STATE OF ARIZONA

Joint Legislative Budget Committee

STATE SENATE

ANDY BIGGS
CHAIRMAN 2012
PAULA A. ABOUD
OLIVIA CAJERO BEDFORD
RICH CRANDALL
LORI KLEIN
RICK MURPHY
STEVEN B. YARBROUGH

1716 WEST ADAMS PHOENIX, ARIZONA 85007

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HOUSE OF REPRESENTATIVES

JOHN KAVANAGH
CHAIRMAN 2011
LELA ALSTON
JOHN M. FILLMORE
JACK W. HARPER
MATT HEINZ
RUSS JONES
ANDY TOBIN
ANNA TOVAR

JOINT LEGISLATIVE BUDGET COMMITTEE
Thursday, April 14, 2011
9:00 A.M.
House Hearing Room 4

MEETING NOTICE

- Call to Order
- Approval of Minutes of December 14, 2010.
- DIRECTOR'S REPORT (if necessary).
- EXECUTIVE SESSION Arizona Department of Administration, Risk Management Services Consideration of Proposed Settlements under Rule 14.
- ADOPTION OF COMMITTEE RULES AND REGULATIONS.
- 2. STATE LAND DEPARTMENT Review of Establishing Fees in Rule.
- 3. JLBC STAFF Consider Approval of Index for School Facilities Board Construction Costs.
- 4. ATTORNEY GENERAL Review of Allocation of Settlement Monies.

The Chairman reserves the right to set the order of the agenda. 4/11/11 lm

People with disabilities may request accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests for accommodations must be made with 72 hours prior notice. If you require accommodations, please contact the JLBC Office at (602) 926-5491.

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REPRESENTATIVES

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MINUTES OF THE MEETING

JOINT LEGISLATIVE BUDGET COMMITTEE

December 14, 2010

The Chairman called the meeting to order at 3:15 p.m., Tuesday, December 14, 2010, in Senate Appropriations Room 109. The following were present:

Senator Pearce, Chairman Members: Representative Kavanagh, Vice-Chairman

> Representative Biggs Senator Braswell Senator Gray Representative McComish Senator Harper Representative Murphy Senator Pierce Representative Williams

Senator Rios

Senator Aboud Representative Cajero Bedford Absent:

> Senator Aguirre Representative Campbell

Representative Heinz

APPROVAL OF MINUTES

Hearing no objections from the members of the Committee to the minutes of October 6, 2010, Chairman Russell Pearce stated that the minutes would stand approved.

ATTORNEY GENERAL - Review of Allocation of Settlement Monies.

Ms. Marge Zylla, JLBC Staff, stated this item is a review of allocation of settlement monies from 2 settlements: 1) a \$250,000 settlement resulting from mediation as part of ongoing Average Wholesale Price litigation with pharmaceutical companies, of which \$227,500 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund and \$22,500 will go toward outside counsel compensation; and 2) a \$1,181,400 settlement from a consent judgment with Pulte Homes, of which \$281,400 is designated to compensate Arizona consumers, \$500,000 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund, \$100,000 will fund the publication of new educational materials, and \$300,000 will go toward Attorney General costs and investigative expenses. The JLBC Staff recommended a favorable review.

Representative Kavanagh moved that the Committee give a favorable review to the Attorney General's allocation plans of settlement monies totaling \$1,431,400. The motion carried.

EXECUTIVE SESSION

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

At 3:20 p.m. the Joint Legislative Budget Committee went into Executive Session.

<u>Representative Kavanagh moved</u> that the Committee reconvene into open session. The motion carried.

At 4:37 p.m. the Committee reconvened into open session.

A. State Department of Corrections - Review of Request for Proposals for 5,000 Private Prison Beds per A.R.S. § 38-431.03A2.

<u>Representative Kavanagh moved</u> that the Committee give a favorable review to the department's proposal on this item. The motion carried.

B. State Department of Corrections - Report on Proposed Correctional Health Services Per Diem Rates per A.R.S. § 38-431.03A2.

This item was for information only and no Committee action was required.

C. Arizona Department of Administration - Risk Management Services - Consideration of Proposed Settlements under Rule 14.

<u>Representative Kavanagh moved</u> that the Committee approve the recommended settlement proposal by the Attorney General's Office in the cases of:

- Thomas v. State of Arizona
- Scott v. State, et al.

The motion carried.

D. Annual Performance Review per Rule 7.

This item was for information only and no Committee action was required.

Without objection, the meeting adjourned at 4:50 p.m.

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Sandy So	humacher, Secreta
Richard	Stavneak, Directo

NOTE: A full audio recording of this meeting is available at the JLBC Staff Office, 1716 W. Adams. A full video recording of this meeting is available at http://www.azleg.gov/jlbc/meeting.htm.

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DATE: April 11, 2011

TO: Representative John Kavanagh, Chairman

Members, Joint Legislative Budget Committee

FROM: Richard Stavneak, Director

SUBJECT: Adoption of Committee Rules and Regulations

The Committee will consider the attached rules and regulations for adoption at its April 14th meeting.

RS:lm Attachment

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.

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 THE COMMITTEE OR THE CHAIRMAN AND VICE CHAIRMAN SHALL 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.

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.
- 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.

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. 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(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.

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;

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. An agency loss prevention plan approved by the Arizona Department of Administration (ADOA). If an approved plan is not available, ADOA will provide an explanation of why it is not approved at that time, and a timetable for submitting an approved 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 judgment 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 an agency loss prevention plan that results from a judgment against the state in an amount equal to or greater than that which requires JLBC settlement authority. Within sixty days after payment of the judgment, ADOA will either indicate approval of the plan, provide an explanation of why it is not approved, or provide an explanation as to why a plan is no longer applicable.

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, or other written communique.

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.

 $\label{eq:JLBC} \begin{array}{l} JLBC \; Staff \\ 04/14/11 \\ e:\ | jlbc\ | Rules\ | JLBC \; RULES-04-14-11.doc \end{array}$

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DATE: April 11, 2011

TO: Representative John Kavanagh, Chairman

Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Ted Nelson, Fiscal Analyst

SUBJECT: State Land Department – Review of Establishing Fees in Rule

Request

Laws 2010, 2nd Regular Session, Chapter 243 repealed the specific fee schedule for State Land Department fees and instead allows the department to set its specific fees in rule. The legislation requires Committee review of the department's fees when they are established by rule.

The Land Department is proposing to retain its current fee schedule in its new rules.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the department's request to establish its current statutory fees in rule.

Analysis

The State Land Department manages 9.3 million acres of State Trust land, which are held in trust for a variety of state beneficiaries, the primary recipient being K-12 education. The fees subject to this review are charged for application, permit, transaction, appraisal, service, filing and document activities relating to the use or purchase of Trust lands or products of those lands (*See Attachment A*).

In FY 2010, the department collected approximately \$750,000 from these fees. This fee revenue is utilized by the department for operating expenses associated with the management of trust lands. The department's total FY 2010 fee revenue was \$1.8 million, which also includes a selling and administrative fee still set in statute and not subject to this review. Total FY 2010 spending by the department for trust related activities was \$11.1 million.

A.R.S. § 37-107 allows the State Land Department to establish its existing statutory fees relating to the management of State Trust lands in rule and also requires the department to have their fees reviewed by

JLBC. In order for the department to establish their existing fees in rule, Laws 2010, 2nd Regular Session, Chapter 243 granted the department a 1-year exemption from rulemaking procedure.

The fees proposed by the department are unchanged from those previously established in statute. The department will be required to seek further review from JLBC to modify its fee structure.

RS/TN:sls

Maria Baier State Land Commissioner

January 10, 2011

Chairman John Kavanagh Joint Legislative Budget Committee 1716 W Adams Phoenix, AZ 85007

Dear Chairman Kavanagh:

This letter is to request placement on the next Joint Legislative Budget Committee hearing agenda.

Senate Bill 1195, which was passed during the second regular session of the 49th Legislature, instructs the Department to establish its fees in rule. The legislation also provided an exemption from rule making to establish the current fees in rule. Any future changes to the fees charged by the Department will go through the rule making process and reviewed by the Joint Legislative Budget Committee per A.R.S. § 37-107.

In addition to review of future changes to the fees, it has been determined that a review by the Joint Legislative Budget Committee is required to establish the current fees in rule. Attached is the Department's exempt rule making packet. Please note that the Department is not changing any fee amounts. The exemption from rule making only applies to fees previously allowed by law.

Thank you for your assistance. Please contact me at 542-4622 or Keith Fallstrom at 542-6735 with any questions.

Sincerely,

Vanessa Hickman

Deputy State Land Commissioner

anesse Hideman

cc: Thomas Soteros-McNamara, OSPB Ted Nelson, JLBC

NOTICE OF EXEMPT RULEMAKING

TITLE

CHAPTER

SUBCHAPTER

PREAMBLE

1. Sections Affected

Rulemaking Action

R12-5-1201

New article, new section

2. The statutory authority for the rulemaking, including both the authorizing statute (general)

and the statutes the rules are implementing (specific):

Authorizing statute:

A.R.S. §37-107(A) and §37-132(A)(1)

Implementing statue:

A.R.S. §37-107(A)

3. The effective date of the rules:

Time and date of filing

4. A list of all previous notices appearing in the Register addressing the exempt rule:

(Name of notice): (volume#) A.A.R. (page #), (date)

5. The name and address of agency personnel with whom persons may communicate

regarding the rule:

Name:

Rozanna Sedillo, Interim Director

Land Information, Title & Transfer Division

Address:

Arizona State Land Department

1616 W. Adams Phoenix, AZ 85007

Telephone:

(602) 542-2504

FAX:

(602) 542-5208

E-Mail:

rsedillo@land.az.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

A.R.S. §37-108 authorized the State Land Department ("Department") to charge specific fees for application, permit, transaction, appraisal, service, filing and document fees for transactions related to the selling, leasing, annexation, conveyance, exchange, right-of-way and use of State lands or products of State lands. With the passing of S.B. 1195 (Laws 2010, 49th Legislature, 2nd Regular Session, Chapter 243), A.R.S. §37-108 is repealed and A.R.S. §37-107 is amended. S.B. 1195 also requires the State Land Commissioner to prescribe by rule the fees collected by the Department for its functions relating to the management of State Trust lands with a few caveats:

- 1. The Department is exempt from the rulemaking process for one year to establish the fees (sec. 18).
- 2. The fees have to remain at the level previously allowed by law. For FY 2009, FY 2010, and FY 2011, the Commissioner was allowed to increase most fees to offset budget reductions. SB 1195 allows these increased fees to continue (sec. 18).
- 3. Future changes to the fees have to be reviewed by the Joint Legislative Budget Committee (sec. 3).

This exempt rule making packet is to establish existing fees per this recent legislation.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

SB 1195 provides an exemption from the rule making requirements to continue existing fees (sec. 18). The Department does not have the flexibility to alter the fees through the exempt rule making process and did not perform any study besides ensuring existing fees are continued.

8. A showing of good cause why the rule is necessary to promote a statewide interest if
the rule will diminish a previous grant of authority of a political subdivision of this
state:

The rule will not diminish the authority of any political subdivision of this state.

9. The summary of the economic, small business, and consumer impact:

The Arizona State Land Department manages 9.3 million acres of State-owned "Trust" lands. These lands were granted to the State of Arizona under the provisions of the 1910 federal Enabling Act that provided for Arizona's statehood in 1912. The lands are held in Trust for various beneficiaries including the common schools (K-12) and 12 other institutions. The Trust's beneficiaries receive revenue from leasing, selling, or using State Trust land and its resources.

Trust land management activities to earn revenue can be divided into three categories:

(1) surface uses (grazing, agricultural, commercial, and rights-of-way); (2) subsurface uses (mineral and precious metal extraction); and, (3) land and natural products sales (i.e. timber, rock, sand, and gravel). These activities along with others can only be applied for on a form prescribed and furnished by the Department with a filing fee. These fees are only charged to those individuals, private companies, government agencies and other entities who do business with or apply to do business with the State Land Department.

For FY 2010, the Department expended about \$11.1 million on Trust activities and collected about \$1.8 million from fees. Of this fee revenue, about \$750,000 was from the fees included in this rule. The remaining fee revenue is from a selling and administrative fee that continues to be prescribed by statute (A.R.S. §37-107 B). Therefore, the Department receives less than 1/5th of its operating budget from fees. The remaining operating funds come from a portion of the proceeds generated by the Trust and from the State's General Fund.

The economic impact to our customers should be examined in two ways. First, establishing these fees in rule will allow more certainty for our customers regarding the fee amounts. The current fees have generally been in place since August 2008. The exception is when there was a lapse in the Commissioner's authority to set the fees due to the delayed passage of the FY 2010 budget. Setting the fees in rule will separate the fee amounts from the budget process. Second, these fees allow the Department to continue operating at its current level. Without establishing these fees in rule, the Department

would not be able to collect about \$750,000 per year. An additional reduction of about 7% to the Department's budget would force additional staff reductions and inhibit the Department's ability to serve its customers.

The Land Department finds that the adoption of A.A.C. Rule R12-5-1201 to be warranted in order to fulfill the requirements of SB 1195.

- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable): Not applicable
- 11. A summary of the comments made regarding the rule and the agency response to
 them: Not applicable
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules: Not applicable.
- 13. <u>Incorporation by reference and their location in the rules:</u> None
- 14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

(Name of notice): (volume #) A.A.R. (page #), (date)

15. The full text of the rules follows:

ARTICLE 12. FEES

R12-5-1201. Administrative Fees

The State Land Department shall charge the following fees for:

Application Type	Fee
Agricultural and Grazing – New (per section or fraction thereof)	\$150
Agricultural and Grazing – Renew	\$200
Commercial – New (10 years or less)	\$1,000
Commercial – New - long term (more than 10 years)	\$2,000
Commercial – Renew (includes homesite)	\$1,000
Appraisal for long term leases and land sales	Actual cost
Complete Assignment to an entity 100% controlled by assignor or family member	\$500
Partial assignment for long term Commercial Lease only – (more than 10 years)	\$2,500
All other assignments	\$1,000
Application to Place Improvement	\$150
Application to Place Improvement without Prior Approval	\$200
Application for Land Treatment	\$150
Special Land Use Permits – New or Renew	\$300
Non-commercial Sovereign Land Boat Dock / Launch Ramp Permit	\$100
Application to Amend General	\$100
Sublease	\$200
Amendments for Commercial Lease – 10 years or less	\$500
Amendments for Commercial Lease – long term (more than 10 years	\$1,000
Lease Reinstatement	\$300
Replacement of lost documents	\$50
Certified copy of documents	\$10 + \$1 per page
Returned check	\$20
Miscellaneous filings: Power of Attorney, Probate Documents and Divorce Documents	\$50
Mortgage, Deed of Trust	\$50 per lease
Bond for conservation or purchase applications for conservation purposes	\$1,000
Right of Way – New or Renew	\$500
Right of Way – Amendment	\$100
Temporary Right of Entry	\$100
Application to Purchase	\$2,000
Certificate of Purchase (Issuance)	\$1,000
Patent (Issuance)	\$200
Application for Partial Patent	\$1,000
Natural Products – Commercial - Wood Products	\$200
Natural Products - Incidental Use Permit	\$200
Natural Products – Water	\$500
Mineral Material	\$500
Mineral Exploration (New or Renew)	\$500
Dil & Gas (New or Renew)	\$500
Geothermal	\$500
Recreational Annual Use - Individual	\$15
Recreational Permits (Group) Less than 5 days, Less than 20 people	\$15
Recreational Annual Use - Immediate Family Unit (Two adults and children under the age of 18)	\$20
Jrban Planning Classification	\$1,000
Jrban Planning Development	\$1,000

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE SENATE

ANDY BIGGS
CHAIRMAN 2012
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1716 WEST ADAMS

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PHOENIX, ARIZONA 85007

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HOUSE OF REPRESENTATIVES

JOHN KAVANAGH
CHAIRMAN 2011
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JOHN M. FILLMORE
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MATT HEINZ
RUSS JONES
ANDY TOBIN
ANNA TOVAR

DATE: April 11, 2011

TO: Representative John Kavanagh, Chairman

Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Jack Brown, Senior Fiscal Analyst

SUBJECT: JLBC Staff - Consider Approval of Index for School Facilities Board Construction Costs

Request

A.R.S. § 15-2041D.3C requires that the cost-per-square-foot factors used in the School Facilities Board (SFB) building renewal and new school construction financing "shall be adjusted annually for construction market considerations based on an index identified or developed by the Joint Legislative Budget Committee (JLBC) as necessary but not less than once each year."

As the FY 2012 budget includes a new construction moratorium and the suspension of the building renewal formula, the adjustment would generate no change in new construction or building renewal costs. In addition, the adjustment will not affect current projects, as statute requires those projects to use the cost per-square-foot in effect at the time they were awarded.

Recommendation

The Committee has at least 2 options to consider:

- 1. Approve a 0% adjustment in the cost-per-square-foot factors, based on the latest 1-year change in the Rider Levett Bucknall (RLB) national construction cost index.
- 2. Approve the SFB Staff request for a 4.9% increase for K-8 grade levels and 0.8% for 9-12 grade levels. This adjustment is based on an index which estimates actual construction costs per-square-foot as opposed to the change in costs from a prior period.

Table 1 lists the cost-per-square-foot amounts for options 1 and 2.

Table 1 Cost-Per-Square-Foot Amo	ounts for Each Op	otion	
	<u>K-6</u>	<u>7-8</u>	<u>9-12</u>
Option 1 - Current Amount	\$136.66	\$144.27	\$167.05
Option 2 - SFB Staff Request	143.36	151.34	168.39

Analysis

Background Information

The original Students FIRST legislation (Laws 1998, 5th Special Session, Chapter 1) established funding amounts per-square-foot of space for new construction and building renewal (e.g., \$90 per-square-foot for Grades K-6). The statute requires that the funding amount per-square-foot "shall be adjusted annually for construction market considerations based on an index identified or developed by the JLBC as necessary but not less than once each year" (A.R.S. § 15-2041D.3C).

Current statute requires that SFB use the cost-per-square-foot in effect at the time a new construction project is approved, except that SFB may adjust the formula amount based on geographic or site conditions as defined in statute.

The Committee has used a variety of different indices to establish the per-square-foot amounts. Last year, the Committee approved a 0% adjustment in the cost-per-square-foot factors, based on an average of the changes in 2 measures of general inflation, the Consumer Price Index (CPI) and the Gross Domestic Product implicit price deflator (GDP deflator).

FY 2009 – FY 2012 budget legislation generally prohibits SFB from authorizing or awarding funding for the design or construction of any new school facility. The FY 2010 budget, however, authorized \$100,000,000 in lease-purchase capacity primarily supported by Federal Funds. SFB subsequently entered into \$91,325,000 worth of lease-purchase transactions to finance 8 new construction projects.

Construction Market Factors

Construction activity in Arizona has continued to be lower than in previous years, largely as a result of the widespread oversupply of residential and commercial properties. Recent analyses have estimated that the Phoenix Metropolitan area has an excess supply of 70,000 housing units.

This oversupply has caused a significant decline in the issuance of new housing building permits, with housing starts in Arizona declining approximately (14.5)% in calendar year 2010, from already depressed levels in 2009. Lower levels of contracting sales tax receipts also suggest a weaker construction market. Fiscal year-to-date contracting tax collections are down (10.3)% from FY 2010.

This decline in market activity has generally reduced inflationary increases in the construction sector.

Two Options

The first option is the continuation of last year's 0% inflation adjustment. This would be based on the minimal change in the RLB national construction index between October 2009 and October 2010, the latest available 12-month period.

The second option is the SFB request of 4.9% for K-8 grade levels and 0.8% for the 9-12 grade levels. SFB Staff has estimated that the current per-square-foot amount is insufficient to build new school facilities using only state funds.

In making this calculation, SFB Staff references data produced by RLB which outlines construction cost estimates for the Phoenix Metropolitan area. These data show that the cost-per-square-foot to build an elementary school varies between \$130-\$200, while the current New School Facilities (NSF) formula amount is \$136.66. In addition, the RLB data shows the cost-per-square-foot to build a high school is \$175-\$260, while the NSF formula amount currently stands at \$167.05. SFB Staff has indicated that they believe the requested adjustments would align the NSF per-square-foot formula amount with current market conditions.

RS/JBr:sls



STATE OF ARIZONA SCHOOL FACILITIES BOARD

Governor of Arizona Janice K. Brewer

March 1, 2011

The Honorable John Kavanagh, Chairman Joint Legislative Budget Committee 1716 West Adams Phoenix, Arizona 85007

And

The Honorable Andy Biggs, Chairman Joint Committee on Capital Review



Dear Representative Kavanagh and Senator Biggs:

A.R.S. §15-2041.D.3(c) states in part "...The cost per square foot shall be adjusted annually for construction market considerations based on an index identified or developed by the joint legislative budget committee as necessary but no less than once each year." To assist the JLBC, the School Facilities Board has prepared the following information.

Established in 2008, the new school construction index (cost per square foot) for grades K-6 and 7-8 is \$140.47. For grades 9-12 it is \$167.05.

For the past few years, the SFB has used analysis developed by the project management firm Arcadis (formerly known as PinnacleOne) and Rider Levett Bucknall or RLB (formerly Rider-Hunt), an international construction consulting group, in support of the annual requests for inflation adjustments.

The Arcadis analysis shows a decrease of 0.65% in construction costs for the year ending December 2009, while the RLB analysis shows a current cost of between \$130.00 and \$200.00 per square foot for elementary school construction and between \$175.00 and \$260.00 per square foot for high school construction. (Please note that the RLB analysis accounts for only construction bid costs. Costs for design, permitting, furniture, etc. need to be added to the cost per square foot. These additional costs add approximately 20% to the construction cost). See attachments.

In FY 2010, the SFB requested the Joint Committee on Capital Review adjust the new school construction cost index by 4.9% for K-6 and 7-8 grade levels and by 0.8% for 9-12 grade levels. The SFB is again requesting the same increase. Although the Arcadis analysis shows a slight decline in construction costs through 2009, the SFB believes the RLB report to be more reflective of current costs.

The current construction market is seeing marked increases in commodities. For example, copper has increased 25%, ductile iron (used in plumbing piping) is up 18%, and scrap steel is at \$100 per ton.

When minimal inflation is taken into consideration, any project awarded at the current index would fall short of adequate funding to build a school that meets the Minimum Guidelines with actual construction starting twelve or more months from award.

Table One below shows the impact on the cost per square foot of the recommended increases of 4.9% for K-6 and 7-8 grade levels and by 0.8% for 9-12 grade levels.

Table One

Grade Level	Current Amount	Adjusted Amoun					
K-6	\$136.66	\$143.36					
7-8	\$144.27	\$151.34					
9-12	\$167.05	\$168.39					

The SFB believes that this amount adequately reflects FY 2011 inflation and market conditions. Excluding local impact fees, the proposed costs per square foot would have covered the construction costs for the most recent SFB new construction projects (excluding projects that required the addition of the Davis-Bacon Act prevailing wage rates).

Fiscal Impact

The SFB assumes there will be no fiscal impact in FY 2011 due to the new construction moratorium, as well as no fiscal impact in FY 2012.

The estimated fiscal impact on the building renewal formula for FY 2012 is \$8.4 million based on full formula funding. For the last three fiscal years, there has been no building renewal formula funding. If this policy continues, the index increase would have no fiscal impact on building renewal formula funding.

If you or your staff has any questions regarding this information and request, please contact me at 602-542-6143 or dgray@azsfb.gov.

Sincerely,

Dean T. Grav

Attachments//

CC: Eileen Klein, Chief of Staff, Governor's Office

Karla Phillips, Policy Advisor on Education, Governor's Office

John Arnold, Director, OSPB



Phoenix Elementary School Building Cost (\$) /SF from FY 1998 through 2009

			a., 00.1001	Danaming c	000 (4) 10		1330 tillough 2003						
Fiscal	1	2	3	4	5	6	7	8	9	10			
Year (FY) July -June		\$/SF of K through 6 in Greater Phoenix	ENR 20 city average Rate of Increase	\$/SF of K through 6 in 20 city average	Inflation Rate of Increase (Marshall Swift)	\$/SF of K through 6 in Greater Phoenix	Inflation Rate of Increase (JLBC Adopted)	\$/SF of K through 6 in Greater Phoenix	\$/SF of K through 6 by Rider Hunt in Greater Phoenix	Rate of Increase			
1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009	1.92% 2.40% 0.99% 1.37% 1.93% 7.88% 5.55% 17.30% 2.66% 4.93%	\$90.00 \$91.73 \$93.93 \$94.86 \$96.16 \$98.01 \$105.74 \$111.60 \$130.91 \$134.39 \$141.01 \$141.74	1.92% 2.40% 0.99% 1.37% 1.96% 7.85% 5.55% 3.90% 2.68% 3.70% 4.99%	\$93.93 \$94.86 \$96.16 \$98.04 \$105.74 \$111.60 \$115.96 \$119.06 \$123.47		\$92.79 \$97.43 \$98.01 \$102.72 \$104.46 \$113.55 \$120.82	0.00% 3.10% 5.00% 0.60% 0.00% 4.20% 1.40% 12.85% 12.20%	\$97.43 \$98.01 \$98.01 \$102.13 \$103.56 \$116.87	\$90.00 \$120.00 \$120.00 \$150.00 \$155.00 \$160.00 \$158.95	0% 0% 25% 3% 5.39% -0.65%			

Notes:

FY 2008-2009, material prices such as steel dropped 18% from the high of September 2008. Wood and cement prices has an annual decreased of 5%. Prevailing wage rates of skilled labor such carpenters and iron workers had increases during the 2nd quarter of 2009.

However, general contractors have been slashing their overhead and profit to remain in business on 2009. There was an increase in the number of bidders from an average of 6 to 12 on open bid projects. This was factored in the computation of the quarterly indices.

- 2 The base construction cost for FY1998 is \$90/sf and was used as a base for all indices shown.
- 3 Column 3 is the 20 City Average BCI Inflation Rate computed by ENR.
- 4 Column 9 & 10, Rider Hunt Inflation Index.

¹ Inflation rate per year was derived using the ENR formula for computing the BCI index, and adjusted to Phoenix market. For FY 2005-2006, the inflation rate was based on the Association of General Contractors Inflation report for the Phoenix market.

USA REPORT

INDICATIVE CONSTRUCTION COSTS

The data in the chart below represents estimates of current building costs in each respective market. Costs may vary as a consequence of factors such as site conditions, climatic conditions, standards of specification, market conditions, etc. Values represent hard construction costs based on U.S. dollars per square foot of gross floor area.

	OFFI		OFFICES RETAIL SHOPPING					22	HOTELS HO					HOSPITAL INDUSTRIAL					PARKING				ENTIAL		EDUCATION						
	PRII	ME	SECON	IDARY	CEN	TER	STI	RIP	5 5	TAR	3 5	TAR	GEN	ERAL	WARE	HOUSE	GRO	UND	BASE	MENT	MULTI	FAMILY	SINGLE	FAMILY	ELEME	NTARY	HIGH S	CHOOL	UNIVE	RSITY	
LOCATION	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	Low	HIGH	LOW	HIGH	Low	HIGH	LOW	HIGH	Low	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	Low	HIGH	LOW	HIGH	LOW	HIGH	
Boston	200	280	175	245	100	180	90	145	210	350	150	220	355	505	70	100	60	80	75	100	135	200	165	250	220	275	240	325	250	350	
Cincinnati	135	205	90	140	85	130	65	120	175	260	105	160	270	350	60	90	40	70	65	95	70	140	65	180	115	145	135	160	165	250	
Denver	140	225	100	150	80	130	65	125	185	280	105	165	325	380	60	90	40	70	60	95	65	160	60	185	115	150	140	175	170	285	
Honolulu	200	375	165	280	140	335	115	305	370	540	225	385	340	545	95	155	60	95	90	180	130	315	195	550	235	335	245	345	280	510	
Las Vegas	160	285	115	185	115	205	65	145	230	460	140	225	285	450	50	90	50	85	60	150	70	200	90	240	170	300	180	420	235	435	
Los Angeles	180	280	120	195	110	195	90	140	250	370	170	245	350	435	70	95	60	95	85	125	135	215	120	260	215	315	280	410	295	410	
Nashville	125	210	80	140	85	125	65	120	175	260	100	160	260	340	60	90	40	70	65	95	70	135	65	175	115	145	130	160	150	225	
New York	205	290	165	230	120	180	115	160	320	445	185	265	380	515	95	145	65	105	80	115	140	210	155	255	165	240	220	290	240	360	
Phoenix	120	220	90	180	90	160	75	135	200	350	120	180	275	425	55	85	45	60	65	80	75	175	90	325	130	200	175	260	175	325	
Portland	165	195	115	150	120	195	115	155	175	265	120	170	325	390	80	110	70	95	85	125	110	190	125	195	170	230	195	245	235	335	
San Francisco	195	300	140	220	115	220	110	165	255	375	190	260	350	500	80	105	70	100	90	135	140	230	140	280	215	320	280	410	300	415	
Seattle	115	175	110	140	75	140	70	120	185	260	140	180	320	485	55	80	70	85	115	140	120	235	100	265	205	270	250	355	265	395	
Washington, DC	175	240	130	185	95	165	75	135	190	285	130	185	455	595	70	85	55	80	65	100	80	165	120	200	175	235	200	250	195	280	

KEY UNITED STATES STATISTICS

	Q4 2009	Q1 2010	Q2 2010	Q3 2010
Gross Domestic Product (GDP)	5.0%	3.7%	1.7%	2.0%
Consumer Price Index (CPI)	215.9	217.6	217.7	218.4
Architectural Billings Index (ABI)	45.4	46.1	46.0	50.4
Construction Put in Place	869.9	845.9	820.2	_
Inflation	0.0%	0.8%	0.0%	0.3%
Unemployment	10.0%	9.7%	9.7%	9.6%
Construction Unemployment	22.7%	24.9%	20.1%	17.2%

GDP represented in percent change from the preceding quarter, seasonally adjusted at annual rates. CPI quarterly figures represent the monthly value at the end of the quarter. ABI is derived from a monthly American institute of Architects survey of architectural firms of their work on the boards, reported at the end of the period. Construction Put in Place figures represent total value of construction dollars in billions spent at a seasonally adjusted annual rate taken at the end of each quarter. Inflation rates represent the total price of inflation from the previous quarter, based on the change in the Consumer Price Index. General Unemployment rates are based on the total pipulation (6 years and over. Construction Unemployment rates are seasonally adjusted, reported at the end of the period.

Sources: U.S. Bureau of Labor Statistics, Bureau of Economic Analysis, American Institute of Architects

THE END IS NIGH?

It is hard to think back to the booming days of 2006 and 2007 and, even with all the explanations given since by bankers, politicians and economists, it is hard not to wonder why the boom (especially in housing) was allowed to run as long it did and why this recession has dragged on and been so terrible.

But how badly has the construction industry been hit? Just a few figures tell the tale;

- According to ADP, between January 2007 and July 2010, the construction industry lost approximately 2.275 million jobs nationally.
- The US Bureau of Labor Statistics noted that by August 2010 unemployment in the construction industry nationwide stood at 17%; architecture firm employment in the U.S. reached a peak in July 2008 of 220,500 but at August 2010 was at 166,700 — a decrease of 24.4%
- According to the American Institute of Architects (AIA), billings by American architectural firms declined in August 2010 for the 30th consecutive month – a record!

However in the last few days there has been some good news from the AIA; the September Architectural Billing Index "...registered a score of 50.4 for September. Any score above 50 signifies growth at U.S. architecture firms." A tepid result no doubt but perhaps a signal that the end (of the decline) is nigh.

STATE OF ARIZONA

Joint Legislative Budget Committee 1716 WEST ADAMS

STATE SENATE

ANDY BIGGS CHAIRMAN 2012 PAULA A. ABOUD OLIVIA CAJERO BEDFORD RICH CRANDALL LORI KLEIN RICK MURPHY STEVEN B. YARBROUGH

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HOUSE OF REPRESENTATIVES

JOHN KAVANAGH CHAIRMAN 2011 LELA ALSTON JOHN M. FILLMORE JACK W. HARPER MATT HEINZ **RUSS JONES** ANNA TOVAR

DATE: April 11, 2011

TO: Representative John Kavanagh, Chairman

Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Senior Fiscal Analyst

SUBJECT: Attorney General - Review of Allocation of Settlement Monies

Request

The FY 2011 General Appropriation Act (Laws 2010, 7th Special Session, Chapter 1) contains a footnote that requires Joint Legislative Budget Committee (JLBC) review of the expenditure plan for settlement monies over \$100,000 received by the Office of the Attorney General (AG), or any other person on behalf of the State of Arizona, prior to expenditure of the monies. Settlements that are deposited in the General Fund pursuant to statute do not require JLBC review.

This request is for review of the expenditure plan for a total of \$6,206,800 from 5 settlements:

- 1) A \$3,471,900 settlement resulting from an agreement with Wells Fargo Bank as a result of alleged misrepresentations in the marketing of adjustable rate mortgages, of which \$2,168,500 will be deposited into the Court Ordered Trust Fund and \$1,303,400 will go toward AG costs and investigative expenses:
- 2) A \$1,500,000 settlement from a consent judgment with Home Loan Center as a result of alleged misrepresentations in the marketing of adjustable rate mortgages, of which \$1,150,000 will be deposited into the Court Ordered Trust Fund, \$300,000 will go toward AG costs and investigative expenses, and \$50,000 will go to the Department of Financial Institutions;
- 3) A \$188,800 settlement from a consent judgment with Amerix Corp. as a result of alleged deceptive practices while offering and selling debt management services, which will be deposited into the Consumer Fraud Fund;
- 4) A \$861,100 settlement from a consent judgment with Dannon Co. as a result of alleged misleading product advertising, which will be deposited into the Court Ordered Trust Fund; and
- 5) A \$185,000 settlement from a consent judgment with DirecTV Inc. as a result of alleged misleading advertising, which will be deposited into the Consumer Fraud Fund.

Of the \$6,206,800 in settlement monies, the AG will directly receive \$1,603,400 for costs and administrative expenses.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plans from the \$3,471,900 settlement with Wells Fargo Bank, the \$1,500,000 consent judgment with Home Loan Center, the \$188,800 consent judgment with Amerix Corp., the \$861,100 consent judgment with Dannon Co., and the \$185,000 consent judgment with DirecTV Inc.

Analysis

Wells Fargo Bank

The Attorney General entered into a settlement with Wells Fargo Bank in December 2010. The settlement resolves a lawsuit alleging misrepresentations in the marketing of certain adjustable rate mortgages by Wachovia Corporation and Golden West Corporation. These 2 companies were acquired by Wells Fargo at the end of 2008. The lawsuit included the allegation that Wachovia and Golden West did not adequately explain to consumers that minimum payments in the first year of the loan did not include interest payments and that unpaid interest would be added to the loan balance, creating higher loan payments in the future.

The settlement does not acknowledge any wrongdoing on the part of Wells Fargo Bank. It requires Wells Fargo bank to 1) offer loan modifications to eligible Arizona borrowers who received these adjustable rate mortgage loans from Wachovia or Golden West and 2) offer other foreclosure alternatives to borrowers who do not qualify for loan modifications. The settlement also requires Wells Fargo Bank to pay \$2,168,500 to the AG to be deposited into the Court Ordered Trust Fund to assist the state's efforts to prevent or mitigate foreclosures and to prevent mortgage loan modification fraud, as well as pay \$1,303,400 to the AG for reimbursement for AG costs and investigative expenses.

Home Loan Center

The Attorney General entered into a consent judgment with Home Loan Center in November 2010. The settlement resolves a lawsuit alleging misrepresentations in the marketing of payment option adjustable rate mortgages. The lawsuit included allegations that Home Loan Center inadequately conveyed the risk of these adjustable rate mortgages, overemphasized supposed benefits, and promoted artificially low interest rates that were temporary and resulted in higher loan payments in the future.

The settlement does not acknowledge any wrongdoing on the part of Home Loan Center. It requires Home Loan Center to comply with the Arizona Consumer Fraud Act and to provide at least 90 days notice to the state if it offers payment option adjustable rate mortgages in the future. If they decide to offer this type of loan in the future, Home Loan Center is required to advertise the risks clearly. The settlement also requires Home Loan Center to pay \$1,150,000 to the AG to be deposited into the Court Ordered Trust Fund to assist the state's efforts to prevent or mitigate foreclosures and to prevent mortgage loan modification fraud, pay \$300,000 to the AG for reimbursement for AG costs and investigative expenses, and pay \$50,000 to the Department of Financial Institutions, which licensed Home Loan Center.

Amerix Corp.

Arizona, along with 20 other states, entered into a consent judgment with Amerix in November 2010. The settlement resolves an investigation of Amerix's alleged violation of consumer protection laws that are applicable to debt management companies. The lawsuit included allegations that Amerix failed to

obtain required business licenses, falsely represented that credit counseling was provided by a non-profit company, and enrolled consumers in programs that generated fees for Amerix and did not always benefit the consumers. The total nationwide settlement amount totals \$4.5 million.

The settlement does not acknowledge any wrongdoing on the part of Amerix. It requires Amerix to comply with all state laws, including licensing requirements, to accurately represent the type of company that performs services, and explain the purpose of the fees charged to consumers. The settlement also requires Amerix to pay \$188,800 to the AG to be deposited into the Consumer Fraud Fund to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act.

Dannon Co.

The Attorney General entered into a consent judgment with Dannon in December 2010. The settlement resolves an investigation into alleged advertising misrepresentations. The lawsuit included allegations that Dannon advertised yogurt products as "drugs" that could treat or prevent digestive and immune system diseases, although the Food and Drug Administration had not approved the products as such. The total nationwide settlement amount totals \$21 million.

The settlement does not acknowledge any wrongdoing on the part of Dannon. It prohibits Dannon from representing that non-approved products prevent or cure diseases, provide digestive relief or immune system support, or represent product health benefits without reliable scientific evidence. The settlement also requires Dannon to pay \$861,100 to the AG to be deposited into the Court Ordered Trust Fund for pharmaceutical, health fraud and consumer product investigations and litigation.

DirecTV Inc.

Arizona, along with 48 other states, entered into a consent judgment with DirecTV in January 2011. The settlement resolves an investigation alleging misrepresentations in the advertising of rebates and pricing. The lawsuit included allegations that DirecTV advertised prices that included rebates that did not apply to all consumers, required a lengthy redemption period, expired prior to redemption or were difficult to redeem, as well as advertising prices without clearly disclosing that the price did not apply to the entire term of the service commitment and failing to honor incentives offered by authorized retailers.

The settlement does not acknowledge any wrongdoing on the part of DirecTV. It requires DirecTV to comply with the Arizona Consumer Fraud Act and with regulations when using the word "free" in their advertising, offer clear disclosure of the terms of advertised offers, obtain express consumer consent before extending or adding to a commitment agreement, and disclose cancellation and automatic renewal fees. The settlement also requires DirecTV to pay \$185,000 to the AG to be deposited into the Consumer Fraud Fund to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act.

RS/MZ:mt



Terry Goddard Attorney General

Office of the Attorney General State of Arizona

Nancy M. Bonnell Antitrust Unit Chief

December 30, 2010

The Honorable Robert L. Burns President of the Senate 1700 West Washington Phoenix, Arizona 85007

The Honorable Kirk Adams Speaker of the House House of Representatives 1700 West Washington Phoenix, Arizona 85007

The Honorable Russell K. Pearce Chairman, Joint Legislative Budget Committee 1700 West Washington Phoenix, Arizona 85007

Re: State of Arizona Settlement with Wells Fargo Bank, N.A.



The State of Arizona recently reached a settlement with Wells Fargo Bank, N.A. ("Wells Fargo") resolving allegations that two companies Wells Fargo had acquired had violated Arizona's Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*

The settlement, in the form of an Assurance of Discontinuance, resolves the State's investigation of alleged deceptive practices employed by Wachovia Corporation and Golden West Corporation in the marketing of payment option adjustable rate mortgages to Arizona consumers. The State alleged that the companies did not adequately explain to consumers that making only the minimum payment due in the first years of the loan did not cover the full amount of accrued interest and that the unpaid interest would be added to the loan balance. As a result, consumers who took those loans face, or in the future will face, higher loan payments that they cannot afford.

¹ At the end of 2008, Wells Fargo purchased Wachovia Corporation, which had already acquired Golden West Corporation.



Hon. Robert L. Burns Hon. Kirk Adams Hon. Russell K. Pearce December 30, 2010 Page 2

The Assurance does not constitute an admission of wrongdoing by Wells Fargo. Under this settlement, Wells Fargo has agreed to do the following:

- Between December 18, 2010 and June 30, 2010, offer loan modifications to eligible, qualified Arizona borrowers who received payment option adjustable rate mortgage loans from Wachovia and Golden West. The estimated value of this mortgage relief is more than \$150 million.
- Establish service commitments to payment option adjustable rate mortgage holders seeking to modify their loans including, but not limited to, providing: a single, primary point of contact for borrowers going through the modification process, adequately staffed help lines, making modification decisions within 30 days after receiving completed applications.
- For those borrowers who do not qualify for loan modifications, offer other foreclosure alternatives including short sales, deeds-in-lieu or relocation assistance.
- Provide \$2,168,539 to the Attorney General's Office to assist in the State's efforts to prevent or mitigate foreclosures and to prevent mortgage loan modification fraud.
- Provide quarterly reports to the Attorney General's Office regarding the number of modifications requested, granted and their performance, among other things.
- Pay \$1,303,423.50 for attorneys' fees and costs.

Our notification to you of this settlement is made without prejudice to our 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.

Hon. Robert L. Burns Hon. Kirk Adams Hon. Russell K. Pearce December 30, 2010 Page 3

Please call me at (602) 542-7728 if you have any questions regarding this matter.

Sincerely,

Nancy M. Bonnell

Consumer Protection and Advocacy Section

Enclosures

The Honorable John Kavanagh cc:

The Honorable David Schapira The Honorable David Lujan Mr. Richard S. Stavneak

Ms. Marge Zylla (Assurance of Discontinuance enclosed)

Mr. Joe Kanefield Ms. Jennifer Boucek Mr. John T. Stevens, Jr.



TOM HORNE ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

PUBLIC ADVOCACY DIVISION CONSUMER PROTECTION & ADVOCACY SECTION

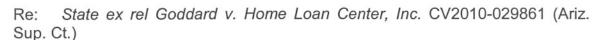
DENA ROSEN EPSTEIN SECTION CHIEF COUNSEL DIRECT PHONE NO. (602) 542-7717 DENA.EPSTEIN@AZAG.GOV

January 6, 2011

The Honorable Robert L. Burns President of the Senate 1700 West Washington Street Phoenix, AZ 85007

The Honorable Kirk Adams Speaker of the House 1700 West Washington Street Phoenix, AZ 85007

The Honorable Russell K. Pearce Chairman, Joint Legislative Budget Committee 1700 West Washington Street Phoenix, AZ 85007





The State of Arizona recently settled a case against Home Loan Center, Inc. resolving allegations that Home Loan Center deceptively advertised certain mortgage loans to Arizona consumers.

The settlement, in the form of a Consent Judgment, resolves the State's investigation of Home Loan Center's advertising practices. According to the Complaint that was filed concurrently with the Consent Judgment, Home Loan Center marketed payment option adjustable rate mortgage loans (POA's) to Arizona consumers from August, 2004 through July, 2007. The "payment option" feature of these loans allowed borrowers to select one of three options to pay their mortgage each month – a fully amortizing payment, an interest only payment or a minimum payment consisting of only some of the interest due that month. The unpaid portion of the interest would be added to the principal amount of the mortgage loan, which is called "negative amortization."



The State's Complaint alleged that Home Loan Center substantially downplayed the risk of POA loans, in violation of the Arizona Consumer Fraud Act, (A.R.S. § 44-1521 et seq.). In mailers sent to approximately 600,000 consumers, Home Loan Centers advertisements allegedly failed to sufficiently explain the negative amortization feature of POA loans, failed to disclose risks associated with POA loans and overemphasized the supposed benefits of these loan products. Home Loan Center also allegedly promoted artificially low interest rates (such as 1% or 1.25%) without clearly disclosing that the low rate was a "teaser" that typically applied only for a period of 30 days and without disclosing the resulting negative amortization caused by the low rate.

The Consent Judgment does not constitute an admission of wrongdoing by Home Loan Center. Under this settlement, Home Loan Center has agreed to comply with the Arizona Consumer Fraud Act as currently written or as amended in the future. The Consent Judgment further requires Home Loan Center to provide at least ninety (90) days notice to the State if it decides to offer payment option adjustable rate mortgage loans in the future. In that event, Home Loan Center must ensure that its advertisements include clear and non-misleading disclosures concerning the risks of POA loan products. The Consent Judgment requires Home Loan Center to provide written reports to the Attorney General concerning its compliance with the Consent Judgment on request. The settlement also provides for a payment of \$1,150,000 to the Attorney General in order to assist the State's efforts to prevent or mitigate foreclosures and to prevent mortgage or loan modification fraud, \$300,000 for attorney's fees and investigative costs, and \$50,000 to the Arizona Department of Financial Institutions, which licensed Home Loan Center during the relevant period.

Our notification of this settlement is made without prejudice to our 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.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,

Dena Rosen Epstein Section Chief Counsel

M/LC.

Consumer Protection and Advocacy Section

cc: The Honorable John Kavanagh

The Honorable David Schapira
The Honorable David Lujan

Mr. Richard S. Stavneak

Ms. Marge Zylla (Settlement Agreement enclosed)

January 6, 2011 Page 3

> Mr. Joe Kanefield Mr. Art Harding Mr. Michael Vargas Mr. John T. Stevens, Jr.

#1454656



TOM HORNE ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

PUBLIC ADVOCACY DIVISION CONSUMER PROTECTION & ADVOCACY SECTION

DENA ROSEN EPSTEIN
SECTION CHIEF COUNSEL
DIRECT PHONE No. (602) 542-7717
DENA.EPSTEIN@AZAG.GOV

February 14, 2011



The Honorable Russell Pearce President of the Senate 1700 West Washington Street Phoenix, AZ 85007

The Honorable Kirk Adams Speaker of the House 1700 West Washington Street Phoenix, AZ 85007

The Honorable John Kavanagh Chairman, Joint Legislative Budget Committee 1700 West Washington Street Phoenix, AZ 85007

Re: State ex rel Goddard v. AscendOne Corp.; Amerix CV2010-031721 (Ariz. Sup. Ct.)

Gentlemen:

The State of Arizona recently settled a multi-state case against AscendOne Corporation, Amerix Corporation, CareOne Services, Inc., FreedomPoint Financial Corporation, 3C, Inc., and Bernaldo Dancel (collectively, "Amerix") resolving allegations that Amerix engaged in deceptive practices in the course of offering and selling of debt management services.

The settlement, in the form of a Consent Judgment, resolves the States' investigation of Amerix's violation of various consumer protection laws applicable to debt management companies, including licensing requirements and the Arizona Consumer Fraud Act, A.R.S. § 44-1521, et. seq. This settlement does not constitute an admission of liability.

According to the Complaint that was filed with the Consent Judgment, Amerix failed to obtain the licenses required by Arizona's debt management laws, including A.R.S. § 6-701 et seq. Amerix allegedly engaged in unlawful conduct by offering and

selling debt management services when they were not legally authorized to offer such services as a result of their non-compliance with licensing requirements. Further, Amerix allegedly represented that the debt management services they were offering and selling were provided by a non-profit credit counseling agencies when, in fact, the for-profit Amerix Defendants provided those services. The Complaint also alleged that Amerix told consumers that they would receive credit counseling services from a CCA when consumers had little or no contact with the CCA. Instead of providing counseling on all available options to resolve debt issues, Amerix allegedly enrolled consumers into Debt Management Programs that generated fees for Amerix but did not always benefit consumers.

Under the Consent Judgment, Amerix has agreed to comply with the Arizona Consumer Fraud Act as currently written or as amended in the future. The Consent Judgment further requires Amerix to comply with all state law requirements, including becoming licensed. The judgment further prohibits Amerix from misrepresenting that their services are being performed by a non-profit, requires Amerix to explain the purpose of the fees they charge and explain the impact entering into a debt management plan could have on a consumer's credit history. On the first and second anniversaries of the settlement agreement, Amerix will provide to the Attorney General of Maryland documents showing current compliance with the terms of the agreement. The settlement also provides for a payment of \$4.5 million to the Attorneys General of twenty one states that participated in the settlement, with Arizona's portion equaling \$188,750.00. These settlements funds were deposited into the consumer fraud revolving fund pursuant to A.R.S. §44 -1531.01.

Our notification of this settlement is made without prejudice to our 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.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,

Dena Rosen Epstein Section Chief Counsel

Consumer Protection and Advocacy Section

cc: The Honorable Andy Biggs

The Honorable David Schapira The Honorable Chad Campbell

Mr. Richard S. Stavneak

Ms. Marge Zylla (Settlement Agreement enclosed)

Mr. Joe Kanefield

Mr. Art Harding Mr. Michael Vargas Mr. John T. Stevens, Jr.

#1507896



TOM HORNE ATTORNEY GENERAL

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PUBLIC ADVOCACY DIVISION
CONSUMER PROTECTION & ADVOCACY SECTION

DENA ROSEN EPSTEIN
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DIRECT PHONE No. (602) 542-7717
DENA.EPSTEIN@AZAG.GOV

February 22, 2011

The Honorable Russell Pearce President of the Senate 1700 West Washington Street Phoenix, AZ 85007

The Honorable Kirk Adams Speaker of the House 1700 West Washington Street Phoenix, AZ 85007

The Honorable John Kavanagh Chairman, Joint Legislative Budget Committee 1700 West Washington Street Phoenix, AZ 85007



Re: State ex rel Goddard v. Dannon Company, Inc., Inc. C2010-9717 (Ariz. Sup. Ct., Pima County)

Gentlemen:

The State of Arizona recently settled a case against The Dannon Company, Inc. ("Dannon") resolving allegations that Dannon violated the Arizona Consumer Fraud Act, (A.R.S. § 44-1521 *et seq.*) in its marketing of Activia and DanActive products.

The settlement, in the form of a Consent Judgment, resolves a 39 state investigation of Dannon's advertising practices. The State's Complaint, filed concurrently with the Consent Judgment, alleges that Dannon unlawfully advertised its products as drugs — by representing they could treat or prevent certain diseases related to digestive health and immunity — when Dannon's yogurt products were not approved as "drugs" by the FDA, and thus it had no legal authority to make such claims. Dannon also allegedly made claims about its products that were not substantiated by competent scientific evidence, including that Activia and DanActive could treat or prevent symptoms of the digestive and/or immune system.

The Consent Judgment does not constitute an admission of wrongdoing by Dannon. Among other things, this settlement prohibits Dannon from:

- representing that covered products prevent, cure, mitigate, treat, or diagnose disease, including claims regarding colds or flu;
- representing that covered products help promote or support relief from temporary diarrhea or constipation, or maintain the immune system, without possessing and relying upon competent and reliable scientific evidence;
- citing, summarizing or linking to clinical studies or research in the labeling
 of a covered product if, in the context of the labeling as a whole, it implies
 that the covered products prevent, cure, mitigate or diagnose disease;
- making representations about a covered product's health benefits, performance, efficacy or safety unless it possesses competent and reliable scientific evidence that is sufficient in quality and quantity;
- making false or misleading representations about the existence, contents, methodology, statistical analyses, study scope, validity, results, conclusions or interpretations of any test, study or research; and
- using certain fanciful names that represent that a covered product helps regulate the digestive system or supports, promotes or maintains immunity, without clearly and conspicuously disclosing the true scientific name of the bacteria.

Dannon further agreed to monitor its compliance with the Judgment, including by monitoring claims or statements made regarding the relevant products by company representatives for five years from the entry of the Judgment.

The Consent Judgment requires Dannon to pay \$861,111.00 to the Arizona Attorney General's Office for pharmaceutical, health fraud and consumer product investigations and litigation. This is Arizona's portion of the multi-state settlement, which totaled \$21 million.

Our notification of this settlement is made without prejudice to our Office's longstanding 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.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,

Dena Rosen Epstein Section Chief Counsel

Consumer Protection and Advocacy Section

cc: The Honorable Andy Biggs

The Honorable David Schapira The Honorable Chad Campbell

Mr. Richard S. Stavneak

Ms. Marge Zylla (Settlement Agreement enclosed)

Mr. Joe Kanefield Mr. Art Harding

Mr. Michael Vargas

Mr. John T. Stevens, Jr.

#1509556



TOM HORNE ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

PUBLIC ADVOCACY DIVISION CONSUMER PROTECTION & ADVOCACY SECTION

DENA ROSEN EPSTEIN SECTION CHIEF COUNSEL DIRECT PHONE No. (602) 542-7717 DENA.EPSTEIN@AZAG.GOV

March 3, 2011

The Honorable Russell Pearce President of the Senate 1700 West Washington Street Phoenix, AZ 85007

The Honorable Kirk Adams Speaker of the House 1700 West Washington Street Phoenix, AZ 85007

The Honorable John Kavanagh Chairman, Joint Legislative Budget Committee 1700 West Washington Street Phoenix, AZ 85007



Re: State ex rel Goddard v. DirecTV, Inc. CV2010-033208 (Ariz. Sup. Ct.)

Gentlemen:

The State of Arizona recently settled a multi-state case against DirecTV resolving allegations that DirecTV violated the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, in its promotion, sale, and provision of satellite television services.

The settlement, in the form of a Consent Judgment, resolves a 49 state investigation of DirecTV's business practices. The State's Complaint, filed concurrently with the Consent Judgment, alleged that DirecTV engaged in a number of deceptive practices including advertising prices that included rebates that did not apply to all consumers, required a lengthy redemption period before taking effect, expired prior to redemption and were procedurally difficult to redeem. DirecTV also advertised prices without clearly and conspicuously disclosing that the advertised price did not apply to the entire term of the service commitment and, upon termination, charged consumers' credit and/or debit accounts without prior notification to the consumer. The State also alleged DirecTV failed to honor the promises and incentives offered by authorized retailers, and refused to release consumers from service commitments even when

authorized retailers failed to disclose material terms. The Consent Judgment does not constitute an admission of wrongdoing by DirecTV.

Among other things, the Consent Judgment requires DirecTV to:

- comply with the Arizona Consumer Fraud Act and with regulations on the use of the word "free" in advertising;
- clearly and conspicuously disclose material terms and conditions of its advertised offers;
- obtain express consent from the consumer before extending or adding to the existing commitment agreement, including disclosing any cancellation fees; and
- clearly notify consumers before a consumer is obligated to pay for automatically renewing seasonal programming, such as sports packages.

The settlement also provides for consumer restitution. The restitution program applies to consumers who file a written complaint with the Attorney General's Office or DirecTV by May 31, 2011, concerning conduct addressed by the terms of the settlement that occurred since January 1, 2007, where the complaint remains unresolved. The settlement requires DirecTV to try to resolve the complaint by offering the consumer restitution and/or some other appropriate relief. DirecTV has 150 days from receiving the complaint to propose resolution, although that time period can be extended by 60 days if a certain volume is met. If the consumer is dissatisfied with DirecTV's proposed resolution, the consumer may appeal the decision to an independent Claims Administrator.

The Consent Judgment also requires DirecTV to pay \$185,000 to the Arizona Attorney General's Office, to be deposited into the consumer fraud revolving fund pursuant to A.R.S. § 44-1531.01 and used for the purposes permitted by statute.

Our notification of this settlement is made without prejudice to our 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.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,

Dena Rosen Epstein Section Chief Counsel

Consumer Protection and Advocacy Section

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