

STATE OF ARIZONA

**Joint Legislative Budget Committee**

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STEVE YARBROUGH

**\* \* R E V I S E D \* \***

**JOINT LEGISLATIVE BUDGET COMMITTEE**

Tuesday, February 6, 2007

8:00 a.m.

**and**

**Thursday, February 8, 2007 (if necessary)**

8:00 a.m.

House Hearing Room 4

**MEETING NOTICE**

- Call to Order
- [Approval of Minutes of December 18, 2006.](#)
- DIRECTOR'S REPORT (if necessary).
- EXECUTIVE SESSION
  - A. Department of Environmental Quality - Review of Request for Proposals for the Vehicle Emissions Inspection Program Contract.
  - B. Arizona Department of Transportation - Review of Proposed Assessment Plan for New Motor Vehicle Division Computer System.
- 1. [Adoption of Committee Rules and Regulations.](#)
- 2. [ARIZONA DEPARTMENT OF CORRECTIONS - Consider Approval and Review of Requested Transfer of Appropriations.](#)
- 3. [STATE LAND DEPARTMENT - Consider Approval of Amended Contract for Permanent Central Arizona Project Water Delivery.](#)
- 4. DEPARTMENT OF PUBLIC SAFETY
  - A. [Quarterly Review of the Arizona Public Safety Communications Advisory Commission.](#)
  - B. [Review of Microwave Communication System Upgrade Expenditures and Progress.](#)
- 5. [DEPARTMENT OF REVENUE - Review of Business Reengineering/Integrated Tax System \(BRITS\) Contract Amendment.](#)

(Continued)

6. DEPARTMENT OF EDUCATION - Review of Kinder Morgan Settlement.
7. ATTORNEY GENERAL
  - A. Review of Uncollectible Debts.
  - B. Review of Allocation of Settlement Monies.
8. DEPARTMENT OF ENVIRONMENTAL QUALITY - Review of Water Quality Permit Processing Times.
9. ARIZONA STATE UNIVERSITY - Review of Walter Cronkite School of Journalism.

The Chairman reserves the right to set the order of the agenda.

2/2/07

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STEPHEN TULLY

**MINUTES OF THE MEETING**

**JOINT LEGISLATIVE BUDGET COMMITTEE**

December 18, 2006

The Chairman called the meeting to order at 10:12 a.m., Monday, December 18, 2006, in Senate Appropriations Room 109. and attendance was as follows:

Members:	Representative Boone, Vice-Chairman	Senator Burns, Chairman
	Representative Biggs	Senator Arzberger
	Representative Gorman	Senator Harper
	Representative Pearce	Senator Martin
	Representative Tully	Senator Waring

Absent:	Representative Burton Cahill	Senator Bee
	Representative Huffman	Senator Cannell
	Representative Lopez	Senator Garcia

**APPROVAL OF MINUTES**

Hearing no objections from the members of the Committee to the minutes of November 15, 2006, Chairman Burns stated the minutes would stand approved.

**ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) - Review of Third Party Quality Assurance Report and Percentage of Third Party Transactions Report.**

Mr. Richard Stavneak, JLBC Director, indicated that the Arizona Department of Transportation (ADOT) quarterly comes before JLBC on the issue of Third Party Quality Assurance Reviews. They are in the process of removing parties from the waiting list to include them in the program. JLBC has requested that ADOT review whether or not they can reduce the size of their sampling and they are doing that. The JLBC Staff has recommended a favorable review and requests that ADOT report back with progress on their statistical sampling by April 30, 2007.

**AHCCCS - Review of Comprehensive Medical and Dental Program Capitation Rate Changes.**

Mr. Stavneak stated that this item has to do with the Comprehensive Medical and Dental Program, which is the Title XIX Medicaid program for foster care children. They are reporting their capitation rates for this program and these rates are within the budgeted amounts and the JLBC Staff recommends a favorable review.

**ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND (ASDB) - Review of School Bus Replacement Expenditure Plan**

Mr. Stavneak stated that ASDB was given \$850,000 in FY 2007 to purchase 10 new school buses. JLBC Staff has reviewed their expenditure plan and believes that it is reasonable and have recommended a favorable review.

**DEPARTMENT OF REVENUE (DOR) - Review of Kerr Expenditure Plan.**

Mr. Stavneak stated that this item is a review of the Kerr settlement administrative costs expenditure plans. The Kerr lawsuit has to do with federal employee retiree payments. The administrative expenses are about \$975,000 and the JLBC Staff believes that their expenditure plan is reasonable.

**Item 1 - ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) - Review of Third Party Quality Assurance Report and Percentage of Third Party Transactions Report.**

*Representative Pearce moved the JLBC Staff recommendation to give a favorable review of the third party quality assurance report and also a favorable review of the third party transactions report, with the stipulation that ADOT provide a progress report on their new statistical sampling method by April 30, 2007. The report should include whether ADOT has reduced the percent of reviewed third party transactions below 10% and still retained statistical validity. The next quarterly report on third party quality assurance, which is due by January 30, 2007, should include the same information as in their latest report. The motion carried.*

**Item 2 - AHCCCS - Review of Comprehensive Medical and Dental Program Capitation Rate Changes.**

*Representative Pearce moved the JLBC Staff recommendation to give a favorable review to the capitation rate changes as outlined. The motion carried.*

**Item 3 - ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND (ASDB) - Review of School Bus Replacement Expenditure Plan.**

*Representative Pearce moved the JLBC Staff recommendation to give a favorable review of ASDB's reported expenditure plan for school bus replacement. The motion carried.*

**Item 4 - DEPARTMENT OF REVENUE - Review of Kerr Expenditure Plan.**

*Representative Pearce moved a favorable review of the Kerr administrative costs expenditure plan, as it appears to be reasonable according to information JLBC Staff received from DOR. The motion carried.*

**DEPARTMENT OF PUBLIC SAFETY (DPS) - Review of Expenditure Plan for the Gang and Immigration Intelligence Team Enforcement Mission (GITEM)**

Mr. Martin Lorenzo, JLBC Staff, stated that this item is a review of the Department of Public Safety's expenditure plan related to \$17,000,000 appropriated to GITEM. The \$17,000,000 is comprised of 2 appropriations, including \$10,000,000 to increase local GITEM participation and to fund new border security efforts and \$7,000,000 to fund an additional 100 DPS sworn personnel. DPS is requesting to spend roughly \$1,300,000 of the \$10,000,000 for operating costs associated with 10 border patrol agents that would assist GITEM, as well as to purchase an armored vehicle and other specialty equipment. In addition, they are requesting to expend \$5,000,000 of the \$7,000,000 appropriation to add 37 officers to GITEM. These officers would be transferring from other programs within the department. These monies are in addition to the \$1,400,000 appropriated at the July meeting.

As a follow-up to its July meeting, the Committee requested that the department pursue negotiations with county sheriffs regarding a regional holding facility. In the department's discussions with county sheriffs in the southern region, they have reported that border patrol has been adequate for their needs, and as such, they do not believe a regional holding facility is necessary. However, this was not the case in northern regions as border patrol doesn't have the same presence. They are working on methods to reimburse county sheriffs for transportation costs related to transporting illegal immigrants.

The committee's options are 1) recommend a favorable review of the department's request; or 2) recommend an unfavorable review of the department's request. Under either option, the JLBC recommends that the Committee require DPS to submit revised expenditure plans prior to expending any additional monies beyond the approved expenditures or on items not included in the current plan.

Senator Harper asked for a breakdown of the \$1,300,000 that DPS wants to use for additional equipment. Mr. Lorenzo referred him to Table 1 of the JLBC Staff memo and indicated that the majority of the costs are operating costs associated with the 10 border patrol agents.

*Representative Pearce moved the JLBC Staff recommendation to give a favorable review for the use of \$1.3 million (of the \$10 million) to fund the purchase of specialty equipment and the operating costs associated with 10 federal Border Patrol*

*agents expected to work with GITEM; and, \$5.5 million (of the \$7 million) to fund the costs associated with adding an additional 37 DPS officers to GITEM, with the caveat that DPS is to submit a revised expenditure plan prior to: 1) expending any additional monies beyond the reviewed expenditures, or 2) expending the approved amounts on items not in their current plan. The motion carried.*

#### **JOINT LEGISLATIVE BUDGET COMMITTEE - Consider Approval of Year 2007-2008 Strategic Program Area Review (SPAR) Topic Candidates**

Mr. Stefan Shepherd, JLBC Staff, indicated that this item is a consideration of the recommended program areas for the Strategic Program Area Review (SPAR). Every 2 years statute requires the JLBC Staff to present to the Committee some proposed SPAR topics. This year the JLBC Staff proposes to look at Substance Abuse and Debt and Third-Party Financing.

Senator Harper asked if the incoming Senate President has assigned which Committee these 2 SPAR topics would be assigned. Mr. Shepherd answered no. Mr. Stavneak added that this would be more of an issue for the Second Regular Session because staff would be performing most of the work in 2007, and then in 2008, the legislative committees would review the reports.

Representative Pearce moved the JLBC Staff recommendation for the 2 program areas for the Year 2007-2008 SPAR cycle. The motion carried.

#### **SUPERIOR COURT - Review of Expenditures of Judicial Collection Enhancement Fund (JCEF) Balance for Probation Officer Salaries.**

Kevin Bates, JLBC Staff, stated that pursuant to a footnote in the FY 2007 General Appropriation Act, the Judiciary is seeking an expenditure authority of \$700,000. These are additional Judicial Collection Enhancement Fund monies above the appropriated amount for probation officer salaries. The JCEF receives revenues from a surcharge on criminal offenses, civil traffic violations and other certain civil violations. This additional amount would be funded from the outstanding JCEF balance.

The Committee has at least 2 options: 1) a favorable review, given that the expenditures are in line with the statutory intentions of these monies, or 2) an unfavorable review, given that the Judiciary is planning to fund an ongoing expense with the one-time monies, and given that the fund balance would sustain this level of expenditure for only 2 additional years.

Representative Biggs asked if the surcharges had been raised from \$5 to \$10 proportioned to JCEF and whether this was approved. Mr. Bates stated that was correct and stated that this was part of Chapter 361 from last session.

Representative Biggs asked what the current percent (of surcharges as a percent of fines) was and Mr. Stavneak answered that it was somewhat over 80%.

Representative Biggs asked if the judge or magistrate still have authority to waive the surcharge. Mr. Bates answered that the judge can order that surcharge be waived if he or she wishes.

Representative Biggs asked if they could waive a portion of the surcharge. Mr. Bates believed that was correct.

Representative Biggs asked if they could designate which portion of the surcharge they wanted to waive. Mr. Bates answered that he did not have that information. Senator Martin said that the clean elections part can not be waived; it stays on no matter what.

Representative Biggs asked should this \$700,000 go to salaries and next year this revenue source be less than the salaries, how does the Judiciary intend to make up the salary. Mr. Kevin Kluge, Chief Financial Officer for the Supreme Court, said they understand that the \$700,000 cannot be sustained by the revenues and that they are treating this as one-time funding, just to bridge the gap between salaries that are approved by the board and salaries/monies available from the state funding.

Senator Burns asked how they planned to handle this in the future when the funds are no longer available. Mr. Kluge answered that they let the chief probation officers know that this is one-time monies, that the revenues cannot sustain this expenditure level, and that they would have to come up with their own plans, either using probation fees or county funds to cover the deficits in ongoing years. Mr. Kluge said that hopefully at some point, they would bridge the gap between money available for state positions with state salary increases given by the Legislature.

Representative Biggs asked if Mr. Kluge is saying that they are essentially treating these 2 years as a bonus, but they may not be available in the third year. Mr. Kluge said that the probation surcharge monies were put in place to help supplement the

funding for probation. He said that we are sitting on a fund balance; that the money should be rolled out, and that it does not sit good sitting in the fund; they want to try to maximize the money that they make available for the probation departments.

Representative Biggs said that he didn't have a problem with that, though this seems to be creating a reliance on this fund that may not likely be available 2 years from now. There doesn't seem to be any concrete plans on how this funding will be continued, and that by terming it anything other than a "one-time bonus," there is the potential to create a reliance that may not be met. Mr. Kluge said the way salaries have worked, is state employee salary raises are given by the Legislature. The county boards set the salaries for probation staff. They fluctuate from year to year. Sometimes the state gives bigger raises than the county gives. Over time it has made up for itself. Right now the state employee salary raises have not been very large over the last several years. A big stride was made last year in giving the raises, and that has helped to fill this gap. Mr. Kluge stated that he is pretty confident that in the next couple of the years, the state monies available to cover these deficits will be there with state employee raises.

Representative Pearce said that Representative Biggs brought up a good point and asked if they are in a position to make a commitment that you would manage, with the ability of vacancy savings, to move forward with dollars that are designed to go for this purpose, and can manage the process, rather than put the Committee in a position that JCEF is back for a supplemental because the costs are not going to be funded. Mr. Kluge said that was the plan and said that the understanding that they have with the chief is that this is one-time money, and it is only to cover this year and possibly next year. They are projecting a \$1.4 million fund balance. They are looking at \$700,000 this fiscal year, possibly \$700,000 next fiscal year. If the funding is not available and revenues cannot sustain increased costs, then they would have to go to probation fees to fund those deficits. Mr. Kluge stated that it is not our policy to come with a budget request for probation salaries above what the state is giving for state employees, so whatever you approve for state employee raises is what goes to the probation staff, regardless if it is enough to cover their deficits or not. That has been our policy. Any county raises above what the state gives, the county is responsible for funding those either out of county general funds or out of probation fees. That is our policy and that way they do not over commit their funds.

*Representative Pearce moved a favorable review of the expenditure of \$700,000 above the appropriated amount, which is consistent with statutory purposes. The motion carried.*

#### **DEPARTMENT OF CORRECTIONS - Consider Approval of Requested Transfer of Appropriations.**

Mr. Martin Lorenzo, JLBC Staff, stated that the Department of Corrections is requesting a transfer of roughly \$18 million from the Employee Related Expenditures (ERE) line to the Overtime Special Line Item to cover the department's estimated overtime costs of roughly \$37.5 million.

Mr. Lorenzo stated that in 2006 the department expended roughly \$41 million in overtime. However the 2007 budget shifted monies from the overtime line to fund a pay raise. This pay raise was intended to help the department fill vacancies and reduce overtime. While vacancies have been filled and staffing has increased, the department's overtime costs have yet to respond to these increases. As a result, the department expended roughly \$15 million of their \$19.7 million overtime appropriation through October. This equates roughly to about \$1.4 million per pay period. As a result, their current budget would fund costs through December.

The committee has at least the following 2 options. The first option is to approve the department's request to transfer \$17.8 million from employee benefits to overtime. However it's unclear if the department's current employee benefits line has sufficient monies to cover these costs. This is due to a variety of factors, one being that there is currently only 3 months of available data to project and analyze their future needs. The second option would be to approve the transfer of \$6.7 million from the employee benefits line to fund overtime costs. The \$6.7 million is due to the department being over funded for correctional officer retirement rates, as a result of actual retirement rates being lower than the funded rates. At the current expenditure rate, the \$6.7 million would last through February. The additional time would allow us to have more information and data to analyze the remaining need for the fiscal year. Under either option the JLBC Staff recommends that the department submit additional information as outlined in our report to allow us to further analyze their overtime and employee benefit needs.

Representative Biggs asked what the vacancy rate was prior to money given for the raises. Mr. Lorenzo answered that in January when budget negotiations began, the department had roughly the same amount of correctional officers they do now, a vacancy rate of about 13%.

Representative Biggs then asked if the vacancy rate is still 13%. Mr. Lorenzo answered yes, it was roughly 13%. However, between January and July that vacancy rate increased. He believes they lost roughly 91 positions between July and the end of the fiscal year. The department has subsequently increased the number of positions by 114 positions through December 4.

Representative Biggs asked how much money was in the ERE line before these raises. Mr. Lorenzo answered that he did not know exactly, but believed the total amount was \$17 million. Mr. Lorenzo further stated that they requested to shift \$17.8 million, but we had previously shifted roughly \$17 million from Overtime to Personal Services and ERE to fund the pay raise. Mr. Stavneak clarified that Mr. Lorenzo was speaking about the shift in the enacted FY 2007 budget. The Committee has not done any shifts so far this fiscal year.

Representative Biggs asked that if a shift was made with either one of these, what would be the anticipated total amount spent on overtime in this fiscal year vs. last year. Mr. Lorenzo answered that in the last fiscal year they spent roughly \$41 million and their current projection is about \$37.5 million.

Representative Biggs said that we are not seeing any appreciable decrease in the vacancy rate, except for the 91 lost and the 114 picked up. He asked if they think that is that is stabilized and are they going be able to close that vacancy rate. Mr. Lorenzo said the \$37.5 million assumes that they'll increase correctional officer staffing by roughly 60 positions a month for the remainder of the fiscal year, which is quite a bit higher than their current number of increases per month.

Representative Biggs asked if that was a net increase. Mr. Lorenzo answered it was and that it would probably take vacancy savings to roughly 7-8%.

Senator Burns asked how the agency is doing on the pay increases and whether we are seeing an impact in turnover and retention in the staffing.

Ms. Dora Schiro, Director, Department of Corrections, said that the department is seeing an appreciable improvement. In January a year ago there were 1,222 vacancies and that continued to rise through the end of June to 1,273 vacancies. She added that there's a correction that is the result of a sweep the 565 vacant positions which went into effect July 1. So immediately the number of empty positions dropped from 1,273 to 708. From the 708 as a baseline on July 1 there is a marked improvement to just 408 vacancies today.

Representative Pearce asked if we've had a net increase of about 708 to 408. Ms. Schiro added that there has been an improvement of 300 officers since July 1.

Representative Pearce asked what Ms. Schiro's projection was, realizing the challenge we have with the competition. He asked if everything looked good for the continuation of this improved status and if we are going to continue to move forward. He stated that he thought we stepped up to the plate with a significant increase for our correctional personnel. He asked if some of this improvement is a direct result of that.

Representative Pearce stated that the sweeps were taken into account in part because of the fact that there was no funding for those positions. He stated that this creates the impression that there are positions that we really don't have. He further asked where we are at with a couple of the high vacancy areas, such as Lewis. He asked if we have made improvement in some of those outlying areas. Ms. Schiro said that Lewis is one of the places where they have seen the most positive changes. They are down to 4% vacancies at Lewis.

Representative Biggs asked about the \$19 million that is in ERE right now and the benefits are being funded at a lower rate in 2007 than in 2006. He asked if that was a correct assumption. Ms. Schiro answered that because of the higher rates of vacancies costs actually dropped, and that is related to what their vacancy rate is. As vacancies reduce and staffing improves those expenditures will adjust proportionately.

Representative Biggs was specifically talking about funding of the benefits. Ms. Schiro explained that the state rate is increased, but the expenditure was reduced because of the lower number of filled positions.

Representative Biggs asked if you transfer \$17 million out of the ERE line into the Overtime line, and you're successful at filling all of these vacancies that you anticipate filling, is there going to be enough money left in the Personal Services and ERE lines to compensate these new hires. Ms. Schiro answered that as we move further into the year they are going to anticipate a shortfall. She testified to that last year prior to the conclusion of the budget. She thinks that the shortfall, which will become far more specific as the fiscal year progresses, is a result of having improved staffing levels. But also one of the unresolved issues that was originally included in the department's pay plan proposal from last year was the elimination of the stipends, which have been funded through vacancy savings. As vacancies go down, the monies available to be reallocated to stipends diminishes. Because they didn't fully adjust the salaries, the Legislature, instead, opted for an across-the-board increase, those stipends continue at those locations, and to discontinue them at this time would result in immediate reverse in the positive numbers she has reported.

Representative Biggs asked what the shortfall is that the department is anticipating. Ms. Schiro stated that she did not have information on the anticipated shortfall and would need to get back to Representative Biggs.

Mr. Stavneak added that the agency's last monthly report, department wide they said that they thought they would experience a shortfall of \$5 million. It may be a different number for just salaries, but department wide, the number was \$5 million.

Ms. Schiro said the total anticipated shortfall at this point is about \$5 million and some for the year.

*Representative Pearce moved to approve option 2 to transfer \$6,654,300 from the ERE line to the Overtime Compensatory SLI. Included in the motion is the recommendation from JLBC Staff that the department submit FY 2006 actual and FY 2007 year-to-date and projected number of hours worked by all positions in the Correctional Officer series by January 20. The hours should be categorized by the number of straight time, overtime, and compensatory time worked.*

Senator Martin said that he could not support giving the agency additional funds until the Committee knows what happened September 7, relating to someone resigning in the department. As a result of that, he was not sure that they should be given additional funds until all answers have been received concerning that.

The motion carried.

#### **DEPARTMENT OF ECONOMIC SECURITY (DES) - Review of Expenditure Plan for Adoption Services - Family Preservation Projects.**

Mr. Eric Jorgensen, JLBC Staff, stated that this item is a review of the DES expenditure plan for \$1,000,000 that was appropriated to the Adoption Services - Family Preservation Projects Special Line Item. A budget footnote requires DES to submit a plan to this Committee. That plan must that consider the recommendation of the Joint Legislative Committee on Adoption Promotion (JLCAP). As far as the expenditure plan, the JLCAP met on November 29 and adopted the initiatives recommended by DES for the use of these funds. The detail of these 2 initiatives can be found on page 2 of the JLBC Staff recommendation memo.

Initiative 1 is for Intake and Recruitment which adds 4 FTE Positions, expands the adoption call center and increases the recruitment efforts. There are also training and technology upgrades. Initiative 2 is for increased support services to adoptive families and includes some crisis intervention services and a hotline, adoption therapy for families that are transitioning into adoption, support groups and some post-adoption support services. These 2 initiatives together would cost just over \$600,000 in FY 2007. Annualizing these initiatives would require \$1.8 million.

For this reason, JLBC Staff included at least 2 options. The first option would be a favorable review, recognizing that the continuation of these initiatives would require an increased appropriation for FY 2008. The second option would be a favorable review with the provision that DES restructure the expenditure plan according to the priorities outlined by the Joint Legislative Committee on Adoption Promotion to keep that within the \$1,000,000 budget for FY 2008. In either case, we do note that DES did not provide performance measures for these programs as required by the budget footnote, and the JLBC Staff recommends that DES provide those measures, along with any historical data that they have by February 1, 2007.

*Representative Pearce moved option 2 to give a favorable review with the provision that the expenditure plan be restructured according to the priorities identified by JLCAP in order to remain within the \$1,000,000 appropriation in future years. Also included in the motion is a recommendation by JLBC Staff that DES provide performance measures for the proposed projects, as required by the budget footnote, by February 1, 2007. These performance measures should relate directly to the utilization of new resources and the expected outcomes. The motion carried.*

#### **EXECUTIVE SESSION**

##### **Arizona Department of Administration, Risk Management Services – Consideration of Proposed Settlements under Rule 14.**

*Representative Pearce moved that the Committee go into Executive Session. The motion carried.*

At 10:52 a.m. the Joint Legislative Budget Committee went into Executive Session.

*Representative Pearce moved that the Committee reconvene into open session. The motion carried.*

At 11:45 a.m. the Committee reconvened into open session.

*Representative Pearce moved that the Committee approve the recommended settlement proposal by the Attorney General's Office in the case of Kepler v. State of Arizona, et.al. The motion carried.*



Representative Pearce moved that the Committee approve the recommended settlement proposal by the Attorney General's Office in the case of *Mundell v. State of Arizona, et al.* The motion carried.

Representative Pearce moved that the Committee approve the recommended settlement proposal by the Attorney General's Office in the case of *Lyftogt v. State of Arizona, et al.* The motion carried.

#### **Arizona Department of Administration - Review of Request for Proposal.**

Senator Burns stated that he would support an unfavorable review, but expressed concern with some of the loose ends that still seem to exist in this particular area. The Department of Administration has come a long way, based on some of the recommendations that the Committee made and they appreciate that, but there are still issues and other significant questions that remain.

Representative Pearce moved that the Committee give an unfavorable review of the RFP, recognizing that there appears to be some movement in the right direction, but there are a lot of issues and concerns about past performance. The motion carried.

#### **Consideration of JLBC Staff Director Salary Pursuant to A.R.S. § 38-431.03.**

Representative Pearce moved that the salary of the Director of the JLBC be moved to \$123,000. The motion carried.

Senator Harper stated that the Director is a good man and well worth the amount, however he felt that the Committee is offering an amount that is more than was asked for.

The motion carried.

#### **Arizona Commission for the Deaf and the Hard of Hearing - Review of Telecommunication Relay Services Contract.**

Representative Pearce moved that the Committee give a favorable review of the Telecommunication Relay Services contract with the stipulation that the favorable review does not constitute an endorsement of an increase in the appropriation in subsequent years. The motion carried.

#### **STATE COMPENSATION FUND (SCF) - Consider Approval of Calendar Year 2007 and 2008 Budgets.**

Mr. Lorenzo Martinez, JLBC Staff, presented the submitted calendar year budgets for 2007 and 2008. The Committee has not approved a budget since 2003 after the State Compensation Fund exceeded the budget level that was set by the Committee. The Committee has at least 2 options, one being to approve the budget as submitted or, once again, not taking any action. In addition, the Committee was interested in SCF donations which are shown on Attachment 3 included in the JLBC Staff recommendation memo.

Mr. Dwayne Miller, Chief Operating Officer for SCF Arizona took questions.

Senator Burns asked if approval is given for the budget as opposed to taking no action, will SCF live within that budget.

Mr. Miller stated that they make every effort to live within that budget. As discussed in the past, there is some uncertainty regarding what the statute means. The budget is reviewed and approved by their Board of Directors on an annual basis. He stated that they intend to live within that budget. He said that in the past when they were not within the budget, it was due to contractual issues, premium tax issues, or other things that resulted in a significant demand on SCF to provide more insurance coverage than was anticipated. He said the revenue side went up more than the expense side in those situations.

Senator Burns questioned a fund donation in the handout and stated that he believed that a lot of donations were above and beyond customer outreach. He questioned recipients of State Compensation Fund money that would fall into the political category and he wanted Mr. Miller's comment.

Mr. Miller stated that it is the policy of SCF and their Board of Directors to be non-partisan in their charitable contributions and community outreach. The focus is on programs that stress workplace safety, safety in general, education, community and economic development, human services, arts and culture, and civic leadership. SCF also strives to make their donations consistent with the geographic distribution that is representative of their policy holder base as well.

Senator Martin asked if SCF had a specific budget for donations, or do they contribute to events as they come up, and if they do have a budget, has this increased, decreased or has it been about the same in the last 10 years.

Mr. Miller stated that SCF does have a budget for this line item. In the past 3 years they have been focusing on ramping up community awareness to better represent the interests of policy holders, as well as the interest of their employees in encouraging them to be involved in their communities. A lot of donations are sponsorships of various events that are part of partnerships they have with other association groups which help service the policy holders of SCF and promote a culture of workplace safety.

Senator Martin asked if United Phoenix (UP) Fire Fighters was funded through the SCF, as he thought they were funded through the City of Phoenix.

Mr. Rick DeGraw, Vice President for Communication Public Affairs for SCF of AZ, said that UP Fire Fighters is a State Compensation Fund member. The fire fighters, themselves, are insured through the city, but the employees they hire in their associations, secretaries and others are insured through SCF.

Senator Harper asked what percentage increase SCF had over the last couple of years for the cost of a basic policy. Mr. DeGraw stated that he believed that the cost actually decreased this year. The year before that they increased slightly. He said that he believed that workers' compensation insurance rates today are at a level that is comparable to about 1972.

Senator Harper asked if an employer has a workers' compensation policy and they go a year without any employees, and having zero exposure with no salaries paid, what would the basic price be for the policy. Mr. DeGraw said that there are hundreds of different job class codes so there is no one basic price. The rates for workers' compensation insurance are set by a statistical rating agency called the National Council of Compensation Insurance (NCCI), which is hired by the Arizona Department of Insurance to collect all the workers' compensation insurance premium and loss information from all carriers in the state. Each carrier can file a deviation from those rates. In spite of the fact that SCF provides the majority of the coverage in the State of Arizona, they were able to file rates that were 10% below and, this coming year is 8% below those standard rates.

Senator Harper asked if those risk assessments deal with exposure rates and if they have anything to do with the base policy costs of writing a policy. Mr. DeGraw stated that expense considerations are taken into account for rates. It is called an expense constant that is part of the national council's filing, and is \$120 a year just for the purpose of writing the policy.

Senator Harper asked if Mr. DeGraw thought that he was being consistent with charging businesses upwards of about \$800 a year for a policy even though they have no exposure and no employee salaries.

Mr. DeGraw said that if the business has no exposure and if they have no employees, they are not required to have workers' compensation insurance. It is only if you have a company with one or more employees. The owners themselves can elect to exclude themselves from workers' compensation coverage. There would be no charge unless they either had employees or intended to have employees.

Senator Harper asked how difficult it would be if a company decided that they would not have employees for a year to cancel their policy and then turn around the next year and obtain a policy. It was his understanding that SCF actually have raised the price of a policy even if the insured does not have any exposure.

Mr. DeGraw said the minimum premium is not set by SCF Arizona. There are minimum premium amounts established by NCCI. If someone were to cancel their policy, they would incur costs associated with the amount of coverage or the amount of exposure during which they had that policy. If they had it for 6 months they would be responsible for 6 months' worth of the minimum premium. As far as canceling that policy and getting reinstated, that is one of the things that SCF of Arizona does extremely well. SCF is very responsive to small businesses. SCF's only requirement in writing a policy is that they have paid all prior bills for all insurance coverage that they requested from SCF.

Senator Burns asked if SCF had a tracking mechanism that would indicate turnaround time, i.e. if someone applies for a policy, how long would it take for them to get coverage.

Mr. DeGraw said that SCF's practice is 10 business days from the time someone requests a quote. Then if everything is in order it would probably take another 10 days to get the policy issued. Mr. DeGraw said that information is tracked, and that it is shared with management and the Board of Directors upon request.

Senator Burns asked if this information is made public. Mr. DeGraw said that they have never had requests to make the information public, but that board meetings are subject to open meeting laws, so if anyone wanted that information, they could attend their board meeting and request that information.

Senator Martin expressed concern about SCF's community outreach projects, given that SCF is part of the state and they are funding people who are lobbying the members. In many ways, he prefers SCF restrict themselves to just advertising. There are ways to communicate without getting into some of these types of outreach efforts that put the Legislature into a bind because you are asking for some sort of legislative change by having any type of cultural or community outreach that is really political in nature. He recommended that SCF reshape its cultural and community outreach strategies to advertising in other areas that don't put the Legislature in a position where they have to pick sides. There are ways to reach your members that doesn't present the Legislature with a political problem. Reading through the donation list presents a very big political problem.

Representative Pearce stated that the SCF has a court decision that says their funds are not public funds. He believes it is a state fund. Out of fairness, the board does a fairly good job. He agreed with Senator Martin. Representative Pearce added that there are specific statutes that say no public monies can be used to influence an election, and this is clearly in violation of the law for the contribution for Proposition 203. He expressed serious concerns with these kinds of issues. Representative Pearce said that SCF's list of projects lends itself to partisan politics with public monies, and he would think that SCF has an obligation to return excess dollars to the businesses. He said that if we have excess dollars we should be looking at a rate reduction or a suspension for a period of time, but not a redistribution of these to pet projects that clearly have partisan overtones.

Senator Harper referred to an incident where money was turned around by an organization to use for issues at the Legislature. The SCF made a donation to the Project Arizona's Future, and they, in turn, were advocating for more spending by the Legislature, including sending out an email to their members that was a lie, saying that the Legislature's budget was cutting \$2 million from veterans' services. The Governor had proposed \$2 million in additional dollars, which is a big difference between not funding an additional \$2 million and cutting \$2 million.

Senator Burns asked Mr. Stavneak if information he received from SCF was sufficient to provide a good analysis as to whether or not their request is a legitimate one. Mr. Stavneak answered that it was not in the same level of detail as you find from other state agencies. It is at more of a summary level and it did not raise any concerns on the JLBC Staff's part.

Senator Burns asked if he felt that when he needed additional information, what was the level of cooperation from the SCF. Mr. Stavneak said SCF has been responsive over the last couple months to requests for information.

Senator Burns suggested that maybe the Committee approve their budget since SCF has said that they would do all they can to stay within that budget.

*Representative Pearce moved that the Committee approve the calendar year 2007 budget of \$104,480,000 and the calendar year 2008 budget of \$108,905,000 as recommended by JLBC Staff.* The motion carried.

Without objection the Committee meeting adjourned at 12:15 p.m.

Respectfully submitted:

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Tanya Smith, Secretary

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Richard Stavneak, Director

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Senator Robert Burns, Chairman

STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
SENATE

ROBERT L. BURNS  
CHAIRMAN 2008  
PAULA ABOUD  
AMANDA AGUIRRE  
JAKE FLAKE  
JORGE LUIS GARCIA  
JACK W. HARPER  
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HOUSE OF  
REPRESENTATIVES

RUSSELL K. PEARCE  
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LINDA J. LOPEZ  
PETE RIOS  
STEVE YARBROUGH

DATE: January 31, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

FROM: Richard Stavneak, Director

SUBJECT: JLBC RULES AND REGULATIONS

The following changes are proposed in the existing Committee rules:

Rule 13

JLBC Rule 13 addresses the content of fiscal notes. The proposed change requires fiscal notes to consider an impact period that covers the full cost of the legislation rather than 3 years. This would address circumstances when legislation has more than a 3 year phase-in period.

Rule 14

JLBC Rule 14 addresses the procedure for the settlement of state liability claims covered by the Risk Management Self-Insurance Fund. The proposed changes update the rules to require submission of additional information, which the Committee has previously requested regarding risk management cases. The following are the changes:

- Require the following additional information be submitted by the Arizona Department of Administration (ADOA) in the Risk Management annual review.
  - Number of claims and lawsuits filed since the last annual report.
  - Status of claims and lawsuits that were listed in the prior year annual report.
  - Number of liability cases taken to trial and information on the verdict and judgment amount.
- Require an ADOA approved loss prevention plan be included in the settlement proposal report provided to Committee members at settlement discussions. The loss prevention plan represents an agreement between the agency and ADOA Risk Management on steps the agency will take to reduce the risk of future losses due to a similar exposure.

(Continued)

- Require ADOA provide the Committee with an approved loss prevention plan to address circumstances when there is a verdict against the state in a trial. The Committee had previously not received information regarding corrective action in these cases.
- A technical change in the reference to settlements requiring Committee approval from A.R.S. § 41-621(M) to A.R.S. § 41-621(N).

Rule 15

JLBC Rule 15 already requires that JLBC Staff cannot disclose a member's confidential information without their consent. The proposed technical change deletes references to information in the public domain like newsletters.

RS:lm

Attachment

# JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

## RULES AND REGULATIONS

### RULE 1

#### NAME OF COMMITTEE AND METHOD OF APPOINTMENT

The name of the Committee is the Joint Legislative Budget Committee, hereinafter referred to as the Committee, consisting of sixteen members designated or appointed as follows:

1. The majority leaders of the Senate and House of Representatives, the Chairmen of the Senate and House of Representatives Appropriations Committees, the Chairman of the Senate Finance Committee and the Chairman of the House of Representatives Ways and Means Committee.
2. Five members of the Senate and five members of the House of Representatives who are members of their Appropriations Committees shall be appointed to the Committee by the President of the Senate and the Speaker of the House of Representatives, respectively.

### RULE 2

#### STATUTORY POWERS AND DUTIES OF THE COMMITTEE

1. The Committee shall ascertain facts and make recommendations to the Legislature relating to the State budget, revenues and expenditures of the State, future fiscal needs, the organization and functions of State agencies or divisions thereof and such other matters incident to the above functions as may be provided for by rules and regulations of the Committee.
2. The Committee shall promulgate rules and regulations for the operation of the Committee.
3. The Committee shall have the powers conferred by law upon legislative committees.
4. The Committee shall make studies, conduct inquiries, investigations and hold hearings.
5. The Committee may meet and conduct its business any place within the State during the sessions of the Legislature or any recess thereof and in the period when the Legislature is not in session.
6. The Committee may establish subcommittees from the membership of the Legislature and assign to such subcommittees any study, inquiry, investigation or hearing, with the right to call witnesses, which the Committee has authority to undertake.

### RULE 3

#### CHAIRMAN OF THE COMMITTEE

The Chairman of the House of Representatives Appropriations Committee shall have a term as Chairman of the Committee from the first day of the First Regular Session to the first day of the Second Regular Session of each Legislature and the Chairman of the Senate Appropriations Committee shall have a term from the first day of the Second Regular Session to the first day of the next Legislature's First Regular Session.

### RULE 4

#### COMMITTEE PROCEEDINGS

The Committee proceedings shall be conducted in accordance with Mason's Manual of Legislative Procedure, except as otherwise provided by these rules.

# JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

## RULES AND REGULATIONS

### RULE 5

#### SUBCOMMITTEES

The Committee may establish subcommittees from the membership of the Legislature and assign to such subcommittees any study, inquiry, investigation or hearing with the right to call witnesses which the Committee has authority to undertake. Each such subcommittee shall include in its membership an equal number of Senate and House of Representatives members.

### RULE 6

#### QUORUM

A majority of the members of the Committee shall constitute a quorum for the transaction of business.

### RULE 7

#### LEGISLATIVE BUDGET ANALYST

The Legislative Budget Analyst (hereinafter "Director") shall be the Staff Director and the Chief Executive Officer of the Committee. The Director shall be appointed by the Committee and shall serve on a full-time basis. The Committee shall annually review the Director's performance and determine the Director's salary within the limits prescribed by law. The Chairman of the Committee may appoint a subcommittee to make recommendations concerning these matters.

In addition to the responsibilities prescribed by A.R.S. § 41-1273, the duties of the Director shall include any duties which shall be assigned by the Committee, including the following:

1. Compilation of information for the Committee.
2. A continuous review of State expenditures, revenues and analysis of the budget to ascertain facts, compare costs, workload and other data and make recommendations concerning the State's budget and revenue of the departments, boards, commissions and agencies of the State.
3. Act as administrative head of the Committee Staff, with authority to hire and dismiss such personnel as may be necessary for the proper conduct of the office, and fix compensation of staff members within any limits set by the Committee.
4. Maintain the records and files of the Committee.
5. Shall make special reports for presentation to the Committee and to others as directed by the Committee.
6. Attend all meetings of the Committee and such other meetings and hearings as are necessary to facilitate the work of the Committee.
7. Examine as to correctness all vouchers for the expenditure of funds appropriated for the use of the Committee.

# JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

## RULES AND REGULATIONS

### RULE 8

#### AGENDA FOR MEETINGS

An agenda for each Committee Meeting shall be prepared by the Director and, whenever possible, mailed or delivered to members of the Committee, not less than one week prior to the meeting. The Director must have at least three weeks prior notice for any state agency-requested items that appear on the agenda, unless the Chairman of the Committee approves of a later submission.

### RULE 9

#### ORDER OF BUSINESS

The Order of Business at a Committee meeting shall be determined by the Chairman of the Committee. It shall normally be as follows:

1. Call to order and roll call
2. Reading and approval of minutes
3. Director's Report [if any]
4. Executive Session (including Rule 14 items)
5. Items requiring Committee review and/or approval
6. Other Business - For Information Only
7. Adjournment

### RULE 10

#### DISBURSEMENTS

1. All expenditures of the Committee shall be by vouchers properly itemized and supported by receipts and shall be approved by the Director when authorized by the Chairman of the Committee.
2. All contracts and studies authorized by the Committee shall be approved by the Committee after examination.

### RULE 11

#### MEETINGS OF THE COMMITTEE

The Committee shall meet at such times and places as the Committee may determine, but in any event, no less than once in each calendar quarter. Additional special meetings may be called by the Chairman or by a majority of the members of the Committee.

### RULE 12

#### ADOPTION AND AMENDMENT OF THE RULES AND REGULATIONS

These rules and regulations shall be adopted and may be amended by a majority vote of the members of the Committee, provided that a quorum is present.



# JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

## RULES AND REGULATIONS

### RULE 13

#### FISCAL NOTES

1. The President of the Senate and the Speaker of the House of Representatives or their designees may each designate bills that shall have a fiscal note prepared regarding their impact.
2. The JLBC Staff shall prepare the fiscal notes utilizing an impact period **THAT COVERS THE FULL COST OF THE LEGISLATION** ~~of three years~~. The fiscal notes shall indicate any local fiscal impact, where appropriate.
3. Fiscal notes shall not contain comments or opinions on the merits of the bill.
4. Exceptions to the procedure set forth in this rule shall be permitted with the approval of the Chairman and Vice Chairman of the Committee.
5. The Committee may amend or suspend this rule or any subsection hereof by a majority vote of those present and eligible to vote.
6. Procedures to implement this rule shall be prepared by the Director and approved by the Chairman and Vice Chairman of the Committee.

### RULE 14

#### STATE LIABILITY CLAIMS - PROCEDURE FOR SETTLEMENT WHEN COVERED BY RISK MANAGEMENT SELF-INSURANCE FUND

1. General provisions for presentation of settlement to the Committee:
  - A. Settlements of \$250,000 or less do not require approval of the Committee pursuant to A.R.S. § 41-621(~~M~~ N). All proposed liability settlements must be presented to the Committee in accordance with these provisions and accompanied by a report containing the information specified in Paragraph 3.
  - B. The report shall be filed with the Chairman of the Committee seven days before the meeting scheduled to consider the settlement proposal.
  - C. A limited number of items may be excluded from the written report and presented orally at the Committee meeting, if the Attorney General and Risk Management Division find the exclusion to be absolutely necessary for the protection of the State's case.
  - D. All Committee settlement proceedings and material prepared for such proceedings shall be required to be kept confidential.
  - E. Any plaintiff's inquiries regarding Committee meeting dates, times and agendas should be directed to the Attorney General's Insurance Defense Section which shall consult with the JLBC Staff Director.
2. At a Committee meeting at which a settlement proposal is considered:
  - A. Material shall be presented by the Attorney General or retained defense counsel who had primary responsibility over negotiation of the settlement and/or handling of the case, together with the Manager of the Risk Management Division of the Department of Administration.

JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

RULES AND REGULATIONS

RULE 14 CONTINUED

STATE LIABILITY CLAIMS (CONT'D)

- B. The Committee Chairman or a majority of the Committee, may request other witnesses to attend and testify at any settlement proposal meeting. When requested by a Committee member, the director of an agency named in a lawsuit for which a settlement is proposed shall be requested to appear at the meeting at which the settlement is proposed.
  - C. The presentation of the settlement proposal at the Committee meeting shall contain, at a minimum, the information required to be submitted pursuant to Paragraph 3.
  - D. In addition to the report, additional drafts, charts, pictures, documents or other items may be presented to the Committee by the Attorney General or Risk Management Division, if helpful in reviewing the merits of the settlement. Additional items shall be presented when requested by the Committee Chairman, or a majority of the Committee at a prior meeting, or a JLBC subcommittee to which the matter has been referred.
  - E. Upon a conclusion of the presentation, the Committee may accept the settlement as proposed, reject the settlement as proposed, recommend an alternative settlement with the advice of the Attorney General and Risk Management Division, request additional information, evaluations or appearances of witnesses, or the matter may be referred to a JLBC subcommittee for further study.
3. The written settlement proposal report submitted to the Committee for each settlement offer shall contain the following information:
- A. A one to two page executive summary of pertinent information related to the case that, at a minimum, summarizes information contained in items B, D, G, H, I, K, L, N and P below.
  - B. The names of the plaintiffs or claimants.
  - C. Whether a lawsuit has been filed, the date on which it was filed and the current status of the lawsuit. If a lawsuit has not been filed, the last date upon which a lawsuit could be filed.
  - D. The basic facts of the case including, first, the undisputed facts and secondly, those facts in dispute.
  - E. A summary of the basis or bases of liability claimed by plaintiff or claimant and the State's defenses to such liability, including the key evidence relied upon by each party.
  - F. The amount originally claimed by the plaintiff or claimant.
  - G. The identifiable damages and/or costs incurred by plaintiff or claimant to date.
  - H. Costs incurred by the State in defending the claim or suit to date.
  - I. Estimated costs to the State of defending the claim or suit through trial.
  - J. Attorney for plaintiff, Attorney General assigned to the case, retained defense counsel, if any.
  - K. Estimate of plaintiff or claimant's chances of prevailing in suit against the State.
  - L. Range of recovery likely at trial for plaintiff's claims.
  - M. Complete terms of settlement including:
    - 1. To whom payment is to be made;

JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

RULES AND REGULATIONS

RULE 14 CONTINUED

STATE LIABILITY CLAIMS (CONT'D)

2. The amount of payment;
  3. The conditions, if any, attached to the payment; and
  4. Deadline for settlement, if any.
- N. Settlement recommendations of Attorney General and Risk Management and recommended response to settlement offer.
- O. Whether the State has any claim or right of recovery against other parties, e.g., subrogation or indemnification.
- P. An agency AND AN ARIZONA DEPARTMENT OF ADMINISTRATION response that shall contain the following information:
1. Actions taken to eliminate or limit the future risk of liability to the state.
  2. Statement as to any disciplinary action(s) taken against any employee(s) that were negligent in carrying out their duties.
  3. THE ARIZONA DEPARTMENT OF ADMINISTRATION'S APPROVED LOSS PREVENTION PLAN.
4. In conjunction with the settlement procedures prescribed pursuant to this rule, the Risk Management Division shall:
- A. Annually report to the Committee on 1) the operations of the Division, 2) the status of pending claims and lawsuits, 3) information on actual judgements and settlements, 4) STATUS OF CLAIMS AND LAWSUITS REPORTED ON THE PRIOR YEAR ANNUAL REPORT, 5) NUMBER OF CLAIMS AND LAWSUITS FILED SINCE THE LAST REPORT, 6) NUMBER OF LIABILITY CASES TAKEN TO TRIAL WITH INFORMATION ON THE VERDICTS AND JUDGEMENT AMOUNTS, and 7) projected fund balances.
  - B. With the assistance of the Attorney General, propose to the Committee any changes in State insurance coverage, State statutes, State liability principles or claims procedures which may help to limit future State liability.
  - C. PROVIDE THE COMMITTEE WITH A DEPARTMENT APPROVED LOSS PREVENTION PLAN FROM ANY TRIAL THAT RESULTS IN A JUDGEMENT AGAINST THE STATE IN AN AMOUNT EQUAL TO OR GREATER THAN THAT WHICH REQUIRES JLBC SETTLEMENT AUTHORITY.

RULE 15

CONFIDENTIAL NATURE OF SERVICES

The Director, members of the JLBC Staff, and those charged with the duty of processing in any manner proposed budget estimates, recommendations or research, shall not, without consent of the recipient legislator(s), disclose to any other person whomsoever, the contents of any letter, memorandum, report, ~~newsletter~~, or any other written communicate.

JOINT LEGISLATIVE BUDGET COMMITTEE OF ARIZONA

RULES AND REGULATIONS

RULE 15 (CONTINUED)

This provision does not apply to regular JLBC Staff reports nor information which the Staff prepares and disseminates under the general authority of the Director that was not specifically requested by a legislator(s).

The violation of any provision of this rule by the Director, a member of his staff, or any person charged in any manner with the duty of processing proposed analysis or research may be deemed sufficient cause for dismissal by the Director and in the case of the Director, by the Committee.

STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
SENATE

ROBERT L. BURNS  
CHAIRMAN 2008  
PAULA ABOUD  
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LINDA J. LOPEZ  
PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Kimberly Cordes-Sween, Fiscal Analyst  
Martin Lorenzo, Fiscal Analyst

SUBJECT: Arizona Department of Corrections – Consider Approval and Review of Requested  
Transfer of Appropriations

**Request**

The Arizona Department of Corrections (ADC) requests Committee approval to transfer a total of \$19.8 million within the department's operating budget and Special Line Items (SLI). This request includes: a) a transfer of \$7.5 million, including \$6 million from Employee Related Expenditures (ERE) and \$1.5 million from the County Jail Beds SLI, to the Overtime/Compensatory Time (OT/CT) SLI to pay for higher-than-expected overtime and compensatory time expenses and b) a transfer of \$12.3 million from the Private Prison Per Diem SLI to the Provisional Beds SLI to allow the department to contract for 645 beds that were previously contracted with Newton County, Texas.

Laws 2006, Chapter 344 requires that any transfer to or from the amounts appropriated for the Overtime/Compensatory Time or Provisional Beds SLI would require review by the Joint Legislative Budget Committee (JLBC). A.R.S. § 35-173 (D) also requires Committee approval prior to transferring monies to or from Employee Related Expenditures.

**Recommendation**

The JLBC Staff recommends that the Committee approve the department's request to transfer \$6 million from the ERE line item and \$1.5 million from the County Jail Beds SLI to the OT/CT SLI. This transfer is anticipated to cover the department's Overtime/Compensatory Time costs through April 2007.

ADC's estimated ERE surplus of \$6 million seems uncertain at this time and could be as low as \$2 million. If the actual surplus is not as great as ADC projects, funding may need to be subsequently restored to ERE.

(Continued)

With regards to the Provisional Beds transfer, the Committee has at least the following 3 options:

1. A favorable review of the transfer of \$12.3 million from the Private Prison Per Diem SLI to the Provisional Beds SLI, as requested by the department. Option 1 would provide significantly more funding than required to contract for 645 replacement beds.
2. Transfer \$3.2 million from the Private Prison Per Diem SLI to the Provisional Beds SLI. Option 2 would allow the department to contract for the 645 Newton, Texas replacement beds on a provisional basis beginning April 1, 2007 at the currently funded per diem rate of \$55.24. A per diem increase would be subsequently considered as part of the FY 2007 supplemental.
3. Defer action with regards to the provisional beds until the department negotiates a contracted rate for all replacement beds. The department is currently in the middle of the evaluation process for contracting these beds and, to date, no actual contract rate has been determined.

Table 1 illustrates the recommended Overtime/Compensatory Time transfer and the Committee options for the Provisional Beds transfer.

<b>Table 1</b>			
<b>Provisional Beds and Overtime Transfers</b>			
JLBC Recommended Overtime Transfer:			
<u>Transfer From:</u>		<u>Transfer To:</u>	
Employee Related Expenditures	\$6,024,100	Overtime/Compensatory Time	<u>\$7,533,100</u>
County Jail Beds	<u>1,509,000</u>		
Total	<u>\$7,533,100</u>	Total	<u>\$7,533,100</u>
Provisional Beds Option 1:			
<u>Transfer From:</u>		<u>Transfer To:</u>	
Private Prison Per Diem	<u>\$12,281,800</u>	Provisional Beds	<u>\$12,281,800</u>
Total	<u>\$12,281,800</u>	Total	<u>\$12,281,800</u>
Provisional Beds Option 2:			
<u>Transfer From:</u>		<u>Transfer To:</u>	
Private Prison Per Diem	\$3,242,300	Provisional Beds	\$3,242,300
Total	<u>\$3,242,300</u>	Total	<u>\$3,242,300</u>
Provisional Beds Option 3:			
Delay Action			

## Analysis

### Overtime/Compensatory Time Transfer

Laws 2006, Chapter 344 appropriated \$19.7 million to ADC to fund costs associated with OT/CT in FY 2007. While the department expended \$40.6 million in FY 2006 for OT/CT, the FY 2007 budget shifted monies from OT/CT to increase entry-level Correctional Officer salaries by \$2,943 to \$32,641. The higher pay was intended to reduce vacancies and, thereby, reduce overtime expenditures. Based on the department's monthly expenditure reports, it appears increases in staffing have resulted in decreased overtime costs in the current year. For example, the department's average overtime cost per-pay-period of \$2.2 million in July and August 2006 has decreased to an average overtime cost per-pay-period of \$1.3 million in November and December 2006.

At the December 2006 meeting, the Committee approved the transfer of \$6.7 million from the employee benefits line to the OT/CT line. As a result, the department's allocation for OT/CT expenses totals \$26.3 million in FY 2007. Based on the department's monthly expenditure report, they have expended \$22.3

(Continued)

million through December 2006. At the current rate of expenditure of \$1.3 million per pay period, the ADC appropriation would be fully expended by February 2007. Their request to shift \$7.5 million (\$6 million from employee benefits and \$1.5 million from the County Jail Beds SLI) to the OT/CT would fund OT/CT costs through mid April 2007. In total, the department projects a need of \$38.2 million for OT/CT in FY 2007.

The department's proposal would shift \$6 million (of the \$7.5 million) from the employee benefits line to the OT/CT line. This request is based on the department's most recent monthly expenditure report which forecasts an employee benefits surplus of \$9.3 million. Their projection assumes the current year-to-date employee benefits rate of 35.4% is reflective of the full year rate. It is unclear however, if this level of surplus will be realized as the department's employee benefits expenditures have fluctuated from month to month. For example, in August 2006 the rate the department was charged equaled 17.15% and in December 2006 the rate was 38.68%. Based on the JLBC Staff Personal Services projection, the budgeted ERE rate of 37.81% would result in an ERE surplus of only \$1.8 million, as compared to ADC's \$9 million surplus estimate.

The department's plan would also shift the remaining \$1.5 million (of the \$7.5 million) from County Jail Beds SLI to the OT/CT line. Due to an unforeseen cancellation of ADC's contract with Coconino County jail for 88 beds, the County Jail Beds SLI has additional funding available for one-time use in other areas of the department's budget. Based on current spending projections within the County Jail Beds SLI, the department's \$1.5 million transfer request would leave sufficient funding in this SLI to pay for remaining county jail beds. ADC currently contracts for 48 Navajo County Jail beds, as approved in Laws 2005, Chapter 5, 2<sup>nd</sup> Special Session.

#### Provisional Bed Transfer

Provisional beds can be public or private in nature and are usually contracted by the department on an annual basis with the option to renew those contracts for up to 5 years. These beds are intended to be for short term use and could be considered "rented" beds. Private beds, on the other hand, are long-term contracted beds that the department will eventually own at the end of the contract term, which is often 20 years. As a result, there is a capital component (for debt service) included in the per diem cost charged to ADC.

In November 2005, the department's contract for 645 beds at the privately-operated Newton County, Texas facility was canceled by the vendor. The FY 2007 appropriated budget anticipated that the department would find permanent private beds to replace the Newton beds. As a result, the budget placed the Newton funding in the Private Prison Per Diem SLI. ADC, however, would instead like to replace these 645 beds on a provisional or temporary basis beginning in spring 2007 and is requesting the shift these funds to the Provisional Beds SLI.

In November 2007, the department released a Request for Proposal (RFP) to replace all provisional beds. ADC is currently in the process of evaluating the bids received and anticipates awarding a contract in by April 1, 2007.

Option 1 would provide a favorable review of the department's request to transfer \$12.3 million from the Private Prison Per Diem SLI to the Provisional Beds SLI to contract for 645 Newton County, Texas replacement beds on a provisional basis at \$65 per day. Assuming an April 1 start date and a \$65 per diem for the Newton replacement beds, ADC would require funding of \$3.8 million. The current budgeted per diem rate for these beds is \$55.24 per day. In order to contract for new beds, ADC is requesting to increase the per diem to \$65 a day. Given that ADC is requesting a transfer of \$12.3 million, option 1 would give the department substantially more funding than the \$3.8 million to fund the 645 replacement beds in this fiscal year.

(Continued)

Option 2 would transfer \$3.2 million from the Private Prison Per Diem SLI to the Provisional Beds SLI. This amount would allow for 645 replacement beds with a start date of April 1 at the currently budgeted per diem of \$55.24. The increase in the per diem rate to \$65 would be resolved as part of the subsequent discussion on the FY 2007 supplemental.

Option 3 would allow the Committee to delay any further action with regards to the provisional bed funding transfers until the department is aware of the exact costs to contract for Newton County replacement beds. Due to the fact that the total cost for the replacement beds is unknown and that the department may require future transfers before the end of FY 2007, this option allows the Committee to have a more accurate estimate of transfer needs for the Provisional Bed SLI and possible needs in other parts of the budget. The department will likely know the exact cost for new provisional contracts at some point in late February or March 2007.

RS/KC/ML:ss



# Arizona Department of Corrections



JANET NAPOLITANO  
GOVERNOR

January 19, 2007

1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007



DORA B. SCHRIRO  
DIRECTOR

Senator Robert Burns  
Chair, Joint Legislative Budget Committee  
Arizona Legislature  
1700 West Washington Street  
Phoenix, Arizona 85007

Representative Tom Boone  
Vice Chair, Joint Legislative Budget Committee  
Arizona Legislature  
1700 West Washington Street  
Phoenix, Arizona 85007



Gentlemen:

The Arizona Department of Corrections requested in a letter dated December 28, 2006 placement on the next agenda of the meeting of the Joint Legislative Budget Committee for the transfer of funds between appropriation line items. The request addressed two transfer needs.

The first transfer deals with the shortfall in appropriations for Overtime/Compensation time expenditures. Based on our December report we request the transfer of \$6,024,107 from the Employee Related Expense (ERE) appropriation and \$1,508,985 from the County Jail Beds appropriation to the Overtime/Compensation appropriation to cover projected overtime costs through April, 2007. The overtime report requested during the November 15, 2006 JLBC meeting is also submitted to JLBC staff.

The second transfer involves moving \$12,281,770 from the Private Prison appropriation to the Provisional Beds appropriation to cover replacing Newton beds with other provisional beds.

I appreciate your consideration and timely attention.

Sincerely,

Dora Schriro

cc: Richard Stavneak, Director, Joint Legislative Budget Committee  
James Apperson, Director, Governor's Office of Strategic Planning and Budgeting

# Arizona Department of Corrections



JANET NAPOLITANO  
GOVERNOR

1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007



DORA B. SCHIRO  
DIRECTOR

December 28, 2006

The Honorable Robert Burns  
Chair, Joint Legislative Budget Committee  
Arizona Legislature  
1700 West Washington Street  
Phoenix, Arizona 85007

The Honorable Tom Boone  
Vice Chair, Joint Legislative Budget Committee  
Arizona Legislature  
1700 West Washington Street  
Phoenix, Arizona 85007

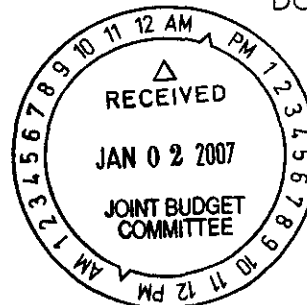
Gentlemen:

The Arizona Department of Corrections requests placement on the next agenda of the meeting of the Joint Legislative Budget Committee to consider two transfers of funds between appropriation line items. The first transfer will cover projected Overtime/Compensatory costs. The second transfer will be used to pay for an increase in per diem rates for replacement provisional beds following the cancellation of two contracts by CSC/GEO and the expiration of a current contract with CCA.

## *Overtime/Compensatory Time Appropriation Shortfall*

The department appeared before the Joint Legislative Budget Committee on December 18 requesting a transfer of funds from the Employee Related Expenses (ERE) appropriation to cover Overtime/Compensatory Time (OT) projected expenditures. The committee approved a transfer of \$6,654,300 from ERE to cover Overtime expenditures through the first pay period in February 2007.

The Committee also directed the department to submit a report showing FY 2006 actual and FY 2007 year-to-date and projected number of hours worked by all positions in the Correctional Officers series by January 20, 2007 categorizing the hours by the number of straight time, overtime, and compensatory time worked. The department plans to comply in full and will determine the amount of funding needed to cover the



The Honorable Robert Burns  
The Honorable Tom Boone  
December 28, 2006  
Page 2

Overtime/Compensatory Time projected expenditures as well as the recommended source of the transfer as soon as the December monthly report is completed. ADC will work with JLBC staff and submit detailed information as quickly as possible in January.

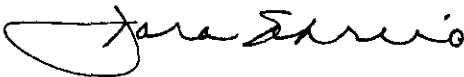
*Private Prison Appropriation Transfer*

The department is in the process of replacing 1,509 provisional beds after two contracts were cancelled by CSC/GEO specifically 864 beds in Reeves County and 645 beds in Newton County, Texas. The department is also in the process of seeking bids to replace up to 2,064 beds in Watonga Oklahoma when our CCA contract expires on June 30, 2007. We currently occupy 1,440 beds, all which are currently available at this location.

Presently, the funding for provisional beds is appropriated in two special appropriation line items; funds for 645 beds are in the Private Prison Per Diem appropriation, the rest are in the Provisional Bed appropriation line item. Further as noted above, the replacement cost is expected to be greater than are the current per diem rates, exceeding the current funds available in the Provisional Beds appropriation. ADC recommends consolidating all funds for provisional beds in the Provisional Bed appropriation line item and transferring \$6,665,239 from the Private Prison Per Diem appropriation to the Provisional Bed appropriation line item.

I appreciate your consideration and timely attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Dora Schriro", with a stylized, cursive script.

Dora Schriro  
Director

Attachment

cc: Richard Stavneak, Director, Joint Legislative Budget Committee  
James J. Apperson, Director, Office for Strategic Planning and Budgeting

**ARIZONA DEPARTMENT OF CORRECTIONS**  
**Provisional Bed Projection**  
**FY 2007**

**In State - Private Prison Contracts FY 07**

Location	Original Alloc	Adjust	Adjusted Alloc
New Beds Funds Available			
General Fund	13,005,000		13,005,000
<i>Out for bid</i>			

				(A)	(B)	(C) (A) + (B)	(D)	(E) (D) - (C)
<b>Out of State - Provisional - Private Prison Contracts FY 07</b>								
Oklahoma (Diamondback)	Days	Beds	Per Diem	YTD Total	Projected	YTD plus Proj	FY 07 Budget	Diff
7/1/06 to 11/30/06	153	1,200	47.65	8,748,540				
12/1/06 to 6/30/07	213	1,440	46.65		14,308,488		20,805,000	
Reeves County Texas								
7/1/06 to 12/10/06	163	778	45.00	5,706,630			14,128,400	
7/1/06 to 12/10/06	163	84	43.00	588,756				
12/10/06 to 12/27/06 Ave Phase out of Reeves				388,800				
Replacement Beds Projection								
1/1/07 to 6/30/07					11,857,425			
				<b>15,432,726</b>	<b>26,165,913</b>	<b>41,598,639</b>	<b>34,933,400</b>	<b>(6,665,239)</b>

**REPLACEMENT BEDS**

Replacement Beds Projection	Days	Weekly Schedule	Perdiem	Projected Cost	YTD Total	Oklahoma (Diamondback)	Sub Total	Remaining Balance
1/1/07 to 6/30/07	181	100	68.00	1,230,800	15,432,726	14,308,488	30,972,014	34,933,400
1/8/07 to 6/30/07	174	100	68.00	1,183,200				3,961,386
1/15/07 to 6/30/07	167	100	68.00	1,135,600				2,778,186
1/22/07 to 6/30/07	160	100	68.00	1,088,000				1,642,586
1/29/07 to 6/30/07	153	100	68.00	1,040,400				554,586
2/05/07 to 6/30/07	146	100	68.00	992,800				(485,814)
2/12/07 to 6/30/07	139	50	68.00	472,600				(1,478,614)
2/12/07 to 6/30/07	139	50	66.50	462,175				(1,951,214)
2/19/07 to 6/30/07	132	100	66.50	877,800				(2,413,389)
2/26/07 to 6/30/07	125	100	66.50	831,250				(3,291,189)
3/05/07 to 6/30/07	118	100	65.00	767,000				(4,122,439)
3/12/07 to 6/30/07	111	100	65.00	721,500				(4,889,439)
3/19/07 to 6/30/07	104	100	65.00	676,000				(5,610,939)
3/26/07 to 6/30/07	97	60	65.00	378,300				(6,286,939)
		1,260		<b>11,857,425</b>				(6,665,239)

STATE OF ARIZONA

**Joint Legislative Budget Committee**

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LINDA J. LOPEZ  
PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Jay Chilton, Fiscal Analyst

SUBJECT: State Land Department – Consider Approval of Amended Contract for Permanent Central  
Arizona Project Water Delivery

**Request**

Pursuant to A.R.S. § 37-106.01, the State Land Department has submitted for approval an amended contract with the Central Arizona Water Conservation District (CAWCD) for permanent Central Arizona Project (CAP) water rights and delivery.

The proposed contract is 39 pages and is available upon request from the JLBC Staff.

**Recommendation**

The JLBC Staff recommends that the Committee approve the amended contract. The amended contract provides terms favorable to the State Land Department by extending the period of the contract from 50 to 100 years. Additionally, the amended contract does not change the financial obligations of the State nor does it change the amount of water purchased by the Land Department.

**Analysis**

The State Land Department holds 9.3 million acres of land in trust for 14 beneficiaries. In order to generate revenue for the beneficiaries, the department plans, leases, and sells Trust land. To maintain the value of the land, A.R.S. § 37-106.01 allows the State Land Department to contract with the CAWCD for CAP water.

The current contract was approved by the JLBC on November 20, 1986 and allows the agency to purchase 32,076 acre-feet of Municipal and Industrial (M&I) CAP water to maintain the value of trust lands in Maricopa, Pinal, and Pima Counties. The water is Colorado River water delivered via the CAP canal. *Table 1* indicates the quantity of water from the contract that is designated for the Trust lands in each specific city.

Water rates are set by the CAWCD Board annually. Firm rates for calendar years 2007 and 2008 and advisory rates for calendar year 2009 through 2012 were approved by the CAWCD Board on June 22, 2006. Currently the department pays \$21 per acre-foot of water, or a total of \$673,596 per year. This rate is expected to

(Continued)

continue until 2010, when the rate is expected to decrease to \$5 per acre-foot due to a settlement between the CAWCD and the federal government regarding the repayment of the CAP project.

<b>Table 1</b>	
<b>Subcontract Water Allocations by City</b>	
<b><u>Area</u></b>	<b><u>Quantity of Water (in acre-feet per year)</u></b>
Phoenix	12,000
Scottsdale	370
Mesa	500
Goodyear	150
Carefree	150
Apache Junction	2,000
Tucson	14,000
Reserve <sup>1/</sup>	<u>2,906</u>
<b>Total</b>	<b>32,076</b>

<sup>1/</sup> Waters labeled "Reserve" may be used by the Land Department on State Trust lands outside of Maricopa, Pinal, and Pima Counties

CAWCD has proposed that the current contract be amended. The amended contract would make 3 changes to the existing contract. These changes are to bring the contract into agreement with the Arizona Water Settlements Act, a 2004 act of the United States Congress. Section 104 of the Arizona Water Settlements Act applies to CAP water and directs the U.S. Secretary of the Interior to amend CAP Municipal and Industrial (M&I) contracts. The first and primary change is to require terms of 100 years, increased from 50 years.

Second, the Arizona Water Settlements Act requires that all amended contracts conform to shortage sharing agreements as described by paragraph 5.3 of the Tohono O'odham settlement agreement, which is part of the Southern Arizona Water Settlements Act of 1982. Shortage sharing describes the order in which uses of water will be reduced the event of a severe shortage of Colorado River water. The first use to be restricted is miscellaneous use, followed by non-Indian agricultural use. Third, any Municipal and Industrial water use, for which the contract under consideration provides water, in excess of 510,000 acre-feet is reduced. CAP Indian Priority Water in excess of 291,574 acre-feet is the fourth water use to be reduced. If these reductions do not bring water orders to within the available CAP supply, the available supply is allocated between users of CAP Indian Priority Water and CAP M&I Priority Water. The prior contract was vague regarding the terms of shortage sharing. The new contract conforms to the requirements of the Arizona Water Settlements Act and mirrors the shortage sharing terms that have been offered to and accepted by other municipal water providers.

The third change is that the amended contract eliminates the original limitations on effluent exchanges. Effluent exchanges occur when a municipal water provider has a wastewater treatment facility and has an agreement to exchange effluent for irrigation water. At this time, this issue is not relevant to the Land Department.

The amended contract does not change the amount of water that the Land Department is purchasing under the contract. As the rates for the water are determined annually by the CAWCD Board, the amended contract will not increase the financial obligations of the State with respect to CAP water rights.

RS:JC:ss

Janet Napolitano  
Governor

Mark Winkleman  
State Land  
Commissioner

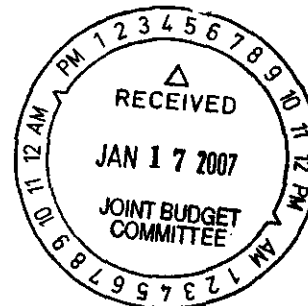
# Arizona State Land Department

1616 West Adams Street Phoenix, AZ 85007 [www.land.state.az.us](http://www.land.state.az.us)



January 17, 2007

Richard Stavneak, Director  
Joint Legislative Budget Committee  
1716 West Adams  
Phoenix, AZ 85007



Dear Mr. Stavneak:

Please accept this letter as the Arizona State Land Department's request for a JLBC agenda item.

By letter dated November 28, 2006, the Central Arizona Water Conservation District (CAWCD), has offered the Land Department an amended subcontract for permanent CAP water delivery with an initial term of 100 years. A copy of the aforementioned letter, and the accompanied subcontract are enclosed for your review. According to A.R.S. § 37-106.01 (A), approval of the JLBC is necessary to obtain a contract with the United States and a multi-county water conservation district ("CAWCD") for municipal and industrial (M&I) Central Arizona Project (CAP) water. The Land Department received JLBC approval on November 20, 1986 for the Department to execute the M&I CAP Subcontract (Contract No. 7-07-30-W0154), see enclosed copy of "Partial Minutes of the Meeting, Joint Legislative Budget Committee, November 20, 1986", which is now proposed to be amended. The principal effect of the proposed amendment is to extend the period of the contract from 50 years to 100 years, as authorized and required by the Arizona Water Settlement Agreement. The Land Department is negotiating other minor changes in the wording, in the form of an addendum, that will not affect the financial responsibilities of the parties, and are intended to comply with state law. It is not anticipated that the amended subcontract would increase the financial obligations of the State with respect to CAP capital charges, as the capital costs referenced in this subcontract are based on the settlement of the CAP construction costs between CAWCD and the federal government.

Please notify me, when this issue can be heard by JLBC. Please contact Cynthia Stefanovic at (602)542-2669 or myself at (602) 542-6735, if you have any questions.

Sincerely,

Keith Fallstrom  
Budget and Accounting Manager  
Arizona State Land Department

KF:CS  
Enclosures

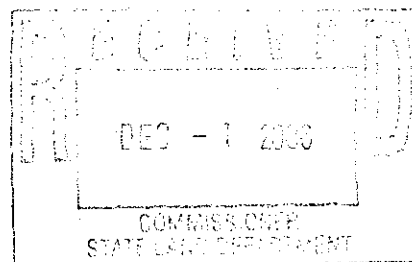
c: Jay Baughman, OSPB



P.O. Box 43020 • Phoenix, AZ 85080-3020  
23636 N. 7th Street • Phoenix, AZ 85024

623-869-2333 • [www.cap-az.com](http://www.cap-az.com)

November 28, 2006



Mr. Mark Winkleman  
Arizona State Land Department  
Land Commissioner  
1616 W. Adams  
Phoenix, AZ 85007

Dear Mr. Winkleman:

Section 104(d) of the Arizona Water Settlements Act, Pub. L. 108-451, directed the Secretary of the Interior to offer amended subcontracts for Central Arizona Project municipal and industrial (M&I) priority water. The amended contracts provide for permanent service of Colorado River water with an initial delivery term of 100 years. The amended contracts also conform to the shortage sharing criteria described in paragraph 5.3 of the Tohono O'odham settlement agreement. Finally, the amended contracts eliminate the original limitations on effluent exchanges. These changes represent significant improvements over the existing CAP M&I subcontracts that were secured by the state parties in the context of the Gila River Indian Community water rights settlement.

Enclosed are three originals of an amended CAP M&I subcontract for Arizona State Land Department. Please have all three originals signed by the appropriate official(s) and return them to CAWCD together with a certified copy of a resolution approving the subcontract and authorizing its execution on behalf of Arizona State Land Department. We must receive these documents from you no later than 60 days after your receipt of this letter. If you have questions, please contact us. Once the subcontract has been signed by CAWCD and the United States, we will return one fully executed original to you.

Article 4.2 of the subcontract provides that it does not become effective until three conditions have been satisfied:

- 1) The subcontract must be validated by a court of competent jurisdiction, as described in A.R.S. §§48-3731 through 48-3734. We intend to provide you with a fully executed subcontract by early next year, so that you may secure court validation in 2007.



Mr. Mark Winkleman

November 28, 2006

Page 2

- 2) The conditions set forth in section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478, must be satisfied. The Act provides that the Secretary of the Interior must publish a finding by December 31, 2007, that those conditions have been satisfied. If that does not happen, the relevant portions of the Act are repealed and the subcontract is voided.
- 3) The subcontractor must pay or provide for payment of past M&I water service capital charges associated with the CAP allocation. Because the amended subcontract does not increase your CAP entitlement, no additional capital charges are owed by Arizona State Land Department.

The amended subcontract's 100-year delivery term begins on January 1 of the year following that in which the amended subcontract becomes effective. Thus, if all of the conditions are satisfied in 2007, delivery of CAP water under the amended subcontract could begin on January 1, 2008. Your timely execution and return of the enclosed subcontract will help maintain that schedule.

If you have any questions about this process, please contact Sheila Brennemann at 623-869-2368.

Sincerely,



Douglas K. Miller  
General Counsel, CAWCD

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Encls.

STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
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PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Jay Chilton, Fiscal Analyst

SUBJECT: Department of Public Safety – Quarterly Review of the Arizona Public Safety  
Communication Advisory Commission

**Request**

Pursuant to Laws 2004, Chapter 281, the Department of Public Safety (DPS) has submitted for review their FY 2007 first quarter expenditures and progress for the statewide interoperability design project.

**Recommendation**

The JLBC Staff recommends that the Committee give a favorable review of the request. First quarter expenditures totaled \$209,700 of nearly \$4.3 million in FY 2007 funding. A technical writer position was filled bringing the total staff to 7 of 9 positions. Activities in the first quarter addressed projects identified in the Public Safety Communication Advisory Commission (PSCC) timeline relating to both the “short-term” and “long-term” interoperable solutions.

**Analysis**

**Background**

The Arizona PSCC was established to develop a statewide standard based interoperability system that allows public safety personnel from one agency to communicate, via mobile radio, with personnel from other agencies. An interoperable system enhances the ability of various public safety agencies to coordinate their actions in the event of a large-scale emergency as well as daily emergencies. Construction costs of a statewide interoperability communication system have been estimated to be as high as \$300 million. The PSCC timeline (*see attachment A*) targets the establishment of a financing and development plan for the system by July 2008.

**Activities**

PSCC progress in the first quarter regarding the timeline and the “short-term” interoperable solution included increasing the number of Arizona Emergency Radio System (AERS) user agencies from 20 to

(Continued)

38 and finalizing the Memorandum of Understanding between the DPS/PSCC Support Office and those user agencies (Milestone 9).

With respect to the “long-term” interoperable solution, the consulting firm contracted to create the conceptual design to the solution has established a project team and established an office at the PSCC location. The firm has begun gathering and analyzing information and has produced the first draft report and contract deliverable. The conceptual design is scheduled to be completed in July 2007 (Milestones 10, 14).

The FY 2008 JLBC Baseline and the Executive recommendation both include \$2.2 million in FY 2008 for detailed design of the long-term interoperable communication system. Based on the conceptual design currently being prepared, the detailed design will enable the testing and deployment of the final system.

The PSCC has also formally established a Governance Committee to research options and exchange ideas regarding funding and operation of a joint-use radio system. The committee will advise the PSCC and consists of representatives from the Tucson Police Department, Maricopa County Sheriff’s Office, and the PSCC Support Office (Milestone 12).

#### Expenditures

Laws 2004, Chapter 275 included a non-lapsing appropriation of \$3 million to DPS in FY 2005 for design costs of a statewide radio interoperability communication system. At the beginning of FY 2007, \$2,987,200 was remaining from that non-lapsing appropriation. In addition, the FY 2007 General Appropriation Act appropriated \$1,335,000 to DPS from the General Fund for the PSCC through the Statewide Interoperability Special Line Item. Therefore, there was a total of \$4,322,200 in available monies for expenditure in FY 2007.

In the first quarter, the PSCC expended roughly \$187,200 for costs associated with the 7 filled staff positions. The PSCC filled a previously vacant technical writer FTE Position. Two telecommunication engineer positions remain unfilled.

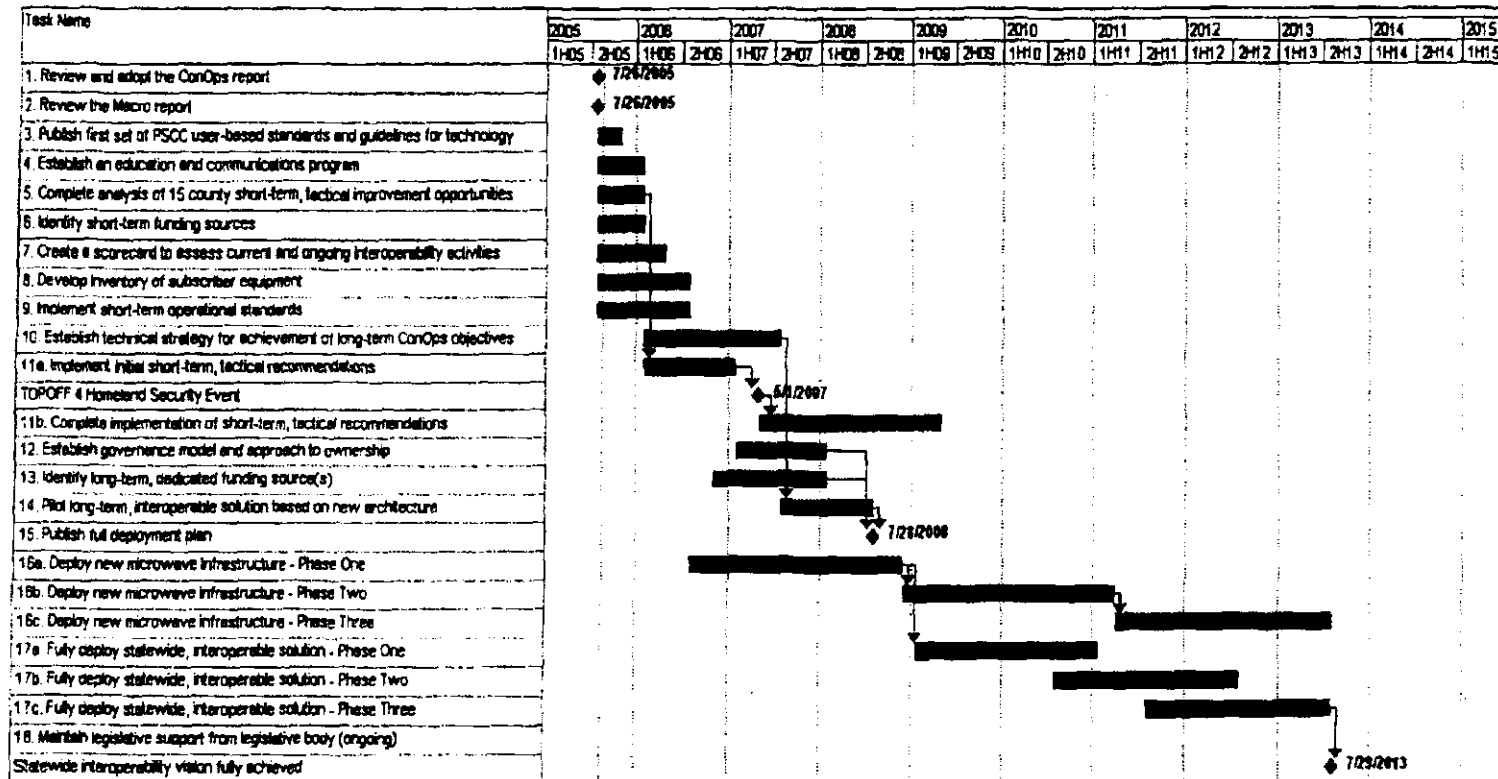
Total first quarter expenditures also included \$22,500 from the PSCC’s non-lapsing funds paid to the consulting firm contracted to create the conceptual design to the “long-term” solution. This leaves \$4,112,500 for the remainder of FY 2007.

Table 1 indicates FY 2007 monies available for expenditure and first quarter expenditures.

<b>Table 1</b>		
<b>PSCC Appropriation &amp; Expenditures</b>		
	<b>FY 2007</b>	<b>1<sup>st</sup> Quarter</b>
	<b><u>Funding Available</u></b>	<b><u>Expenditures</u></b>
Personal Services	\$ 737,300	\$118,100
Employee Related Expenditures	230,100	20,100
Professional & Outside Services	2,987,200 <sup>1/</sup>	--
Travel - In State	41,400	400
Travel - Out of State	26,600	1,500
Other Operating Expenditures	299,600	47,100
Equipment	-	-
<b>Total Operating Expenditures</b>	<b>\$4,322,200</b>	<b>\$187,200</b>
<sup>1/</sup> The remaining amount from the \$3 million in non-lapsing monies is included in the Professional & Outside Services line.		

The following project plan conveys the major components of the short- and long-term strategies for achieving statewide interoperability in the State of Arizona. Through execution of this plan, the State can address the critical communications issues facing public safety and realize the vision for radio interoperability shared by the PSCC and the State of Arizona.

Figure 2. Arizona Statewide Interoperability Project Plan



consulting

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26 October 2005 — Page 5

# ARIZONA DEPARTMENT OF PUBLIC SAFETY

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

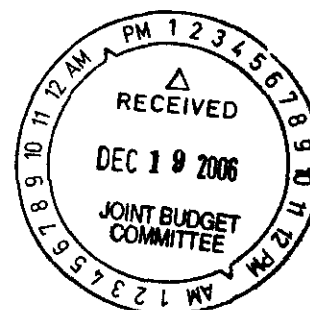


JANET NAPOLITANO  
GOVERNOR

ROGER VANDERPOOL  
DIRECTOR

December 22, 2006

Mr. Richard Stavneak, Director  
Joint Legislative Budget Committee  
1716 West Adams  
Phoenix, AZ 85007




Dear Mr. Stavneak:

Attached is our first quarter report for the Arizona Public Safety Communications Commission (PSCC). Included is a narrative of our activities and progress relative to milestones identified in our Concept of Operations document for the reporting period of July 1, 2006 through September 30, 2006.

If we can answer any questions or assist you or your staff in any manner, please contact Mr. Curt B. Knight, Executive Director, PSCC at (602) 271-7400.

Sincerely,

  
Fol Roger Vanderpool  
Director

HB

Attachments

## Public Safety Communications Commission

### **PSCC Concept of Operations Milestone Activities:**

The following quarterly activities provide an update of progress on the milestones and timeframes established in the Arizona Public Safety Communications Commission Concept of Operations document.

#### **Milestone 4 – Education and Communication Program:**

Mr. Curt Knight and Mr. Kevin Rogers met with several State Senators and Representatives. These meetings were conducted to provide information on the Concept of Operations and to discuss PSCC's FY 2008 and 2009 budget requests to complete the detailed design for a statewide public safety radio system and to expand upon the demonstration project into Phase I of the entire statewide deployment. Additional meetings will be conducted after the General Election.

#### **Milestone 9 – Implement Short-Term Operational Standards:**

#### **Milestone 11 – Implement Short-Term Tactical Recommendations:**

Development continues on the installation of the Arizona Emergency Radio System (AERS) equipment at remote communications sites. The Arizona Department of Public Safety (DPS) Wireless Systems Bureau and the Arizona Division of Emergency Management (DEMA) are on schedule with the anticipated completion of 18 operational sites by year end throughout the state which will provide basic interoperability to first responders. The operational plan and all related technical documentation on the mutual aid frequencies can be found on the PSCC website:  
<http://www.azdps.gov/pssc/standards.asp>.

The Operational Work Group of the Statewide Interoperability Executive Committee (SIEC) has developed a recommended standard for common radio channel name usage to facilitate interoperability. The recommended standard will be discussed and is expected to be approved at the formal SIEC/PSCC meeting on January 23, 2007.

The Memorandum of Understanding (MOU) between the DPS/PSCC Support Office and a total of 38 AERS user agencies has been finalized. Currently, the various organizations participating in the AERS project include:

- 13 - Law Enforcement
- 8 - Fire Service
- 8 - State Government Agencies
- 3 - Emergency Medical Service
- 1 each - Emergency Management, Public Works, Public Health, Public Safety Communications, Federal Agency, Non-Governmental Organization

**Milestone 10 – Establish Technical Strategy for Long-Term Objectives:**

**Milestone 14 – Pilot Long-Term Solution:**

Federal Engineering, the consulting firm selected to provide engineering services and create the conceptual design for the land mobile radio system, has established a project team and office at the PSCC location. They have begun gathering data and analyzing information to determine the overall user needs for public safety communications. In conjunction with the PSCC Support Office, Federal Engineering has met with radio system managers from large modern systems in Arizona, this in concert with previously completed studies has formed the first draft report and contract deliverable. Federal Engineering has begun the detailed engineering and computer analysis to create radio coverage maps and coverage comparisons between radio bands. These activities will form the basis of the conceptual design scheduled to be published in July 2007.

**Milestone 12 – Establish Governance Model and Approach to Ownership:**

Planning guides and research documents from the SAFECOM program and the National Governor's Association as well as the PSCC's Concept of Operations have all recognized the critical importance of a strong governance structure to manage the ownership and operation of a shared statewide public safety radio system. The PSCC Support Office has formally solicited the support of the SAFECOM program to assist Arizona's planning efforts.

A Governance Committee was formally established by the PSCC to research options and ultimately advise the PSCC. Representatives from the Tucson Police Department, Maricopa County Sheriff's Office, Phoenix Police Department and the PSCC Support Office attended a Governance Committee meeting to exchange ideas and discuss funding, ownership and operation of a joint-use radio system. Additional sessions are planned prior to the January 23, 2007 Commission meeting.

**Milestone 13 – Identify Long-Term Funding Sources:**

To stay on track with the PSCC's Concept of Operations published timeline and maintain the required critical synchronization with the statewide microwave system deployment, the PSCC Support Office has completed the FY 2008 and 2009 budget requests to complete the detailed design for a statewide public safety radio system and to also expand upon the demonstration project into Phase I of the entire statewide deployment. The need for a regular non-lapsing funding stream beginning in FY 2010 was a common theme during budget briefings for legislators and the Governor's staff related to the PSCC's FY 2008 and 2009 requests.

**Milestone 16 – Deploy New Microwave Infrastructure:**

The Department of Public Safety through its Wireless Systems Bureau is managing a three year \$12.4 million appropriation to begin the replacement and upgrade of the “southern loop” microwave infrastructure. A critical timing and budget synchronization between the statewide microwave replacement and the PSCC’s long-term interoperable solution needs to be maintained to effectively deploy the statewide interoperable radio system on schedule. The microwave replacement schedule as reported to the JLBC on July 27, 2006 by the Wireless Systems Bureau maintains that synchronization.

**Staffing:**

In September, Mr. Jim Jertson joined the PSCC Support Staff to provide technical writing and desktop publishing services. Jim has been the Publications Editor for the Department of Public Safety for seven years and brings a high level of professionalism, skill and creativity to this position.

**Future PSCC meetings:**

Tuesday, January 23, 2007 at 1:00 p.m.  
Burton Barr Central Library  
1221 North Central Avenue  
Phoenix, Arizona

Tuesday, April 24, 2007 at 1:00 p.m.  
Location: TBA

**Budget:**

Expenditures for the first quarter of FY 2007 totaled \$187,217.71. The largest portion is attributed to salary, employee-related expenses and our building lease.



STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
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JAKE FLAKE  
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LINDA J. LOPEZ  
PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Jay Chilton, Fiscal Analyst

SUBJECT: Department of Public Safety – Review of the Microwave Communication System  
Upgrade Expenditures and Progress

**Request**

Pursuant to the FY 2007 Capital Outlay Bill (Laws 2006, Chapter 345), the Department of Public Safety (DPS) has submitted for review the expenditures and progress of the upgrade to its microwave communications system. Besides appropriating \$2.5 million in state funds for FY 2007, Chapter 345 stated the intent of the Legislature that this project also receive \$1.6 million in federal Homeland Security funds in FY 2007. DPS has learned that it will not receive these federal monies in FY 2007.

**Recommendation**

The committee has at the following 2 options:

- 1) A favorable review of the request.
- 2) An unfavorable review of the request.

Under either option, JLBC Staff recommends the following provisions:

- DPS submit an updated cost estimate on the southern loop of the project and of the entire project in its June 30, 2007 statutory report.
- DPS submit an updated expenditure plan and project timeline for the entire project, addressing the lack of Homeland Security monies, with its June 30, 2007 report.
- The Department of Homeland Security submit by February 18, 2007 written documentation regarding the available uses of federal Homeland Security funding and the length of time such policies have been in effect. JLBC Staff has also requested information on this topic from the federal Department of Homeland Security, and will update the Committee at the meeting.

(Continued)

Through the first half of FY 2007, DPS expended \$53,000 and is preparing to release 5 Requests for Proposals (RFP) for wireless tower upgrades before the end of the fiscal year. At its July meeting, the Committee requested that DPS provide cost updates for the total project and for the southern loop of the microwave system. The updated cost estimate for the system is \$47.5 million, and \$11.9 million for the southern loop. The project was originally expected to cost \$61 million.

## **Analysis**

### Background

The FY 2007 Capital Outlay Bill (Laws 2006, Chapter 345) appropriated a total of \$2,533,000 in each of the 3 years from FY 2007 through FY 2009 to DPS for the design, construction, and implementation of a digital upgrade of its microwave communications system. The appropriation included up to \$295,600 and 4 FTE Positions for project management. In addition, the bill specified that it was the intent of the Legislature that Federal Office of Homeland Security funding in the amount \$4.8 million over the three year period (\$1.6 million annually) be distributed for this project. Along with the state appropriation, DPS is required to submit a semiannual progress report to JLBC for review.

DPS had originally planned to spend \$12.4 million over 3 years. Since submitting the original expenditure plan, DPS has learned that federal Homeland Security funding will not be available for FY 2007. According the State Department of Homeland Security, the latest federal grant guidelines allow Homeland Security Grant Program monies to be used for planning, organization, equipment, training, exercises, personnel, and management and administration, but not for permanent structures such as radio towers. JLBC Staff is attempting to confirm this information. It is possible that the Homeland Security funding may be available for both FY 2008 and FY 2009, depending on the federal guidelines. DPS will still expend the total \$2,533,000 appropriation in FY 2007, although the lack of the Homeland Security funding has created the need for a revised expenditure plan and will affect the timeline for the completion of the project. Due to the uncertainty regarding the Homeland Security funding, DPS does not currently have a project timeline.

The microwave system is the backbone of the DPS statewide radio system. The system provides dispatch control of radio base stations and connects 53 remote radio communication sites and 20 state office locations. In addition, data from the Arizona Criminal Justice System is sent over the microwave system to criminal justice agencies around the state.

The current analog microwave radio system is divided into 3 segments, with each segment operating independently, enabling single or multiple digital segments to coexist with the current analog segments. The estimated total cost has been revised since the DPS expenditure plan for the microwave upgrade funding was heard by the JLBC in July 2006. The revised estimated cost to upgrade all 3 segments is \$47.5 million, down from \$61 million. DPS also plans to use the FY 2007 funding to repair 3 damaged sites in the northern and western segments. The upgrade of the microwave radio backbone is an integral part of the long-term interoperability solution currently under development by the Public Safety Communication Commission.

### Activities

Current activities are focused on staffing, damaged tower replacement, and site development in the southern segment. DPS' Wireless Systems Bureau (WSB) is currently in the process of hiring a Project Manager and is also advertising for a Tower Technician position. The WSB has also purchased a new emergency power generator and power transfer switch equipment for the Phoenix Microwave Room, which will serve as the operations center for the new digital microwave system.

(Continued)

In the southern segment and for the 3 damaged towers DPS plans to replace in FY 2007 that are outside the southern segment, DPS is currently undertaking a variety of tower load studies and soil analyses. In early January of 2007, DPS issued a RFP for replacement of 1 damaged tower and plans to issue 2 additional RFPs in the 3<sup>rd</sup> quarter of FY 2007, with 2 more in the 4<sup>th</sup> quarter. In addition, DPS is working to acquire the necessary agreements to establish 3 new microwave sites, which will be necessary to improve the quality of communication on the new digital microwave system.

#### Expenditures

As of December 2006, DPS had expended \$53,000 for the digital microwave system including tower studies, soil analysis, microwave frequency coordination, system support equipment and supplies, and the Phoenix generator. Due to continued research, the estimated total cost to upgrade all 3 segments has been revised from \$61 million to \$47.5 million. The estimated cost for the southern segment is \$11.9 million; for the northern segment, costs are projected at \$20.2 million; the western segment's cost is projected at \$15.4 million. Actual tower and building costs still need to be determined on a per-site basis determined by location, available space, system needs, and difficulty to construct.

RS/JC:ss

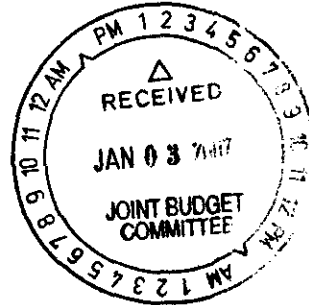
# ARIZONA DEPARTMENT OF PUBLIC SAFETY

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



JANET NAPOLITANO  
GOVERNOR

ROGER VANDERPOOL  
DIRECTOR



December 26, 2006

Mr. Richard Stavneak, Director  
Joint Legislative Budget Committee  
1716 West Adams  
Phoenix, AZ 85007

Dear Mr. Stavneak:

Pursuant to the FY 2007 Capital Outlay Bill (Laws 2006, Chapter 345), the Department of Public Safety (DPS) is submitting the required updated report on the digital microwave communications system upgrade expenditures and progress. This bill anticipates funding the upgrade of the Department's microwave system for Fiscal Years FY07-FY09. Appropriated funding level was designated at \$2,533,000 for these three years. Additional Federal Homeland Security monies were anticipated to help fund the project, but have not been available to date.

The current status of the project is proceeding as described in the original Joint Legislative Budget Committee submittal. Activities are occurring in the staffing area, damaged tower replacement, and site development in the South Loop. Progress is being made in the following areas:

## Staffing

The Wireless Systems Bureau (WSB) is in the third round of Qualification Appraisal Board evaluations for the Project Manager. In the two previous QAB processes the qualified applicants accepted other employment during the evaluation and hiring process. An additional person for the Tower Technician Section is also in the advertising and hiring process.

## Phoenix Microwave Room

WSB has ordered the new emergency power generator and power transfer switch equipment. Currently WSB staff is working with DPS Facilities on the new commercial AC feed. The Phoenix Microwave Room will serve as the Operations Center for the new digital microwave center.

## Tower Load Studies and Soil Analysis

Tower load studies and soil analysis are being performed on southern loop sites and three additional sites outside the southern loop.

## Oatman Mountain Tower

WSB has issued the Request for Proposal (RFP) for this tower replacement. This contract is expected to be awarded early January, 2007. This tower had previously experienced damage to the anchor points, and was in need of replacement. WSB is also developing the required specifications for the foundation and tower construction.

### **Black Metal Mountain**

WSB is developing a RFP for the tower replacement at this site. The tower RFP is expected to be completed first quarter 2007. This tower has experienced structural damage at the 100 foot level and needed to be replaced. WSB is working with the Metropolitan Water District of Southern California to obtain permission to construct the replacement tower.

### **Towers Mountain**

WSB has obtained U.S. Forest Service approval to construct at this site. Soil analysis has been completed for this tower construction. WSB is developing the RFP for a tower and building to meet Department's needs. The tower RFP is expected to be completed first quarter 2007. Upon completing the tower and building replacement, DPS will be able to provide digital microwave connectivity between Phoenix and Flagstaff. This will allow improved services to the Flagstaff Dispatch Center for their Computer Aided Dispatch and the Mobile Data Computer system expansion.

### **Thompson Peak**

This communications site will be a key in the southern loop. Meetings on site construction and partnerships are being conducted with Maricopa County and several other local and federal government agencies. WSB is developing the RFP for a tower and building to meet Department's needs. The tower RFP is expected to be completed second quarter 2007.

### **Casa Grande Mountain**

This communications site will be constructed on property owned by the Arizona National Guard. Permission to build on the land has been granted with the formal agreement pending. Partnership meetings with Pinal County and the City of Casa Grande have been held. Several additional local and federal agencies have also expressed interest in this site. WSB is developing the RFP for a tower and building to meet user needs. The tower RFP is expected to be completed second quarter 2007.

### **Red Mountain**

The Department has been participating in a series of meetings on the development of this communications site. Santa Cruz County is in the process of acquiring the real estate this site will be built on. Interested parties include the State, Santa Cruz County, Cochise County, several local government agencies and a number of federal agencies. When the user needs have been defined, WSB will finish the RFP for a tower and building to meet those needs.

### **Keystone Peak**

Meetings have been held with Pima County and several federal agencies on the development of a new communications site at this location. WSB is working with the Bureau of Land Management on obtaining permission to construct this site at a new location. When the user needs have been defined, WSB will finish the RFP for a tower and building to meet those needs.

### **Mescal Microwave Site**

Finalize the agreement with Lattice Communications for the use of Mescal as a microwave repeater site. This site is required to reduce the path length between Keystone Peak and Texas Canyon. This area was identified as one of the new site location requirements.

### System Cost Update

Current expenditures for the digital microwave system support including tower studies, soil analysis, microwave frequency coordination, system support equipment and supplies, and the Phoenix Generator is \$53,000. The revised system cost projections for the 29 sites in Phoenix and the South Loop is \$11.9M. For the 34 sites in the North Loop the cost is projected at \$20.2M. For the 25 sites in the West Loop the cost is projected at \$15.4M. The estimated cost to construct the replacement towers has been reduced based on continued research. Actual tower and building costs still need to be determined on a per-site basis determined by location, available space, system needs, and difficulty to construct.

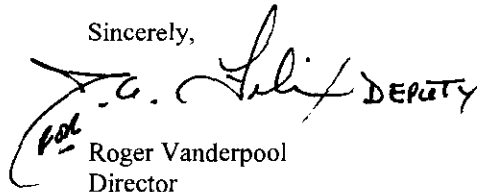
ITEM	\$ Expended
Personnel Services	0
Tower and Soil Analysis	\$3,500
Microwave Coordination Fees	\$3,000
Phoenix Upgrade	\$29,000
Equipment and Electrical Parts	\$13,500
Mescal Site Cost	\$4,000

### 2 GHz Microwave Spectrum buy-out by T-Mobile USA, Inc.

Some years ago the Federal Communications Commission (FCC) started a radio spectrum use review. One result of this inquiry was the reallocation of both private and federal microwave (M/W) spectrum for use by the PCS cellular providers. Additional 2 GHz M/W spectrum was identified for future action. In 2000 the FCC started a Notice of Proposed Rule Making (NPRM) to reallocate additional spectrum below 3 GHz for Advanced Wireless Services. After several additional NPRMs and a series of Report and Orders (RO), in April of this year, the Ninth Report and Order was issued for the final Service Rules for Advanced Wireless Services. The final Rules includes M/W spectrum currently used by DPS for microwave control links. T-Mobile has successfully purchased spectrum as the result of the FCC's Advanced Wireless Services spectrum auction. The 9<sup>th</sup> RO also provides for the relocation of any incumbent licensee at essentially no cost to the licensee. Incumbents are to be relocated to new M/W spectrum with equivalent facilities. DPS has 11, 2GHz M/W licenses that may be affected by the T-Mobile spectrum purchase. WSB is in contact with T-Mobile and working on a contract for M/W relocation. Once the T-Mobile contract is finalized, and T-Mobile's markets needs are determined, the reduction of cost to the State, for microwave upgrade and infrastructure support, will be determined.

If we can answer any questions or assist you or your staff in any manner, please contact Mr. Kevin Rogers at (602) 223-2260.

Sincerely,

 **DEPUTY**  
Roger Vanderpool  
Director

STATE OF ARIZONA

**Joint Legislative Budget Committee**

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DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Bob Hull, Principal Research/Fiscal Analyst

SUBJECT: Department of Revenue – Review of Business Reengineering/Integrated Tax System  
Contract Amendment

**Request**

The Committee gave an unfavorable review at its October 24, 2006 meeting to the Department of Revenue's (DOR) \$14.8 million contract amendment with a vendor to finish converting individual income tax collections to the Business Reengineering/Integrated Tax System (BRITS) (*see Attachment 1*). DOR now requests review of a proposed additional \$2.2 million BRITS contract amendment to extend the vendor's operation of the BRITS data center for 1 year from October 2007 through September 2008. Laws 2006, Chapter 350 requires DOR to submit for Committee review any BRITS contract extensions or modifications that change the dollar value of the contract.

These contract amendments permit DOR to expend BRITS-related General Fund revenue collections without an appropriation.

**Recommendation**

The Committee has at least the following 2 options:

- 1) A favorable review of a \$2.2 million contract amendment to allow the vendor to continue to operate the BRITS data center. The Information Technology Authorization Committee (ITAC) has approved the proposed contract amendment.
- 2) An unfavorable review, since foregone General Fund revenue is used to pay for the amendment. If the Committee selects this option, DOR would likely proceed with the amendment. DOR proceeded with the prior contract amendment after the Committee's unfavorable review in October. If DOR pursues this contract amendment, the JLBC Staff recommends that DOR report the final cost of the amendment to the Committee.

(Continued)

## **Analysis**

### **Background**

BRITS is the computer system being implemented by the DOR to further automate and integrate their separate tax systems, including the transaction privilege tax, and corporate and individual income taxes. BRITS was designed to improve enforcement and ultimately increase revenues to the state. BRITS is being paid for through a gain-sharing arrangement, which pays the vendor 85% of tax enforcement revenues above an established baseline amount until the project is paid for. The state receives the remaining 15%. Enforcement revenue represents collections received through the tax audit and collection processes.

The BRITS vendor is Accenture. In addition to developing BRITS, a subsidiary of Accenture named Accenture Technical Infrastructure Services (ATIS) has the contract to operate the data center. The data center is the facility housing the BRITS computer servers which operate the programs, such as transaction privilege tax, withholding tax, and corporate income tax.

### **ITAC Approval**

ITAC is the Government Information Technology Agency's (GITA) oversight committee, which reviews and approves information technology projects with development costs over \$1 million. ITAC has approved DOR's amendment to operate the BRITS data center for an additional year, along with 7 conditions to improve DOR and GITA analysis, monitoring and reporting of the BRITS project. In addition, GITA strongly recommended that DOR hire an independent advisory consultant to monitor the contractor's progress, DOR's testing, training and staffing, and report monthly on the status of these activities to DOR and GITA. In its "green-yellow-red" project status report, GITA now shows BRITS with a "yellow" status.

ITAC required that DOR add the data center amendment to DOR's previously reviewed \$14.86 million amendment to complete individual income tax, so that DOR would not have to deal with potentially disruptive changes to BRITS data center operations at the same time that they are implementing individual income tax.

ITAC approved DOR's amendment based on an estimated cost of \$2.8 million. DOR reports that their original \$2.8 million amendment is an estimate based on initial discussions with the contractor; DOR expected the \$2.8 million amount to decrease following negotiations. DOR now reports that the contractor's estimate has decreased to \$2.2 million as of January 2, 2007. DOR still needs to analyze the \$2.2 million figure and engage in negotiations with the contractor. DOR reports that the cost for administering the data center is \$1.8 million for the year ending September 30, 2007.

The ITAC approval included 7 conditions to improve DOR and GITA's analysis, monitoring and reporting of the BRITS project. The conditions include the following:

- DOR will limit the cost related to both contract amendments to \$17.66 million.
- Implementation of document imaging and "customer relationship management" shall be postponed until DOR has assumed operation, maintenance and support functions for BRITS.
- DOR will prepare a staffing plan including new technical personnel for supporting BRITS, and present the plan at the January 2007 ITAC meeting. DOR will also prepare an estimate of increased personnel costs over the next 2 years, due to hiring new technical staff.
- DOR, with GITA, will revise its BRITS project status reporting to include activities that could affect the schedule and cost of the project.

(Continued)



- DOR will schedule the BRITS External Steering Committee to meet at least every other month, tape-record the proceedings, and attach a summary of the meetings to its monthly BRITS report to GITA.
- DOR will provide GITA with a plan and cost estimate for extending the BRITS file server hosting contract.
- DOR shall evaluate and report on potential requirements to upgrade file servers to support full BRITS implementation.

These provisions support the JLBC's October request (*Attachment 1*) that ITAC and GITA improve their oversight and monitoring of high dollar value contract changes to automation projects and that DOR not pursue contract amendments for the document imaging and "customer relationship management" components until the individual income tax is implemented.

DOR notes that BRITS has generated new revenues sufficient to offset the cost of the data center. DOR reports \$216 million of BRITS revenues through November 2006. These are revenues above the BRITS baseline. The Committee has expressed concern that the BRITS baseline has not been adjusted for population or economic growth, and that BRITS revenue includes audit revenues unrelated to the BRITS program. The Committee requested that outside experts evaluate that claim; that work is proceeding.

RS/BH:ym  
Attachment



STATE OF ARIZONA

## Joint Legislative Budget Committee

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LINDA J. LOPEZ  
STEPHEN TULLY

DATE: October 18, 2006

TO: Senator Bob Burns, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director *RS*

FROM: Bob Hull, Principal Research/Fiscal Analyst *BH*

SUBJECT: Department of Revenue – Review of Business Reengineering/Integrated Tax System  
Contract Amendment

### Request

The Department of Revenue (DOR) requests review of its Business Reengineering/Integrated Tax System (BRITS) proposed contract amendment. Laws 2006, Chapter 350, requires DOR to submit for Committee review any BRITS contract extensions or modifications that change the dollar value of the contract.

### Summary

DOR hired a contractor (Accenture) in September 2002 to enhance the automation of its revenue collection process. The contractor is paid through a gain-sharing arrangement. Under gain-sharing, the contractor receives 85% of the increased enforcement revenue attributed to BRITS, and 15% goes to the state. The current cost of BRITS is \$136.7 million, including \$129.7 million for the original contract and \$7 million for 2 previous contract amendments. The project is 2 years behind schedule. Due to a misunderstanding, DOR had thought that the project would be completed for a firm fixed price, since it had been described as a fixed price contract during the contracting process. The Arizona Department of Administration (ADOA) has clarified that fixed price contracts can increase in cost under certain circumstances.

Due to delays in the earlier part of the project, DOR is now seeking a \$14.8 million contract amendment to finish converting individual income tax collections to BRITS. The \$14.8 million cost would result in foregone revenue of \$12.6 million to the General Fund, \$1.7 million to cities and counties, and \$500,000 to Proposition 301 education programs. In addition to the \$14.8 million, the contractor will pay \$4.25 million to finish the contract.

DOR and the contractor reached an agreement on their respective share of the costs after a series of negotiations. While DOR has provided an outline of their cost sharing agreement, there has been no

(Continued)

independent assessment of responsibility between DOR and the contractor for the earlier project delays. DOR did not ask the Government Information Technology Agency (GITA) to participate in the contractor negotiations.

The \$14.8 million amendment will not cover all of the original components of the BRITS project, which included document imaging and "customer relationship management". These components have not been started, and may cost at least another \$10 million. The "customer relationship management" component has not been well defined, which leads to further uncertainty about future costs.

DOR has rejected the option of stopping the project at this point. Given that 2 main tax categories have already been converted, the department believes that there are potential gains to both customer service and enforcement from having the individual income tax on the system as well.

Overall, the project could eventually cost at least \$161.5 million, or 24.6% more than originally projected. To date, DOR says that BRITS has generated more additional revenue than was projected, or \$182.3 million. It is difficult to confirm the amount of enforcement revenues generated by BRITS versus other causes. Only \$37.1 million of the \$182.3 million can be traced to specific taxpayers who were discovered by BRITS. The remaining \$145.2 million attributed to BRITS is enforcement revenue which exceeds baseline amounts agreed to by DOR and the contractor. It is also unclear to what extent the improved economy may have contributed to the revenue increases which have been attributed to BRITS.

In general, DOR and GITA do not appear to have sufficiently communicated on this project. GITA does not have sufficient information to comment on the reasonableness of the \$14.8 million contract amendment's revised timeline and cost. GITA has no basis to evaluate the division of cost between DOR and the contractor for the transaction privilege tax delays. In its "green-yellow-red" project status report, GITA continues to show BRITS with a "green" status. We have asked GITA for their perspective on this ranking, given the project's problems.

Beyond the cost of the contract amendment, DOR has begun to identify costs of taking over the project from the contractor in 2008 and beyond. The department estimates that they will need \$6.2 million in FY 2008, and \$2.2 million in FY 2009.

### **Recommendation**

The Committee has at least the following 2 options:

- 1) A favorable review, since as required, the submittal provides information on the proposed contract amendment. The project has generated more revenue than anticipated.
- 2) An unfavorable review, since the BRITS project is over both budget and time. There is no independent basis to determine whether the vendor is being held appropriately accountable.

Under either option, the JLBC Staff suggests that the Committee consider adopting the following recommendations:

- 1) DOR/GITA provide joint monthly status reports to JLBC and Office of Strategic Planning and Budgeting (OSPB) Staff on the project until its conclusion, including reports from the project's outside oversight consultant.
- 2) DOR not pursue contract amendments for the document imaging and "customer relationship management" components until the individual income tax is implemented. This delay would give the Legislature time to consider in the 2007 session the value of these components. To assist in this

(Continued)

evaluation, DOR should submit detailed rationale for these last 2 components to the JLBC by January 31, 2007.

- 3) ITAC report by December 31, 2006 to the JLBC as to improving general procedures for ensuring that all agencies keep them apprised of high dollar value contract changes to automation projects, and GITA's efforts to ensure that they provide sufficient monitoring.
- 4) JLBC Staff with DOR and OSPB jointly convene an outside panel to evaluate the BRITS baseline calculation and provide feedback regarding the effects of automation versus an improving economy on the increased level of collections. We would report on the results by November 30, 2006.
- 5) The Arizona Department of Administration (ADOA) report to the JLBC by November 30, 2006 as to steps to improve agencies' understanding of contract provisions.

## **Analysis**

### **Background**

A.R.S. § 41-2559 allows an agency to contract with a vendor to finance technology projects without receiving a legislative appropriation for the project. The vendor is paid based on a gain-sharing agreement from a portion of the increased revenues, which are computed according to established performance standards and attributed to the project above agreed upon baseline revenues. Before awarding the contract, the agency must consult the Joint Legislative Budget Committee (JLBC) Staff regarding the contract's potential fiscal impact on the state. If JLBC Staff finds a significant negative impact to the state, the Staff must report its findings to the Committee.

BRITS is the computer system being implemented by the DOR to further automate and integrate their separate tax systems, including the transaction privilege tax, and corporate and individual income taxes. BRITS was designed to improve enforcement and ultimately increase revenues to the state.

BRITS is being paid for through a gain-sharing arrangement, which pays the vendor 85% of tax enforcement revenues above an established baseline amount until the project is paid for. The state receives the remaining 15%. Enforcement revenue represents collections received through the tax audit and collection processes. The actual baselines were negotiated between DOR and the vendor, with input from consultants, and are subject to modification to account for legislative changes which would affect the baselines.

Delays have increased both the cost and completion timeline of BRITS. The cost has increased from \$129.7 million for the original contract to \$136.7 million due to project delays and previous contract amendments, as shown in *Table 1*. In February 2006, DOR belatedly signed a \$6,586,000 contract amendment for the contractor to operate the BRITS data center for 4 years from October 1, 2003 through September 30, 2007. Operating the BRITS data center had been an additional cost option in the original contract, which DOR chose on its own to implement. The contract amendment allowed DOR to use additional General Fund resources on this project without a legislative appropriation.

The BRITS project is running behind its original schedule of taking 4 years to complete, from September 2002 through August 2006. This is due to problems and ensuing delays following the conversion of the transaction privilege tax to BRITS. The project was 2 years behind schedule in converting corporate income tax, as shown in *Table 2*. The individual income tax conversion has been delayed from September 2006 to February 2008. DOR has postponed implementing 2 other key deliverables, "customer relationship management" and document imaging, and expects to report on their estimated additional costs and timeframes sometime before February 2008.

(Continued)

<b>Table 1</b>		
<b>Current Estimate of BRITS Costs</b>		
	<u><b>Timeframe</b></u>	<u><b>Cost</b></u>
Base contract	9/02 - 8/06	\$122,664,700
Estimated Interest	9/02 - 8/06	<u>7,000,000</u>
Subtotal Original Contract		\$129,664,700
<b><u>Previous Amendments</u></b>		
Operate BRITS Data Center	10/03 - 9/07	\$6,586,000
Corporate Scope Changes		<u>422,300</u>
Subtotal Previous Amendments		\$7,008,300
<b>Current Total <sup>1/</sup></b>		<b>\$136,673,000</b>
<b><u>Proposed Amendment</u></b>		
Contractor Support (one-time)	9/06 - 2/08	\$8,412,200
Temporary DOR Staff (one-time)	9/06 - 2/08	<u>2,080,000</u>
Operation and Support (ongoing)	9/06 - 8/07	<u>4,365,000</u>
Subtotal Proposed Amendment		\$14,857,200
<b>Total With Proposed Amendment <sup>1/</sup></b>		<b>\$151,530,200</b>
Document Imaging/Customer Mgmt <sup>2/</sup>		<u>\$10,000,000</u>
<b>Total With Future Amendment <sup>1/</sup></b>		<b>\$161,530,200</b>
<sup>1/</sup> In addition, Laws 2006, Chapter 350, provides \$1,200,000 from the General Fund in FY 2007 to DOR for operational support of BRITS. The \$1,200,000 includes \$800,000 for disk storage and equipment costs and \$400,000 for server and printer replacement costs.		
<sup>2/</sup> Our estimate for the cost of project support is at least \$10 million. The cost of a contract amendment for these 2 key deliverables is yet to be determined.		

<b>Table 2</b>			
<b>BRITS Completion Timeline</b>			
	<u><b>Original Projection</b></u>	<u><b>Revised Projection</b></u>	<u><b>Conversion</b></u>
Transaction Privilege Tax	1/04		1/04
Withholding	1/04		10/04
Corporate Income Tax	9/04	7/06	9/06
Customer Relationship Management	9/05	To Be Determined	
Document Imaging	3/06	To Be Determined	
Individual Income Tax	9/06	2/08	

(Continued)

The proposed \$14.8 million contract amendment to finish converting individual income tax collections would raise the current total cost to \$151.5 million. This future contract amendment for document imaging and “customer relationship management” could raise the cost to at least \$161.5 million, or 24.6% more than originally projected.

### **Auditor General Report and Legislative Action**

An Auditor General performance audit issued in October 2005 concluded that DOR needed to better manage the BRITS project, including hiring an outside expert oversight advisor to monitor the project as called for in the original contract and involving more DOR information technology staff with the project. DOR reports that they hired an outside oversight consultant in March 2006. In June 2006, the Auditor General reported in their 6-month follow-up that their recommendations are in the process of being implemented. The Auditor General expects that their 12-month follow-up will be issued sometime after October 2006.

Due to the project’s delays, Laws 2006, Chapter 346, included session law requiring legislative authorization prior to executing any future BRITS contract extensions or modifications that increase the contractor’s share of gain-sharing proceeds from state revenues. However, Laws 2006, Chapter 350, also enacted session law authorizing DOR to execute extensions or modifications of the current BRITS contract in FY 2007, if DOR submits for JLBC review any contract extensions or modifications that change the dollar value of the contract. This is the basis for the Committee review of DOR’s proposed \$14,857,200 contract amendment.

### **Revised Project Scope**

DOR wants the contract amendment since they used more resources than planned for both transaction privilege tax delays and corporate income tax scope changes. The contract amendment includes \$8,412,200 for contractor support for implementation delays, \$2,080,000 for temporary DOR backfill staff, and \$4,365,000 for contractor operation and support of BRITS. These items are described as follows:

- The \$8,412,200 is the cost to finish converting individual income tax collections to BRITS. This amount is due to overspending original contract monies on previous conversions and increased testing for the individual income tax conversion. The \$8,412,200 includes \$3,382,000 for DOR’s 44% share of transaction privilege tax delays, \$250,000 for DOR’s 2-month corporate income tax acceptance testing delay, and \$4,780,200 for 6 additional months of testing for the individual income tax conversion. DOR and the contractor reached a negotiated agreement that DOR was 44% responsible and the contractor was 56% responsible for problems with the transaction privilege tax conversion. The \$3,382,000 represents the cost for DOR’s 44% of responsibility for transaction privilege tax delays. In addition, the vendor will absorb \$4,252,000 of costs for their 56% of responsibility. Please see *Attachment A* for DOR’s response to JLBC Staff questions, including their description of how they and the contractor arrived at the 44%/56% split of responsibility. It is difficult to assess the percentage shares, due to a lack of information. GITA has not evaluated the reasonableness of the 44%/56% split.
- The \$2,080,000 is the cost of DOR’s temporary staff used to check the quality of legacy system data and resolve data problems before converting individual income tax to BRITS.
- The \$4,365,000 represents the 1-year cost for the contractor to support the new software used by BRITS. Before BRITS, DOR had mainly legacy mainframe systems. The BRITS project has introduced new technologies and software. DOR states that they will need to train their information technology personnel and hire additional staff to support BRITS in the future, including database

(Continued)

administrators, system designers, programmers, technical architects, and server administrators. DOR is now beginning an assessment to identify the number of staff and skill levels needed to operate and maintain BRITS. DOR has not yet requested funding for this issue in their FY 2008 budget request. The department states that they expect to submit the budget issue before the Committee meeting.

DOR reports that if the BRITS project were stopped now, they would have the cost of continuing to run and maintain both the legacy and BRITS computer systems. Currently the transactions privilege tax and corporate income tax have been converted to BRITS, and the individual income tax is still running on the legacy system. In addition, DOR would not receive the full benefit of increased enforcement revenue and customer service from having all 3 taxes running on the BRITS database.

From the beginning of the BRITS project, DOR has reported that the BRITS contract was a firm, fixed price contract, which the contractor was obliged to complete for the stated price regardless of the timeframe. DOR now reports that they misunderstood the meaning of a fixed price contract. The Arizona Department of Administration (ADOA) has provided an explanation that a fixed price contract may be adjusted for changes in the work or conditions under which the contract was awarded. BRITS is a task order-based contract which will cost more to extend the timeline. Please see *Attachment B* for ADOA's complete response.

In addition to the proposed \$14,857,200 contract amendment to finish converting individual income tax collections, DOR has also delayed implementing 2 additional key deliverables of the original BRITS contract, "customer relationship management" and document imaging. BRITS' "customer relationship management" component is intended to provide customers with a good experience when interacting with DOR, including accurate and timely processing and a single point of contact. Document imaging is intended to improve DOR's processing of paper documents by such means as capturing and viewing images from BRITS, automating data capture, automated fax receipt, and remittance processing. The cost of project support for these 2 key deliverables could be at least \$10 million. DOR reports that they do not yet have either a cost or timeframe for implementing these 2 key deliverables. DOR states that they will develop and provide this information while working on the individual income tax conversion.

### **GITA's Perspective**

We asked the Government Information Technology Agency (GITA) for their perspective on the status of BRITS. Please see *Attachment C* for GITA's complete response. GITA reports that the DOR director met with the GITA director on September 6, 2006 to discuss BRITS issues. The GITA director recommended that DOR get the BRITS Oversight Committee more involved. The BRITS Oversight Committee includes mostly DOR staff, an Information Technology Authorization Committee (ITAC) representative, a GITA representative, and some county and city representatives.

In general, GITA and DOR do not appear to have sufficiently communicated on this project. GITA does not have enough information to comment on the reasonableness of the \$14.8 million contract amendment's revised timeline and cost. GITA has no basis to evaluate the 44%/56% division of cost between DOR and the contractor for the transaction privilege tax delays. GITA is also concerned that DOR has not provided GITA with their staffing plan for ongoing BRITS support upon completion of the project, which could contribute to future cost overruns and implementation delays. GITA has asked DOR to provide monthly updates to ITAC to improve DOR's communication regarding BRITS.

GITA cites the success of BRITS in producing \$182 million of revenue, and reports that the BRITS project has a "green" status. GITA defines a green status project as being on schedule, within budget and having clear deliverables, a project plan and status report.

**BRITS Revenue**

DOR reports that \$182,289,000 of total increased revenue through August 2006 has been attributed to the BRITS project, including \$37,061,500 from discovery and \$145,227,500 from efficiency. Discovery revenue is money from nonfilers and unlicensed businesses or collections identified by BRITS' automated taxpayer identification programs. Discovery revenue can be traced to specific taxpayers. Efficiency revenue is all enforcement revenue which results from BRITS process or program changes other than discovery revenue. Efficiency revenue is measured against baseline dollar amounts which are based on complex baseline calculations, and were negotiated between DOR and the vendor. The baselines are subject to modification to account for legislative changes which would affect the baselines. It is unclear to what extent the improved economy may have contributed to the revenue increases which have been attributed to BRITS.

BRITS' \$182,289,000 of total revenue includes \$154,945,600, or 85% of the total, which is available to pay the vendor. The \$154,945,600 available to pay the vendor exceeds the \$151,530,200 total cost of the original contract, prior amendments, and the proposed \$14,857,200 amendment by \$3,415,400.

RS/BH:ym  
Attachments (3)



# STATE OF ARIZONA

Department of Revenue  
Office of the Director  
(602) 716-6090



Janet Napolitano  
Governor

Gale Garriott  
Director

December 11, 2006



The Honorable Robert Burns  
Chairman - Joint Legislative Budget Committee  
1700 West Washington  
Phoenix, Arizona 85007

Dear Senator Burns:

In compliance with Laws 2006, Chapter 350, Section 41, this letter is to serve as the Department of Revenue's notification to the Joint Legislative Budget Committee requesting review of the Department's intent to further modify the BRITS contract amendment. On October 24, 2006 the Department came before the Joint Legislative Budget Committee (JLBC) for review of a \$14.9 million amendment to the BRITS contract.

The Department has now received a letter from the Government Information Technology Agency (GITA) informing us that GITA is recommending to the Information Technology Authorization Committee (ITAC) conditional approval of the amended BRITS project. This conditional approval is based on the Department implementing seven specific recommendations outlined by GITA (please see attachment). These recommendations will require the modification of the existing BRITS amendment and an estimated increased expenditure of \$2.8 million. The total cost of the BRITS amendment is now estimated to be \$17,657,200.

The Department is requesting to be placed on the next JLBC agenda for review of the BRITS contract amendment. If you have any questions regarding this request, please contact Kristine Ward (716-6090).

Sincerely,

A handwritten signature in cursive script, appearing to read "Gale Garriott".

Gale Garriott  
Director - Arizona Department of Revenue

cc: Representative Russell Pearce  
Richard Stavneak - Director JLBC  
Jim Apperson - Director OSPB  
Bob Hull - JLBC  
Matthew Kennedy - OSPB

STATE OF ARIZONA

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STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Steve Schimpp, Assistant Director

SUBJECT: Department of Education – Review of Kinder Morgan Settlement

**Request**

Pursuant to A.R.S. § 15-915(B), the Arizona Department of Education (ADE) requests a favorable review of its plan to provide school districts in Pinal County with \$306,400 in corrected Basic State Aid funding due to a recent settlement in the Arizona Tax Court regarding property taxes paid in prior years by the Kinder Morgan Corporation. At the June and September 2006 JLBC meetings, the Committee favorably reviewed similar requests for school districts in Yuma, Cochise and Maricopa Counties. Settlement data for school districts in Pinal County were not available at the time of those discussions, so their request is now being heard separately. One additional county (Pima) also is affected by the settlement, but has not yet reported required data to ADE. The Department will request a state aid correction for Pima County school districts once that information is received.

**Summary**

The JLBC Staff recommends that the Committee give a favorable review of the request, as it conforms with statutory requirements regarding state aid corrections required as a result of Arizona Tax Court rulings.

**Analysis**

Subject to review by the JLBC, A.R.S. § 15-915(B) requires the Superintendent of Public Instruction to reimburse school districts for K-12 “local share” taxes that they must refund to a taxpayer due to an Arizona Tax Court ruling that reduces the taxpayer’s assessed property value for prior fiscal years. In this regard, the Arizona Court of Appeals on December 9, 2005 upheld an earlier Arizona State Tax Court ruling requiring the Arizona Department of Revenue to lower the assessed value of property owned by Kinder Morgan Energy Partners LP (“Kinder Morgan”) retroactively for FY 2001, FY 2002, FY 2003 and FY 2005. This has the effect of reducing the amount of K-12 Qualifying Tax Rate (QTR) and County Equalization Tax Rate (CETR) monies owed by Kinder Morgan for those years, with the state being required to make up the difference pursuant to A.R.S. § 15-915(B). Based on “before” and “after”

(Continued)

property value numbers for Kinder Morgan under the court rulings, ADE has determined that affected school districts in Pinal County collectively are entitled to \$306,400 in additional Basic State Aid funding for the fiscal years in question (*see Attachment*).

The computed \$306,400 total does not include settlement-related interest costs or monies to reimburse school districts for taxes paid by Kinder Morgan for items other than the QTR and CETR, such as for small school district budget exemptions, desegregation, excess utilities, overrides and bond debt service, as those costs are not addressed in A.R.S. § 15-915(B). The state, however, will end up indirectly paying a portion of those costs if they are normally funded with primary property taxes (which is not the case for overrides and bonding) for districts that already have primary property tax rates that exceed the “1% cap” in the State Constitution, as the state pays 100% of “1% cap” costs. Several of the affected districts in Pinal County receive 1% cap funding. Data with which to estimate their settlement-related “1% cap” costs, however, are not available. Any “1% cap” funding that school districts receive for the settlement will be automatically paid through the Additional State Aid program rather than through a Basic State Aid correction mandated by A.R.S. § 15-915(B) and, therefore, will not receive Committee review.

RS/SSC:ym  
Attachment

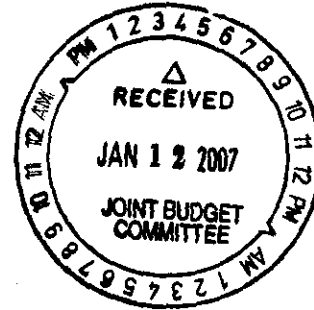


State of Arizona  
Department of Education

Tom Horne  
Superintendent of  
Public Instruction

January 11, 2007

Mr. Robert Burns, JLBC Chairman  
Joint Legislative Budget Committee  
1716 W. Adams  
Phoenix, AZ 85007



Re: Pinal County - Correction to State Aid and County Equalization Amounts pursuant to ARS 15-915(B) (Fiscal Years 2001, 2002, 2003 and 2005) due to the Kinder Morgan (SFPP) Property Tax Judgment for tax years 2000, 2001, 2002 and 2004

Dear Mr. Burns,

This memorandum is submitted to you pursuant to ARS 15-915 (B) which provides that corrections to state aid based on a change in assessed valuation – pursuant to ARS 42-16213 - are subject to review by the JLBC.

The Pinal County Assessors office has corrected the assessed valuations by district for Kinder Morgan property. These corrections affect fiscal years 2001, 2002, 2003 and 2005. The calculated state aid corrections (including the county equalization amounts) are summarized by district in the attached documents. The original and revised assessments from Pinal Counties for each district are also included as separate attachments.

As a note, there are districts in Pima County who are also impacted by this Kinder Morgan judgment. Once the assessed valuation changes for this county by district are submitted to ADE, the additional district state aid corrections will be calculated and a letter submitted to you for review. You have already given a favorable review to the state aid corrections due to this issue calculated for Yuma, Cochise, and Maricopa counties. If you have any other questions or concerns please contact Mr. Phil Williams at 602-542-8250 or via email at [pwillia@ade.az.gov](mailto:pwillia@ade.az.gov).

Sincerely,

  
Vicki Salazar  
Associate Superintendent – Finance

Cc: Richard Stavneak, Director, JLBC Staff, Phil Williams, Deputy Associate Superintendent – School Finance.

Maricopa County Correction to State Aid County Equalization  
Due to Kinder Morgan Assessed Valuation Appeal  
Tax Years 2000, 2001, 2002 and 2004  
August 15, 2006

District Name	Correction to FY 2001			Correction to FY 2002			Correction to FY 2003			Correction to FY 2005			Qualifying Levy Correction All Years		Total County Equalization Correction All Years
	Qualifying Levy Correction	County Equalization Correction	Total for Year	Qualifying Levy Correction	County Equalization Correction	Total for Year	Qualifying Levy Correction	County Equalization Correction	Total for Year	Qualifying Levy Correction	County Equalization Correction	Total for Year			
Mary C O'Brien Accommodation District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Florence Unified School District	9,590.00	1,896.04	11,486.04	9,109.00	1,519.54	10,628.54	6,824.00	1,580.20	8,404.20	922.00	180.81	1,102.81	26,445.00	5,176.59	
Ray Unified District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Mammoth-San Manuel Unified District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Superior Unified School District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Maricopa Unified School District	16,430.00	1,896.04	18,326.04	10,217.00	1,519.54	11,736.54	9,982.00	1,580.20	11,562.20	849.00	180.81	1,029.81	37,478.00	5,176.59	
Coolidge Unified District	2,851.00	1,896.04	4,747.04	11,632.00	1,519.54	13,151.54	11,615.00	1,580.20	13,195.20	1,207.00	180.81	1,387.81	27,305.00	5,176.59	
Apache Junction Unified District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Oracle Elementary District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
J O Combs Elementary District	288.00	1,896.04	2,184.04	0.00	1,519.54	1,519.54	0.00	1,580.20	1,580.20	0.00	180.81	180.81	288.00	5,176.59	
Casa Grande Elementary District	18,004.00	1,896.04	19,900.04	24,485.00	1,519.54	26,004.54	22,148.00	1,580.20	23,728.20	2,338.00	180.81	2,518.81	66,975.00	5,176.59	
Red Rock Elementary District	0.00	1,896.04	1,896.04	4,577.00	1,519.54	6,096.54	4,362.00	1,580.20	5,942.20	409.00	180.81	589.81	9,348.00	5,176.59	
Eloy Elementary District	7,969.00	1,896.04	9,865.04	630.00	1,519.54	2,149.54	676.00	1,580.20	2,256.20	52.00	180.81	232.81	9,327.00	5,176.59	
Sacaton Elementary District	6,656.00	1,896.04	8,552.04	2,067.00	1,519.54	3,586.54	2,217.00	1,580.20	3,797.20	171.00	180.81	351.81	11,111.00	5,176.59	
Toltec Elementary District	18,469.00	1,896.04	20,365.04	11,951.00	1,519.54	13,470.54	18,096.00	1,580.20	19,676.20	1,066.00	180.81	1,246.81	49,582.00	5,176.59	
Stanfield Elementary District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Picacho Elementary District	8,648.00	1,896.04	10,544.04	3,887.00	1,519.54	5,406.54	3,890.00	1,580.20	5,470.20	388.00	180.81	568.81	16,813.00	5,176.59	
Casa Grande Union High School District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Santa Cruz Valley Union High School District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Central Arizona Valley Institute of Technology	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Cobre Valley Institute of Technology District	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
	88,905.00	18,960.45	107,865.45	78,555.00	15,195.39	93,750.39	79,810.00	15,801.96	95,611.96	7,402.00	1,808.10	9,210.10	(1) 254,672.00	(2) 51,765.89	

(1) + (2) = \$306,400

STATE OF ARIZONA

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PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Leah Ruggieri, Fiscal Analyst

SUBJECT: Attorney General – Review of Uncollectible Debts

**Request**

Pursuant to A.R.S. § 35-150(E), the Attorney General requests that the Committee review its FY 2005 listing of \$16.8 million in uncollectible debts referred to the Attorney General by state agencies for collection.

**Recommendation**

The JLBC Staff recommends that the Committee give a favorable review of the request pending more information on 2 outstanding debts totaling \$6.8 million. A favorable review by the Committee will allow the State Comptroller to remove debt, certified by the Attorney General as uncollectible, from the state accounting system. The report meets the requirements of A.R.S. § 35-150(E).

**Analysis**

The Attorney General's Collection Enforcement Unit functions as a collection service for past due debts owed to state agencies, boards and commissions. The unit returns 65% of collected monies to the client agencies and retains the remaining 35% for unit operational costs. While the Collection Enforcement Unit is able to collect monies from many individuals and businesses that owe monies to the state, some debts are uncollectible.

The Attorney General's Office reviewed the cases assigned to the Collection Enforcement Unit. Based on this review, the Attorney General advises that \$16.8 million owed to the state is uncollectible. Of this amount, the Attorney General lists:

- \$6.5 million due to defunct corporations and limited liability companies;
- \$2.8 million due to insufficient debtor resources;
- \$1.0 million due to settlement;

(Continued)

- \$1.5 million due to bankruptcy;
- \$4 million due to inability to locate the debtor.

The remaining \$1.0 million is listed as uncollectible due to the debtor being deceased or incarcerated, expiration of the statute of limitation, or because the cost of collection exceeds the amount of debt owed.

A debt amount is categorized as uncollectible due to insufficient debtor resources when the Attorney General determines that the debtor has no assets, no wages, and a negative credit report. Depending on the circumstances of the case, the Attorney General may wait anywhere from 6 months to 10 years to determine a debt is uncollectible due to insufficient debtor resources. When a debt amount is determined to be uncollectible due to insufficient debtor resources and is removed by the State Comptroller from the state accounting system, the judgment remains recorded with the state and the lien imposed on the debtor is not expunged. Additionally, state income tax refunds will be offset by the amount of the debt.

The table below demonstrates that of the \$16.8 million in uncollectible debt, approximately 88% are debts that were owed to 5 agencies: the Corporation Commission, the Department of Commerce, the Registrar of Contractors, the Industrial Commission of Arizona, and the Department of Revenue. The remaining 12% are debts owed to 31 other agencies.

<b>Uncollectible Debt Recommended for Write-Off by Client Agency</b>		
	<b>Amount Recommended for Write-Off</b>	<b>Percentage</b>
Arizona Corporation Commission	\$ 4,966,600	30%
Department of Commerce	3,411,200	20%
Registrar of Contractors	2,682,700	16%
Industrial Commission of Arizona	1,923,800	11%
Department of Revenue	1,801,200	11%
All Others	<u>1,984,200</u>	<u>12%</u>
<b>Total</b>	<b>\$16,769,700</b>	<b>100%</b>

By comparison, the state removed \$10.7 million in uncollectible debts from the accounting system in FY 2004. The FY 2005 amount of \$16.8 million is greater than this year primarily due to a \$3.4 million case involving a debtor that cannot be located and a \$3.4 million case involving a defunct corporation. We have requested more information on both of these cases. The report includes a brief explanation for each uncollectible debt, the date the debt was determined uncollectible, and the dollar amount of each debt.

RS/LR:ym



**Terry Goddard**  
**Attorney General**

**Office of the Attorney General**  
State of Arizona

Anthony S. Vitagliano,  
Chief Counsel TBC Section

Direct Telephone: (602) 542-8300  
Tony.Vitagliano@agaz.gov

December 15, 2006

HAND-DELIVERED

Leah Ruggieri  
Joint Legislative Budget Committee  
1716 West Adams  
Phoenix, Arizona 85007


Re: **UNCOLLECTIBLE DEBT REPORT**

Dear Ms. Ruggieri:

Pursuant to A.R.S. § 35-150(E), enclosed is the listing of all uncollectible debts owed to the State which were referred to the Collection Enforcement Revolving Fund for the fiscal year ending June 30, 2005.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Anthony S. Vitagliano  
Chief Counsel  
Tax, Bankruptcy & Collection Section

ASV/tmm  
Enclosures

cc: Senator Robert Burns, Chairman, w/attachments  
Representative Russell Pearce, Vice Chairman, w/attachments  
Richard Stavneak, JLBC, w/attachments  
James Apperson, OSPB, w/attachments  
John Stahmer, OSPB, w/attachments  
Clark Partridge, State Comptroller, w/attachments  
Mark Wilson, Attorney General's Office w/attachments  
Richard Travis, Attorney General's Office, w/attachments

DEC 15 2006

JOINT BUDGET  
COMMITTEE



December 15, 2006

Page -2-

The Honorable Robert Burns, Chairman  
Joint Legislative Budget Committee  
Arizona State Senate  
1700 West Washington  
Phoenix, Arizona 85007

The Honorable Russell Pearce, Vice Chairman  
Joint Legislative Budget Committee  
Arizona House of Representatives  
1700 West Washington  
Phoenix, Arizona 85007

Richard Stavneak  
Joint Legislative Budget Committee  
1716 West Adams  
Phoenix, Arizona 85007

James Apperson  
Governor's Office of Strategic  
Planning and Budgeting  
1700 West Washington  
Phoenix, Arizona 85007

Leah Ruggieri  
Joint Legislative Budget Committee  
1716 West Adams  
Phoenix, Arizona 85007

John Stahmer  
Governor's Office of Strategic  
Planning and Budgeting  
1700 West Washington  
Phoenix, Arizona 85007

Clark Partridge  
State Comptroller  
100 North 15<sup>th</sup> Avenue Suite 302  
Phoenix, Arizona 85007

<u>Client Agency</u>	<u>Abbreviation</u>
Arizona Corporation Commission	ACC
State Board of Charter Schools	BCS
Department of Building and Fire Safety	BFS
Banking Department	BNK
Department of Commerce	CDO
Consumer Protection and Advocacy, Arizona Office of the Attorney General	CPA
Civil Rights Division, Arizona Office of the Attorney General	CRD
Department of Environmental Quality	DEQ
Department of Health Service	DHS
Department of Administration	DOA
Department of Corrections	DOC
Department of Transportation	DOT
Department of Education	EDD
State Land Fire District	FDS
Arizona Game and Fish Commission	GAF
Highway Division - Arizona Department of Transportation	HGD
Industrial Commission of Arizona	ICA
Liability Management Section	IDS
Arizona Insurance Guaranty Fund	IGF
Arizona Department of Insurance	INS
Department of Juvenile Corrections	JJC
Arizona Lottery Commission	LOT
Motor Vehicle Division - Arizona Department of Transportation	MVD
Northern Arizona University	NAU
Commission of Post-Secondary Education	PEC
Department of Real Estate	RED
Arizona State Retirement	RET
Arizona Department of Revenue	REV
Arizona Registrar of Contractors	ROC
Risk Management - Arizona Department of Administration	RSK
Right of Way Division, Arizona Department of Transportation	RWD
State Land Department	SLD
Structural Pest Control Commission	SPB
Veterans' Service Commission	VSE
Workers Compensation, Arizona Department of Administration	WKR
Department of Weights and Measures	WMD

STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
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AMANDA AGUIRRE  
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HOUSE OF  
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PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Leah Ruggieri, Fiscal Analyst

SUBJECT: Attorney General – Review of Allocation of Settlement Monies

**Request**

Pursuant to a footnote in the General Appropriation Act, the Office of the Attorney General (AG) has notified the Committee of the allocation of monies received from the Sony BMG settlement agreement and the Deed and Note Traders (DNT) consent decree.

**Recommendation**

The JLBC Staff recommends that the Committee give a favorable review of the allocation plans from the Sony BMG settlement agreement and the DNT consent decree. The allocation plans are consistent with A.R.S. § 44-1531.01, which relates to the distribution of monies recovered as a result of enforcing consumer protection or consumer fraud statutes.

**Analysis**

The General Appropriation Act contains a footnote that requires JLBC review of the allocation or expenditure plan for settlement monies over \$100,000 received by the AG or any other person on behalf of the State of Arizona, and it specifies that the AG shall not allocate or expend these monies until the JLBC reviews the allocations or expenditures. Settlements that are deposited in the General Fund pursuant to statute do not require JLBC review. The AG recently settled 2 cases that will result in the receipt of settlement monies over \$100,000.

**Sony BMG Settlement**

In December 2006, the Attorney General entered into a multistate settlement with Sony BMG as a result of allegations that the company placed anti-copying software on certain music CDs without adequate disclosures to consumers. One version of the software, XCP, was designed to automatically download on consumers' computers without their knowledge. XCP also created security vulnerabilities on

(Continued)

Windows-based computers, exposing them to viruses and other problems. In some cases, consumers who tried to remove XCP from their computers had their CD-ROM drives crash. Another version of the software, MediaMax, would download on consumers' computers even if they declined to accept the software. One version of MediaMax also created security vulnerabilities on computers. The total multistate settlement amount is \$4.25 million, of which \$313,000 will be deposited into Arizona's Consumer Fraud Revolving Fund for attorney costs and fees. In addition to the \$4.25 million payment to the states, Sony BMG will also provide refunds up to \$175 to all consumers who experienced harm to their computers when they tried to remove the software.

#### Deed and Note Traders Consent Decree

In December 2006, the Attorney General also entered into a consent decree with DNT as a result of allegations that the company ran 2 programs that violated consumer fraud statutes. DNT implemented a HomeSavers program that allowed consumers facing foreclosure to sell their homes to DNT and rent them until they could be re-purchased in approximately 2 years. The Attorney General's office alleged, however, that the intent of the program was to create an arrangement in which consumers would rent their homes until they could no longer afford the payments, at which time they would be evicted and DNT would receive permanent ownership. DNT also set up a Rent-to-Own program to target consumers with credit problems. Consumers were rarely able to purchase the homes they rented, however, because they had to meet multiple and onerous qualifications. The consent decree requires DNT to make restitution to 14 consumers who lost their homes to DNT in an amount exceeding \$234,000. Individual refunds range from \$1,700 to \$43,600. Additionally, \$200,000 will be deposited into the Consumer Fraud Revolving Fund for attorney costs and fees.

RS/LR:ts



Terry Goddard  
Attorney General

Office of the Attorney General  
State of Arizona

Rene Rebillot  
Consumer Protection &  
Advocacy Section

December 29, 2006

The Honorable Ken Bennett  
President of the Senate  
1700 West Washington  
Phoenix, Arizona 85007

The Honorable James P. Weiers  
Speaker of the House  
1700 West Washington  
Phoenix, Arizona 85007

The Honorable Robert L. Burns  
Chairman, Joint Legislative Budget Committee  
1700 West Washington  
Phoenix, Arizona 85007



Re: In the Matter of Sony BMG Music Entertainment

Dear Gentlemen:

The Attorney General participated in a multistate settlement in the consumer fraud investigation of Sony BMG. As a result of the settlement, Arizona entered into an Assurance of Discontinuance with Sony BMG. The Assurance related to allegations over Digital Rights Management (DRM) copyright software that Sony BMG placed on certain music CDs without adequate disclosures. The Assurance was approved by the Pima County Superior Court.

During 2005, SONY BMG distributed more than 12 million CDs with two kinds of anticopying software. SONY BMG did not adequately inform consumers on the outside of the CD boxes or elsewhere that the CDs contained anti-copying software or Digital Rights Management (DRM) software. One version of the software was called XCP and this software was designed to hide or "cloak" a number of the program's files and operations so that when consumers played XCP CDs in their Windows-based computers, consumers did not know that the anti-copying software was downloaded onto their computers. XCP created security vulnerabilities on Windows-based computers by exposing them to viruses and other problems. Also, when consumers did discover XCP on their computers, they experienced problems when they tried to remove

Hon. Ken Bennett  
Hon. James P. Weiers  
Hon. Robert L. Burns  
December 29, 2006  
Page 2

the software. Some consumers who tried to remove XCP had their CD-ROM drives crash.

Another version of the anti-copying software used by SONY BMG, called MediaMax, caused a driver to download on a consumer's computer even if the consumer declined to accept the software. One version of MediaMax, Media Max 5.0, also created a less significant security vulnerability on consumers' computers, by allowing subsequent users the ability to modify the contents of the computer, and to run dangerous programs that they would not otherwise have been able to run.

Overall, the Assurance provides for a \$4.25 million settlement amount, restitution and injunctive relief. Under the terms of the Assurance, SONY BMG will provide refunds up to \$175 to all consumers who experienced harm to their computers when they sought to remove the DRM software. Refund claims must be submitted to SONY BMG through a claims process which SONY BMG will publicize on its website. Sony BMG will pay approximately \$313,000 toward this office's costs and attorneys fees. The costs and attorney's fees will be placed in the Consumer Fraud Revolving Fund pursuant to A.R.S § 44-1531.01.

The injunctive relief provisions will specifically prohibit SONY BMG from using XCP or MediaMax DRM software in the future, and will sharply limit the ways in which SONY BMG may use anti-copying software. If it does choose to use DRM software in the future, SONY BMG must inform consumers about it. Sony BMG cannot use software that permanently resides on a computer's hard drive unless the user gets clear and conspicuous notice, and an option to decline installation of the files; if the user declines installation of the software, no files may be installed; and all of the material terms and conditions of the functions and features of the software must be disclosed immediately prior to installation of any software. For 6 months following execution of the Assurance, these disclosures must also be provided in an insert to the CD. Furthermore, future end user license agreements (EULA) used by Sony BMG can no longer contain specified overly restrictive and onerous terms for consumers. To the extent the EULA provides information concerning the fact that the software may limit a user's ability to transfer music to any media player or portable device such as an iPod, this limitation must also be disclosed on the outside of the CD box. Finally, Sony BMG must continue its program of pulling XCP CDs from the shelves of retailers, must destroy Media Max 5.0 CDs in wholesale stock, and must sticker Media Max 3.0 CDs still in wholesale stock with the disclosure that software is installed on a consumer's computer prior to acceptance of a EULA.

Hon. Ken Bennett  
Hon. James P. Weiers  
Hon. Robert L. Burns  
December 29, 2006  
Page 3

Our notification to you of this settlement is made without prejudice to this office's long standing position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

Please call me at (602) 542-7701 if you have any questions regarding this matter.

Sincerely,



Rene Rebillot  
Section Chief Counsel  
Consumer Protection and Advocacy Section

Enclosure: Assurance of Discontinuance

cc: The Honorable Russell K. Pearce  
The Honorable Linda Aguirre  
The Honorable Phil Lopes  
Mr. Richard Stavneak  
Ms. Leah Ruggieri ✓  
Mr. Timothy Nelson  
Mr. Richard Travis  
Mr. John Stevens

#992326



Terry Goddard  
Attorney General

Office of the Attorney General  
State of Arizona

Rene Rebillot  
Consumer Protection &  
Advocacy Section

December 26, 2006

DEC 27 2006

The Honorable Ken Bennett  
President of the Senate  
1700 West Washington  
Phoenix, Arizona 85007

The Honorable James P. Weiers  
Speaker of the House  
1700 West Washington  
Phoenix, Arizona 85007

The Honorable Robert L. Burns  
Chairman, Joint Legislative Budget Committee  
1700 West Washington  
Phoenix, Arizona 85007

Re: State of Arizona, ex rel. Terry Goddard, Attorney General vs. Deed and Note Traders, L.L.C

Dear Gentlemen:

The Attorney General obtained a Consent Decree from Deed and Note Traders, L.L.C. The Consent Decree was subsequently approved by the Pima County Superior Court.

DNT set up a HomeSavers program, purportedly offering consumers facing foreclosure a simple way to save their homes. Consumers would sell their homes to DNT; rent back their former homes from DNT; and, after approximately two years, re-purchase their homes from DNT. The Attorney General alleged that DNT's HomeSavers program was deceptive and misleading as DNT's intention was not to "save" consumers' homes; rather their intention was take title to the consumers' homes; rent the homes to the consumers until they were no longer able to keep up with their rent; and finally, to evict consumers and keep their homes. DNT also set up a Rent-to-Own program to target consumers with credit problems by offering a "NO QUALIFYING" transaction. DNT's offer and the Rent-to-Own program itself were deceptive. Consumers rarely were able to purchase the homes they were renting because of the many and onerous qualifications they had to meet in order to purchase the homes.



Hon. Ken Bennett  
Hon. James P. Weiers  
Hon. Robert L. Burns  
December 26, 2006  
Page 2

The terms of the Consent Decree allow the fourteen consumers who still reside in their homes to repurchase their homes for between 25% and 74% less than DNT's repurchase price or the FMV of the homes. DNT must also make restitution to fourteen consumers who have lost their homes to DNT in an amount exceeding \$234,000. The amount of restitution is tied to the amount of money consumers lost to DNT. Refunds range from \$1,709 to \$43,566. DNT must finance the purchase of consumers' homes for those consumers who continue to lease from DNT. The company must provide financing for a minimum of 15 years to consumers for the purchase price of their homes on terms consumers have the ability to pay. DNT will also pay \$200,000 toward this office's costs and attorneys fees. The costs and attorney's fees will be placed in the Consumer Fraud Revolving Fund pursuant to A.R.S § 44-1531.01.

In addition to the monetary relief, the Consent Decree contains strong injunctive provisions. For example, DNT is prohibited from engaging in any type of mortgage foreclosure assistance. DNT is allowed to engage in Rent-to-Own transactions; however, DNT must clearly disclose all of the terms of the transaction and must determine the creditworthiness of the consumer and the consumer's ability to pay the rent.

Our notification to you of this settlement is made without prejudice to this office's long standing position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

Please call me at (602) 542-7701 if you have any questions regarding this matter.

Sincerely,



Rene Rebillot  
Section Chief Counsel  
Consumer Protection and Advocacy Section

Enclosure: Consent Decree and Complaint

cc: The Honorable Russell K. Pearce  
The Honorable Linda Aguirre  
The Honorable Phil Lopes  
Mr. Richard Stavneak  
Ms. Leah Ruggieri  
Mr. Timothy Nelson  
Mr. Richard Travis  
Mr. John Stevens

STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
SENATE

ROBERT L. BURNS  
CHAIRMAN 2008  
PAULA ABOUD  
AMANDA AGUIRRE  
JAKE FLAKE  
JORGE LUIS GARCIA  
JACK W. HARPER  
THAYER VERSCHOOR  
JIM WARING

1716 WEST ADAMS  
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HOUSE OF  
REPRESENTATIVES

RUSSELL K. PEARCE  
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KIRK ADAMS  
ANDY BIGGS  
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LINDA J. LOPEZ  
PETE RIOS  
STEVE YARBROUGH

DATE: January 31, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Jeremy Olsen, Fiscal Analyst

SUBJECT: Arizona Department of Environmental Quality – Review of Water Quality Permit Processing Times

**Request**

In accordance with Laws 2006, Chapter 344, the Arizona Department of Environmental Quality (DEQ) has submitted for review a report documenting water quality permit processing times for FY 2006 and 2007.

**Recommendation**

The Committee has at least the following options:

- A favorable review of the request.
- An unfavorable review of the request.

Under either option, JLBC Staff recommends that DEQ report to the Committee on its rationale for not using the FY 2007 \$200,000 allocation from the Water Quality Fee Fund for additional contract permitting staff, given the increase in applications.

**Analysis**

Laws 2006, Chapter 344, required DEQ to submit a report on water quality permit processing times for FY 2006 and projected totals for FY 2007. This report was also required to include the total number of staff hours and total costs to process water quality permits, and the progress

(Continued)

made in reducing permit processing times. This report is included as an attachment with this memo.

In FY 2006, the department received a total of 2,899 water quality permit applications. Of 48 permit types with at least one application, on average DEQ met the Licensing Timeframe (LTF) for all but 1 permit type. For this single permit type (an Aquifer Protection Permit requiring a public hearing) the average processing time exceeded the deadline by 18 days. While the average processing time exceeded the licensing deadline for only 1 permit category, DEQ exceeded the deadline for at least 1 permit in 9 categories.

Compared to FY 2006, the department has received a total of 1,245 applications during the period of July 1 to November 30, 2006. Year to date in FY 2007, the average processing time has exceeded the deadline for 4 of 48 permits types. For all of FY 2007, the department projects that the average time to issue 2 types of Aquifer Protection Permits will exceed their permit processing timeframe.

In FY 2007, the department projects it will receive an additional 247 water permit applications, an increase of 8.5%. Costs of processing permits are expected to increase by \$930,300, or 22.1%. The table below contains actual permit information for FY 2006 and projected information for FY 2007.

Water Quality Permits					
	<u>Applications</u>	<u>Staff Hours</u>	<u>Average Hours Per Permit</u>	<u>Staff Costs</u>	<u>Average Cost Per Permit</u>
FY 2006	2,899	86,919	30.0	\$4,203,400	\$1,400
FY 2007	3,146	96,623	30.7	5,133,700	1,600
<b>Total</b>	<b>6,045</b>	<b>183,542</b>	<b>30.4</b>	<b>\$9,337,100</b>	<b>\$1,500</b>

In FY 2007, the department received an appropriation of \$200,000 from the General Fund and an additional \$200,000 from the Water Quality Fee Fund to hire outside contractors to reduce the backlog of permits waiting for processing.

The department reports that nearly all of the \$200,000 General Fund appropriation has been obligated, and that the \$200,000 appropriation from the Water Quality Fee fund did not provide any additional money for permit processing because the department already had adequate appropriation authority to pay for existing Water Quality employees. The department reports that the additional General Fund monies did not substantially reduce processing timeframes, but did not provide any specific details. JLBC Staff has also requested from the department an explanation as to why it did not use the additional Water Quality Fee Fund money to contract for permit staff, considering that applications are projected to increase 8.5% over FY 2006.

For FY 2008, the JLBC Baseline budget includes an additional \$600,000 from the Water Quality Fee fund for the department's expedited water quality permitting process. The Executive budget includes approximately \$1,250,000 from the Water Quality Fee fund for 14 additional Aquifer Protection Permit FTE Positions.

RS:JO:ss



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)

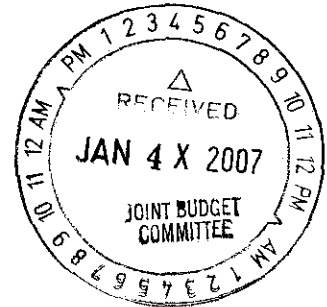


Stephen A. Owens  
Director

January 4, 2007

The Honorable Robert L. Burns, Chair  
Joint Legislative Budget Committee  
Arizona State Senate  
1700 West Washington Street  
Phoenix, Arizona 85007

The Honorable Russell K. Pearce, Chair  
House Appropriations Committee  
Arizona House of Representatives  
1700 West Washington Street  
Phoenix, Arizona 85007



Re: Report on Water Quality Permitting for FY2005-2006 and FY2006-2007

Dear Chairman Burns and Chairman Pearce:

In accordance with House Bill 2863, Chapter 34, Section 13, Forty-seventh Legislature, Second Regular Session (2006), the Department of Environmental Quality (ADEQ) is submitting a written report on the Water Quality Permitting Program for review by the Joint Legislative Budget Committee. The report and associated attachments are enclosed. The report provides information on the water quality permit processing times, staff hours and total costs devoted to water quality permit processing for fiscal years 2005-2006 and 2006-2007.

The unprecedented growth throughout the state in recent years has strained the resources of the water quality permitting programs. The Department continues to process a large number of applications for all types of water quality permits. Since public reports, lots sales, construction and other development activities cannot occur without these approvals, adequate staffing and resources are critical to the Department being able to meet the demand.

If I can provide you with any further information or if you have any questions, please feel free to contact me at 602-771-2203.

Sincerely,

Stephen A. Owens  
Director

cc: Richard Stavneak, Director, JLBC  
James Apperson, Director, OSPB  
✓ Jeremy Olsen, Analyst, JLBC  
Marcel Benberou, Analyst, OSPB

Northern Regional Office  
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733



## Water Quality Permit Processing Times Report, December 2006

This Report is submitted to the Joint Legislative Budget Committee in accordance with House Bill 2863, Chapter 34, Section 13, Forty-seventh Legislature, Second Regular Session (2006).

This Report details maximum, minimum and average water quality permit processing times for fiscal year 2005-2006 and the first five months of fiscal year 2006-2007, as reflected in the Department's AZURITE database. The third table provides projected totals for fiscal year 2006-2007 data based on the actual figures for the first five months. See attached tables.

This Report also includes total number of staff hours devoted to water quality permit processing in fiscal year 2005-2006 and fiscal year 2006-2007 and total costs to process these permits. The fiscal year 2005-2006 information includes actual hours and costs; fiscal year 2006-2007 shows projected totals based on actual figures for the first five months of FY07. See attached. Finally, a report of progress made in reducing water quality permit processing times, for both APP and AZPDES permits, is requested. This final request relates to the appropriation for fiscal year 2006-2007 of \$200,000 in general funds and appropriation authority of \$200,000 in water quality fee funds for water quality permit processing.

Because the general fund appropriation included no FTEs, the Department used the appropriation to hire outside contractors to review and prepare four individual AZPDES permits. This contracted permitting is underway and the Department has obligated nearly the full \$200,000 in general fund money for these contractors. In order to reduce the APP permits backlog and permit processing times and because of a shortage of appropriated FTEs in the APP program, ADEQ moved two AZPDES permit writer positions to the APP Program and these permit writers are currently working on the APP permits. While this funding enabled ADEQ to process four AZPDES permits and move two permit writer FTEs to work on APP applications, it did not help to substantially reduce the permitting backlog in either program.

As for the \$200,000 appropriation authority for the Water Quality Fee Fund (WQFF), that appropriation authority in reality provided no new money or FTEs to address the permit backlog because ADEQ already had appropriation authority from the WQFF which was adequate to pay for all existing WQFF FTEs.

The Department continues to handle a very large number of inquiries regarding the status of water quality permits in process. Since lot sales, construction and other development cannot occur without these permits, the demand for immediate permit processing is very high. While the Department is able to meet Licensing Time Frame requirements in the large majority of cases, the Department is challenged to meet the actual demand for permits without sufficient numbers of properly trained staff.

### Water Quality Permit Processing

	Total Staff Hours	Total Staff Costs
July 1, 2005 – June 30, 2006	86,919	\$4,203,448
July 1, 2006 – June 30, 2007	96,623 <sup>(1)</sup>	\$5,133,663 <sup>(2)</sup>
Totals	183,542	\$9,337,111

<sup>(1)</sup> Increased staff hours includes ADEQ's increased emphasis on filling positions made vacant when cities and counties have hired ADEQ permits and engineering staff in FY07.

<sup>(2)</sup> Increased staff costs include the increased personnel services and ERE costs for the pay increase taking effect in March of FY06.

Arizona Department of Environmental Quality  
Water Quality Division  
LTF Report for FY06  
Actual 2005-2006 Totals

Program	License Category	Total Applications	Allowable LTF in Working Days	Max % of Timeframe Used	Min % of Timeframe Used	Average % of Timeframe Used
DRINKING WATER PROGRAMS	Standard drinking water treatment facility, project and well ATC	493	43	200.00	2.33	60.64
	Complex drinking water facility, project or well ATC	0	73	0.00	0.00	0.00
	Standard public and semi-public swimming pool design approval	28	42	97.62	7.14	66.16
	Standard drinking water treatment facility, project or well AOC	220	43	100.00	0.00	34.52
	Standard public and semi-public swimming pool AOC	6	42	92.86	2.38	38.49
	Standard drinking water new source approval	1	43	93.02	93.02	93.02
	Drinking water time extension approval	16	22	100.00	9.09	47.73
	(NRO) Standard drinking water treatment facility, project and well ATC	231	43	204.65	0.00	32.76
	(NRO) Standard public and semi-public swimming pool design approval	11	42	50.00	7.14	23.59
	(NRO) Complex public and semi-public swimming pool design approval	1	83	1.20	1.20	1.20
	(NRO) Standard drinking water treatment facility, project and well AOC	132	43	83.72	0.00	26.81
	(NRO) Standard public and semi-public swimming pool AOC	3	42	57.14	11.90	39.68
	(NRO) Complex public and semi-public swimming pool AOC	1	83	9.64	9.64	9.64
	(SRO) Standard drinking water treatment facility, project and well AOC	132	43	97.67	0.00	9.02
	(SRO) Standard public and semi-public swimming pool AOC	2	42	19.05	11.90	15.48
	Monitoring frequency change approval	37	42	100.00	7.14	43.56
	Residual disinfectant concentration sampling interval approval	1	30	73.33	73.33	73.33
GROUNDWATER PROGRAMS	Subdivision Individual Facilities	57	67	100.00	0.00	31.89
	Subdivision Community Facilities	340	58	100.00	0.00	41.03
	Reuse, Individual Permit, No Public Hearing	2	221	95.02	38.91	66.97
	Reuse, Type 3 General Permit	5	81	72.84	4.94	44.94
	Standard sewerage collection system AOC	3	53	50.94	32.18	42.14
	Standard wastewater treatment facility AP major modification permit with no public hearing	1	221	92.31	92.31	92.31
	Standard wastewater treatment facility AP other modification permit	1	221	87.78	87.78	87.78
	Complex industrial facility AP new permit with no public hearing	1	284	99.30	99.30	99.30
	Biosolid applicator registration request acknowledgment	18	15	140.00	6.67	30.00
	APP, Complex Individual Permit, public hearing	0	329	0.00	0.00	0.00
	APP, Individual Permit, No Public Hearing	20	221	123.98	42.08	85.68
	APP, Individual Permit, Public Hearing	4	266	122.93	82.71	106.77
	APP, Individual Permit, Significant Amendment, No Public Hearing	28	221	124.89	0.90	92.94
	APP, Individual Permit, Significant Amendment, Public Hearing	2	266	98.12	41.73	69.92
	APP, Individual Permit, Other Amendment	21	135	114.81	11.85	76.90
	APP, Type 3 General Permit	15	81	48.15	20.99	24.28
	APP, 4.01 General Permit, Pre-Construction 300 services or less	405	53	100.00	0.00	59.39
	APP, 4.01 General Permit, Post-Construction 300 services or less	343	42	97.62	0.00	30.62
	APP, 4.01 General Permit, Pre-Construction 300 services or more	17	83	97.59	6.02	50.25
	APP, 4.01 General Permit, Post-Construction 300 services or more	22	53	100.00	0.00	47.34
	APP, Standard Single 4.02, 4.03, 4.13 and 4.14 General Permits, Pre-Construction	129	42	97.62	0.00	44.28
	APP, Standard Single 4.02, 4.03, 4.13 and 4.14 General Permits, Post-Construction	55	31	93.55	0.00	25.45
	APP, 4.23 General Permit, Pre-Construction	7	83	55.42	6.02	23.24
	APP, 4.23 General Permit, Post-Construction	3	53	30.19	7.55	20.13
	APP, Standard Combined Two or Three Type 4 General Permits, Pre-Construction	22	53	100.00	9.43	42.06
	APP, Standard Combined Two or Three Type 4 General Permits, Post-Construction	8	42	71.43	0.00	24.70
	APP, Complex Combined Four or more Type 4 General Permits, Pre-Construction	3	83	55.42	4.82	37.35
	APP, Complex Combined Four or more Type 4 General Permits, Post-Construction	4	53	66.04	3.77	23.58
SURFACE WATER	AZPDES, Individual Permit, Major Facility, No Public Hearing	15	284	124.65	41.55	88.57
	AZPDES, Individual Permit, Minor Facility, No Public Hearing	23	221	122.62	25.34	78.16
	AZPDES, Individual Permit, Major Modification, No Public Hearing	1	221	97.29	97.29	97.29
	CWA 401 state certification of a proposed CWA 404 permit	8	63	12.70	0.00	6.15
	CWA 401 state certification of a proposed CWA 402 NPDES permit	1	63	7.94	7.94	7.94
	TOTAL	2899				

Arizona Department of Environmental Quality  
Water Quality Division  
LTF Report for FY07  
Projected 2006-2007 Totals

Program	License Category	Projected Total Applications	Allowable LTF in Working Days	Projected Max % of Timeframe Used	Projected Min % of Timeframe Used	Projected Average % of Timeframe Used
DRINKING WATER PROGRAMS	Standard drinking water treatment facility, project and well ATC	537	43	95.35	0.00	37.15
	Complex drinking water facility, project or well ATC	2	73	54.79	54.79	54.79
	Standard public and semi-public swimming pool design approval	28	42	95.24	7.14	52.78
	Standard drinking water treatment facility, project or well AOC	216	43	95.35	4.65	31.21
	Standard public and semi-public swimming pool AOC	6	42	59.52	59.52	59.52
	Standard drinking water new source approval	1	43	93.02	93.02	93.02
	Drinking water time extension approval	14	22	86.36	4.55	50.00
	(NRO) Standard drinking water treatment facility, project and well ATC	230	43	100.00	0.00	27.73
	(NRO) Standard public and semi-public swimming pool design approval	9	42	26.19	0.00	15.48
	(NRO) Complex public and semi-public swimming pool design approval	1	83	1.20	1.20	1.20
	(NRO) Standard drinking water treatment facility, project and well AOC	167	43	100.00	0.00	30.20
	(NRO) Standard public and semi-public swimming pool AOC	2	42	19.05	19.05	19.05
	(NRO) Complex public and semi-public swimming pool AOC	1	83	9.64	9.64	9.64
	(SRO) Standard drinking water treatment facility, project and well AOC	130	43	25.58	0.00	5.87
	(SRO) Standard public and semi-public swimming pool AOC	7	42	4.76	0.00	2.38
	Monitoring frequency change approval	35	42	97.62	7.14	44.52
	Residual disinfectant concentration sampling interval approval	1	30	73.33	73.33	73.33
GROUNDWATER PROGRAMS	Subdivision Individual Facilities	100	67	100.00	1.49	31.76
	Subdivision Community Facilities	330	58	100.00	0.00	39.89
	Reuse, Individual Permit, No Public Hearing	5	221	0.00	0.00	0.00
	Reuse, Type 3 General Permit	14	81	64.20	1.23	21.81
	Standard sewerage collection system AOC	3	53	50.94	32.18	42.14
	Standard wastewater treatment facility AP major modification permit with no public hearing	1	221	92.31	92.31	92.31
	Standard wastewater treatment facility AP other modification permit	1	221	87.78	87.78	87.78
	Complex industrial facility AP new permit with no public hearing	1	284	100.00	100.00	100.00
	Biosolid applicator registration request acknowledgment	18	15	140.00	6.67	30.00
	APP, Complex Individual Permit, public hearing	2	329	109.12	109.12	109.12
	APP, Individual Permit, No Public Hearing	18	221	98.64	72.85	92.68
	APP, Individual Permit, Public Hearing	4	266	122.93	82.71	106.77
	APP, Individual Permit, Significant Amendment, No Public Hearing	30	221	124.89	2.71	91.02
	APP, Individual Permit, Significant Amendment, Public Hearing	2	266	98.12	41.73	69.92
	APP, Individual Permit, Other Amendment	23	135	123.70	28.89	87.11
	APP, Type 3 General Permit	14	81	29.63	7.41	20.99
	APP, 4.01 General Permit, Pre-Construction 300 services or less	391	53	100.00	0.00	55.80
	APP, 4.01 General Permit, Post-Construction 300 services or less	370	42	247.62	0.00	40.03
	APP, 4.01 General Permit, Pre-Construction 300 services or more	18	83	71.08	6.02	29.82
	APP, 4.01 General Permit, Post-Construction 300 services or more	20	53	98.11	11.32	55.19
	APP, Standard Single 4.02, 4.03, 4.13 and 4.14 General Permits, Pre-Construction	156	42	100.00	0.00	61.44
	APP, Standard Single 4.02, 4.03, 4.13 and 4.14 General Permits, Post-Construction	93	31	83.87	0.00	27.42
	APP, 4.23 General Permit, Pre-Construction	9	83	96.39	13.25	36.45
	APP, 4.23 General Permit, Post-Construction	5	53	81.13	3.77	42.45
	APP, Standard Combined Two or Three Type 4 General Permits, Pre-Construction	30	53	67.92	7.55	42.09
	APP, Standard Combined Two or Three Type 4 General Permits, Post-Construction	5	42	9.52	0.00	4.76
	APP, Complex Combined Four or more Type 4 General Permits, Pre-Construction	12	83	83.13	15.66	40.72
	APP, Complex Combined Four or more Type 4 General Permits, Post-Construction	4	53	66.04	3.77	23.58
SURFACE WATER	AZPDES, Individual Permit, Major Facility, No Public Hearing	17	284	70.42	49.65	60.04
	AZPDES, Individual Permit, Minor Facility, No Public Hearing	25	221	79.64	52.04	64.93
	AZPDES, Individual Permit, Major Modification, No Public Hearing	3	221	85.07	85.07	85.07
	CWA 401 state certification of a proposed CWA 404 permit	35	63	69.84	1.59	13.76
	CWA 401 state certification of a proposed CWA 402 NPDES permit	0	63			
TOTAL		3146				

Notes:

Italics denote projected numbers of applications for category; none submitted as of 11/30/06



Arizona Department of Environmental Quality  
Water Quality Division  
LTF Report FY07

July 1 - November 30, 2008

Program	License Category	Actual Applications as of 11/30/06	Allowable LTF in working days	Max % of Timeframe Used	Min % of Timeframe Used	Average % of Timeframe Used as of 11/30/06
DRINKING WATER PROGRAMS	Standard drinking water treatment facility, project and well ATC	231	43	95.35	0.00	37.15
	Complex drinking water facility, project or well ATC	1	73	54.79	54.79	54.79
	Standard public and semi-public swimming pool design approval	6	42	95.24	7.14	52.78
	Standard drinking water treatment facility, project or well AOC	93	43	95.35	4.65	31.21
	Standard public and semi-public swimming pool AOC	1	42	59.52	59.52	59.52
	Standard drinking water new source approval	0	43	0.00	0.00	0.00
	Drinking water time extension approval	3	22	86.36	4.55	50.00
	(NRO) Standard drinking water treatment facility, project and well ATC	66	43	100.00	0.00	27.73
	(NRO) Standard public and semi-public swimming pool design approval	4	42	26.19	0.00	15.48
	(NRO) Complex public and semi-public swimming pool design approval	0	83	0.00	0.00	0.00
	(NRO) Standard drinking water treatment facility, project and well AOC	72	43	100.00	0.00	30.20
	(NRO) Standard public and semi-public swimming pool AOC	1	42	19.05	19.05	19.05
	(NRO) Complex public and semi-public swimming pool AOC	0	83	0.00	0.00	0.00
	(SRO) Standard drinking water treatment facility, project and well AOC	42	43	25.58	0.00	5.87
	(SRO) Standard public and semi-public swimming pool AOC	3	42	4.76	0.00	2.38
	Monitoring frequency change approval	10	42	97.62	7.14	44.52
	Residual disinfectant concentration sampling interval approval	0	30	0.00	0.00	0.00
GROUNDWATER PROGRAMS	Subdivision Individual Facilities	43	67	100.00	1.49	31.76
	Subdivision Community Facilities	135	58	100.00	0.00	39.89
	Reuse, Individual Permit, No Public Hearing	2	221	85.07	46.33	27.02
	Reuse, Type 3 General Permit	6	81	64.20	1.23	21.81
	Standard sewerage collection system AOC	0	53	0.00	0.00	0.00
	Standard wastewater treatment facility AP major modification permit with no public hearing	0	221	0.00	0.00	0.00
	Standard wastewater treatment facility AP other modification permit	0	221	0.00	0.00	0.00
	Complex industrial facility AP new permit with no public hearing	0	284	0.00	0.00	0.00
	Biosolid applicator registration request acknowledgment	0	15	0.00	0.00	0.00
	APP, Complex Individual Permit, public hearing	1	329	109.12	109.12	109.12
	APP, Individual Permit, No Public Hearing	6	221	98.64	72.85	92.68
	APP, Individual Permit, Public Hearing	0	266	0.00	0.00	0.00
	APP, Individual Permit, Significant Amendment, No Public Hearing	13	221	124.89	2.71	91.02
	APP, Individual Permit, Significant Amendment, Public Hearing	0	266	0.00	0.00	0.00
	APP, Individual Permit, Other Amendment	10	135	123.70	28.89	87.11
	APP, Type 3 General Permit	3	81	29.63	7.41	20.99
	APP, 4.01 General Permit, Pre-Construction 300 services or less	168	53	100.00	0.00	55.80
	APP, 4.01 General Permit, Post-Construction 300 services or less	159	42	247.62	0.00	40.03
	APP, 4.01 General Permit, Pre-Construction 300 services or more	4	83	71.08	6.02	29.82
	APP, 4.01 General Permit, Post-Construction 300 services or more	4	53	98.11	11.32	55.19
	APP, Standard Single 4.02, 4.03, 4.13 and 4.14 General Permits, Pre-Construction	67	42	100.00	0.00	61.44
	APP, Standard Single 4.02, 4.03, 4.13 and 4.14 General Permits, Post-Construction	40	31	83.87	0.00	27.42
	APP, 4.23 General Permit, Pre-Construction	4	83	96.39	13.25	36.45
	APP, 4.23 General Permit, Post-Construction	2	53	81.13	3.77	42.45
	APP, Standard Combined Two or Three Type 4 General Permits, Pre-Construction	13	53	67.92	7.55	42.09
	APP, Standard Combined Two or Three Type 4 General Permits, Post-Construction	2	42	9.52	0.00	4.76
	APP, Complex Combined Four or more Type 4 General Permits, Pre-Construction	5	83	83.13	15.66	40.72
	APP, Complex Combined Four or more Type 4 General Permits, Post-Construction	0	53	0.00	0.00	0.00
SURFACE WATER	AZPDES, Individual Permit, Major Facility, No Public Hearing	2	284	70.42	49.65	60.04
	AZPDES, Individual Permit, Minor Facility, No Public Hearing	4	221	79.64	52.04	64.93
	AZPDES, Individual Permit, Major Modification, No Public Hearing	1	221	85.07	85.07	85.07
	CWA 401 state certification of a proposed CWA 404 permit	18	63	69.84	1.59	13.76
	CWA 401 state certification of a proposed CWA 402 NPDES permit	0	63	0.00	0.00	0.00
TOTAL		1245				

STATE OF ARIZONA

**Joint Legislative Budget Committee**

STATE  
SENATE

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CHAIRMAN 2008  
PAULA ABOUD  
AMANDA AGUIRRE  
JAKE FLAKE  
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HOUSE OF  
REPRESENTATIVES

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PETE RIOS  
STEVE YARBROUGH

DATE: January 30, 2007

TO: Representative Russell Pearce, Chairman  
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Leah Ruggieri, Fiscal Analyst

SUBJECT: Arizona State University – Review of Walter Cronkite School of Journalism

**Request**

The FY 2007 Higher Education Budget Reconciliation Bill (Laws 2006, Chapter 352) required Arizona State University (ASU) to submit for review to the Joint Legislative Budget Committee (JLBC) its operational and capital plans for the ASU Downtown Phoenix Campus (DPC). The Committee favorably reviewed the DPC plans at its November 2006 meeting. At the time of the review, however, ASU had not presented its agreement with a private developer to design and construct the Cronkite School of Journalism/KAET Channel 8 project.

**Recommendation**

The Committee has at least the following options:

- 1) A favorable review. Of the \$188 million bond amount approved by City of Phoenix voters to construct and renovate several buildings at the Downtown Phoenix Campus, \$71 million would be dedicated to the construction of the Cronkite School of Journalism at no additional cost to the state.
- 2) An unfavorable review. The agreement to construct the Cronkite School of Journalism was not previously submitted for formal legislative approval. Once the city bond is paid off, ASU will own the building, which could increase the state's operating costs and building renewal expenses.

Based on a recommendation by Senator Burns, the Joint Committee on Capital Review (JCCR) unfavorably reviewed the ASU Downtown Campus housing proposal at its January 2007 meeting, due to a lack of greater legislative involvement in the initial campus siting. Since that time, Senator Burns has announced that he is working with ASU on a plan to enhance legislative oversight, which in turn would lead to JCCR reconsidering its unfavorable review.

(Continued)

If the Committee favorably reviews the project, the Committee has the option to add its standard provision that a favorable review does not constitute an endorsement of General Fund appropriations to offset any operations and maintenance costs when the project is complete.

## Analysis

In their September submission to the Committee on operational and capital plans for the DPC, ASU indicated that the Walter Cronkite School of Journalism and Mass Communication would move from the Tempe campus to the downtown campus in FY 2009. ASU estimates that beginning in FY 2009, 1,800 students (headcount) attending the DPC would be enrolled in the School of Journalism.

When the Committee favorably reviewed ASU's plans in November 2006, ASU did not submit a plan to construct the building that would house the Cronkite School of Journalism. On November 15, 2006, however, the City of Phoenix authorized Sundt Construction, Inc. in conjunction with their architectural partner, HDR Architecture, to provide programming, design, and construction for the Cronkite School of Journalism project. The project involves the construction of a 217,700 square-foot six story building located on Taylor Street between Central Avenue and First Street. It would house the School of Journalism with space for teaching newsrooms, broadcast news studios, a radio station, mediated classrooms and a central gathering space. In addition, the KAET television students would be located in the building and ground floor retail is planned for the Central Avenue side as well as on the corners of First Street and Taylor.

The total cost for the Cronkite School of Journalism is \$71 million and would be financed with proceeds from the \$188 million bond approved by City of Phoenix voters to construct and renovate several buildings at the Downtown Phoenix Campus. According to their agreement with the city, ASU is not required to make lease payments on any of the buildings constructed with bond proceeds. After 2012, ASU and the city have only committed to discuss that option.

From FY 2008 through FY 2012, however, ASU will contribute \$2 per square-foot per year to a reserve and replacement fund that will support any necessary repairs, which is approximately \$435,400 per year for the Cronkite School of Journalism. Additionally, ASU is responsible for covering the cost of Furniture Fixtures and Equipment, which is budgeted at \$7.6 million. Though KAET's specialized equipment will be relocated and reinstalled in the new building, ASU is still developing the costs associated with additional specialized equipment for the school. The project is scheduled for completion and move in by August 2008.

The School of Journalism would have a total cost per-square-foot of \$336 and a direct construction cost per-square-foot of \$251. *Table 1* compares the per-square-foot costs of the Walter Cronkite School of Journalism to those of other university non-research-related capital projects. As *Table 1* below illustrates, the magnitude of these expenses are slightly higher in comparison to the average of other university non-research-related capital projects previously approved by the Committee since June 2005. It is difficult to evaluate the reasonableness of the per-square-foot cost of the Cronkite School of Journalism compared to these projects, as it would include the KAET television studio. The non-research-related capital projects listed in *Table 1* did not involve the construction of similar space.

Rider Hunt Levett & Bailey, a property and construction consultant group, estimated in their 2006 3<sup>rd</sup> quarter Construction Cost Report that construction of a university building would range from \$180 to \$370 per-square foot. The low-end of this range represents the cost to construct a university building that contains strictly classroom space, whereas the high-end of this range represents the cost to construct a university building that contains lab space. The Cronkite School of Journalism costs are expected to be closer to the high end of this range, as it involves the construction of specialized space.

(Continued)

Additionally, materials costs have risen markedly in the past few years due to increasing worldwide demand. Between 2005 and 2006 alone, the cost per-square-foot to construct a 2-4 story office building in Phoenix increased by 11.7% according to RSMeans, a supplier of construction cost information. When accounting for the specialized features in the Cronkite School of Journalism as well as the increase in construction costs due to inflation, the JLBC Staff finds that the per-square-foot costs of this project are reasonable.

<b>Table 1</b>				
<b>Assorted University Non-Research Capital Projects</b>				
<b>Estimated Per Square Foot Costs</b>				
<b><u>Project</u></b>	<b><u>Review Date</u></b>	<b><u>Total Project Cost</u></b>	<b><u>Total Cost Per Square Foot</u></b>	<b><u>Direct Construction Cost Per Square Foot</u></b>
UA-Architecture Building Expansion	June 2005	\$9,400,000	\$281	\$202
ASU PD Facility	October 2006	12,500,000	328	229
<b>Cronkite School of Journalism</b>	<b>January 2007</b>	<b>71,000,000</b>	<b>336</b>	<b>\$251</b>
UA-Poetry Center	June 2005	6,800,000	385	286
<b>AVERAGE</b>			<b>\$333</b>	<b>\$242</b>

The City of Phoenix contracted this project with the design/build method. Under this procurement method, the total project budget is determined first, after which a RFP is issued for a designer/contractor team to design and construct the project. The team selected from the RFP process develops a proposal that meets the pre-determined budget amount and a timeline for project completion.

RS/LR:ts



**Responses to Questions from JLBC on Downtown Phoenix Campus Report following Committee Review**

Mr. Stavneak's letter to President Crow on November 22, 2006 requested that ASU provide answers to six questions that the Committee delineated. The answers to those questions were provided in an email to JLBC staff on November 14, 2006.

Subsequent discussion with staff indicated that more detailed information was requested for question #1, including the break-out of capital expenditures for the Downtown Phoenix Campus between acquisition costs and renovations by building. That information follows:

ARIZONA STATE UNIVERSITY DOWNTOWN PHOENIX CAMPUS ACQUISITION AND RENOVATION COSTS					
	(\$millions)		Total Acquisition and Renovation Costs	Building Square Footage	Cost per sf
	Property Acquisition	Renovation			
The 411 Building	30.5	26.3	56.8	315,068	\$ 83
Park Place	10.4	10.0	20.4	82,453	\$ 121
Contingency for Property Acquisition (Phase II), including supporting cost	10.4	1.3	11.7		
Mercado		1.9	1.9	110,381	\$ 17
Post Office Building		4.0	4.0	100,293	\$ 40
Financing		1.0	1.0		
Relocation of Existing Tenants		3.0	3.0		
Misc. City Costs (permitting, legal, etc.)		1.9	1.9		
	51.3	49.4	100.7	608,195	\$ 81

Note: The Acquisition Costs for Phase II have not been completed and are a part of an eminent domain case. The estimates here are the best estimates for the maximum cost of the acquisition and related legal and other costs.

Furthermore, JLBC requested details for the design and construction of the Cronkite/KAET building project. The information follows:

The Walter Cronkite School of Journalism and 8/KAET will be housed in a building that is estimated to be 211,000 GSF. The building will be a six story building and will be located on the ASU Downtown Phoenix Campus on Taylor Street between Central Avenue and First Street. Ground floor retail is planned for the Central Avenue side as well on the corner of First Street and Taylor.

Housed within this building will be the Cronkite School of Journalism whose space will include teaching newsrooms, broadcast news studios, a radio station, mediated classrooms and a central gathering space for large group presentations. KAET/8 operations will also be located in its entirety there with two television studios and facilities that will have the ability to televise live town halls and fundraising events. University classrooms serving the entire downtown campus will also be housed in this building.

The City of Phoenix is responsible for the cost of construction and is funded through the bond election that occurred in March 2006. The project's budget has been set at \$71 million.

ASU is responsible for furniture, fixtures and equipment and is budgeted at \$7 million.

This design-build project is currently in the final programming stages and is scheduled for completion and move in by August 2008.

ITEM 54

DISTRICT 8

CD20000006 - CRONKITE  
SCHOOL OF JOURNALISM/  
KAET CHANNEL 8

1-STEP DESIGN/BUILD  
PROGRAMMING AND  
CONCEPTUALIZATION

Request to authorize the City Manager to enter into an agreement with Sundt Construction, Inc. in conjunction with their architectural partner, HDR Architecture, to provide programming, design, construction, and construction administration and inspection services for the Cronkite School of Journalism/KAET Channel 8 project.

The advertisement for this project was issued in August 2006. A total of ten teams submitted acceptable Statements of Qualifications for this project. The selection committee interviewed three firms on October 6, 2006. After discussions between the committee members, the team of Sundt Construction, Inc. and HDR Architecture, Inc. was selected as the panel recommendation to provide these design-build services.

The Cronkite School of Journalism/KAET Channel 8 project involves an approximately 244,000 gross square foot, multi-story facility to be located at 415 North Central Avenue and will include retail space, a television broadcast studio, classrooms, offices, shell space, and mechanical and electrical rooms.

The initial phase is anticipated to involve the programming and conceptualization of the Cronkite School of Journalism/KAET Channel 8, located at 415 North Central Avenue. The schedule requires that this facility be fully operational by August 2008.

In order to meet the accelerated schedule, the total project cost of \$71,000,000 is being requested for approval at this time. This includes all design, construction, construction administration and inspection fees, and other associated City and ASU fees.

### Financial Impact

Funding for this project is available from 2006 General Obligation (G.O.) Bonds plus the use of interim financing approved by the City Council on June 21, 2006. The cost of the interim financing is not expected to exceed \$3.0 million over the construction period. The interim financing costs will be funded from \$600,000 in non-ASU tenant rents received by the City from properties on the current downtown ASU campus, predominately the 411 N. Central Avenue property, and an amount not to exceed \$600,000 from ASU with the remainder of the interim financing costs paid from the Downtown Community Reinvestment Fund.

### Affirmative Action

Sundt Construction, Inc. is eligible to do business with the City of Phoenix until September 30, 2007, by its compliance with the affirmative action requirements of the City Code, Chapter 18, Article V. The firm is responsible for maintaining its eligibility during the life of the contract and failure to do so may result in termination of the contract.

This Council award is subject to execution of the agreement by all of the parties.

This item is recommended by Mr. Cavazos, the Engineering and Architectural Services Department and the Downtown Development Office.

This item is also recommended by Mr. Cavazos.

Approved:	◆	Remarks:
Disapproved:	◆	
Continued:	◆	