticed and conducted in accordance with the open meeting law.

The individual members of that Board are as follows:

Frederick Anderson - representing insurance industry  
R. Edward Emerson - boiler consultant  
T. Dean McCook - boiler repair  
Terry Melot - boiler repair  
Paul Smith - boiler manufacture  
Rex Featherstone - utility (owner/operator)  
Mike Rutledge - utility (owner/operator)

### Elevator

Within the Arizona Division of Occupational Safety and Health (ADOSH) is the Elevator Section. Arizona Revised Statutes Title 23, Chapter 2, Article 12 created the Elevator program.

The Elevator program is an equipment-oriented program that annually inspects all elevators and escalators in the state. No conveyance under the jurisdiction of the elevator section shall operate unless the conveyance has a Certificate of Inspection showing that the conveyance was found to comply with standards and regulations adopted by the Commission.

If the Elevator Section of ADOSH, following an inspection or investigation, determines that there is reasonable cause to believe that there is a violation of adopted standards or regulations, then a correction order is issued detailing the violations and the needed repairs. If, in the opinion of the Director (ADOSH) or his authorized representative, the continued operation of the defective conveyance constitutes an immediate danger, then the Director or his authorized representative may condemn such device and require it to be returned to a condition allowing safe operation before being put back in service. If the owner/operator fails to comply with the correction or condemnation order, then the Commission may file an action in Superior Court enjoining the owner/operator from engaging in further actions that are in violation of those orders. The elevator inspectors inspected 4,580 elevators in FY '05 and found 1,494 deficiencies.

Under the provisions of this statute, nothing in this statute impairs a political subdivision from asserting jurisdiction if it is found by the Commission that the political subdivision has adopted standards that are at least equal to those promulgated by the Commission. The City of Phoenix has asserted jurisdiction over elevators within the city's boundaries, and the Commission has determined that the standards adopted by Phoenix are equal to the Commission's.

Under A.R.S. §23-491.04, the Commission has established an Elevator Advisory Board to assist the Commission in drafting standards and regulations. The Elevator Advisory Board's meeting is duly noticed and is conducted in accordance with the state's open meeting law. The make-up of the members of the Advisory Board is as follows:

Rudy Mezosi - Kone Elevator Company  
 Dave Martin - Thyssen Krupp Elevator Company  
 Larry Griese - Schindler Elevator Company  
 Tom Ogden - Amtech Elevator Company  
 Don Kroenenbette - Centric Elevator Company  
 Jamie Flannigan - Millar Elevator Service  
 Karl Morse - University of Arizona  
 Jerry Cluff - Union of Elevator Constructors  
 Mike Barnes - Advanced Elevator Company  
 Michael Hotchkiss - Hotchkiss Elevator Company  
 Tony Meehl - Otis Elevator Company  
 Mark Gustafson - City of Phoenix

**Occupational Safety and Health Advisory Committee**

In accordance with A.R.S. §23-409, the Commission created the Occupational Safety and Health Advisory Committee. The purpose of the Committee is two fold: to assist the Commission in drafting standards and regulations and to provide recommended names to the Governor for the Occupational Safety and Health Review Board. The Committee shall be composed of a reasonably balanced representation of regulated industries, including agriculture and labor and other persons knowledgeable of safety and health.

The make-up of the committee is as follows:

Stacia Johnson-General Dynamics - Management  
 Jody Sims- FNF Construction - Management  
 Robert Hume - Management  
 Christopher Van Kirk - Pipefitters Union - Labor  
 Jim Kelley- Millwrights Union - Labor  
 Vacant - Labor  
 Paul McKee, City of Scottsdale - Public  
 Janet McLay, City of Tucson - Public  
 William Cavness, Asbestos Institute - At Large  
 Charles Alvarez, OTAC - At Large  
 Abel Almanza, Pan American Insurance - Agriculture

Although there is no statute or rule specifying when the committee is to meet, the practice has been for the committee to meet quarterly with few exceptions. The Advisory Committee met four times in calendar year 2000, four times in 2001, three times in 2002, four times in 2003, two times in 2004, and to date, two times in 2005.

As an approved program under the U.S. Department of Labor's Occupational Safety and Health Administration, Arizona's occupational safety and health program is annually evaluated. Included, under Tab 3, is the latest evaluation, covering the period of Oct. 1, 2003 to Sept. 30, 2004.

## **Labor Department**

The Labor Department has 15 FTE's. The Labor Department's primary responsibility is in three areas: youth employment law enforcement, resolution of disputes involving wages, and regulating private employment agencies that charge fees, which includes placement agencies, career counseling firms, modeling and talent firms, and sitting services.

### **Wage Dispute Resolution**

The Labor Division investigates the non-payment of wages (not exceeding \$2,500) pursuant to A.R.S. §23-350, et seq. The non-payment of wages includes hourly, vacation pay, commissions and bonuses. Most of the investigations are conducted through the mail; however, the Department does hold investigative meetings between the parties in a case. The first part of the process involves an informal settlement conference. If the case cannot be settled, an investigative meeting is held in which all the facts in the case are gathered. As a result of the investigative meetings, the Department issues a formal determination.

During FY '04, 3,104 wage claims were filed against employers. Of these, 1,450 wage claims were determined to be valid. Of the valid claims, 1,026 claims were paid for a total of 71%. Judgments were ordered from the Superior Court in 293 cases. (Please note FY '05 data is not available because a number of cases are pending determinations).

### **Youth Employment Law**

The State's youth employment laws are enforced by the Labor Division pursuant to A.R.S. §23-230 et seq. There are hour restrictions for youths under the age of sixteen. In addition, there are two groups of occupation restrictions, i.e., for youths under the age of sixteen and youths under the age of eighteen. The Labor Division reviews every workers' compensation claim where the injured worker is under the age of eighteen. In FY '05, 1,060 injury reports were received and administratively reviewed.

After that review, 126 incidents were physically investigated. In addition, 38 public complaints were investigated and 680 employer visits were conducted at the employer's place of business during FY '05.

A maximum penalty of \$1,000.00 is imposed on employers who violate the youth employment laws. In FY '05, the Labor Division issued 58 Cease and Desists orders for a total of \$10,540.00 in penalties.

### **Licensing of Employment Agencies**

The Labor Division licenses private employment agencies which charge fees to applicants seeking employment pursuant to A.R.S. §23-521 et seq. These agencies

include career counseling firms, model & talent agencies, placement agencies, sitter services, nursing agencies and domestic placement agencies.

There are currently 59 licensed agencies in the State of Arizona. Of these, 27 are model & talent agencies, 25 are career counseling firms, 3 are placement agencies, 2 are sitter services, 1 is a nurses agency and 1 is a domestic service agency. In FY '05, the Division processed 10 new applications and 52 renewal applications. In addition, it investigated 11 unlicensed agencies and 4 complaints against career counseling firms. The four complaints were resolved and a total of \$5,875.00 was refunded to all four complainants.

### **Employment Advisory Counsel**

The Arizona Employment Advisory Council was established in 1970 to advise the Industrial Commission about private employment agency industry needs. A.R.S. §23-522.02 directs the Council to inquire into the needs of the employment agency industry and to consider and make recommendations to the Industrial Commission of Arizona (ICA) and the Labor Division Director on all matters relating to employment agencies in the State. The Council serves in an advisory capacity, whereas the ICA is responsible for the direct administration and enforcement of employment agency statutes and rules and the supervision of the industry. The Council assists the ICA by reviewing and making recommendations to the Commission regarding new license applications for employment agencies, making recommendations on license renewal applications and making legislative and rulemaking recommendations. The Council met four times in calendar year 2004 and has met two times in calendar year 2005.

The Advisory Council is composed of seven members appointed by the ICA for 3-year terms (A.R.S. §23-522.01.B and A.R.S. §23-522.01.C). Three members must have at least 3 years' executive or managerial experience in the private employment agency industry in Arizona. The Council currently has a member in the career counseling industry, the model & talent agency industry and the employment agency industry. The other four members must have held positions in commerce or industry in Arizona for at least 3 years. The members and their representations are as follows:

Chairman, Gerald Banky	- Asarco (Private Sector)
Patricia Grumm	- Home Depot (Private Sector)
Linda Baugh	- American Career Executives (career counseling)
Dani Green	- Dani's Agency (model and talent agencies)
Eric Johnston	- Morgan & Associates (Private Sector)
Madalynn Terzenbach	- (Private Sector)
Terry Wien	- Dorado Employment Agency (employment agencies)

### **Special Fund Division**

The Special Fund has 19 FTE's. The Special Fund Division is responsible for administering benefits from a trust fund (Special Fund) that was legislatively created to provide the following workers' compensation benefits:

1. Providing benefits for uninsured claimants;
2. Continuing workers' compensation benefits for claimants of insolvent carriers and insolvent self insured employers;
3. Sharing of permanent disability benefits (LEC Awards) for claimants who have preexisting non-work related conditions set forth in A.R.S. §23-1065 and claimants who have prior work related scheduled injuries;
4. Vocational rehabilitation benefits;
5. Continuing medical benefits for pre-1973 workers' compensation claims.

The Special Fund is a trust fund that consists of the surplus in revenues transferred into the Special Fund from the administrative fund and revenues from assessments, investment income and lease income from property owned by the Special Fund. The funds in this trust fund can only be used for the purposes set forth in A.R.S. §23-907, §23-966 and §23-1065. All salaries of the Special Fund Division are paid out of the ICA's administrative fund. Currently the assessments (in accordance with A.R.S. §23-966 and §23-1065) to fund the Special Fund are 2 1/2% of workers' compensation premiums.

The Special Fund is responsible for administering benefits in the following areas:

1. **No-Insurance (A.R.S. §23-907)** - The Special Fund is responsible for administering all claims filed by employees who have sustained a work place injury while working for an employer that is violating law by not providing workers' compensation coverage for its employees. Upon the filing of a no-insurance claim, an investigation is conducted and a decision to accept or deny the claim is made. Upon acceptance, the claim is processed and the injured employee is provided with compensation for lost wages and medical benefits as provided by law.

It is important to note that, statutorily, prior to 2003, the Special Fund Division could not provide benefits to an injured worker until there was finality to a claim. Additionally, there was little or no statutory deterrence for being in violation of the law by being uninsured because the penalties for not being insured were extremely low. In 2003, the legislature amended the law allowing the Special Fund Division earlier intervention in a claim. Additionally, the ICA was given authority to issue much larger penalties to uninsured employers violating the law by not providing workers' compensation insurance coverage.

There were 3,281 no-insurance awards issued in FY '05. Expenditures for no-insurance in FY '05 were 7.2 million dollars.

2. **Insolvent Insurance Carriers or Self-Insured Employers (A.R.S. §23-966)** - The Special Fund Division acts as a guarantee fund and is responsible for the administration of claims when an insurance carrier or self-insured employer is unable to pay benefits. Since 2001, the ICA has seen a number of insurance carriers and self-insured employers become insolvent. Our actuarial liability for insolvent carriers increased from \$21.4 million to \$241.2 million. As a result, we have seen our obligations for claimants grow from a relatively small number to now over 1,200 open workers' compensation claims. In terms of net assets, the Special Fund went from \$80.1 million dollars in 2001 to a net asset deficit of \$162.6 million at June 30, 2004. We estimate the net assets deficit will be \$150 million at June 30, 2005. On an annualized basis with the change to the statute last year (allowing us to transfer unspent appropriated revenues from the administrative fund to the special fund), we are able to meet our annualized obligations.
3. **Apportionment (A.R.S. §23-1065)** - This statutory provision provides circumstances in which the Special Fund will share responsibility with insurance carriers/self-insured employers for a portion of liabilities for certain loss of earning capacity awards. The Special Fund received 460 reimbursement (apportionment) requests in FY'05 that resulted in a \$2million dollar expenditure.
4. **Vocational Rehabilitation (A.R.S. §23-1065)** - The Special Fund Division administers vocational rehabilitation benefits to injured workers who are unable to return to their date of injury occupations. The Special Fund administers two programs:
  - a. Through a contract with the Department of Economic Security's Rehabilitation Services the capabilities of injured workers with unscheduled injuries (injuries to the torso and head) are assessed and a vocational plan is developed. The Special Fund then will train an injured worker for meaningful employment.
  - b. For those that have scheduled injuries (generally injuries to the extremities) the Special Fund has contracted with a number of private vocational rehabilitation counselors to evaluate the capabilities of the injured worker and to develop a plan to train the injured worker for meaningful employment. This can take two forms: the typical class room training or on-the-job training. If an employer is agreeable, the Special Fund will pay for 50% of the salary for an individual, if upon successful completion of training the employer will provide employment.

In FY '05 there were 150 rehabilitation awards issued. The expenditures, which include the continuing costs for programs approved in prior years, was approximately 2.5 million dollars in FY '05.

5. Supportive Care (A.R.S. §23-1065) - Supportive care benefits are paid to workers injured prior to August 8, 1973 for medical benefits necessary to maintain their condition at a stationary level or to provide all care if the level of benefits by the insurance carrier have been exhausted. Currently we have 512 claimants who receive supportive medical maintenance. Expenditures for supportive care in FY '05 were approximately 4 million dollars.

### Legal Division

The Industrial Commission has its own legal counsel separate from the Attorney General. The Legal Division has 23 FTE's. The Legal Division is responsible for representing the Industrial Commission before various legal forums within and outside the State of Arizona. It is responsible for prosecuting our regulatory responsibilities and representing the Special Fund. The specific functions of the Legal Division and its FY '05 activity are listed as follows:

1. Represents the divisions of the Agency regarding regulatory types of issues that pertain to their individual operations.
  - 186 cases involving no-insurance
  - 124 ADOSH cases
  - 3 Labor cases which involved appeals to Superior Court
2. Provides legal advice to the five-member Commission and divisions
  - Provided 92 opinions
3. Assists Divisions with the development and adoption of rules and coordinate rule-making activities with the Governor's Regulatory Review Commission (GRRC) regarding promulgation of rules.
  - Conducted 3 five year reviews
  - Progress report to GRRC
  - Licensing time- frame report to GRRC
  - Submitted 2 final rule packages
  - 6 rule packages pending
4. Administers a compliance program to ensure that employers provide workers' compensation insurance coverage for their employees. This program includes the assessment of civil penalties and the initiation of action in Superior Court enjoining an employer from conducting their business until they get workers' compensation insurance.
  - Received 1,708 referrals regarding no-insurance coverage
  - Identified 1,154 employers as uninsured
  - 723 compliance investigations completed

- Civil penalties of \$250,000 assessed in FY '05
  - 20 Civil penalty cases referred to hearing
  - 53 cases in which injunction proceedings were initiated in Superior Court
5. Initiates subrogation of third party claims for no insurance claims
    - 13 third-party lien files opened in FY '05
  6. Represent the ICA before other state and federal agencies and other legal forums inside and outside the State of Arizona. These include courts in other states, Bankruptcy Court and Federal Court system.
  7. Oversees the collection efforts of the Agency.
    - 413 collection files opened in FY '05
    - 154 collection files referred to Attorney General's Office
    - 39 collection investigations completed
    - Approximately \$1.3 million collected in FY '05
  8. Represents the Special Fund in litigation involving activities of the Special Fund. These issues include insurance company insolvencies, uninsured workers' compensation claims, apportionment claims, supportive care etc.
    - 186 no-insurance cases
    - 142 apportionment cases
    - 21 cases involving insolvency issues
  9. Represents the ICA in personnel matters.

**3. EXTENT TO WHICH THE AGENCY HAS OPERATED IN THE PUBLIC INTEREST**

The general powers of the Industrial Commission address this issue. Specifically, A.R.S. §23-107A (2) states that the ICA shall, "Administer and enforce all laws for the protection of life, health, safety, and welfare of employees in every case and under every law when such duty is not specifically delegated to any other..."

Whether it be workers' compensation, occupational safety and health, resolution of wage disputes, youth employment laws or any other law the Commission administers, all are in the public interest and focus on the protection of life, health, safety and welfare of employees.

To be more specific, each of the major areas are specifically addressed as follows:

1. **Workers' Compensation** – As a regulatory agency, the Commission's role is to ensure that claims are being processed correctly and that the system for evaluating

and resolving disputes is efficient, fair, and not unnecessarily burdensome on the parties. The Industrial Commission, through its respective divisions, has provided protections to the injured workers and benefits to the insurance carriers by equitably monitoring every aspect of the claims process.

- There were 1,082 wage recommendations made by insurance carriers and self-insured employers which were determined by the Claims Division to be incorrect. The accuracy of wage information at the beginning of the claim process is critical in ensuring that the benefit levels are statutorily correct.
- The intervention of the Claims Division allows the injured worker to receive benefits promptly. In the WCRI study, only 25% of the loss of earnings determinations were protested with only approximately 8% going to hearing. Since the WCRI study, the percentage of loss of earning capacity determinations being protested has decreased to 18%. Clearly, the active analysis of an independent body like the Claims Division allowed the injured worker to receive his/her benefits accurately and promptly.
- Providing independent analysis of the wage determinations and the Loss of Earning Capacity has reduced the litigation rate to well below what exists in other states. This low litigation rate has resulted in reduced overhead costs to the insurance carriers and reduced premium costs to employers.
- Both society and the injured worker benefits when injured workers receive vocational rehabilitation. Under the Special Fund's vocational rehabilitation program, any injured worker with a permanent impairment who is unable to return to their date of injury occupation has the ability to be retrained in a meaningful occupation.

Another and equally important aspect of the workers' compensation system is the process to resolve disputes. Even though workers' compensation law is complex, the parties can be assured that an unbiased judge, knowledgeable in the system, will make an independent determination regarding the issue in dispute.

- Unlike other legal forums, workers' compensation claimants can elect to represent themselves. A great deal of effort has been made to ensure that the unrepresented claimant has received instruction regarding their legal responsibilities under the law.
- Additionally, to ensure equality and a level playing field in the resolution of these disputes, the Commission bears the costs associated with witness fees for physicians as well as court reporting costs.

2. **Safety and Health** - The role of the Arizona Division of Occupational Safety and Health is to ensure that every workplace is free of hazards that could cause death or serious physical harm to a worker. Both the employees and the employers in Arizona enjoy the benefits that they derive from having an Arizona Division of Occupational Safety and Health. This conclusion is based upon the following:

- Arizona has one of the lowest rates of injury in the country despite the fact that construction, a high hazard industry, has been flourishing. Using U.S. Department of Labor's Bureau of Labor Statistics' data from 2000 thru 2003, the illness and injury rate has decreased 32%.
- Workers' compensation claims generally, another good measure of safety and health effectiveness, have decreased dramatically in the last 10 years. Time lost claims, which are the most costly, decreased 38% during that period.
- Effective safety and health programs result in lower workers' compensation costs. Arizona employers enjoy the third lowest workers' compensation premiums in the country. Because of the benefits they have received from having effective safety and health programs, employers have been able to see the cost of workers' compensation on a per capita basis decrease from \$521 per employee in 1994 to \$292 per employee in 2004, a 41% decrease.
- Elevator and Boiler programs also are beneficial in addressing public safety as well as occupational issues. Whether it is a hot water boiler in a motel/hotel or an escalator or elevator in the airport or in a department store, employees and the general public receive benefits from having the knowledge that boilers and public conveyances have been inspected and are safe.

3. **Labor** - The Labor Division assists the public with its investigations of wage disputes, protects young workers under eighteen from working in hazardous occupations, and protects the consumer in dealing with private employment agencies.

- The Labor Division, in addressing wage disputes, is ensuring that employees have a forum to bring their non-payment of wage issues to an entity that will independently evaluate their allegation at no cost to them. While clearly the number of employers unfairly withholding wages is a minor percentage of the total employer population, the process acts as a deterrent for those that may be inclined to take unfair advantage of their employees.
- Ensuring that children are not working in prohibited occupations protects those individuals from injury and illness at an early age. Limiting the

number of hours a child can work, especially during the school year, is equally important and in the best interests of the child.

- Licensing of employment agencies is important to ensuring that fraudulent firms are not taking unfair advantage of clients. As an interesting aside, a number of years ago the ICA introduced legislation to delete from our jurisdiction the licensing of employment and talent agencies. The industry, as well as those individuals affected by those industries, came in mass to the legislature in opposition to that legislation. They testified that the licensing of those entities by the Industrial Commission was instrumental in keeping out fraudulent companies who prey on unsuspecting individuals. This has proven to be correct. Through the Employment Advisory Council, prospective employers are screened to make sure that there are no historical problems associated with these applicants. As we detailed in the Labor Department's activities, we have had complaints regarding unlicensed agencies and/or fraudulent activities and have interceded to stop operations and provide restitution to the victims.

#### **4. EXTENT TO WHICH THE RULES ADOPTED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE**

All of the rules adopted by the Agency are consistent with our legislative mandate. With the exception of OSHA standards that are incorporated by reference, all rules go before the Governor's Regulatory Review Commission and one of the elements of their review is whether the Agency has the authority under their existing statutes to propose and promulgate those rules.

The standards adopted by the Commission that pertain to Occupational Safety and Health program are federally proposed standards. Because of the mandate to adopt those standards or their equivalents within specific time periods, there is a statutory exemption from the Governor's Regulatory Review Commission (GRRC) when we are adopting federal standards. Nevertheless, these rules are subject to all other rule making requirements and are approved by the Attorney General (in lieu of GRRC). As such the community receives notice of the proposed rulemaking and has an opportunity to comment on the rules. If the federal standards present problems to the affected industries, we investigate the issues and take appropriate action either in modifying the standards or in not adopting the standards. Recently, there was a homebuilding safety standard that presented significant problems to the affected industry. After hiring engineers and investigating the matter independently, the ICA noted a number of problems and chose not to adopt the standards. Over the years, there were at least two other standards that were not adopted by the Commission because of adverse affects on Arizona industries - Cotton Dust and Heat Stress. Both of those standards were ultimately withdrawn by U.S. Department of Labor for a variety of reasons.

The Agency is given general and specific rulemaking authority in Title 23. See A.R.S. §§23-107(A)(1) (General); 23-240 (Youth Employment); 23-361 (Wage Claims); 23-

405(4) (OSHA); 23-474(3) (Boilers); 23-491.04(3) (Elevators); 23-523 (Private Employment Agents); 23-921(B) (Workers' Compensation); 23-961(J) (Self-Insurance Taxes); 23-961.01 (Workers' Compensation Self-Insurance Pools); 23-1044(G) (Workers' Compensation Loss of Earning Capacity); 23-1066 (Workers' Compensation Guardian Ad Litem); 23-1067(A) (Workers' Compensation Lump Sum Commutation).

The Commission's activity associated with rulemaking is listed as follows:

- Workers' Compensation Practice and Procedure, R20-5-101 et. seq., last amended Feb.3, 2004.
- Occupational Safety and Health Standards, R20-5-601 et seq., last amended effective June 2, 2003. Occupational Safety and Health Rules of Procedure before the Industrial Commission of Arizona, R20-5-801 et seq., last amended in 1975. Recognizing a need to update this Article, the Agency began preliminary work on this Article in the Spring of 2003, which work included the scheduling of meetings with a representative of the regulated community to discuss proposed changes. Following those discussions, a rule draft was provided to the representative in the Fall of 2003 for comments. No comments were forthcoming regarding this draft, and the Agency expects to move forward with a Notice of Proposed Rulemaking this year.
- Self Insurance for Individual Employers, R20-5-1101 et seq., adopted effective April 4, 2005.
- Self-insurance requirements for individual employer and workers' compensation pools organized under A.R.S. §§11-952.01(B) and 41-621.01, R20-5-201 et seq. These rules were last amended effective October 9, 1998 and need further amendment to conform to the recently adopted Article 11.
- Self Insurance requirements for Workers' Compensation Pools Organized Under A.R.S. §23-961.01, R20-5-701 et seq., adopted effective September 9, 1998.
- Private Employment Agents, R20-5-301 et seq., last amended effective September 9, 1998.
- Arizona Boilers and Lined Hot Water Heaters, R20-5-401 et seq., last amended effective October 9, 1998.
- Elevator Safety, R20-5-501 et seq., last amended effective March 15, 2003.

- Wage Claims, R20-5-1001 et seq., adopted effective January 26, 1988. The Agency intends to update this Article and expects to file a Notice of Proposed Rulemaking by the end of 2005.

**5. 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.**

For rule changes that are expected to have a substantive impact on the community, the Agency has historically invited public comment prior to the formal rulemaking process. Inviting public comment and keeping the public apprised of the process is accomplished primarily through mass mailings, the Agency's website, and public meetings. The Commission has also taken advantage of the creation of committees, consisting of representatives of the community to solicit comment and draft proposed rules for consideration by the Commission. This process at times can be a lengthy one, but in most cases it has been effective. Because the process is probably unique, the best way to describe the process is to provide two recent examples:

1. The 2001 rule amendments to the workers' compensation rules are an example of such a process. These rule amendments, which became effective August 17, 2001, were the result of extensive work that involved the regulated community before the formal rulemaking process started. In 1994, a workers' compensation advisory committee was established by the Commission to evaluate and provide recommendations for rule changes to the Workers' Compensation Rules of Procedure. This committee, consisting of Commission representatives and attorneys representing injured workers and employers, met numerous times from July 1994 through January 1997. The Committee presented draft rule proposals to the Commission for its consideration and adoption. Thereafter, on three separate occasions, Commission staff presented draft rule proposals to the community for public comment via mass mailings and its website. The Commission also submitted the rule amendments to GRRC for courtesy reviews. It was only after significant public comment and feedback that, on January 14, 2000, the Commission directed that the rule amendments be filed as a Notice of Proposed Rulemaking with the Secretary of State.
2. We are required by the Governor's Regulatory Review Commission's rules to review and update our Agency rules every five years. Accordingly, we recognized the need to update our self-insurance rules. We currently have approximately 150 employers who are self-insured and there is also an Arizona Self-Insurance Association.

The ICA began the process of updating those rules by providing all self-insured employers and their association a copy of the first draft of the proposed rules and asking for their comments. Based upon their comments, the ICA made changes and drafted a second version. The second draft was sent it out to all of

the parties for comment. Because of confusion regarding some of the proposed changes, a public meeting was requested with members of the Commission and the self-insurers in which approximately 40 individuals were present. Based upon input from that meeting, another draft was developed and mailed to all parties. After another draft(s), the issues were sufficiently resolved to propose adoption of the rule package to the Commission to begin the formal rule making process. With some minor input and changes at the public hearing, the five member Commission adopted the rule package with no opposition approximately 2 years after we began the process.

The Agency uses a variety of resources to keep the public informed as to its actions and expected impact of actions.

- **Agency Website:** The Agency website contains several links, each designed to keep the public informed as to different areas of interest. The Agency has maintained a link on its website to a rulemaking page that attempts to keep the public informed as to the progress of current rulemaking activity. Additionally, a summary of the minutes from the Commission's weekly meetings are posted on the website. The Commission also uses the website to provide information regarding scheduled public meetings or hearings, or other areas of interest.
- **Regulatory Agenda:** The Agency posts its regulatory agenda on its website. The agenda contains a listing of published docket openings, pending rulemakings, and proposed or final rulemaking packages. The agenda also lists Five-year reviews scheduled for that year.
- **Agency Directory:** The Agency directory, updated annually, contains rules, policy statements, and other information of interest. The directory is available to the public in the director's office during regular business hours.
- **Mass mailings:** Whether simply informational or in the nature of a substantive policy statement, the Agency uses mass mailings to apprise the regulated community of information.
- **Annual Commission Seminar:** The Commission conducts two claims seminars, one in California for those processing workers' compensation claims out of state and the other in Arizona. The claims seminar in Arizona typically has 1,000 to 1,200 attendees over two days. The purpose of the seminar is to train attendees on claims processing and to inform the workers' compensation community regarding topical issues. The first day is reserved for workshops and the second is a series of speakers who update the community regarding changes in medicine, court decisions, and legislative and rule changes, etc.

- Annual Fee Schedule: Under A.R.S. § 23-908(E), the Commission has the authority to establish fees for physicians, physical therapists, and pharmaceuticals. Prior to establishing these fees, the Commission mails a draft proposal to the community for comment. The public is invited to either submit written comments or to testify in person before the Commission at a public meeting.
- Annual Stakeholder's meetings: On an annual basis the Commission sends its Legislative agenda to the regulatory community and invites the regulated community to assist it in the establishment of its legislative agenda. This agenda is sent in advance of a stakeholders' meeting in which the agenda is presented to the Commission and public comment invited.

**6. EXTENT TO WHICH THE AGENCY HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION.**

The Industrial Commission is statutorily able to investigate and resolve complaints that are within its jurisdiction.

1. Under general powers, the Commission has the statutory right and obligation to conduct investigations. A.R.S. §23-107 B states, "upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee the commission has the power, with or without notice, to make investigations necessary to determine the matter complained of".

This provision statutorily would apply to complaints, which would involve physical inspections of worksites, which would fall under the jurisdiction of the Commission's Arizona Division of Occupational Safety and Health and the Labor Division.

2. The Commission is given specific authority to administer and enforce provisions contained in the workers' compensation statutes through Arizona Revised Statutes Chapter 1, Article 2 of Title 23. These statutory provisions allow the Commission or their delegated agents through the other Divisions - Claims, Legal or Administrative Law Judge, to conduct investigations, issues subpoenas for people or documents and issues sanctions for non-compliance.
3. Under specific laws associated with ADOSH and Labor Division, individuals are given specific authority to conduct inspections, review documents and to make determinations regarding complaints filed with those Divisions.

**7. EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER THE ENABLING LEGISLATION**

The Industrial Commission has adequate authority to prosecute actions under existing legislation covering Industrial Commission administrative activity. With respect to typical prosecutorial issues such as citations, notice of violations, and Superior Court injunctions, those actions are typically prosecuted by our own Legal Counsel under existing law.

There are additional issues that can be prosecuted by other prosecutorial bodies like the Attorney General or County Attorneys under existing law. For example, A.R.S. §23-929 reads, “upon the request of the Commission the attorney general or under his direction the county attorney of the proper county shall institute and prosecute the necessary actions or proceedings for the enforcement of the provisions of this chapter”.

Under Arizona’s Occupational Safety and Health Laws, there are provisions for criminal sanctions. ADOSH notifies the Attorney General’s Office of all fatalities and, as well, in those cases in which an employee’s serious injury or illness has resulted in a willful violation. The Attorney General for potential prosecution under criminal statutes reviews these referrals. The County Attorneys do the same. As an example, Pinal County prosecuted a contractor in Apache Junction for a willful violation in which a youth was killed in a collapse of an unprotected trench. In another case, the Attorney General prosecuted a representative of an out of state company for the deaths of two workers because they did not test the quality of the air before sending workers in to work in an underground sewage tank.

**8. EXTENT TO WHICH THE AGENCY HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES, WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE**

There has been no need to change occupational safety and health or the laws pertaining to youth employment, wage dispute or employment/talent licensing. These laws are adequate to address their respective statutory mandates. However, there have been a number of significant changes to workers’ compensation laws. We have included a listing and description of the legislative changes that have occurred to the workers’ compensation law since our last Sunset Audit. (These changes can be found under Tab 4).

Probably one of the most significant statutory changes pertained to the processing of “no-insurance” claims in our Special Fund (ARS §23-907). Historically this has always been a problem and one that we have attempted to resolve several times. “No- insurance” claims are those workers’ compensation claims from injured workers who work for an employer who is violating the law by not providing workers’ compensation insurance

coverage. In those cases, the ICA's Special Fund is responsible for payment of all workers' compensation benefits.

In the past, we were not able to provide medical or indemnity benefits to a non-insured injured worker until there was finality with that claim. Unfortunately, some of those violating employers delayed that finality by protesting every aspect of that workers' compensation claim. Clearly, this was a very unfair situation for the injured worker. Additionally, there was very little deterrence in being uninsured because the penalty associated with being uninsured was only \$500.

In 2003, the legislature approved a significant rewriting of the statutes pertaining to "no-insurance". The Special Fund is allowed to administer benefits to a non-insured injured worker once an investigation is conducted and a determination is made that the workers' compensation claim is valid. Additionally, the penalties associated with being uninsured were increased dramatically, \$1,000 to \$10,000. There have been a number of other significant changes, but this is one that had a positive impact on the operations of the Commission and, in terms of fairness, on the uninsured injured worker(s) as well.

With the number of insurance company insolvencies and the fact that the Commission's Special Fund is the guarantee fund for those insolvent workers' compensation claims, we have found ourselves involved with insurance issues that are impacting the Special Fund. Some of these issues are large deductible policies and adequacy of insurance company deposits. We have been working closely with the Department of Insurance to go through the investigative process to determine what course or courses of action needs to be taken to reduce the potential liabilities to the Special Fund.

**9. THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE AGENCY TO COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION**

We are unaware of any changes that need to be made.

**10. THE EXTENT TO WHICH THE TERMINATION OF THE AGENCY WOULD SIGNIFICANTLY HARM THE PUBLIC HEALTH, SAFETY OR WELFARE**

Inasmuch as everything we do is focused on safety, health and welfare of those involved in or by the laws the legislature has implemented, the impact of terminating the Agency would be potentially catastrophic to employees, employers, and the general public.

Given that workers compensation is a constitutional requirement the assumption is that if the agency were to be terminated the statutory provisions essential to the program would remain in place. Therefore, I am answering the question by addressing the consequences that would result if there were no agency to oversee the workers compensation system.

- Claimants clearly need an independent entity to ensure that workers' compensation claims are being appropriately processed. Without that, the workers' compensation system would deteriorate to a system in which every issue is either litigated or legislated or both.
- Injured workers who were not able to receive prompt medical care would fall onto the roles of AHCCCS.
- Injured workers who, because of their injuries, could not return to their date of injury occupations would not receive vocational rehabilitation and would, in all probability, fall onto public assistance.
- Fewer employees would elect to be covered by workers' compensation and, as a result, employers would lose their "exclusive remedy" (protection from law suits) protections under the law.
- Insurance carriers would be required to expend additional money to train their claims processors to replace the training that is provided free of charge by our Claims Division.
- In excess of 1,200 claimants involved with insolvent insurance carriers would immediately go on the roles of public assistance to address their living and medical needs.

Arizona's approved program is similar in content to federal OSHA but differs in significant ways. If the agency was terminated Federal OSHA would have jurisdiction and those elements of the program that are unique to Arizona thru its state ADOSH program would be lost.

- Political subdivisions are under the jurisdiction of ADOSH. Workplace safety and health issues for political subdivision would not be addressed. Injuries and illnesses would increase.
- The five-member Commission must approve all penalty assessments. At the Commission's publicly noticed weekly meetings, the ADOSH Director is required to present a prima facie case for the issuance of penalties. Based upon the facts presented, the Commission approves, disapproves or modifies the proposed penalties. This level of public scrutiny would not be present.
- ADOSH issues repeat violations if the same standard is violated within one year from the prior inspection date. By contrast, federal OSHA uses multiple years of history as a basis for a repeat citation. Arizona uses only the previous year because of the heavy emphasis on the construction industry and the fact that there are many more repeat inspections of Arizona contractors than on the federal level.

- ADOSH developed a consultation and training program as an integral part of their program from the beginning. This program has worked with employers and employees and their organizations to assist them in establishing workplace safety and health programs. Within this program there are unique aspects only found in Arizona.
- The Arizona legislature enacted A.R.S. §23-418.01 that allows the ICA to assess an additional \$25,000 against an employer if the employee's permanent disability or death was the result of a willful or repeat occupational safety and health violation. The \$25,000 amount is payable to the injured employee, or in the event of the employee's death, to his/her dependents if it can be shown that the injury did not occur as a result of the injured or deceased employee's disobedience to specific instructions given to the employee or to instructions pertaining to specific safety standards applicable to the job condition.
- While federal OSHA conducts investigations of elevator and boiler accidents or complaints, in addition to conducting these same investigations, ADOSH has a certification program for prospectively ensuring that these devices are safe before they go into operation.

Without an agency to regulate the employment related issues under the jurisdiction of the Industrial Commission the following consequences could reasonably be expected to occur. :

- Workers would not have the ability to resolve disputes involving their wages without having to expend money to resolve their disputes in small claims courts.
- Children under the age of eighteen would, in all probability, be having more injuries and illnesses because there would be fewer personnel to monitor prohibited employment.
- There would be more fraud in the employment, career counseling and talent agencies because no one would be monitoring the industries and ensuring that clients would be dealt with fairly.

**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 is an excellent question and one that can be answered different ways by different people. As a regulatory agency, it is one that is constantly being asked whenever we look at our operations. It is our opinion that the level of regulation exercised by the Industrial Commission is appropriate.

We have historically looked at our regulatory role as to essentially providing a balance between having sufficient regulations in place to ensure that we are meeting our statutory mandate to protect the safety, health, and welfare of employees and balancing that with the ability of those providing services, (insurance carriers and employers) being able to carry out their duties without being overly burdened by regulation(s).

It is because of this concern for balance that the Commission takes their rulemaking authority very seriously. As an agency, there is an inordinate amount of time and resources spent to solicit comments from the regulated community. More importantly, there is a great deal of effort and resources spent to resolve differences in any rule proposal before the formal rulemaking process even begins. That is why a great deal of time is taken, in some cases 2-3 years, in updating existing regulations.

As to federal standards, even though we have 6 months to adopt federal standards or equivalent standards and even though the affected industries participate on a federal level, we continue to communicate with the affected community in Arizona. If we receive objections from the affected community regarding the viability of a standard in Arizona, we immediately investigate the standard to determine if we should adopt it. Recently we had a home building standard in which the home building industry objected that some of the engineering standards utilized in the proposed standard were not feasible because they did not apply to homes being built under Arizona codes. The ICA independently contracted with an Arizona engineer and determined the home building industry was correct. We did not adopt the standard. The ICA then began working with the industry to develop alternative approaches to ensure the safety of workers in that industry. Historically, the ICA has taken similar actions regarding federal standards involving heat stress and cotton dust.

**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**

We have utilized private contractors whenever it is feasible and appropriate.

- The Claims Division utilizes physicians for independent medical evaluations involving occupational disease cases.
- The Arizona Division of Occupational Safety and Health contracts with private engineers and other experts.
- The Administrative Law Judge Division we contracts with interpreters and court reporters.
- The Special Fund Division contracts with actuaries, doctors, private labor market consultants, nurses, and private rehabilitation specialists, employers who provide on the job training, and private and public training facilities.

Additionally, because the Special Fund acts as an insurance carrier for insolvent carriers, supportive medical care, and no-insurance cases, it contracts with a myriad number of private entities including contractors, architects, and automobile mechanics and specialists.

- The Legal Division contracts with a number of private entities including physicians and labor market specialists.
- Additionally, because the Special Fund owns the ICA offices in Tucson and Phoenix, it contracts with everything from landscaping and cleaning to construction and maintenance contractors.
- Inasmuch as our Special Fund is made up of investments, we contract with banks, investment managers, and private attorneys. Additionally, since the Industrial Commission facility in Phoenix was built by issuing bonds (certificates of participation), we dealt with a number of financial institutions associated with those financial transactions.

## **ADDITIONAL QUESTIONS**

- 1. An identification of the problem or the needs that the agency intends to address.**

From an operational standpoint, the ICA does not have any problem that would prevent it from fulfilling its statutory mandates. Saying that, however, there is an operational concern and that is the amount of time that it takes to resolve a dispute before our Administrative Law Judge Division.

Currently, on average, it takes approximately 118 days to resolve a dispute. However, there are cases in which there are multiple medical experts testifying that may take upwards of 7 to 12 months to resolve. Despite the fact that this appears to be about average for other states, the 5-member Commission has expressed a concern regarding the length of time it takes to resolve these more complex cases. In March of this year, the Commission implemented a "fast track" system in which medical reports could be utilized in lieu of live medical testimony. To date, this voluntary program has not been utilized by the legal community. The Commission will be holding informational meetings with the legal community in an attempt to effectively address this issue.

We have a continuing concern with respect to issues that are related to the insolvencies of insurance companies and their impact on the continued solvency of the Special Fund. As we indicated in an earlier response, the Department of Insurance and the Industrial Commission are jointly investigating these issues. Based upon this investigation, we may have additional legislative or legal actions may be initiated to resolve those issues.

Finally, the Commission has a significant concern regarding the need to address workers' compensation benefit levels. Arizona is currently 49<sup>th</sup> in the country. While this is a

legislative matter and outside the jurisdiction of the Commission, the Commission has a concern that the lack of action regarding this issue could jeopardize the workers' compensation system. To effectively address this issue, the parties (employer and employee organizations) need to get together to discuss and hopefully address this issue. The Commission has been attempting to get the parties together, however, to date, it has not been successful. The Commission will continue to act as a facilitator.

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

In addition to the quantitative data presented in Question 2 - Effectiveness of the Agency in meeting its objectives, the following information is offered:

In the Workers' Compensation Research Institute's (WCRI) study (pages 80 thru 84) of Arizona's workers' compensation system, the auditors noted, "Keeping in mind that what succeeds in one state may not work the same way in a different system context, policymakers may find that adapting successful features from another state system is an efficient way to solve problems in their systems. Here we discuss one lesson that other states can glean from the Arizona experience: Active involvement of the state agency". The WCRI study identified 5 elements of this active approach that they felt were valuable:

- **Active Claims Monitoring and enforcement.** WCRI noted that active claims monitoring involves ensuring that the information in the claims file is accurate and correct; notifying insurance carriers and self-insurers of a workers' compensation claim and monitoring responses to ensure compliance with statutory 21 day requirement; monitoring the progress of accepted claims, auditing payor notices and issuing other notices, enforcement by the issuance of penalties for bad faith or unfair claims processing practice violations.
- **Providing information, training, and assistance.** WCRI determined that the ICA performs full range of information, training and assistance. Specifically, two annual seminars with 1,300 claims handlers in attendance with additional 20 to 25 short seminars each year and ombudsman staff which handles 3,800 to 4,000 inquiries per year.
- **Issuing Impartial Awards that Determine the Amount of Benefits are Due.** WCRI noted that it was beneficial to unrepresented claimants to have the ability to rely on an unbiased entity to calculate correct benefit levels. WCRI concluded that the issuance of accurate and unbiased awards resulted in lower litigation rates than other states.
- **Assisting Unrepresented Applicants.** WCRI found that in 17% of cases referred to judges for hearings, workers were not represented by attorneys. Through Ombudsman's Office and thru Administrative Law Judge Division information is

given to the unrepresented claimant that allows them to competently prepare for hearings and represent themselves.

- **Promoting Workplace Safety.** The WCRI noted that Arizona is one of a few states with a state level OSHA office that is located in the same parent organization as workers' compensation functions. The WCRI noted that a close relationship between the two functions allows OSHA to direct enforcement and consultation efforts where the need is greatest. The WCRI noted that some employers and insurers see this partnership as a system strength.

Overall, one of the things we consider a major accomplishment is the fact that since 1994 the Commission has been able to perform more operations, offer more services, involve itself in many more complex issues, improve the delivery of services, and improve its efficiencies, while at the same time holding down historical costs (appropriated budget) to the rate of inflation. The reason that we have been able to do all of this is because we have dramatically improved our technological capabilities by adding a major optical disk system for data retrieval and document processing, revamping and updating computer software, and enhancing the physical computer system.

**3. An identification of any other agencies having similar, conflicting, or duplicative objectives and an explanation of the manner in which the agency avoids duplication or conflict with other agencies**

The ICA is unaware of any state agency that has duplicative activities that are similar or are in conflict with the Industrial Commission's authority. There are several agencies that have certain areas that overlap the Commission's authority. For those areas of overlapping responsibilities, we have memorandums of understanding, statutory exclusions, exclusions by federal case law, or we have established working relationships with those agencies. These working relationships are in place to ensure that our efforts are not duplicative or in conflict with one another.

- We have a working relationship with the Corporation Commission when it comes to areas in which there may be overlapping jurisdiction - gas pipeline safety issues are an example. We have a working relationship with the Radiation Regulatory Agency as it relates to low level radiation covered by our occupational safety and health program. In those areas, the ICA either defers to them or conducts inspections jointly to address issues of mutual concern. We have a working relationship with the Department of Health Services, which involves sharing of information regarding occupational health exposures. All areas of conflict are resolved either before the inspection or during the inspection to reduce any confusion with the entity being inspected.
- The ICA recognizes federal jurisdiction (eg. matters covered by Railway Administration or Environmental Protection Administration). In such matters, we either defer to state contracted agencies such as the Corporation Commission and the Department of Environmental Quality or we refer the

matter to the federal authorities. If there are overlapping areas of jurisdiction, the ICA will conduct joint inspections to address areas of concern without unnecessarily burdening the entity being inspected.

- In other areas the ICA has entered into contracts for services to prevent duplicative activities. For example, there exists a vocational rehabilitation component in workers' compensation. Within the Department of Economic Security there is a Division of Employment and Rehabilitation Services, which, under federal guidelines, provides those services statewide. For a number of years, the Special Fund has contracted with DES to provide those vocational rehabilitation evaluation services for workers' compensation claimants who have unscheduled injuries.
- The ICA is excluded by law from certain activities that are either constitutionally established, such as the jurisdiction of the State Mine Inspector (Title 27, Chapter 3, Arizona Revised Statutes), or are established by Federal Law such as the Atomic Energy Act of 1954 (See A.R.S. §23-402).

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

**A. Consequences of eliminating the Agency**

Inasmuch as the agency sole responsibility is the safety, health and welfare of employees and the public, the consequences of eliminating the agency are answered in prior question 10.

**B. Issues to address if agency were consolidated with another agency**

- Consolidation of the Industrial Commission with another agency would create complexities that would be difficult to address. First from an organizational standpoint, the Commission is a Governor appointed body that has specific statutory authority to perform certain functions. Consolidation would require statutory amendments and a restructuring of the organizational framework to avoid conflicts in operational authority.
- Secondly, from a fiscal standpoint, the Commission is essentially a self-supporting agency that is funded from assessments on the industry. Consolidating with another agency that is supported from the general fund or through different assessments could create potential conflicts resulting from two different accounting systems.
- The plan approval and statutes for the state's occupational safety and health program takes into account the relationship between ADOSH and the Commission. If the Commission were to be consolidated with another agency, then the relationship of the new agency to the Commission and to

ADOSH would have to be addressed to resolve potential conflicts and to answer concerns that Federal OSHA would have regarding operational matters.

- The work processes and practices of the Industrial Commission are unique and may or may not be available within state government. Our claims, administrative law judge, special fund and legal system utilize an optical disk and document processing system to scan and retrieve documents. Our computer system, which works in tandem with this system, has a local area network with a large bandwidth in order to view all of the document images.

*FY 2004*  
*FEDERAL EVALUATION*



**ARIZONA  
OCCUPATIONAL  
SAFETY AND HEALTH  
PROGRAM**

---

**Evaluation Period:**

**October 1, 2003 - September 30, 2004**

**Plan Approval:**

**October 29, 1974**

**Plan Certification:**

**September 18, 1981**

**Final 18(e) Approval:**

**June 20, 1985**

*Prepared by:*

**U. S. Department of Labor  
Occupational Safety and Health Administration  
Region IX  
San Francisco, California**

**U.S. Department of Labor**

Occupational Safety and Health Administration  
71 Stevenson Street  
San Francisco, California 94105



Reply to the Attention of:

AUG 03 2005

Mr. Larry Etchechury  
Director  
Industrial Commission of Arizona  
800 W. Washington Street  
P.O. Box 19070  
Phoenix, AZ 85005-9070

Dear Mr. Etchechury:

Enclosed for your review is the evaluation report for the State of Arizona 23(g) Occupational Safety and Health Program and the 21(d) Consultation Program covering the period of October 1, 2003 through September 30, 2004.

I am pleased that the State continues to demonstrate commitment and support to the Arizona program and implementation of its Five Year Strategic Plan. The Arizona occupational safety and health program continues to meet OSHA requirements for State plans and ADOSH performance is similar to that noted in recent evaluations.

We appreciate the assistance your staff has provided us regarding some of the information used in this report.

Please submit any comments you may have within 30 days of your receipt of this report. Your comments will become a part of this evaluation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Strassheim".

Frank Strassheim  
Regional Administrator

Enclosure

cc: D. Perkins  
P. White  
M. Sauber  
T. Meisinger

RECEIVED  
Industrial Commission of Arizona

AUG 4 2005

DIRECTOR

## EXECUTIVE SUMMARY

The Arizona Division of Occupational Safety and Health (ADOSH) developed a five-year Strategic Plan to cover FY 2003-2007 and standards were established for measuring the performance and effectiveness of its programs and services. Within the Strategic Plan, Annual Performance goals were established to incrementally achieve the five-year goals. This report contains the Occupational Safety and Health Administration's (OSHA's) assessment of Arizona's progress in achieving its Annual Performance Goals and mandated activities covering the period from October 1, 2003 to September 30, 2004.

With respect to Arizona's first strategic goal—improving workplace safety and health as evidenced by fewer hazards, reduced exposures and fewer injuries, illnesses and fatalities—ADOSH focused its resources on the construction industry and on establishments utilizing silica-containing products in their workplace. In addition, Arizona continued outreach efforts to attract applicants to the Arizona VPP/STAR program since effective safety and health management, which goes beyond OSHA standards, can protect workers more effectively than simple compliance. During this evaluation period, Arizona generally met its intent in this area. However, ADOSH fell short of its projected goals when it came to conducting activities in establishments where employees are potentially exposed to silica. OSHA has recommended that ADOSH target establishments to reduce silica exposures.

With respect to Arizona's second strategic goal, securing public confidence in the development and delivery of ADOSH services, Arizona set a goal for reducing citation lapse time. Citation lapse time did not decrease but, in fact, increased during this evaluation period. Arizona followed its normal practice of encouraging compliance officers and supervisors to get case files completed but the State did not institute anything new that would address this problem. OSHA has recommended that ADOSH implement procedures to reduce citation lapse times.

Arizona continues to devote significant resources to increase public awareness of the importance of workplace safety and health by offering partnerships to employers, providing compliance assistance services, improving outreach efforts, and encouraging active worker participation. With regard to compliance assistance and outreach efforts, Arizona has placed a tremendous amount of effort in this area by offering 384 training sessions during FY 2004. In addition, Arizona has established a close working relationship with the Spanish-speaking media and ADOSH has had articles published periodically to get the word out about its services and about accidents that have occurred and how they can be prevented.

Arizona formed and signed its second alliance to make safety and health resources more available to businesses. It is an agreement with the National Federation of Independent Businesses (NFIB) to work together to conduct training, promote each other's services, and to hold joint safety and health meetings or seminars.

Arizona expanded its partnership program for construction employers to encourage a safe and healthy work environment and to prevent serious accidents through increased training and implementation of enhanced safety and health programs. Two employers were added to the construction partnership program during FY 2004 and, currently, Arizona has four partnerships. In FY 2004, Arizona also worked up a partnership agreement with the State of Nevada to share information during the construction of a bridge over the Colorado River (Hoover Dam Bypass) since both states have jurisdiction over parts of this bridge.

Arizona has adopted the federal OSHA Safety and Health Achievement Recognition Program (SHARP) and has made a serious effort to promote this program. At present, Arizona has 17 SHARP participants.

Arizona's enforcement and consultation programs continue to be satisfactory overall. During this evaluation, Arizona conducted 1,796 inspections and 1,043 consultation visits and had seven vacancies at various times throughout the year. This compares to 2,058 inspections and 723 consultation visits conducted last year with only two vacancies. Although Arizona performed effectively in most areas, Arizona needs to focus its attention on the timely verification of serious hazard abatement. During this evaluation, 23.3% of serious hazards were not abated within 30 days of the abatement due date. In addition, the timely completion of discrimination investigations has been a problem and could be improved. ADOSH did not complete 40.8% of discrimination complaints within the required 90 calendar days.

# Table of Contents

INTRODUCTION AND BACKGROUND .....	1
<b>I. ASSESSMENT OF ARIZONA’S ACHIEVEMENT OF ANNUAL PERFORMANCE GOALS .....</b>	<b>3</b>
<b>A. Five-Year Strategic Goal 1: Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities.....</b>	<b>3</b>
Annual Performance Goal 1.1 .....	3
Annual Performance Goal 1.2 .....	3
Annual Performance Goal 1.3 .....	4
Annual Performance Goal 1.4 .....	4
<b>B. Five-Year Strategic Goal 2: Secure public confidence through excellence in the development and delivery of ADOSH services.....</b>	<b>5</b>
Annual Performance Goal 2.1 .....	5
<b>II. ASSESSMENT OF ARIZONA’S PERFORMANCE OF MANDATED ACTIVITIES .....</b>	<b>6</b>
<b>A. Program Administration .....</b>	<b>6</b>
<b>B. Enforcement .....</b>	<b>6</b>
Complaints .....	6
Imminent Danger .....	6
Denial of Entry .....	7
Inspections .....	7
Abatement Verification .....	8
Citation Processing .....	8
Sanctions.....	8
Public Employee Coverage.....	10
Review Procedures .....	10
Standards .....	11
Variances .....	11
CASPA’s.....	11
Discrimination .....	11
<b>C. Consultation .....</b>	<b>12</b>
Number of Consultants .....	12
Visits in High Hazard Establishments .....	12
Visits to Smaller Businesses.....	12
Visits Where Consultant Conferred with Employees .....	13
Verification of Serious Hazards.....	13
Uncorrected Serious Hazards .....	14
Training Program.....	14
Internal Quality Assurance Program for Consultation .....	14
Recognition and Exemption Program.....	14
Voluntary Protection Program .....	14
<b>III. FY 2004 ARIZONA ANNUAL REPORT .....</b>	<b>15</b>
<b>IV. FY 2004 REPORTS AND MEASURES .....</b>	<b>16</b>

## INTRODUCTION AND BACKGROUND

The Arizona Legislature enacted the Arizona Occupational Safety and Health Act of 1972 that charged the Arizona Division of Occupational Safety and Health (ADOSH) with the responsibility of administering the occupational safety and health program in Arizona. In 1974, the State implemented its Occupational Safety and Health plan, under the provisions of Section 18(b) of the Occupational Safety and Health Act and, on September 18, 1981, the State plan was certified as having completed all its developmental steps. Effective June 20, 1985, Arizona was granted final approval and concurrent Federal enforcement authority was relinquished. The designated agency for the administration of the State program is the Industrial Commission of Arizona (ICA) and, within the ICA, ADOSH is responsible for compliance and voluntary compliance programs of the Arizona occupational safety and health plan. The Director of the ICA and the State Plan Designee is Larry Etchechury. Darin Perkins administers the ADOSH program.

Under the Arizona State plan, ADOSH is comprised of three major units: enforcement, consultation, and training and education. It has jurisdiction over nearly 2.2 million workers in approximately 114,000 private and public establishments. The Arizona program covers all occupational safety and health issues within the state except for areas where the State is precluded from enforcement. These areas are: a) areas of exclusive Federal jurisdiction, b) private contractors on Indian Nation lands, c) Federal employees, d) copper smelters, and e) concrete and batch plants that are physically located within mine property.

ADOSH has a total of 54 staff positions and operates its occupational safety and health program under two Federal grant agreements: 1) a 23(g) operational program agreement that covers enforcement of private and public sector employers and consultation of public sector employers and 2) a 21(d) consultation program agreement that covers consultation of private sector employers. In FY 2004, ADOSH's operating budget was \$3,189,266 for its 23(g) program and \$760,556 for its 21(d) program. ADOSH receives State revenues based upon a tax of up to 3% on workers' compensation premiums.

Construction continues to be one of the high-hazard industries nationwide and ADOSH has directed significant resources to reducing the number of work-related injuries, illnesses and fatalities in Arizona's construction industry. ADOSH is committed to building and maintaining partnerships with Arizona organizations and individuals with an interest in workplace safety and health. The state staff recognizes that the division's effectiveness in reducing workplace injuries, illnesses and fatalities depends on the active involvement and support provided by management, labor and government.

The Voluntary Protection Program (VPP) promotes effective safety and health management recognizing that safety and health management which goes beyond OSHA standards can protect workers more effectively than simple compliance. To recognize this achievement, ADOSH continued outreach efforts to attract applicants to the Arizona VPP/STAR program. Arizona VPP sites continue to serve as mentors to other companies striving to improve their safety and health

programs. Arizona was slow in getting started in adopting a Safety and Health Achievement Recognition Program (SHARP), but in FY 2004 ADOSH significantly increased its efforts and went from zero to seventeen participants. This is a considerable improvement which should result in improved safety and health conditions at those particular worksites for years to come. Arizona also expanded its partnership program for construction employers to encourage a safe and healthy work environment and to prevent serious accidents through increased training and implementation of enhanced safety and health programs.

The Consultation Section has a current staffing level of two program managers, ten consultants, three training coordinators and two administrative support staff. Arizona provides consultation services through on-site consultation and training visits upon the request of an employer. In addition, consultants provide many off-site services such as conducting training courses, holding discussions with employers at ADOSH offices, mailing educational material to employers, and loaning instructional videos on a variety of topics.

Federal OSHA monitors ADOSH's program performance to ensure that Arizona's state plan is at least as effective as federal OSHA. Consistent with the Federal Government Performance and Results Act (GPRA), ADOSH developed a five-year Strategic Plan to establish standards for measuring the performance and effectiveness of its programs and services, against an established baseline, using a balanced combination of enforcement and outreach approaches. The ADOSH Strategic Plan sets goals that are incrementally achieved through the implementation of Annual Performance Plans. While ADOSH's primary objective is to improve occupational safety and health in all Arizona workplaces, the Strategic Plan and Annual Performance Plan provide a more specific focus for agency resources. The ADOSH Strategic Plan was revised in FY 2003 and covers FY 2003-2007.

This report, composed of two parts, covers the time period of October 1, 2003 through September 30, 2004 and evaluates the State's performance of its new goals and indicators. The first part is an assessment of Arizona's achievement of its FY 2004 Annual Performance goals and progress toward its five-year Strategic Plan goals. Part two addresses State program requirements (Mandated State Plan Activities), contained in 29 CFR 1902.3 and 29 CFR 1902.4, which address specific criteria for State Plans and indices of effectiveness.

## I. ASSESSMENT OF ARIZONA'S ACHIEVEMENT OF ANNUAL PERFORMANCE GOALS

- A. Five-Year Strategic Goal 1: Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities.

### Annual Performance Goal 1.1

*Reduce the injury and illness rate by 4% in the construction industry (except heavy construction)*

To achieve a reduction in the construction industry illness and injury rate, Arizona concentrated its resources in this industry and set goals for enforcement inspections, consultation surveys, and training courses. Arizona's construction industry goals were to conduct 1000 inspections and 420 consultation visits in addition to providing construction-related training courses.

Arizona exceeded its goals for inspections and consultation visits. ADOSH conducted 1069 (107%) inspections and 661 (157%) consultation surveys in construction. The training section also presented construction-related courses during the year with 379 construction companies attending.

The Consultation program activities are linked with compliance activities to address the Division's goals of reducing the construction illness and injury rate. ADOSH continued an outreach campaign toward the construction industry through the presentation of training courses and speeches to employees and employers, conducting consultation surveys, maintaining a website, and preparing and distributing newsletter articles and informational brochures. The Consultation program continues to stress construction safety in areas such as fall protection and trenching/shoring safety. The Consultation program has also continued partnerships with construction trade associations to provide safety training and to promote the use of consultation services.

The latest available illness and injury rate data (CY 2003) from the Bureau of Labor Statistics (BLS) shows a 32.0% reduction in the illness/injury rate for the construction industry compared to the baseline year (CY 2000) set by Arizona. Although the reduction in the BLS illness and injury rate decreased from 10.3 to 7.0 (32.0%), the data for CY 2003 is not directly comparable to data from prior years. This is because OSHA revised its requirements for recording occupational injuries and illnesses and, therefore, data used by BLS for CY 2003 is based on a modified recordkeeping system. However, this is still the best indicator we have in measuring state performance. ADOSH will be revising its baseline for the next evaluation period.

### Annual Performance Goal 1.2

*Reduce by 2% the number of silica samples that are out of compliance with the OSHA PEL.*

Silica remains a significant issue in Arizona and has recently become an issue in the roof tile industry. During FY 2003, Arizona established a baseline for this goal and found 10 enforcement inspections out of 61 (16.4%) and 7 consultation surveys out of 31 (22.6%) were out of compliance with the OSHA PEL. To meet this goal, Arizona targeted establishments within certain Standard Industrial Classification (SIC) groups, such as the marble industry, and sent letters to these employers inviting them to participate in the consultation program. Employers not responding to the invitation were placed on an inspection list. During this evaluation, ADOSH conducted two silica inspections, falling significantly short of its goal of 50 inspections and 25 consultation surveys. ADOSH did not offer any explanation for not meeting this target.

**Recommendation:** ADOSH needs to regularly track its progress in achieving its planned goals.

**Annual Performance Goal 1.3**

*Reduce fatalities and injuries to employees working within heavy construction by 8%.*

ADOSH established this goal to compliment the efforts of other agencies and associations in protecting construction workers in highway work zones. To impact heavy construction injuries and fatalities, ADOSH set goals of conducting 115 inspections and 25 consultation surveys in heavy construction. ADOSH fell short of its inspection goal and conducted only 90 inspections (with 160 hazards identified) but ADOSH more than doubled its consultation goal and conducted 54 surveys (100 hazards identified).

ADOSH data shows there were three fatalities in the heavy construction industry for FY 2004, which is the same number of fatalities in Arizona's baseline year (CY 2002). The latest available illness and injury rate data (CY 2003) from BLS shows a 56.9% reduction in the illness/injury rate for the heavy construction industry compared to the baseline year (CY 2000) set by Arizona. Although the reduction in the BLS illness and injury rate decreased from 10.9 to 4.7 (56.9%), the data for CY 2003 is not directly comparable to data from prior years. This is because the Occupational Safety and Health Administration revised its requirements for recording occupational injuries and illnesses and, therefore, data used by the BLS for CY 2003 is based on a modified recordkeeping system. However, this is still the best indicator we have in measuring state performance. ADOSH will be revising its baseline for the next evaluation period.

**Annual Performance Goal 1.4**

*Approve at least two new workplaces for inclusion in the Voluntary Protection Program.*

Arizona met this goal. ADOSH approved two workplaces for inclusion in its Voluntary Protection Program. ADOSH also completed a brochure to inform employers of the requirements and benefits of the VPP and distributed it to 15 employers during this period. In addition, the Assistant Director, Pat Ryan, educated employers from Arizona, Nevada and California in the requirements of VPP by leading a workshop that included the completion of the VPP application.

**B. Five-Year Strategic Goal 2: Secure public confidence through excellence in the development and delivery of ADOSH services.**

**Annual Performance Goal 2.1**

*Reduce citation lapse times by 5%.*

Arizona did not meet this goal. ADOSH averaged 58.2 days to issue safety inspection citations and 49.1 days to issue health inspection citations. This reflects an **increase** in citation lapse time of 14% (58.2/50.9) for safety and 28% (49.1/38.5) for health citation issuance as compared to the baseline.

**Recommendation:** *ADOSH needs to implement procedures to reduce citation lapse times.*

## II. ASSESSMENT OF ARIZONA'S PERFORMANCE OF MANDATED ACTIVITIES

### A. Program Administration

As part of an approved state plan, each state must successfully administer a program that meets its mandated responsibilities. These are core elements of an effective state occupational safety and health program and are required by the OSH Act and regulations in 29 CFR Parts 1902 and 1953. Through its annual grant application, Arizona ensured that the program will contain all fundamental elements required of a state plan and that the state will work to meet its commitments.

In FY 2004, ADOSH operated with a budget of \$3,189,266 for its 23(g) program and \$760,556 for its 21(d) program. ADOSH has an authorized staffing level of 54 positions, of which 26 are safety and 16 are health positions. However, during this evaluation period, ADOSH had four safety and three health vacancies.

### B. Enforcement

#### Complaints

Arizona's performance in handling complaints in a timely manner was satisfactory. In FY 2004, Arizona averaged 7.21 days to conduct an on-site complaint inspection, compared to its seven-day goal. For investigations involving a phone/fax procedure, the State averaged 2.3 days, compared to its three-day goal. In 96.8% of the complaints received, ADOSH notified complainants of inspection results in a timely manner. (SAMM 1,2,3)

Table 1 shows the average number of workdays it took ADOSH to initiate complaint inspections and investigations and the percent of complaint inspections where ADOSH notified complainants within 20 workdays of citation issuance or 30 workdays of closing conference without citation. The table also compares this year's performance with that of previous fiscal years.

Table 1

Complaints (SAMM 1,2,3)						
	<i>FY 2000</i>	<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>	<i>FY 2004</i>	<i>Goal</i>
Days to Initiate Inspection (SAM 1)	11.52 days (1832/159)	9.69 days (2074/214)	7.08 days (2311/326)	5.20 days (1612/310)	7.21 days (2322/322)	7 days
Days to Initiate Investigation (SAM 2)	2.65 days (1826/688)	3.56 days (871/244)	3.55 days (771/217)	2.90 days (586/202)	2.30 days (815/353)	3 days
Complainants Notified Timely (SAM 3)	92.36% (145/157)	88.63% (187/211)	95.92% (306/319)	96.82% (304/314)	96.83% (305/315)	100 %

#### Imminent Danger

Arizona's response to complaints and referrals alleging imminent danger was satisfactory. ADOSH had three complaint/referrals classified as imminent danger and responded to all within one day. (SAMM 4)

Denial of Entry

Arizona did not have any denials of entry during this evaluation period. (SAMM 5)

Inspections

ADOSH did not meet its projected inspection goal of conducting 1480 safety and 520 health inspections. During this evaluation period, Arizona conducted 1338 safety (90.4% of projected) and 458 health (88.1% of projected) inspections. In addition to projecting activity levels for inspections, ADOSH projected that at least 75% of its safety inspections would be in the construction industry and it achieved this goal. (Micro-to-Host Report)

Chart 1 shows a breakdown of the number of safety and health inspections conducted by ADOSH during FY 2004. Chart 2 shows a breakdown for the number of inspections by industry that ADOSH conducted. The charts also compare this year's performance with that of previous fiscal years. (Micro-to-Host Report)

Chart 1

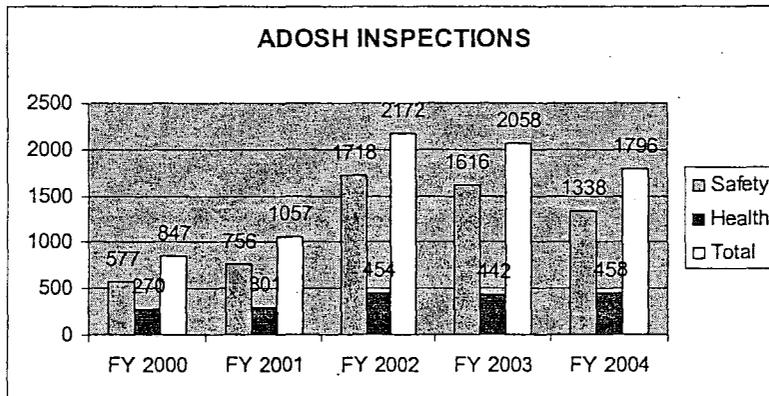
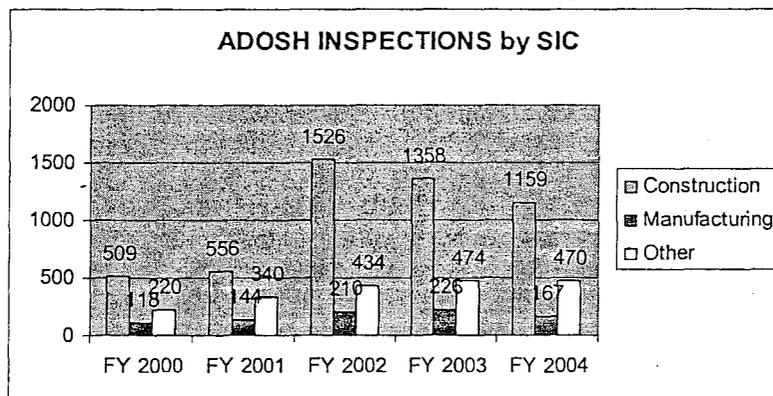


Chart 2



**Abatement Verification**

Arizona did not meet this goal of achieving 100% abatement verification. The percentage of safety and health serious, willful, repeat violations (S/W/R) verified abated within the abatement due date plus 30 calendar days was only 77% for the private sector and 84% for the public sector. This reflects a slight improvement over last year's private sector results and a moderate decline for the public sector. (SAMM 6)

Table 2 shows the percent of serious, willful, repeat and unclassified current violations that ADOSH found and verified abated within the abatement due date plus 30 calendar days. The table also compares this year's performance with that of the previous fiscal year.

Table 2

% S/W/R Violations Timely Verified Abated (SAMM 6)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Goal
Private Sector	No Data	No Data	33.04% (185/560)	73.76% (492/667)	76.68% (569/742)	100%
Public Sector	No Data	No Data	36.36% (8/22)	95.24% (20/21)	84.09% (37/44)	100%

**Recommendation:** Arizona needs to ensure timely abatement verification of serious, willful, repeat violations.

**Citation Processing**

The average number of calendar days it took Arizona to issue citations, from opening conference to issuance of citations, was 58.2 days for safety inspections and 49.1 days for health citations compared to national average results of 46.3 and 60.7 days, respectively. As indicated in Arizona's Annual Performance Goal 2.1, ADOSH needs to implement procedures to reduce citation lapse times. (SAMM 7)

Table 3 shows the average number of calendar days from the date the inspection was opened to the date ADOSH issued a citation and compares this year's performance with that of previous fiscal years.

Table 3

Citation Lapse Time in Calendar Days (SAMM 7)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY04 Nat. Avg.
Safety	51.73 days (19710/381)	47.49 days (16669/351)	51.02 days (26735/524)	53.66 days (30480/568)	58.19 days (45448/781)	46.3 days
Health	43.58 days (6145/141)	36.21 days (5685/157)	38.96 days (9507/244)	46.05 days (13127/285)	49.13 days (16264/331)	60.7 days

**Sanctions**

In FY 2004, the percent programmed safety inspections with serious, willful and repeat (S/W/R) violations increased to 26% from a figure of 16% during the last evaluation. Although the percent of programmed safety inspection is only half the national average, ADOSH has significantly increased this percentage over the last two years. A similar comparison shows that

the percent of programmed health inspections with S/W/R violations decreased from 40% to 32%. (SAMM 8)

Table 4 shows the percent of ADOSH's programmed inspections that had a violation classified as serious, willful, repeat, or unclassified and compares this year's performance with that of previous fiscal years. The significant drop seen for programmed safety inspections in FY 2002 reflects a policy change in Arizona. In order to establish a complete historical record, ADOSH began writing inspection reports for all employers inspected on construction sites in January 2002, regardless of whether or not citations were issued. Prior to that date, ADOSH only wrote an inspection report on the general contractor as well as any subcontractors who were found in violation of the standards.

Table 4

% Programmed Inspections with S/W/R Violations (SAMM 8)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY04 Nat. Data
Safety	48.08 % (125/260)	33.3 % (185/556)	12.98 % (189/1456)	16.29 % (202/1240)	25.95 % (266/1025)	55.9
Health	68.18 % (15/22)	33.9 % (36/106)	38.73 % (55/142)	40.13 % (63/157)	31.67 % (70/221)	48.9

**Recommendation:** ADOSH should re-evaluate its inspection-targeting program to go to places with significant hazards.

During this evaluation period, the average number of violations per inspection for S/W/R violations remains at one-half the national average of 2.0 and other-than-serious violations remains significantly above the national average of 1.4. Although the number of S/W/R violations found is much lower than the national average, Arizona issued more violations (3.61) per inspection if all violations are grouped. Case file reviews have been conducted in previous fiscal years and the classification of violations was not found to be a problem. (SAMM 9)

Table 5 shows the average number of violations found by ADOSH among inspections that found a violation and compares this year's performance with that of previous fiscal years.

Table 5

Violations/Inspection (SAMM 9)						
	FY2000	FY2001	FY2002	FY 2003	FY 2004	FY04 Nat. Avg.
S/W/R	1.25 (657/522)	1.12 (572/508)	1.06 (817/768)	0.99 (807/809)	1.06 (1184/1113)	2.0
Other	2.30 (1202/522)	2.13 (1087/508)	2.24 (1726/768)	2.69 (2182/809)	2.55 (2841/1113)	1.4

In FY2004, the average initial penalty continues to be above the national average for serious violations.

Table 6 shows the average initial penalty that ADOSH issued for a serious violation and compares this year's performance with that of previous fiscal years.

Table 6

Average Penalty (SAMM 10)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY04 Nat. Avg.
Serious	\$2,372	\$2,153	\$1,925	\$1,744	\$1,810	\$1,306

**Public Employee Coverage**

Public employee coverage is found to be satisfactory. The State's enforcement program for state and local government is identical to that in the private sector. ADOSH schedules inspections and issues citations and penalties for both in the same manner and if citations are contested, State agencies are represented by the Attorney General's Office. During FY 2004, 9.3% of Arizona's inspections were conducted in the public sector, which is higher than its three-year average of 6.6%. (SAMM 11)

Table 7 shows the percent of ADOSH's total inspections that were conducted in the public sector and compares this year's performance with that of previous fiscal years.

Table 7

% Inspections in Public Sector (SAMM 11)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	3-yr State Avg.
	5.37 % (46/857)	6.26 % (65/1038)	3.41 % (74/2170)	7.28 % (142/1951)	9.30 % (167/1796)	6.6 %

**Review Procedures**

Upon request from the employer, ADOSH supervisors hold informal conferences prior to the end of the 15-day statutory contest period. Based on the evidence presented at the informal conference, ADOSH may delete or reclassify the violations and may reduce the penalty. If ADOSH and the employer are unable to resolve the employer's concerns through the informal conference, the employer may request a hearing before an Administrative Law Judge (ALJ) of the ICA. Any party aggrieved by a decision of a hearing may request a review by the five-member Review Board. The Review Board may affirm, reverse, modify or supplement the decision of the ALJ. The Board's decision may be appealed to the Superior Court.

Pre-contest data indicates most citations are upheld. In FY 2004, ADOSH continued to sustain both violations and penalties during informal conferences. Only 3.1% of violations were vacated, 0.5% of violations were reclassified and 67.8% of the penalties were retained. This compares favorably with federal data of 4.5%, 4.6% and 60.7% respectively. (SIR C7-C9)

In FY 2004, the average lapse time from the date of contest to a first level decision is only 135 days compared to 183 days for the national average. (SAMM 12) ADOSH also continued to sustain violations during the contest period. During the review procedures, 14.3% of contested violations were vacated, 7.2% violations were reclassified, and 61.6% of penalties were retained. The percent violations vacated, reclassified and retained compares favorably with federal data of 23.1% and 14.1%, and 52.3%, respectively. (SIR E-1, 2, 3)

Table 8 shows the average number of days it took Arizona to make a “first-level” decision for contested cases and compares this year’s performance with that of previous fiscal years.

Table 8

Contested Case Lapse Time (days) (SAMM 12)						
	<i>FY 2000</i>	<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>	<i>FY 2004</i>	<i>FY 2004 Nat. Avg.</i>
	149.4 days (13898/93)	142.7 days (12560/88)	152.8 days (15126/99)	176.2 days (8103/46)	135.4 days (10700/79)	183.0 days

**Standards**

States are required, by 29 CFR 1953.5, to adopt Federal standards actions within six months of the date of promulgation of the new Federal standard or more stringent amendment. In FY 2004, OSHA published two Federal Register notices that required State adoption within six months. The first notice promulgated a fire protection standard for shipyard employment. However, Arizona plan does not cover maritime activities and, therefore, did not adopt this standard.

The second notice revoked “Respiratory Protection for M. Tuberculosis” (29 CFR 1910.139) and begin applying the General Industry Respiratory Protection Standard (29 CFR 1910.134) to respiratory protection against TB. The adoption due date for States was June 30, 2004, however, Arizona anticipates adoption by March 30, 2005. The State’s performance in standards adoption exceeded the required six-month time frame.

**Recommendation:** Arizona needs to ensure the timely adoption of Federal standards.

**Variations**

Arizona did not issue any variations in FY 2004.

**CASPAs**

Two Complaints About State Program Administration (CASPA) were filed with Federal OSHA during FY 2004 and they are still being reviewed. One relates to timeliness and adequacy of a fatality inspection and the other relates to the adequacy of a complaint inspection.

**Discrimination**

A total of 49 complaints alleging discrimination were investigated during this evaluation period, seven (14.29%) of which were found to be meritorious. ADOSH met the 90-day time limit for completing discrimination investigations 59% of the time. (SAMM 14) Of the seven meritorious cases, 2 (28.57%) were settled. (SAMM 15)

Table 9 shows the percent of discrimination investigations (11c) that ADOSH completed within 90 calendar days and compares this year’s performance with that of previous fiscal years.

Table 9

Discrimination (SAMM 13, 14, 15)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Goal/FY04 Nat. Avg.
Total Cases Opened	20	24	39	51	49	-
% Completed Within 90 Days	65.00 % (13/20)	58.33 % (14/24)	64.10 % (25/39)	70.59 % (36/51)	59.18 % (29/49)	100 %
% Merit Cases	20.00 % (4/20)	25.00 % (6/24)	15.38 % (6/39)	13.73 % (7/51)	14.29 % (7/49)	20.9 %
% Merit Cases Settled	50.0 % (2/4)	83.33 % (5/6)	33.33 % (2/6)	71.43 % (5/7)	28.57 % (2/7)	85.7 %

**Recommendation:** ADOSH needs to ensure discrimination complaints are completed within the required 90 days.

### C. Consultation

#### Number of Consultants

According to Arizona's Grant application, the current staffing level of the Consultation and Training Branch consists of two program managers, ten consultants, three training coordinators, and two administrative support staff. As of the end of the fiscal year, Arizona had one consultation position vacant.

#### Visits in High Hazard Establishments

Arizona's performance is satisfactory. In FY 2004, the percent of initial visits in high hazard industries was 98.44% (MARC 1) and in smaller business establishments with less than 250 employees was 95.10%. (MARC 2) The consultation section has continually promoted the consultation program through partnerships, outreach campaigns and its direct mailing to high hazard establishments.

Table 10 shows the percent of initial consultation visits conducted in high hazard establishments and compares this year's performance with that of previous fiscal years.

Table 10

Visits in High Hazard Establishments (MARC 1) (Private Sector)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Goal
	85.97 % (380/442)	88.82 % (556/626)	97.53 % (829/850)	94.86 % (609/642)	98.44 % (945/960)	Not less than 90%

#### Visits to Smaller Businesses

Table 11 shows percent of initial consultation visits to smaller businesses (having no more than 250 employees) and compares this year's performance with that of previous fiscal years.

Table 11

Visits to Smaller Businesses (MARC 2) (Private Sector)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Goal
	98.19 % (434/442)	97.60 % (611/626)	98.47 % (837/850)	92.99 % (597/642)	95.10 % (913/960)	Not less than 90%

Visits Where Consultant Conferred with Employees

In FY 2004, ADOSH consultants conferred with employees during 99.58% of initial consultation visits and 60% of its follow-up visits. (MARC 3)

Table 12 shows the percent of initial and follow-up visits during which the consultant conferred with employees and compares this year's performance with that of previous fiscal years.

Table 12

Visits where Consultant Conferred with Employees (MARC 3) (Private Sector)						
	FY2000	FY2001	FY2002	FY 2003	FY 2004	Goal
Initial	100.00 % (442/442)	99.84 % (625/626)	99.65 % (847/850)	99.53 % (639/642)	99.58 % (956/960)	100%
Follow-up	38.10 % (8/21)	90.91 % (10/11)	79.31% (23/29)	100 % (10/10)	60.00 % (3/5)	100%

Verification of Serious Hazards

Serious hazards are required to be corrected and verified in a timely manner, which is no more than 14 days beyond the latest correction due date. (MARC 4A) In FY 2004, ADOSH obtained evidence of abatement within the 14-day time period for 95.55% of hazards classified as serious.

Table 13 shows the percent of serious hazards that ADOSH verified corrected within 14 working days of the latest correction due date, percent of serious hazards that took ADOSH more than 14 days to verify correction, and the percent of serious hazards that were referred to enforcement. The table also compares this year's performance with that of previous fiscal years.

Table 13

Verification of Serious Hazards (MARC 4) (Private Sector)						
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Goal
% Verif'd corrected within 14 days of correction date (MARC 4A)	63.06% (710/1126)	90.01% (631/701)	89.59% (783/874)	93.03% (854/918)	95.55% (966/1011)	100%
% Not Verified Corrected within 14 days of correction date (MARC 4B)	36.94% (416/1126)	9.99% (70/701)	10.41% (91/878)	6.97% (64/918)	4.45% (45/1011)	0%
% Referred to enforcement (MARC 4C)	0% (0/1126)	0% (0/701)	0% (0/874)	0% (0/918)	0% (0/1011)	-

Analysis: Although Arizona has made progress in this goal, they still need to ensure that serious hazards are corrected in a timely manner.

**Uncorrected Serious Hazards**

In FY 2004, ADOSH did not have any uncorrected hazards for more than 90 days past due. Table 14 shows the number of uncorrected serious hazards with a correction date of more than 90 days past due and compares this year's performance with that of previous fiscal years.

Table 14

Uncorrected Serious Hazards (MARC 5) (Private Sector)						
	<i>FY 2000</i>	<i>FY 2001</i>	<i>FY 2002</i>	<i>FY 2003</i>	<i>FY 2004</i>	<i>Goal</i>
	0	1	1	1	0	0

**Training Program**

Arizona's performance is satisfactory. The Consultation Section offers training sessions throughout the year to employers, employees and professional groups. In FY 2004, Arizona conducted 384 training sessions with 3359 employer participants and 5247 employee participants attending these sessions.

**Internal Quality Assurance Program for Consultation**

Arizona operates an Internal Quality Assurance (IQA) program through the use of accompanied visits, on-the-job evaluations, case file reviews and data review. The consultants are supervised through the continual use of on-the-job evaluations and regular review of their work. This ensures that hazards are identified and corrective advice is offered. Supervisors hold regular meetings with the consultants to ensure uniformity between sections and individual employees.

**Recognition and Exemption Program**

Under the Consultation agreement, States are required to implement a recognition and exemption program. Arizona has adopted the federal OSHA SHARP. At present, Arizona has 17 SHARP participants and has made a serious effort to promote this program.

Arizona formed and signed its second alliance with the National Federation of Independent Businesses (NFIB) which will promote safety and health in Arizona businesses. In addition, Arizona expanded their partnership program for construction employers that would offer the opportunity for employer recognition. Two employers have signed an agreement with ADOSH in FY 2004 and, currently, Arizona has four partnerships.

**Voluntary Protection Program**

VPP promotes effective safety and health management recognizing that safety and health management, which goes beyond OSHA standards, can protect workers more effectively than simple compliance. To recognize this achievement, ADOSH continued outreach efforts to attract applicants to the Arizona VPP/STAR program and has added two new sites in FY 2004. Arizona VPP sites continue to serve as mentors to other companies striving to improve their safety and health programs.

### **III. FY 2004 ARIZONA ANNUAL REPORT**

**THE INDUSTRIAL COMMISSION OF ARIZONA  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**Fiscal Year 2004  
Annual Report**



**October 1, 2003 through September 30, 2004**

*Director: Darin Perkins*

*Assistant Director: Patrick Ryan*

*Assistant Director: Mark Norton*

*I.T. Administrator: Edie Doolittle*

*Administrative Secretary: Dianne Marks*

# ADOSH

## Quarterly and Annual Report

A. Number of safety and health compliance inspections by category are shown below:

CATEGORY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
Accident	14	5	6	15	40	2.23
Complaint	63	75	94	83	315	17.57
Planned	309	325	365	175	1174	65.48
Prog. Related	12	4	10	8	34	1.9
Follow-up	1	1	1	2	5	0.28
Referrals	17	13	25	6	61	3.4
Unprog. Related	42	48	45	28	163	9.09
Monitoring	1	0	0	0	1	0.06
<b>Total</b>	<b>459</b>	<b>471</b>	<b>546</b>	<b>317</b>	<b>1793</b>	

Number of safety and health compliance inspections by SIC are shown below:

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent of Total	Yearly Goal	Percent of Yearly Goal
0100-0999	Agriculture	17	4	8	11	40	2.23	121	33.06
1500-1799	Construction	266	291	400	202	1159	64.64	1060	109.34
2000-3999	Manufacturing	49	35	43	40	167	9.31	444	37.61
4000-8999	Services	80	76	89	61	306	17.07	418	73.21
9100-9799	Public Admin.	47	65	6	3	121	6.75	121	100
<b>Total</b>		<b>459</b>	<b>471</b>	<b>546</b>	<b>317</b>	<b>1793</b>		<b>2164</b>	<b>82.86</b>

Inspections in emphasis programs:

EMPHASIS PROGRAM	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
HI CLAIMS	80	68	6	0	154
CLAIMS	6	8	6	1	21
FALL	49	53	124	61	287
TRENCH	26	17	37	22	102

Number of discrimination investigations opened:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
Discrimination Investigations opened	17	9	11	25	62

# ADOSH

## Quarterly and Annual Report

### B. PHOENIX "A" SAFETY COMPLIANCE INSPECTIONS

CATEGORY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
Accident	3	2	1	5	11	1.85
Complaint	15	11	19	15	60	10.08
Planned	81	105	157	110	453	76.13
Prog. Related	1	1	0	6	8	1.34
Follow-up	0	0	0	0	0	0
Referrals	5	1	5	0	11	1.85
Unprog. Related	16	16	14	6	52	8.74
Monitoring	0	0	0	0	0	0
<b>Total</b>	<b>121</b>	<b>136</b>	<b>196</b>	<b>142</b>	<b>595</b>	
Avg. per CO/wk	1.55	1.74	2.51	2.18		

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent of total	Yearly Goals	Percent of Yearly Goal
0100-0999	Agriculture	0	2	2	0	4	0.67	34	11.76
1500-1799	Construction	73	109	172	128	482	81.01	411	117.27
2000-3999	Manufacturing	8	4	9	5	26	4.37	102	25.49
4000-8999	Services	14	6	13	9	42	7.06	102	41.18
9100-9799	Public Admin.	26	15	0	0	41	6.89	34	120.59
<b>Total</b>		<b>121</b>	<b>136</b>	<b>196</b>	<b>142</b>	<b>595</b>		<b>683</b>	<b>87.12</b>
Discrimination Investigations Opened		0	0	0	0	0			

# ADOSH

## Quarterly and Annual Report

### C. PHOENIX "B" SAFETY COMPLIANCE INSPECTIONS

CATEGORY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
Accident	4	1	0	3	8	1.52
Complaint	6	10	19	7	42	8
Planned	132	128	128	37	425	80.95
Prog. Related	3	0	2	0	5	0.95
Follow-up	0	0	0	2	2	0.38
Referrals	6	2	6	1	15	2.86
Unprog. Related	5	4	11	7	27	5.14
Monitoring	1	0	0	0	1	0.19
<b>Total</b>	<b>157</b>	<b>145</b>	<b>166</b>	<b>57</b>	<b>525</b>	
Avg. per CO/wk	2.42	2.23	2.55	1.62		

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent of total	Yearly Goals	Percent of Yearly Goal
0100-0999	Agriculture	1	1	3	1	6	1.14	32	18.75
1500-1799	Construction	122	111	146	44	423	80.57	384	110.16
2000-3999	Manufacturing	9	4	7	4	24	4.57	96	25
4000-8999	Services	25	17	10	8	60	11.43	96	62.5
9100-9799	Public Admin.	0	12	0	0	12	2.29	32	37.5
<b>Total</b>		<b>157</b>	<b>145</b>	<b>166</b>	<b>57</b>	<b>525</b>		<b>640</b>	<b>82.03</b>
Discrimination Investigations Opened		3	2	3	3	11			

# ADOSH

## Quarterly and Annual Report

### D. TUCSON SAFETY COMPLIANCE INSPECTIONS

CATEGORY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
Accident	3	0	2	2	7	3.59
Complaint	5	10	5	10	30	15.38
Planned	37	35	31	4	107	54.87
Prog. Related	6	1	7	0	14	7.18
Follow-up	0	0	0	0	0	0
Referrals	0	1	1	2	4	2.05
Unprog. Related	14	11	4	4	33	16.92
Monitoring	0	0	0	0	0	0
<b>Total</b>	<b>65</b>	<b>58</b>	<b>50</b>	<b>22</b>	<b>195</b>	
Avg. per CO/wk	2.5	2.23	1.92	0.85		

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent of total	Yearly Goals	Percent of Yearly Goal
0100-0999	Agriculture	3	1	1	0	5	2.56	15	33.33
1500-1799	Construction	54	41	41	10	146	74.87	180	81.11
2000-3999	Manufacturing	1	2	3	7	13	6.67	45	28.89
4000-8999	Services	6	13	5	5	29	14.87	45	64.44
9100-9799	Public Admin.	1	1	0	0	2	1.03	15	13.33
<b>Total</b>		<b>65</b>	<b>58</b>	<b>50</b>	<b>22</b>	<b>195</b>		<b>300</b>	<b>65</b>
Discrimination Investigations Opened		6	0	0	4	10			

# ADOSH

## Quarterly and Annual Report

### E. PHOENIX HEALTH COMPLIANCE INSPECTIONS

CATEGORY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
Accident	2	0	2	4	8	2.31
Complaint	25	29	38	36	128	36.89
Planned	46	55	30	7	138	39.77
Prog. Related	2	2	1	0	5	1.44
Follow-up	0	1	1	0	2	0.58
Referrals	5	8	12	1	26	7.49
Unprog. Related	5	14	13	8	40	11.53
Monitoring	0		0	0	0	0
<b>Total</b>	<b>85</b>	<b>109</b>	<b>97</b>	<b>56</b>	<b>347</b>	
Avg. per CO/wk	0.82	1.05	1.07	0.72		

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent of total	Yearly Goals	Percent of Yearly Goal
0100-0999	Agriculture	6	1	1	2	10	2.88	30	33.33
1500-1799	Construction	8	21	22	12	63	18.16	65	96.92
2000-3999	Manufacturing	24	19	23	13	79	22.77	156	50.64
4000-8999	Services	28	32	46	28	134	38.62	135	99.26
9100-9799	Public Admin.	19	36	5	1	61	17.58	30	203.33
<b>Total</b>		<b>85</b>	<b>109</b>	<b>97</b>	<b>56</b>	<b>347</b>		<b>416</b>	<b>83.41</b>
Discrimination Investigations Opened		6	4	7	16	33			

# ADOSH

## Quarterly and Annual Report

### F. TUCSON HEALTH COMPLIANCE INSPECTIONS

CATEGORY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
Accident	1	2	1	0	4	3.05
Complaint	12	14	13	15	54	41.22
Planned	13	3	19	19	54	41.22
Prog. Related	0	0	0	2	2	1.53
Follow-up	1	0	0	0	1	0.76
Referrals	1	1	1	2	5	3.82
Unprog. Related	2	4	3	2	11	8.4
Monitoring	0	0	0	0	0	0
<b>Total</b>	<b>30</b>	<b>24</b>	<b>37</b>	<b>40</b>	<b>131</b>	
Avg. per CO/wk	1.15	0.92	1.42	1.54		

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent of total	Yearly Goals	Percent of Yearly Goal
0100-0999	Agriculture	7	0	1	8	16	12.21	10	160
1500-1799	Construction	9	9	18	8	44	33.59	20	220
2000-3999	Manufacturing	6	6	2	12	26	19.85	45	57.78
4000-8999	Services	7	8	15	11	41	31.3	40	102.5
9100-9799	Public Admin.	1	1	1	1	4	3.05	10	40
<b>Total</b>		<b>30</b>	<b>24</b>	<b>37</b>	<b>40</b>	<b>131</b>		<b>125</b>	<b>104.8</b>
Discrimination Investigations Opened		2	3	1	2	8			

# ADOSH

## Quarterly and Annual Report

### G. CONSULTATION ACTIVITY

#### PHOENIX

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
0100-0999	Agriculture	3	3	5	1	12	2.33
1500-1799	Construction	35	72	93	101	301	58.56
2000-3999	Manufacturing	7	14	8	22	51	9.92
4000-8999	Services	29	22	39	32	122	23.74
9100-9799	Public Admin.	0	11	7	10	28	5.45
<b>Total</b>		<b>74</b>	<b>122</b>	<b>152</b>	<b>166</b>	<b>514</b>	
Safety Average per	Consultations sfty consult/wk.	46 1.77	86 2.21	122 3.13	129 3.1	383	
Health Average per	Consultations IH consult/wk	28 0.86	36 1.38	30 1.15	37 1.42	131	

#### TUCSON

SIC	INDUSTRY	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals	Percent
0100-0999	Agriculture	0	1	3	2	6	1.12
1500-1799	Construction	88	106	112	109	415	77.57
2000-3999	Manufacturing	1	6	7	7	21	3.93
4000-8999	Services	8	21	18	5	52	9.72
9100-9799	Public Admin.	1	4	18	18	41	7.66
<b>Total</b>		<b>98</b>	<b>138</b>	<b>158</b>	<b>141</b>	<b>535</b>	
Safety Average per	Consultations sfty consult/wk.	92 2.36	125 3.21	140 3.59	124 3.18	481	
Health Average per	Consultations IH consult/wk	6 0.62	13 1	18 1.38	17 1.31	54	

# ADOSH

## Quarterly and Annual Report

### H. TRAINING SECTION

OVERALL TRAINING STATISTICS	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
Training Courses/Speeches Presented	83	82	126	93	384
Employer Participants Trained	688	785	1038	848	3359
Employer Participant - Hours	2139	2275	2919	2205	9538
Employee Participants Trained	1090	1358	1454	1345	5247
Employee Participant - Hours	3286	3955	3686	3623	14550
Hours of training conducted	260	212	341	263	1076
Average mgmt per class	8.29	9.57	8.24	9.12	8.81
Average employees per class	13.13	16.56	11.54	14.46	13.92
Average class length (hours)	3.13	2.59	2.71	2.83	2.82
<b>Employers in attendance by SIC</b>					
0100 - 0999 Agriculture	7	20	19	11	57
1000 - 1499 Mining	1	0	0	0	1
1500 - 1799 Construction	93	88	96	102	379
2000 - 3999 Manufacturing	54	36	46	34	170
4000 - 4999 Transportation	9	9	7	10	35
5000 - 5999 Wholesale/Retail Trade	15	13	24	21	73
6000 - 6799 Fin/Ins/Real Estate	16	16	14	20	66
7000 - 8999 Services	114	167	148	141	570
9100 - 9799 Government	35	40	28	15	118
9999 N.C./ Various Employers	7	2	5	13	27
<b>Total</b>	351	391	387	367	1496
Average courses per trainer per week	2.2	2.1	3.2	2.4	

# ADOSH

## Quarterly and Annual Report

### I. STANDARDS/PLAN CHANGES

*The Arizona Division of Occupational Safety & Health did not submit any state plan changes during this year.*

**There were no standard or plan changes during FY 04.**

# ADOSH Quarterly and Annual Report

## J. BOILER SECTION

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
State Inspections	494	398	441	449	1782
Insurance Inspections	274	298	287	298	1157
Total	768	696	728	747	2939
Requirements	167	177	225	124	693
Insp./ Inspector/wk	19	16.5	17	17.3	

# ADOSH

## Quarterly and Annual Report

### K. ELEVATOR SECTION

Inspection Type	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
Annual Inspections	848	871	926	852	3497
Violations	316	362	273	312	1263
In Compliance	532	509	654	540	2235
New Inspections	83	60	53	88	284
Violations	42	21	16	26	105
In Compliance	41	39	19	62	161
Follow up Inspections	45	13	22	19	99
Violations	12	7	2	6	27
In Compliance	34	6	20	13	73
<b>Sub Total</b>	<b>976</b>	<b>944</b>	<b>1001</b>	<b>959</b>	<b>3880</b>
Complaint Inspections	2	2	0	0	4
Accident Investigations	0	0	1	0	1
Training Programs	0	0	0	0	0
Pre-job Consultations	64	84	118	81	347
Interim Follow ups	52	41	39	45	177
Personnel Hoist Consultations	7	5	12	3	27
Five Year Tests	0	5	8	0	13
Out of Service	44	51	52	35	182
					0
<b>Sub Total</b>	<b>169</b>	<b>188</b>	<b>230</b>	<b>164</b>	<b>751</b>
<b>Grand Total</b>	<b>1145</b>	<b>1132</b>	<b>1231</b>	<b>1123</b>	<b>4631</b>
Inspections per Inspector/wk	14.7	14.5	15.8	16.2	

# ADOSH

## Quarterly and Annual Report

### SIGNIFICANT CASES:

#### First Quarter:

#### Second Quarter:

Sulpher Springs Valley Electric Cooperative: Several citations, including willful serious citations, were issued to SSVEC in response to an accident that left one employee severely injured and paralyzed. Penalties of approximately \$136,000 were issued.

#### Third Quarter

Tabcon, Inc.: Contractor on Davis-Monthan Air Force Base. Performing roofing work. Issued willful and serious citations for fall protection, etc. Penalties in excess of \$100,000.00.

Factor Sales, Inc.: Inspection conducted in response to a complaint of employees being locked in stores at night. Complaint was valid. Willful citations for locking employees in stores. Penalties in excess of \$400,000.00 issued.

#### Fourth Quarter:

# ADOSH

## Quarterly and Annual Report

### GOAL 1.1

**5-Year Performance Goal:**

*Reduce the injury and illness rate by 10% in the construction industry, except heavy construction.*

**Annual Performance Goal:**

*Reduce the injury and illness rate by 2% in the construction industry, except heavy construction.*

**BASELINE:** BLS calendar year 2000 Total Arizona Case Rate for construction = 10.3

2001 rate = 9.2

2002 rate = 8.4\*

2003 rate = N/A at time of report.

### GOAL ACTIVITY:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
<b>Compliance Inspections</b>	246	273	366	184	1069
Hazards identified	264	309	470	214	1257
% insp. w/ hazards	49	50	59	55	
<b>Consultation Surveys</b>	117	163	184	197	661
Hazards identified	223	380	370	417	1390
% surveys w/ hazards	79	93	91	86	
<b>Const'n companies attending classes</b>	93	88	96	102	379

\*Data recording and collection changed beginning in 2002. Comparisons with prior years may not be accurate.

# ADOSH

## Quarterly and Annual Report

**GOAL 1.2**

**5-Year Performance Goal:**

*Reduce by 10% the percentage of silica samples that are out of compliance with the OSHA PEL.*

**Annual Performance Goal:**

*Reduce by 3% the percentage of silica samples that are out of compliance with the OSHA PEL.*

**Baseline: Number of silica samples out of compliance with the OSHA PEL during FY 2003:**

*Compliance = 10*

*Consultation = 7*

**FY 2004: Compliance = 2**

**Consultation = 0**

**GOAL ACTIVITY:**

Compliance Inspections	0	0	1	1	2
Hazards identified	0	0	5	5	10
% insp. w/ hazards	0	0	100	100	
# insp. with monitoring	0	0	1	1	2
# insp. w/ silica overexposure	0	0	1	1	2
Consultation Surveys	0	0			0
Hazards identified	0	0			0
% surveys w/ hazards	0	0			
# surveys with monitoring	0	0			0
# surveys w/ silica overexposure	0	0			0
Training Courses Taught	0	0	1	0	1
# Employers in attendance			6		
# Employees in attendance			10		

**First Quarter:**

No inspections or surveys were conducted this quarter in response to this emphasis program, however, ADOSH's silica training course was completed and is currently being made available to employers.

# ADOSH

## Quarterly and Annual Report

### GOAL 1.3

**5-Year Performance Goal:**

*Reduce fatalities and injuries to employees working within heavy construction such as highway and street construction projects by 20%.*

**Annual Performance Goal:**

*Reduce fatalities and injuries to employees working within heavy construction by 4%.*

*Baseline: Number of Arizona fatalities for heavy construction for FY 2002, and BLS FY 2000 Arizona total case rate for heavy construction.*

**Fatalities**

*FY 2002 = 3*

*FY 2003 = 0*

*FY 2004 = 3*

**BLS case rate:**

*FY 2000 = 10.9*

*FY 2001 = 10.4*

*FY 2002 = 7.4*

*FY 2003 = N/A at time of report*

### GOAL ACTIVITY:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
<b>Compliance Inspections</b>	20	18	34	18	90
Hazards identified	29	43	64	24	160
% insp. w/ hazards	65	67	74	50	
<b>Consultation Surveys</b>	5	15	21	13	54
Hazards identified	7	23	45	25	100
% surveys w/ hazards	57	80	90	93	

# ADOSH

## Quarterly and Annual Report

### GOAL 1.4

**5-Year Performance Goal:**

*Approve at least 10 new workplaces for inclusion in the Arizona Voluntary Protection Program (VPP).*

**Annual Performance Goal:**

*Approve at least 4 new workplaces for inclusion in the VPP.*

**Baseline:**     *Number of workplaces with VPP status as of 9/30/02 = 10*

*Number of workplaces approved in FY 2003 = 1*

*Number of workplaces approved in FY 2004 = 2*

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
Number of conferences conducted	0	0	1	1	2
Number of applications/brochures dist.	0	3	4	8	15
Number of applications received <del>Y</del>	1	0	0	0	1
Number of site evaluations conducted	0	2	0	1	3
Number of workplaces approved <del>Y</del>	0	1	0	1	2

# ADOSH

## Quarterly and Annual Report

**GOAL 2.1**

**5-Year Performance Goal:**

*Reduce citation lapse times by 20%.*

**Annual Performance Goal:**

*Reduce citation lapse times by 5%.*

**Baseline:** *Fiscal year average citation lapse times for FY 2002: Safety = 50.91, Health = 38.47.*

*FY 2003: Safety = 53.2*

*Health = 42.3*

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Average	% change from 2002
Avg. citation lapse time (safety)	41.8				41.8	-17.89
Percent change from previous qtr.						
Avg. citation lapse time (health)	38.5				38.5	0.08
Percent change from previous qtr.						

***OSHA REVIEW BOARD***

***INDUSTRIAL COMMISSION***

***of***

***ARIZONA***

***SUNSET AUDIT***

***August, 2005***

Arizona Occupational Safety and Health Administration Review Board  
c/o Lisa Gervase, Attorney at Law  
28248 N. Tatum, B-1, #154  
Cave Creek, AZ 85331  
480-515-4801 Tel  
480-515-4821 Fax  
[lisa.gervase@azbar.org](mailto:lisa.gervase@azbar.org)

August 8, 2005

Larry Etchechury  
Executive Director  
Industrial Commission of Arizona  
800 W. Washington St.  
Phoenix, AZ 85007

Re: **Sunset Review Information of the Arizona Occupational Safety and Health Administration Review Board (OSHA Review Board)**

Dear Mr. Etchechury:

Below please find the OSHA Review Board's information for you to provide to the House and Senate Committees that will be conducting the Sunset Review of the Board.

The Board is comprised of five people, each appointed to a staggered five-year term. The current Board members are David Areghini (chairperson), management member (Salt River Project); Thomas Davies, public member (Herrick Steel); Angela Miller-Brooks, public member (Publisher - *The Ebony Cactus*); Matthew Cunningham, public member (Partner in The Cunningham Law Firm); and Louis DeRoan III, labor member (Partner in the DeRoan & Seyffer Law Firm).

In the past several years, the Board has met up to four times a year to hear appeals of OSHA cases from the Industrial Commission's Division of Occupational Safety and Health. It has no staff, and thus uses a contracted law firm to provide needed administrative and legal services.

The Board's response to the factors listed in the Arizona House of Representatives' July 1, 2005 letter follows.

A. Items 1-12

1. The OSHA Review Board's objective is to provide a forum to fairly and impartially hear and decide appeals from orders of the Industrial Commission's Division of Occupational Safety and Health (ADOSH). The purpose of establishing the OSHA Review Board was

RECEIVED  
Industrial Commission of Arizona

AUG 9 2005

DIRECTOR

to mirror federal occupational safety and health disciplinary order appeals and have a final appeal step in the administrative law process rather than proceeding directly to Court.

2. The OSHA Review Board has operated extremely efficiently. It has a five-member Board that essentially acts in a volunteer capacity. It has no staff, and uses only an attorney on a contract basis to handle legal and administrative tasks. The Board has procedures in place to process appeals as quickly as possible, while providing all parties ample time to fully present their arguments and perfect their appeals.
3. The OSHA Review Board currently has one labor member, one management member, and three public members, who are prepared and thoughtful. They analyze the facts of each case with both the employee and employer in mind. This objective balance ensures the enforcement of reasonable employee safety regulations, and fair disciplinary orders.
4. The OSHA Review Board has no rules. It had a procedural rule, adopted in 2000, but in conferring with the Governor's Regulatory Review Council before the recent five-year review report deadline, it was determined that the Board does not have its own specific rule making authority. So, the rule was allowed to expire by operation of law. The Board will have to seek specific legislative authority to promulgate rules and the rule will have to be re-promulgated. The rule worked great for the five years it was in place, by placing all parties on notice of exactly what to expect and exactly what to do from a procedural standpoint. Until a new rule is adopted, the Board will request that parties observe certain procedural steps, as it did before it had a procedural rule.

The rule was consistent with the spirit and intent of the Board's legislative mandate, but evidently not the strict reading of the law.

5. During the promulgation of the one rule, now expired, the OSHA Review Board sought input from everyone, including litigants and attorneys who had appeared before the Board over several years. It held a public comment hearing and placed the proposed rule on its meeting agendas so that any interested person could comment. The rule was only procedural, informing attorneys and lay people how to process an appeal before the Board and what to expect. It had no substantive impact.
6. The Board does not investigate and resolve complaints. Its jurisdiction is limited to deciding appeals.
7. Neither the Attorney General, nor other agencies, have prosecutorial authority under the Board's statutes.
8. The Board has asked the Industrial Commission to seek the addition of specific rule making authority in the Board's statutes when the Commission seeks legislative changes

of its own. Since the Board has no staff, it would have to hire someone to seek this minor change. It is more efficient to add this simple change to any legislative package that the Commission may be pursuing.

9. One law change to have specific rule making authority is necessary.
10. Termination of the Board would eliminate a party's legal right to appeal ADOSH decisions in a user-friendly forum. Having the Board as an interim appeal step before filing appeals to the Court of Appeals is an efficient and effective appeal step. Removing this appeal step may be a substantial financial detriment to litigants, and may preclude appeals by lay persons who cannot maneuver through the Court of Appeals.
11. No changes are appropriate to the Board's regulatory role. Its exercise of authority in deciding appeals is well balanced.
12. The Board exclusively uses a private contractor since it has no staff. The administrative and legal work of the Board is so minimal that the only feasible way it can be accomplished is via a contractor. It would be a conflict of interest for the Board to use Industrial Commission staff to handle administrative and legal tasks related to appeals. Historically, the Board met about every quarter to hear and decide appeals. However, in the past two years, it has met only once because the number of appeals has substantially declined, likely because more cases are mediated before going to formal hearing.

B. Questions 1-4

1. The only need that the Board currently has is to have a law change, providing it with specific statutory rule making authority.
2. The Board's objective is to hear and decide appeals in a fair and impartial manner. It will continue to accomplish this goal with appropriately appointed Board members and contracted administrative/legal assistance.
3. There is no other agency that has similar, conflicting or duplicate objectives. No other agency decides appeals from ADOSH.
4. The Board cannot be eliminated without the risks stated in paragraph A.10 above. The Board cannot be consolidated with another agency without risking a conflict of interest or threat of losing its quasi-judicial impartiality.

- C. The Board has no annual report, and no fees. The accountant at the Industrial Commission handles the Board's financial tasks. The Board has no FTEs, only one contractor to handle minimal administrative and legal duties. A docket of all of the Board's cases, activities and meetings is maintained by its contractor. The contractor sent

several boxes of the Board's old dockets, including correspondence, memos, notices, agendas, and minutes, and an index of each, to the Industrial Commission office for proper archiving. The contractor maintains the current dockets at its office. This information is available for Legislative review, upon request.

Thank you for handling the Board's Sunset Review along with that of the Industrial Commission. If a Board member or I need to be present to answer any questions or provide additional information, please let me know.

Sincerely,



Lisa Gervase  
Contract Attorney for the Board

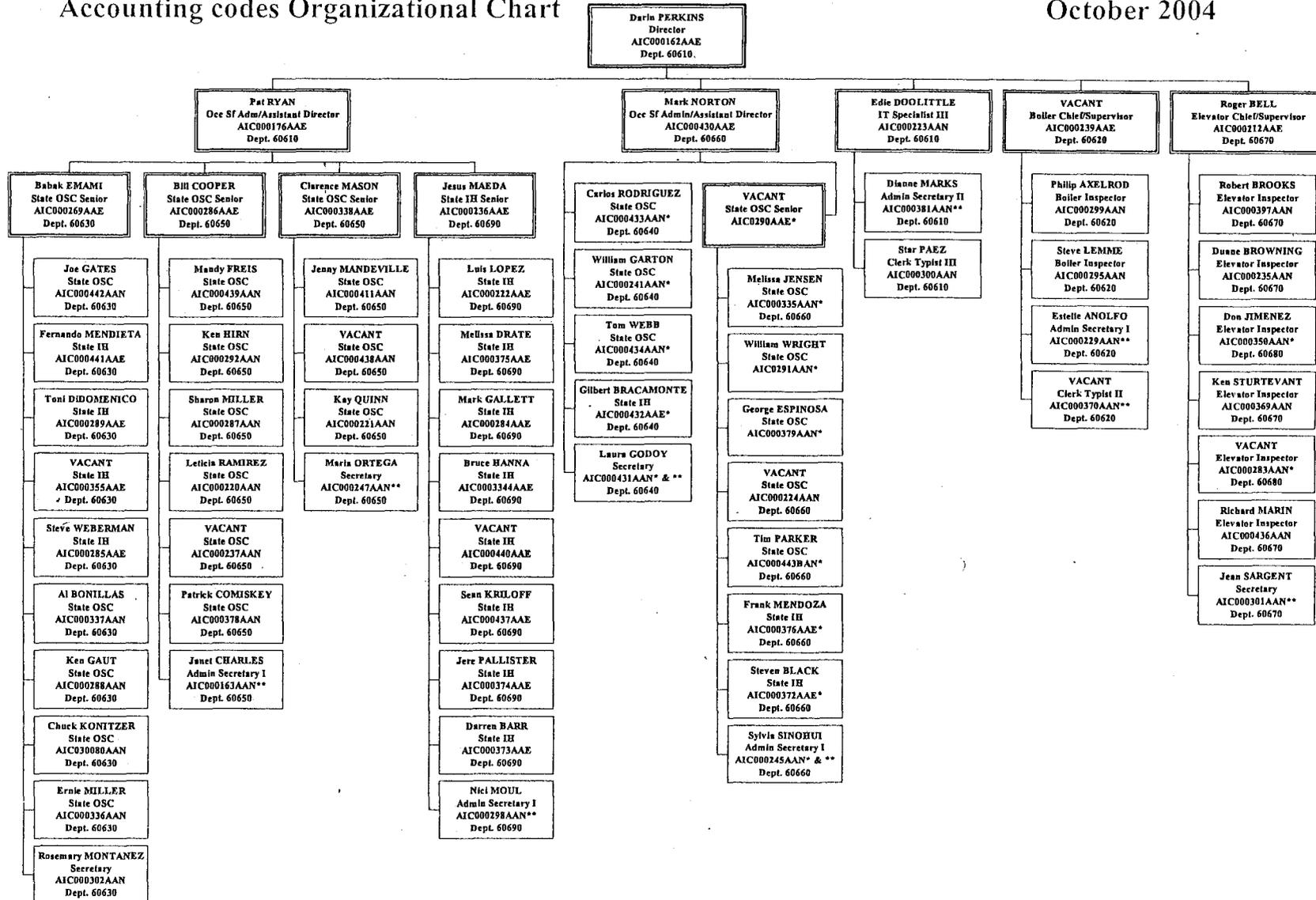
cc: David Areghini, Chairman  
OSHA Review Board

# The Industrial Commission of Arizona

## Division of Occupational Safety & Health

Accounting codes Organizational Chart

October 2004



\*Tucson

\*\* Overall supervision provided by position AIC000223AAAN

Total 66 positions.

#### **IV. FY2004 REPORTS AND MEASURES**

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: ARIZONA

RID: 0950400

From: 10/01/2003      CURRENT  
 To: 09/30/2004      FY-TO-DATE      REFERENCE/STANDARD

MEASURE	From: 10/01/2003 To: 09/30/2004	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2322 7.21 322	138 6.27 22	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	815 2.30 353	55 1.96 28	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	305 96.83 315	24 100.00 24	100%
4. Percent of Complaints and Referrals responded to within .1 day -ImmDanger	3 100.00 3	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	569 76.68 742	46 24.34 189	100%
Public	37 84.09	1 33.33	100%
	44	3	
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	45448 58.19 781	4591 65.58 70	2495161 46.3 53858
Health	16264 49.13 331	1610 50.31 32	813443 60.7 13412
			National Data (1 year)
			National Data (1 year)

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: ARIZONA

RID: 0950400

MEASURE	From: 10/01/2003		CURRENT		REFERENCE/STANDARD
	To: 09/30/2004		FY-TO-DATE		
8. Percent of Programmed Inspections with S/W/R Violations					
Safety	266	26	83491		
	25.95	41.27	55.9		National Data (3 years)
	1025	63	149250		
Health	70	4	11714		
	31.67	28.57	48.9		National Data (3 years)
	221	14	23941		
9. Average Violations per Inspection with Vioations					
S/W/R	1184	123	409336		
	1.06	1.20	2.0		National Data (3 years)
	1113	102	200698		
Other	2841	255	282672		
	2.55	2.50	1.4		National Data (3 years)
	1113	102	200698		
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1969348	238237	471909175		
	1810.06	2089.79	1305.9		National Data (3 years)
	1088	114	361378		
11. Percent of Total Inspections in Public Sector	167	0	396		
	9.30	.00	6.6		Data for this State (3 years)
	1796	89	6028		
12. Average lapse time from receipt of Contest to first level decision	10700	671	3205357		
	135.44	111.83	183.0		National Data (3 years)
	79	6	17512		
13. Percent of 11c Investigations Completed within 90 days	29	6	100%		
	59.18	60.00			
	49	10			
14. Percent of 11c Complaints that are Meritorious	7	4	1371		
	14.29	40.00	20.8		National Data (3 years)
	49	10	6576		
15. Percent of Meritorious 11c Complaints that are Settled	2	4	1175		
	28.57	100.00	85.7		National Data (3 years)
	7	4	1371		

\*SAMM4

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

1 A MARC REPORT @0990400@  
 NO. 18, 2004  
 REPORT ENDING DATE: SEP 2004  
 PAGE 1 OF 2  
 QUARTER: 4 FY: 2004

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 MANDATED ACTIVITIES REPORT FOR CONSULTATION (MARC)

- PROJECT NAME: Arizona 03 PRIVATE SECTOR

MEASURE QUARTER FY-TO-DATE REFERENCE/STANDARD

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	280	965	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	278	945	
Percent	99.64	98.44	
Number of Initial Visits	279	960	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	279	960	
Visits <= 250 Employees in Estab Percent	264 94.62	913 95.10	
Visits <= 500 Employees CB Employer Percent	258 92.47	912 95.00	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	279	956	
Percent	100.00	99.58	
Number of Initial Visits	279	960	
Follow-Up			
Number with Empe Conferences	1	3	
Percent	100.00	60.00	
Number of Follow-Up Visits	1	5	
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

- \*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

1 OSHA MARC REPORT @0990400@  
 NOV 18, 2004  
 REPORT ENDING DATE: SEP 2004  
 PAGE 2 OF 2  
 QUARTER: 4 FY: 2004

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 MANDATED ACTIVITIES REPORT FOR CONSULTATION (MARC)

- PROJECT NAME: Arizona 03 PRIVATE SECTOR

MEASURE QUARTER FY-TO-DATE REFERENCE/STANDARD

Thru 4C based on Closed Cases ONLY

4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)

100%

Number Verified Timely	297	966
Percent	97.70	95.55
Total Serious Hazards	304	1011

Number of Serious Hazards Verified Corrected:

On-Site	182	438
Within Original Time Frame	94	350
Within Extension Time Frame	2	52
Within 14 Days of Latest Correction Due Date	19	126

4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)

Number NOT Verified Timely	7	45
Percent	2.30	4.45
Total Serious Hazards	304	1011

Percent of Serious Hazards Referred to Enforcement

Number Referred to Enforcement	0	0
Percent	.00	.00
Total Serious Hazards	304	1011

5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)

0

- \*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

1@0990400@

HAZARDS NOT VERIFIED TIMELY (MEASURE 4B)

PAGE 1

```

0 REPORT-ID OWNER REQUEST-NR VISIT-NR OPEN VISIT VTYPE CORR-DATE VERIFY-DATE ITEM-NR CONSULT-ID JOB-TITLE
09904030000PVTT0802694596005028075890020040323000I00002004052800200407270000000010000T447400000000S
09904030000PVTT0802695254005033288250020040602000I000020040730002004091600000000020000X957400000000H
09904030000PVTT0802695254005033289160020040519000I000020040630002004091600000000010000E656700000000S
09904030000PVTT0802695254005033289160020040519000I000020040630002004091600000000020000E656700000000S
09904030000PVTT0802695254005033289160020040519000I000020040630002004091600000000030000E656700000000S
09904030000PVTT0802696039005033301850020040708000I000020040901002004092200000000010000E656700000000S
09904030000PVTT0802696039005033301850020040708000I000020040901002004092200000000020000E656700000000S
0*****TOTAL ***** 7

```