

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
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CHAIRMAN 2010
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<http://www.azleg.gov/jlbc.htm>

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JOINT LEGISLATIVE BUDGET COMMITTEE

Tuesday, April 28, 2009

8:00 A.M.

House Hearing Room 4

MEETING NOTICE

- Call to Order
 - [Approval of Minutes of December 19, 2008.](#)
 - DIRECTOR'S REPORT (if necessary).
 - EXECUTIVE SESSION - Arizona Department of Administration, Risk Management Services - Consideration of Proposed Settlements under Rule 14.
1. [Adoption of Committee Rules and Regulations.](#)
 2. [CORPORATION COMMISSION, DEPARTMENT OF HOUSING, DEPARTMENT OF INSURANCE, AND STATE PARKS BOARD - Review of Requested Exchange of Fund Transfers.](#)
 3. [ARIZONA PIONEERS' HOME - Consider Approval of Requested Transfer of Appropriations.](#)
 4. [DEPARTMENT OF ENVIRONMENTAL QUALITY - Review of Intended Use of Monies in the Indirect Cost Recovery Fund.](#)
 5. [AHCCCS - Review of Revised Acute Care Capitation Rate Changes - Agency Request.](#)
 6. [ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND - Review of Intended Use of Voucher Fund Expenditures.](#)
 7. ATTORNEY GENERAL
 - A. Review of Allocation of Settlement Monies - State vs. Countrywide.
 - B. Review of Allocation of Settlement Monies - State vs. Eli Lilly.
 - C. Review of Allocation of Settlement Monies - State vs. Great Expectations.
 - D. Review of Allocation of Settlement Monies - State vs. Pfizer, Inc.

8. DINÉ COLLEGE - Review of Funding Compact.

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

4/21/09

sls

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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MINUTES OF THE MEETING

JOINT LEGISLATIVE BUDGET COMMITTEE

December 19, 2008

The Chairman called the meeting to order at 9:35 a.m., Thursday, December 19, 2008, in Senate Appropriations Room 109. The following were present:

Members:	Senator Burns, Chairman	Representative Pearce, Vice-Chairman
	Senator Garcia	Representative Biggs
	Senator Harper	Representative Cajero Bedford
	Senator Waring	Representative Lopez
		Representative Rios
		Representative Yarbrough
Absent:	Senator Aboud	Representative Adams
	Senator Aguirre	Representative Boone
	Senator Verschoor	

APPROVAL OF MINUTES

Hearing no objections from the members of the Committee to the minutes of November 13 2008, Chairman Burns stated that the minutes would be approved.

DIRECTOR'S REPORT

Mr. Richard Stavneak, Director, JLBC, reported that the Strategic Program Area Reviews (SPARS) would not be assigned in the upcoming year.

ARIZONA DEPARTMENT OF ADMINISTRATION - Review of Emergency Telecommunication Services Revolving Fund Expenditure Plan.

Mr. Dan Hunting, JLBC Staff, stated that this item is a review of the expenditures in the Emergency Telecommunication Services Revolving Fund. This fund received revenue from a monthly tax on wired and wireless telephone accounts of 20¢ per month. The Committee has at least 2 options: 1) a favorable review of the \$7.5 million wireless portion of the fund, or 2) an unfavorable review.

Mr. Paul Shannon, Assistant Director, Budget and Resource Planning, ADOA, responded to member questions.

The Committee requested ADOA forward a copy of the RFI for the state's employee health plan.

Chairman Burns stated that this item will be held due to the serious budget situation.

(Continued)

DEPARTMENT OF COMMERCE - Review of Memorandum of Understanding for the Arizona 21st Century Fund.

Mr. Eric Billings, JLBC Staff, stated that this item is a review of the Memorandum of Understanding (MOU) between the Department of Commerce and Science Foundation Arizona (SFaz) to use the monies in the Arizona 21st Century Competitive Initiative Fund. The Committee has at least the following 2 options: 1) a favorable review since SFaz's proposal generally meets the statutory guidelines for the 21st Century Fund, or 2) an unfavorable review.

Mr. Grant Nulle, Director of Finance and Policy Research, Science Foundation Arizona, responded to member questions.

Dr. William Harris, President and CEO, Science Foundation Arizona, responded to member questions.

The Committee requested the Science Foundation Arizona report back to the Committee with a breakdown of the contracts SFaz enters into in terms of how the intellectual property is divided between state institutions and private industry.

Chairman Burns stated that this item will be held due to the serious budget situation.

DEPARTMENT OF REVENUE

A. Review of FY 2009 Data Center Expenditure Plan.

Mr. Juan Beltran, JLBC Staff, stated that this item is a review of Department of Revenue's (DOR) FY 2009 Data Center Expenditure Plan. The department may utilize up to \$1.6 million of General Fund revenues in FY 2009 with expenses associated with the operation and relocation of a new data center. The Committee will have at least the following 2 options: 1) a favorable review of the proposed \$1.2 million expenditure plan, or 2) an unfavorable review.

Representative Pearce moved that the Committee give a favorable review to the \$1.2 million expenditure plan. The motion carried.

The Committee also recommended that if the funding for this program is retained in the FY 2010 budget, that the program be funded by a direct appropriation rather than through the diversion of General Fund revenue.

B. Review of FY 2009 General Fund Revenue Enforcement Goals.

Mr. Beltran stated that this item is a review of DOR's FY 2009 General Fund Revenue Enforcement Goals. The department's goal for FY 2009 is \$361.3 million, which is \$(29.4) million below their FY 2008 actual collections. The Committee has at least the following 2 options: 1) a favorable review of the department's goals for FY 2009, or 2) an unfavorable review.

Ms. Kristine Ward, Deputy Director, Department of Revenue, responded to member questions.

Representative Pearce moved that the Committee give a favorable review to DOR's General Fund revenue enforcement goals for FY 2009. In addition, the Committee requested that DOR continue to report license compliance and transaction privilege tax as separate items for FY 2010, since each program produces a significant dollar amount of audit revenue. The motion carried.

DEPARTMENT OF ENVIRONMENTAL QUALITY - Review of Water Quality Permit Processing Times.

Mr. Dan Hunting, JLBC Staff, stated that the 2008 General Appropriation Act contains a footnote that requires the Department of Environmental Quality (DEQ) to submit for JLBC review a report on water quality permit processing times and costs. For FY 2008, DEQ met the licensing timeframe targets for 43 out of 45 permit types. The Committee has at least the following 2 options: 1) a favorable review, or 2) an unfavorable review.

(Continued)

Ms. Joan Card, Director of Water Quality Division, Department of Environmental Quality, responded to member questions.

The Chairman asked DEQ to supply the Committee with information on the number and status of rulemaking proposals in place.

Representative Pearce moved that the Committee give a favorable review to DEQ's water quality permit processing time and costs. The motion carried.

EXECUTIVE SESSION

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

At 10:40 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 11:02 a.m. the Committee reconvened into open session.

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

Representative Pearce moved that the Committee approve the recommended settlement proposal by the Attorney General's Office in the case of *Dora Delgado et al. vs. Holy Cross Hospital, et al.* The motion carried.

Senator Garcia was excused from the vote.

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

A. Arizona Department of Administration - Risk Management Annual Report.

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

B. Annual Performance Review of JLBC Staff Director.

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

Without objection, the meeting adjourned at 11:05 a.m.

Respectfully submitted:

Sandy Schumacher, Secretary

Richard Stavneak, Director

Senator Bob Burns, Chairman

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 22, 2009

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 21 meeting. The rules and regulations are the same as the Committee used in the last biennium.

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. 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.

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. 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 judgments 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 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.

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DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Caitlin Acker, Assistant Fiscal Analyst

SUBJECT: Corporation Commission, Department of Housing, Department of Insurance, and State
Parks Board - Review of Requested Exchange of Fund Transfers

Request

The FY 2009 Budget Reductions and Transfers Bill (Laws 2009, 1st Special Session, Chapter 1, Section 29) requires JLBC review of agency requests to transfer monies between their own funds in order to comply with transfers required by the act. The Arizona Corporation Commission, Department of Housing, Department of Insurance, and State Parks Board have requested Committee review of fund transfers pursuant to this bill.

Recommendation

The Committee has at least the following 3 options:

1. A favorable review of the proposed exchange of fund transfers.
2. A favorable review of the proposed exchange of fund transfers with the following revision: Rather than exchange \$3 million of the State Park Enhancement Fund (SPEF) transfer with the State Lake Improvement Fund (\$2 million) and Heritage Fund (\$1 million) monies, instead exchange \$2 million of SPEF with \$2 million of Heritage Fund. There would be no exchange with SLIF.
3. An unfavorable review.

Analysis

Table 1 summarizes the requested fund transfers.

(Continued)

Table 1

Requested FY 2009 Fund Transfer Switches

<u>Agency</u>	<u>Fund Specified in Laws 2009, Ch. 1</u> ^{1/}	<u>Ch. 1 Transfer Amount</u> ^{2/}	<u>Transfer Type</u>	<u>Agency Proposed Fund</u> ^{3/}	<u>Revised Transfer Amount</u> ^{4/}
Corporation Commission	Public Access Fund	\$239,200	EBT ^{5/}	Investment Management Fund	\$239,200
Department of Housing	Housing Program Fund	\$2,500,000	EBT	IGA and ISA Fund	\$2,500,000
Department of Insurance	Insurance Examiners' Revolving Fund	\$236,500	FRAT ^{6/}	Captive Insurance Regulatory and Supervision Fund	\$123,300
				Health Care Appeals Fund	\$58,200
				Financial Surveillance Fund	\$55,000
State Parks Board ^{7/}	State Parks Enhancement Fund	\$3,000,000	EBT	State Lake Improvement Fund	\$2,000,000
				Arizona Heritage Fund	\$1,000,000
		<hr/>			<hr/>
		\$5,975,700			\$5,975,700

^{1/} Fund source for reductions mandated by Laws 2009, 1st Special Session, Chapter 1.

^{2/} Amount for reductions mandated by Laws 2009, 1st Special Session, Chapter 1.

^{3/} Funds from which agencies are requesting transfers in order to accommodate the mandated reductions.

^{4/} Transfer amounts proposed by agencies.

^{5/} Excess balance transfers (EBTs) sweep money from anticipated FY 2009 ending balances into the General Fund.

^{6/} Fund reduction and transfers (FRATs) reduce annual FY 2009 spending from the agency's Other Funds. An amount equal to these reductions would be swept into the General Fund.

^{7/} There is also an alternative proposal to exchange \$2 million of SPEF with \$2 million of Heritage Fund. There would be no exchange with SLIF.

((Continued))

Arizona Corporation Commission

Laws 2009, 1st Special Session, Chapter 1, Section 4 requires an excess balance transfer (EBT) of \$239,200 from the Corporation Commission's Public Access Fund to the General Fund. EBTs sweep money from the anticipated FY 2009 ending balances into the General Fund. The Commission is requesting to transfer \$239,200 from the Investment Management Regulatory and Enforcement Fund instead of the Public Access Fund in order to complete the EBT. According to a cash flow analysis provided by the agency, the Public Access Fund would have an FY 2009 ending balance of \$(160,900) if the EBT is completed. If, instead, a transfer is completed from the Investment Management Fund, the agency estimates the Public Access Fund will have an FY 2009 ending balance of \$78,300 and the Investment Management Fund will have an FY 2009 ending balance of \$407,300.

The FY 2010 draft budget plan includes a \$284,200 EBT from the Public Access Fund and a \$433,300 EBT from the Investment Management Fund. According to the agency, the proposal to complete the FY 2009 EBT from the Investment Management Fund rather than the Public Access Fund would not affect the proposed FY 2010 transfers.

The Public Access Fund receives revenue from fees for expedited service for the filing of articles of incorporation and other documents. The fund is used for a data processing system that allows direct, on-line access by any person at a remote location to all public records concerning corporations and associations.

The Investment Management Regulatory and Enforcement Fund receives licensing fee revenue from investment advisors and investment advisor representatives as well as revenue from costs recovered from enforcement actions associated with the licensing. The fund is used for education, regulatory, investigative, and enforcement operations in the Securities Division of the Commission.

Arizona Department of Housing

Chapter 1, Section 4 requires the Department of Housing (ADOH) to transfer \$2,906,300 in excess balances from the Housing Program Fund to the General Fund. The department is requesting to transfer \$2,500,000 from the IGA and ISA Fund instead of the Housing Program Fund to facilitate the EBT. There would be a remaining Housing Program Fund transfer of \$406,300. According to ADOH, the Housing Program Fund has earned significantly less interest during FY 2009 and will receive as much as \$1,000,000 less in fee income due to a delay in the award of federal low-income housing tax credits. The agency also believes that the IGA and ISA Fund is currently better able to absorb the reduction and transferring money from the fund would avoid a shortfall in the Housing Program Fund.

According to the agency, the Housing Program Fund would have an FY 2009 ending balance of \$2,781,700 if the EBT is completed. If, instead, the transfer is made from the IGA and ISA Fund, the agency estimates the Housing Program Fund would have an FY 2009 ending balance of \$5,281,700 and the IGA and ISA Fund would have an FY 2009 ending balance of \$4,242,000. The proposal would not affect the FY 2010 draft budget plan because the plan does not contain an EBT from the IGA and ISA Fund.

The Housing Program Fund receives fees from the following programs: private activity bond (underwriting and hearings), low-income tax credit (application, monitoring, and reservation fees), fees charged from conferences and workshops, and fees from the Section 8 project-based contract administration program. The fund pays for the cost of administering the programs from which the deposits are received and for other department programs. Additionally, the monies may be transferred to any fund established by the Arizona Housing Finance Authority (AZHFA) in connection with any bonds or certificates issued by the Authority.

The IGA and ISA Fund receives revenue from Interagency Service Agreements, including about \$2,500,000 from the Housing Trust Fund through an interagency agreement to support the programs of

(Continued)

AZHFA. The fund also receives monies through fees earned by the finance authority. The fund supports the activities of AZHFA which issues bonds to finance single and multi-family housing programs.

Department of Insurance

Chapter 1, Section 5 requires the Department of Insurance to complete a \$241,200 fund reduction and transfer (FRAT) from the Insurance Examiners' Revolving Fund (IERF). FRATs reduce annual FY 2009 spending from the agency's Other Funds. An amount equal to these reductions would be swept into the General Fund. The department is requesting to transfer \$123,300 from the Captive Insurance Regulatory and Supervision Fund, \$58,200 from the Health Care Appeals Fund, and \$55,000 from the Financial Surveillance Fund instead of IERF in order to complete the FRAT. There would be a remaining IERF transfer of \$4,700.

According to the agency, there are insufficient funds in the Insurance Examiners' Revolving Fund to complete the FRAT. If the transfer is made from the Captive Insurance Regulatory and Supervision Fund, the Health Care Appeals Fund and the Financial Surveillance Fund, the agency estimates the Insurance Examiners' Revolving Fund would have an ending balance of \$30,700, the Captive Insurance Regulatory and Supervision Fund would have an ending balance of \$100,000, \$14,200 would be left in the Health Care Appeals Fund, and the Financial Surveillance Fund would have an ending balance of \$61,700.

The FY 2010 draft budget plan includes a \$52,300 FRAT and \$13,100 salary lump sum reduction from the Captive Insurance Regulatory and Supervision Fund as well as a \$482,100 FRAT and \$113,500 salary lump sum from the Insurance Examiners' Revolving Fund. According to the agency, the proposal would not affect the FY 2010 draft budget plan.

The Insurance Examiners' Revolving Fund receives payments from insurance companies for costs of financial, rate, and market conduct examinations performed by contract examiners. The fund provides monies for contract examiners' per diem compensation and to reimburse contract examiners for travel and living expenses. Monies are also used to cover the department's related administrative costs.

The Captive Insurance Regulatory and Supervision Fund receives license and renewal fees collected from individual captive insurers and corporations applying to do business as a captive insurer. A captive insurer is an enterprise with the authority to function as an independent insurance company, but is organized by a parent company with the express intent to provide the parent company's insurance. The fund is used to promote the state's captive insurance industry and cover the department's related administration costs.

The Health Care Appeals Fund receives a one-time fee of \$200 and an annual fee of up to \$200 per health care insurance company. The fund is used to pay for start-up and ongoing costs related to selecting an independent review organization. The selected organization will conduct external independent reviews that involve issues of medical necessity.

The Financial Surveillance Fund receives assessments paid by domestic insurers, other than life and disability re-insurers, service companies, and mechanical reimbursement re-insurers. The fund provides monies for the cost of financial analysts who conduct financial surveillance of domestic insurers in order to identify possible risks to financial stability.

Arizona State Parks Board

Chapter 1, Section 4 requires the State Parks Board to transfer \$3,664,000 from the State Parks Enhancement Fund (SPEF) to the General Fund. The board is proposing to reduce its SPEF transfer to \$664,000 and to instead transfer \$2,000,000 from the State Lake Improvement Fund (SLIF) and \$1,000,000 from the Arizona Heritage Fund. According to the agency, the transfer will allow them to

(Continued)

maintain agency operations at the currently reduced levels during FY 2009 and provide for the minimum balance forward in SPEF that is required to continue operations into FY 2010.

According to the agency, if the EBT is completed from SPEF, the FY 2009 ending balance would be negative because FY 2009 revenue is about 13% lower than anticipated. If, instead, the EBT is completed from SLIF and the Arizona Heritage Fund, SPEF would have an FY 2009 ending balance of \$2,000,000, SLIF would have an ending balance of \$1,159,600, and the Arizona Heritage Fund would have an ending balance of \$18,121,800.

The FY 2010 draft budget plan includes a \$725,900 FRAT, \$2,901,500 EBT, and \$557,600 salary lump sum reduction from SPEF. It also includes a \$415,000 FRAT, \$4,753,000 EBT, and \$185,400 salary lump sum reduction from SLIF as well as a \$163,900 salary lump sum from the Heritage Fund. According to the agency, this proposal would not affect the FY 2010 draft budget plan.

The Committee also has the option to favorably review the exchange of \$2,000,000 from the Arizona Heritage Fund in place of SPEF. There would be no revision in the current SLIF transfer. This would leave FY 2009 ending balances of \$336,000 for SPEF, \$17,121,800 for the Arizona Heritage Fund, \$2,159,600 for SLIF.

SPEF generates revenue from state parks user fees and concession sales. Half of the fund is appropriated for parks operations and the other half is used for park acquisition and development.

SLIF generates revenue primarily from the Highway User Revenue Fund based on a formula that estimates state gasoline taxes paid for boating purposes. It also receives revenue from a portion of the watercraft license tax collected by the Arizona Game and Fish Department. The fund is used to fund projects at boating sites, including launching ramps, parking areas, lake improvement and construction, campgrounds and acquisition of property to provide access to boating sites.

The Arizona Heritage Fund receives an annual transfer from the Lottery Fund of up to \$10,000,000 and interest earnings. The Lottery transfer funds acquisition and development of local, regional, and state parks (35%); development of trails (5%); acquisition of natural areas (17%); maintenance and operation of natural areas (4%); environmental education (5%); State Parks acquisition and development (17%); and historic preservation projects (17%). Interest earnings are used for program administration.

RS/CA:sls

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

March 31, 2009

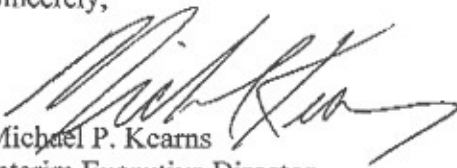
D. Clark Partridge
State Comptroller
Arizona Department of Administration
General Accounting Office
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Mr. Partridge: *CLARK*

Pursuant to Laws 2009, 1st Special Session, Chapter 1 (SB1001), section 29, the Commission respectfully requests authorization to transfer \$ 239,200 from the Investment Management Act Fund 2404 to the Public Access Fund 2333, in order for the Commission to meet its mandate to transfer the additional amount from the Public Access Fund to the General Fund as described in SB1001, section 4.

The attached Cash Flow projections for both the Public Access Fund 2333 and Investment Management Act Fund 2404 show the effect of this requested transfer.

Sincerely,


Michael P. Kearns
Interim Executive Director

Cash Flow Analysis for FY09

Agency Name:

Fund Name:

ARIZONA CORPORATION COMMISSION
PUBLIC ACCESS FUND

Prepared by: Peter Vazquez, Fiscal Svcs Mgr II, and Michael Keams, Deputy Executive Director

Date: 31-Mar-08

Pvazquez@azcc.gov or

Mkeams@azcc.gov

Phone: 602-542-4140

Fund Number:

2333

FY Ending:

6/30/09

E-Mail

Beginning Cash Balance

OBJT

Revenues:

Taxes

Intergovernmental

Sales & Charges for Services

Licenses, Permits & Fees

Fines, Forfeitures & Penalties

Other

Total Revenues

Expenditures:

Personal Services

Employee Related

Professional & Outside Svcs

Travel In State

Travel Out of State

Food

Aid to Organizations

Operating

Capital Outlay

Capital Equipment

Non Capital Equipment

Debt Service

Cost Allocation

Total Expenditures

Transfers In

Transfers Out

Transfers Out - Sweeps

Ending Cash Balance

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
Beginning Cash Balance	\$ 687,210.08	\$ 654,933.08	\$ 572,450.08	\$ 374,548.03	\$ 476,293.03	\$ 248,788.87	\$ 203,790.87	\$ 340,705.87	\$ 313,532.87	\$ 350,962.87	\$ 612,582.87	\$ 635,022.87	\$ 687,210.08
Revenues:													
Taxes	4100												-
Intergovernmental	4200												-
Sales & Charges for Services	4300	207,396.00	228,235.00	378,330.00	428,300.00	179,045.00	389,625.00	334,056.00	306,842.00	325,000.00	310,000.00	310,000.00	3,707,737.00
Licenses, Permits & Fees	4400	17,568.00	277,616.00	43,912.00	(72,906.00)	23,832.00	(75,740.00)	(7,045.00)	(79,858.00)	-	-	-	127,380.00
Fines, Forfeitures & Penalties	4500												-
Other	4600	(2,836.00)	-	(5,500.00)	(3,732.00)	-	(8,793.00)	(3,827.00)	(3,122.00)	-	-	-	(25,810.00)
Total Revenues		222,128.00	505,851.00	417,742.00	351,662.00	202,877.00	306,992.00	323,193.00	223,862.00	325,000.00	310,000.00	310,000.00	3,809,307.00
Expenditures:													
Personal Services	8000	159,000.00	106,171.00	394,363.00	108,668.00	112,124.00	168,661.00	105,528.00	108,323.00	94,725.00	94,725.00	94,725.00	1,636,628.00
Employee Related	8100	58,946.00	37,329.00	37,876.00	38,671.00	39,506.00	58,898.00	38,473.00	38,149.00	35,650.00	35,650.00	35,650.00	488,948.00
Professional & Outside Svcs	8200	828.00	7,613.00	5,212.00	4,621.00	4,465.00	4,256.00	(12,975.00)	5,651.00	3,650.00	3,650.00	3,650.00	33,971.00
Travel In State	8500				140.00	5.00				20.00	20.00	20.00	225.00
Travel Out of State	8600												-
Food	8700												-
Aid to Organizations	8800												-
Operating	7000	37,931.00	96,533.00	171,010.00	70,635.00	88,634.00	116,320.00	53,411.00	104,026.00	123,525.00	123,525.00	123,525.00	1,213,901.00
Capital Outlay	8100												-
Capital Equipment	8400												-
Non Capital Equipment	8500		788.00	3,169.00	1,003.00		3,955.00	1,841.00	100.00	30,000.00	30,000.00	30,000.00	130,326.00
Debt Service	8800											29,500.00	-
Cost Allocation	9000												-
Total Expenditures		254,405.00	249,034.00	611,630.00	223,839.00	224,634.00	351,990.00	156,278.00	251,309.00	287,570.00	287,570.00	287,570.00	3,503,399.00
Transfers In	4900												239,200.00
Transfers Out	9100			4,014.00	278.00	205,747.16			(274.00)			340,000.00	549,765.21
Transfers Out - Sweeps	9100		339,300.00		25,800.00							239,200.00	604,300.00
Ending Cash Balance		\$ 654,933.08	\$ 572,450.08	\$ 374,548.03	\$ 476,293.03	\$ 248,788.87	\$ 203,790.87	\$ 340,705.87	\$ 313,532.87	\$ 350,962.87	\$ 612,582.87	\$ 635,022.87	\$ 687,210.08

NOTES:

Fund transfers in November 2008 include \$205,747.16 towards the total \$545,747.16 FYE 2008 Fund Balance Reversion.

Estimated Fund Transfers in June 2009 include balance of \$340,000 towards \$545,747.16 FYE 2008 Fund Transfer, and additional \$239,200 for SB1001 enacted January 2009.

Cash Flow Analysis for FY09

Agency Name:
Fund Name:ARIZONA CORPORATION COMMISSION
INVESTMENT MANAGEMENTPrepared by: Peter Vazquez, Fiscal Svcs Mgr II, and Michael Keams, Deputy Executive Director
Date: 31-Mar-09

Pvazquez@azcc.gov or

Mkeams@azcc.gov

Phone: 602-542-4140

Fund Number:

2494

FY Ending:

6/30/09

E-Mail

	OBJT	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
Beginning Cash Balance		\$ 916,332.27	\$ 910,680.93	\$ 442,523.93	\$ 426,624.93	\$ 442,399.93	\$ 568,728.93	\$ 754,343.93	\$ 1,398,915.93	\$ 870,804.27	\$ 344,939.27	\$ 230,474.27	\$ 318,909.27	\$ 916,332.27
Revenues:														
Taxes	4100													-
Intergovernmental	4200													-
Sales & Charges for Services	4300	80,575.66	89,305.00	125,890.00	120,740.00	192,540.00	239,740.00	753,649.00	176,845.00	150,145.00	150,145.00	150,145.00	150,145.00	2,379,855.66
Licenses, Permits & Fees	4400													-
Fines, Forfeitures & Penalties	4500													-
Other	4600													-
Total Revenues		80,575.66	89,305.00	125,890.00	120,740.00	192,540.00	239,740.00	753,649.00	176,845.00	150,145.00	150,145.00	150,145.00	150,145.00	2,379,855.66
Expenditures:														
Personal Services	6000	63,933.00	42,622.00	43,243.00	69,471.00	48,726.00	45,225.00	74,659.00	46,151.00	45,600.00	45,600.00	45,600.00	45,600.00	616,630.00
Employee Related	6100	22,294.00	14,841.00	12,346.00	24,594.00	17,485.00	8,900.00	34,218.00	16,553.00	16,110.00	16,110.00	16,110.00	16,108.00	215,670.00
Professional & Outside Svcs	6200													-
Travel In State	6500													-
Travel Out of State	6600													-
Food	6700													-
Aid to Organizations	6800													-
Operating	7000			86,200.00							(35,300.00)			49,900.00
Capital Outlay	8100													-
Capital Equipment	8400													-
Non Capital Equipment	8500													-
Debt Service	8600													-
Cost Allocation	9000													-
Total Expenditures		86,227.00	57,463.00	141,789.00	94,065.00	66,211.00	54,125.00	109,077.00	62,704.00	61,710.00	25,410.00	61,710.00	61,709.00	882,200.00
Transfers In	4900													-
Transfers Out	9100								642,252.66		239,200.00			881,452.66
Transfers Out - Sweeps	9100		500,000.00		10,900.00					614,300.00				1,125,200.00
Ending Cash Balance		\$ 910,680.93	\$ 442,523.93	\$ 426,624.93	\$ 442,399.93	\$ 568,728.93	\$ 754,343.93	\$ 1,398,915.93	\$ 870,804.27	\$ 344,939.27	\$ 230,474.27	\$ 318,909.27	\$ 407,345.27	\$ 407,345.27

NOTES:

Total Revenues are estimated at FY 2008 level's with an increase of 5%. However, actual July and August revenues are below this estimate.

Estimated Fund Transfer in January 2009 reflects the Dec 31st, 2008 estimated fund balance less \$100,000, as described in ARS 44-3296 d.

The additional \$12,091.27 difference represents December payroll that would have cleared with sufficient remaining appropriation, and cleared in January 2009.

JANICE K. BREWER
Governor



FRED KARNAS
Director

STATE OF ARIZONA
DEPARTMENT OF HOUSING

1110 WEST WASHINGTON, SUITE 310
PHOENIX, ARIZONA 85007

(602) 771-1000 WWW.AZHOUSING.GOV

February 5, 2009



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

Re: Senate Bill 1001, Section 29
Reductions and transfers; budget units; cash transfers

Dear Mr. Stavneak:

Pursuant to Senate Bill 1001, Section 29, the Arizona Department of Housing (ADOH) is notifying the Joint Legislative Budget Committee (JLBC) that it intends to request a cash transfer between its own funds from the state comptroller to comply with a required reduction or transfer.

Specifically, ADOH would like to request that \$2,500,000 be transferred from the agency's IGA/ISA fund to the Housing Program Fund to provide a portion of the 50 percent year end balance lump sum sweep from that fund in the amount of \$2,906,300. The IGA/ISA Fund primarily contains funds for Arizona Housing Finance Authority programs.

A \$2.9 million transfer would reduce the Housing Program Fund (HPF) year end balance to less than 50 percent since JLBC based its figures on September 2008 estimates which have since been reduced. The HPF has earned significantly less interest during FY2009 and will receive as much as \$1.1 million less in fee income due to a delay in the award of federal low-income housing tax credits which accounts for a substantial amount of its fee income. To avoid a significant shortfall in the agency's primary operating funds, ADOH recommends diverting a portion of this sweep to the IGA/ISA Fund. The IGA/ISA Fund is currently better able to absorb this reduction. Current market conditions have caused a significant delay in the Arizona Housing Finance Authority's ability to issue single-family mortgage revenue bonds during the first half of this fiscal year, delaying the AzHFA's need for the capital to issue bonds into the second half of the year, thereby reducing its needs for this fiscal year.

Additionally, ADOH needs to inform JLBC that it does not currently have enough uncommitted Housing Trust Fund dollars in its account to cover the 50 percent year end balance transfer in the amount of \$17,562,000. As you know, the Housing Trust Fund does not receive its FY2009 allocation of Unclaimed Property Proceeds from the Arizona Department of Revenue until the close out of the state's "13th" month in mid-July 2009, thus it is not in possession of the cash to meet this transfer – these funds are still in the possession of the Arizona Department of Revenue (ADOR). JLBC needs to determine whether a request should be made to ADOR to advance \$17.5 million for the 2009 Housing Trust Fund allocation now so that the funds can be transferred into the General Fund in February. Otherwise this transfer to the General Fund will need to wait until the State's "13th" month, when the transaction would normally occur.

We would also like to point out that like the Housing Program Fund, the Housing Trust Fund transfer will reduce the account balance to less than 50 percent of its remaining balance at year end since interest earned on Housing Trust Funds has been less than originally projected and because ADOR is now projecting as much as a \$10 million reduction in the amount of funds it will have available to transfer to the HTF in FY2009. ADOH is projecting that this reduction, along with the \$17.6 million sweep will result in the FY2010 HTF program being reduced by as much as 64 percent of its current program, if not more.

Should you have any questions about either of these issues, please contact Carol Ditmore, Assistant Deputy Director/Operations at (602) 771-1062 or carold@azhousing.gov.

Sincerely,



Fred G. Karnas, Jr.
Director

cc: Clark Partridge, GAO
Eric Billings, JLBC
Eileen Klein, OSPB
Illya Riske, OSPB

Sandy Schumacher

From: Scott Greenberg [sgreenberg@azinsurance.gov]
Sent: Friday, April 03, 2009 9:09 AM
To: Eric Billings
Cc: Christina Urias; Gerrie Marks; Karlene Wenz; Jennifer Uharriet
Subject: SB 1001 § 29 Fund Transfers
Attachments: ftq-IERF-20090217.pdf, SB1001-Sec29_20090217_FINAL.doc

Eric,

On February 17, 2009, we responded to GAO Comptroller Clark Partridge's "Fund Transfer Questionnaire" indicating that we had an insufficient balance in the Insurance Examiners' Revolving Fund ("IERF," Fund 2034) to execute the transfers required in SB 1001 (see attached). On the same date, we delivered to Mr. Partridge the attached letter recommending the following fund transfers to enable the IERF to satisfy the requirements under SB 1001:

- \$123,315 from the Captive Insurance Regulatory and Supervision Fund (Fund 2377)
- \$58,200 from the Health Care Appeals Fund (Fund 2467)
- \$55,000 from the Financial Surveillance Fund (Fund 2473);

Since our letter to Mr. Partridge, we have executed the IERF transfers (to the General Fund) prescribed by Section 4(24) and by Section 7; however, insufficient funds remain to enable us to execute the \$241,200 transfer prescribed in Section 5(21) of the Act. Jennifer Uharriet with the OSPB indicated that no one provided you this information and she asked me to do so.

Scott B. Greenberg

Chief Operating Officer
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018-7269
e-mail: sgreenberg@azinsurance.gov
phone: 602.364.3764
fax: 602.364.3470

4/3/2009



Department of Insurance
State of Arizona
Office of the Director
Telephone: (602) 364-3471
Facsimile: (602) 364-3470

JANICE K. BREWER
Governor

2910 North 44th Street, Suite 210
Phoenix, Arizona 85018-7269
www.id.state.az.us

CHRISTINA URIAS
Director of Insurance

February 17, 2009

Mr. D. Clark Partridge, State Comptroller
General Accounting Office
Arizona Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007



Dear Mr. Partridge:

We reported in a "Fund Transfer Questionnaire" document (attached) that there is insufficient cash in the Insurance Examiners' Revolving Fund (or "IERF," Fund 2034) to allow us to transfer \$404,200 pursuant to §§ 4 and 5 of Senate Bill 1001. We believe the maximum available from the IERF is \$167,685. Therefore, there is a \$236,515 deficiency and we have limited means of generating revenue to satisfy the transfer requirement.

Pursuant to §29 of Senate Bill 1001, we request permission to transfer the following amounts to the IERF to enable us to satisfy the requirements of §§ 4 and 5 of Senate Bill 1001 relative to the IERF:

- \$123,315 from the Captive Insurance Regulatory and Supervision Fund (Fund 2377)
- \$58,200 from the Health Care Appeals Fund (Fund 2467)
- \$55,000 from the Financial Surveillance Fund (Fund 2473);

Each of these transfers will create critically low cash balances in the affected funds. These transfers leave us with no funding sources to satisfy the additional \$47,700 transfer from the IERF required by § 7 of the Bill, detailed on page 35 of the "FY 2009 Budget Revisions Plan As Enacted (2/10/09)."

Sincerely,

Germaine L. Marks
Deputy Director



STATE OF ARIZONA-GENERAL ACCOUNTING OFFICE
Fund Transfer Questionnaire

Agency Name: IDA

Fund Name and Number: Insurance Examiners' Revolving Fund (2034)

1. Based on your cash flow projection, will this transfer create a cash flow problem that would prevent the transfer to be processed by February 28, 2009? ☒ Yes ☐ No

If yes, please indicate when the cash will be available to make the transfer and any other facts or circumstances that will help in assessing the issue.

SB 1001 §§ 4 and 5 require transfers totaling \$404,200 from the IERF to the General Fund. The JLBC allocation per SB 1001 § 7 calls for an additional \$47,700 transfer from the IERF to the General Fund.

As of January 31, 2009, the Insurance Examiners' Revolving Fund ("IERF") had a cash balance of \$367,685. The IERF will owe approximately \$100,000 for office space costs in August 2009. We also need to maintain a minimum balance of \$100,000 to pay contractors and employees while we await recoupment - insurers to reimburse the Department for examination expenses. At the \$100,000 level, we will be in constant danger of having to delay expenditures while we recoup expenses from insurers. Therefore, the maximum available amount for the transfer is \$167,685.

2. Do you anticipate any restricted fund problems in the above-mentioned fund by making the transfer immediately to the general fund? ☒ Yes ☐ No

If yes, please cite the reasons or statutory reference for the restriction.

The IERF pays "...preexamination selection and preparation costs, examination costs, postexamination costs and other such costs of evaluations of compliance" relating to examining "...the affairs, transactions, accounts, records and assets..." of insurers and other entities authorized to do business in Arizona. ARS § 20-156, et al. The Department recoups expenses from the examined party and deposits them in the IERF. ARS § 20-159(C). Each insurer is required to pay a \$100 deposit, returned to the insurer upon its cessation of business in Arizona. ARS § 20-159(E). Transferring funds from the IERF to the General Fund will require the ADOL to recoup more than examination costs.

3. Does this fund contain any federal dollars? Please mark the box below that applies:

- ☒ There is no federal financial participation (FFP) in the above-mentioned fund. I have documentation at my agency supporting this statement. I understand that the federal auditors may want to review my files to verify this claim. I also understand that if after a review the above-mentioned fund does in fact have FFP, my agency is responsible for refunding the appropriate FFP to the Federal government with imputed interest.
- ☐ There is federal financial participation (FFP) in the above-mentioned fund/funds. If this fund has federal financial participation, GAO will contact you for more details.

Please contact Scott B. Greenberg at 602.364.3764 to coordinate efforts.
(Contact Name) (Phone Number)

The above verification is correct to the best of my knowledge.

Agency CFO Signature

Date

Submit by Email

"Managing and conserving natural, cultural, and recreational resources"



March 31, 2009

D. Clark Partridge, State Comptroller
General Accounting Office
Arizona Department of Administration
100 N. 15th Avenue, Ste. 302
Phoenix, AZ 85007

Janice K. Brewer
Governor

State Parks
Board Members

Chair
Reese Woodling
Tucson

Arlan Colton
Tucson

Tracey Westerhausen
Phoenix

William C. Cordasco
Flagstaff

Larry Landry
Phoenix

William C. Scalzo
Phoenix

Mark Winkleman
State Land
Commissioner

Kenneth E. Travous
Executive Director

Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007

Tel & TTY: 602.542.4174
AZStateParks.com

800.285.3703 from
(520 & 928) area codes

General Fax:
602.542.4180

Director's Office Fax:
602.542.4188

Re: Cash Transfer Request per SB 1001 Sec 29

Arizona State Parks requests permission to transfer \$2,000,000 cash from the State Lake Improvement Fund 2106 and \$1,000,000 cash from the Arizona Heritage Fund 2296 to the State Parks Enhancement Fund 2202.

These cash transfers will enable the agency to 1) comply with the fund reductions and transfers required by SB 1001, 2) maintain agency operations at the currently reduced levels during FY 2009, and 3) provide for the minimum cash balance forward required to continue operations into FY 2010 in the Enhancement Fund.

Attached are the cash flow documents for the three funds that are directly affected by the cash transfer. Cash flow documents for two other funds - the General Fund 1000 and Reservation Surcharge Fund 1304 - are also attached, as the requested cash transfers will also enable us to comply with SB 1001 reductions and transfers for those two funds.

If you require any further information, please contact Miryom Snyder at (602) 542-6938 or msnyder@azstateparks.gov.

Sincerely,

Kenneth E. Travous
Executive Director

"Managing and conserving natural, cultural, and recreational resources"



February 26, 2009

Clark Partridge, State Comptroller
ADOA General Accounting Office
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: SB 1001 Sec 3, 4, 5, 6 transfers and reductions

Dear Mr. Partridge,

Jan Brewer
Governor

State Parks
Board Members

Chair
William C. Scalzo
Phoenix

Arlan Colton
Tucson

Reese Woodling
Tucson

Tracey Westerhausen
Phoenix

William C. Cordasco
Flagstaff

Larry Landry
Phoenix

Mark Winkelman
State Land
Commissioner

Kenneth E. Travous
Executive Director

Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007

Tel & TTY: 602.542.4174
AZStateParks.com

800.285.3703 from
(520 & 928) area codes

General Fax:
602.542.4180

Director's Office Fax:
602.542.4188

Attached are the Fund Transfer Questionnaires, fund transfers, and appropriation reduction transactions required by SB 1001 Sections 3, 4, 5, and 6. We are unable to comply with three of the specific requirements, and so those three transfer / reduction transactions have not been signed. Attached is a one-page summary of the transactions, and the three are clearly marked with bordered outlines.

Before March 31, 2009, we intend to request a transfer of cash from one or more agency funds to one or more of other agency funds, per SB 1001 Section 29. This will make it possible for us to comply with two of the remaining items, as well as the anticipated compliance with Section 7. At this time, we have not completed our calculation of the exact dollar amount required from and to each of the various funds.

Also attached is an appropriation increase form in compliance with SB 1001 Section 20. This increase is intended to offset a portion of our General Fund reduction, and will enable us to begin the expenditure transfers necessary to bring our GF expenditures down to our new appropriation level. We request that this increase be processed as soon as possible.

Full compliance with Section 3, the General Fund reduction, will not be possible until SB 1003 becomes effective on May 2, 2009. A substantial portion of the offset for our GF reduction will not be available until we are able to access the funds appropriated to State Parks in Section 6 of SB 1003.

If you have any questions, or require any additional information, please contact me at (602) 542-6938 or msnyder@azstateparks.gov. You may also contact Brad McNeill, acting Asst. Director of Admin. Services, at (602) 542-7156 or bmcneill@azstateparks.gov.

Sincerely,

Miryom Snyder
Chief of Fiscal Operations, acting

cc: Thomas Sotero-McNamara, OSPB

Arizona State Parks

SB 1001 & SB 1003 - Transfers to State General Fund

Boxed items indicate need for delayed compliance

Fund Source	Fund Transfer OR	Expenditure Reduction SB 1001 Sec 5A.29	Personnel Reduction SB 1001 Sec 7	Total Transfers to State Gen. Fund
	GF Reduction			
1000 General Fund	<div>\$4,656,100 SB 1001 Sec 3.46</div>			
	\$196,900 SB 1001 Sec 6.30			\$4,853,000
1304 Reservation SC Fund		<div>\$27,600 SB 1001 Sec 5A.29</div>	\$17,600	\$45,200
2106 State Lake Improvement Fund	\$10,154,200 SB 1001 Sec 4A.36	\$207,500 SB 1001 Sec 5A.29	\$77,900	\$10,439,600
2111 Law Enforcement Boating Safety	\$500,000 SB 1001 Sec 4A.36			\$500,000
2202 Enhancement Fund	<div>\$4,664,000 SB 1001 Sec 4A.36</div>	\$413,000 SB 1001 Sec 5A.29	\$234,200	\$5,311,200
2253 Off-Highway Vehicle Fund	\$436,300 SB 1001 Sec 4A.36	\$118,400 SB 1001 Sec 5A.29	\$33,500	\$588,200
2296 Heritage Fund	\$3,000,000 SB 1003 Sec 5	\$1,909,300 SB 1001 Sec 5A.29	\$68,800	\$4,978,100
2448 Partnerships Fund			\$5,900	\$5,900
3117 Donations Fund			\$8,300	\$8,300
4010 Publications Fund			\$9,500	\$9,500
Total Fund Transfers	\$23,607,500	\$2,675,800	\$455,700	\$26,739,000

STATE OF ARIZONA

Joint Legislative Budget Committee

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DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Blake Riley, Staff Intern

SUBJECT: Arizona Pioneers' Home – Consider Approval of Requested Transfer of
Appropriations

Request

The Arizona Pioneers' Home requests Committee approval to transfer up to \$100,000 from the Personal Services Line to the Employee Related Expenditures (ERE) line in FY 2009.

Because the Arizona Pioneers' Home has a Modified Lump Sum by Agency budget, A.R.S. § 35-173 requires Committee approval of transfers to or from the Personal Services and ERE line items.

Recommendation

The JLBC Staff recommends that the Committee approve the agency request to transfer up to \$100,000 from Personal Services to the Employee Related Expenditures line in FY 2009. The Personal Services line is projected to have a surplus of \$495,000 available in FY 2009 to cover this shortfall.

Analysis

According to the Arizona Pioneers' Home, the total amount required for ERE will be \$1.6 million for FY 2009 as compared to the appropriated \$1.5 million. The JLBC Staff concurs with the updated ERE estimate of \$1.6 million based on current spending patterns. During FY 2008, the Committee approved a total transfer of \$350,700 from the Personal Services line and Prescription Drugs Special Line Item to ERE.

RS/BR:ss

Arizona Pioneers' Home

Janice K. Brewer
Governor

300 South McCormick Street
Prescott, Arizona 86303
(928) 445-2181 - FAX (928) 778-1148

Gary Olson
Superintendent



April 10, 2009

Representative John Kavanagh, JLBC Chairman
Arizona House of Representatives
1700 West Washington, Room 114
Phoenix, AZ 85007

RE: Shortage in Arizona Pioneers' Home Employee Related Expenses (ERE) Budget

Dear Chairman Kavanagh,

In review of the Arizona Pioneers' Home (APH) ERE Budget for fiscal year 2009, it is estimated that a shortage in the amount of approximately \$100,000 (plus or minus \$10,000) will occur by year end. A similar shortage occurred last fiscal year, and the JLBC approved a transfer of monies from the Arizona Pioneers' Home personal services budget and prescription drugs special line item budget to correct the deficiency.

A few years ago a comparative analysis was performed by the General Accounting Office between the APH and two like sized agencies—this was revisited last year. In said analysis, a significant difference between the costs associated with Health Insurance premiums for the Arizona Pioneers' Home (Yavapai County) and the two like sized agencies (Maricopa County) resulted in part of the difference. Secondly, Arizona Pioneers' Home appropriated funds are derived from state charitable land trust funds versus the general fund. In this, the way in which ERE payments are deducted is different—ERE is deducted from the general fund in a sweep at the beginning of the year based on projections, and ERE is deducted from other appropriated funds, such as the state charitable land trust, in a pay period by pay period basis reflecting actual costs.

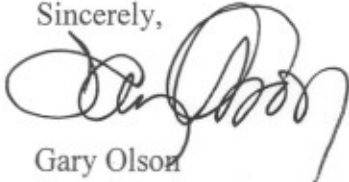
In this, it was discovered that due to the Health Insurance premium differences, the ERE Budget was under budgeted for FY2008, and this remains true for FY2009. This is being corrected in the FY2010 and FY2011 budgets via a realignment, and the move to a lump sum budget.

In light of this, I am requesting placement on the next Joint Legislative Budget Committee meeting agenda to request a transfer of projected surplus funds from our personal services budget which we estimate will have a surplus of approximately \$495,000 (plus or minus \$10,000).

If we do not cover the shortage through a transfer of funds, the ERE Budget will be in error before fiscal year end.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Olson", written over a horizontal line.

Gary Olson
Superintendent

c: Richard Stavneak, JLBC Director
Eileen Klein, Governor's Office of Strategic Planning and Budget Director
Beth Kohler Lazare, Policy Advisor for Health and Human Services

STATE OF ARIZONA

Joint Legislative Budget Committee

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DATE: April 22, 2009

TO: Representative John Kavanagh, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Dan Hunting, Fiscal Analyst

SUBJECT: Department of Environmental Quality – Review of Intended Use of Monies in the
Indirect Cost Recovery Fund

Request

Pursuant to a General Appropriation Act footnote (Laws 2007, Chapter 255), the Department of Environmental Quality (DEQ) requests Committee review of the intended uses of \$1,999,600 in Indirect Cost Recovery Funds above the \$11,900,500 appropriation.

Recommendation

The Committee has at least the following options:

1. A favorable review of increasing expenditures by the full \$1,999,600 request to \$13,900,100. This option would effectively reduce the amount of Indirect Cost Recovery Fund transfer in the March 26 FY 2010 draft plan from \$4.2 million to \$0.5 million.
2. A favorable review of increasing expenditures by a reduced amount of \$599,600 to \$12,500,000. This option would effectively reduce the FY 2010 draft plan transfer from \$4.2 million to \$3.2 million.
3. An unfavorable review. These monies could be used to reduce the FY 2010 budget shortfall by \$4.2 million as outlined in the FY 2010 draft plan.

(Continued)

Analysis

The Indirect Cost Recovery Fund is used to pay administrative and overhead expenses for DEQ programs. A footnote in the General Appropriation Act allows DEQ to spend all Indirect Cost Recovery Fund revenues, but requires Committee review if the department plans to exceed the specifically appropriated amount. The original FY 2009 appropriation to the fund was \$10,531,000; however, subsequent legislative adjustments for salary and budget offsets have raised the appropriation to \$12,748,200. The January Special Session FY 2009 budget changes subsequently reduced the appropriation to \$11,900,500.

DEQ has expended \$9,526,500 from this fund in the first 2 quarters of FY 2009. They anticipate spending a total of \$13,900,100 for the entire fiscal year. In comparison, they spent \$12,308,300 in FY 2008. They intend to spend the additional monies on salaries and benefits, rent, and other operating expenses. One reason for these increased costs is that DEQ has shifted all of its health, dental and life insurance costs, as well as rent and computer costs to the Indirect Cost Recovery Fund to offset a General Fund reduction of \$(2,441,200) that was enacted as part of revisions to the FY 2009 budget. If the Committee does not favorably review the \$2 million DEQ request, the department will have a challenge in finding other ways of implementing this reduction with 2 months remaining in the fiscal year.

There are sufficient reserves in the fund to accommodate the DEQ request for FY 2009. However, the fund balance would not permit the \$4.2 million in fund transfers included in the FY 2010 draft budget plan of March 26. With the DEQ request, there would only be sufficient funds for a \$0.5 million transfer in FY 2010, assuming the \$13.9 million funding level continued in FY 2010.

Alternatively, the Committee could favorably review an amount less than the full request. A favorable review of a \$599,500 increase, bringing expenditures to \$12.5 million, would leave \$3.2 million available for transfer to the General Fund, assuming the same \$12.5 million spending level in FY 2010.

If the DEQ request is not favorably reviewed, the full \$4.2 million will be available for transfer to the General Fund.

Although the Indirect Cost Recovery Fund is appropriated, monies are transferred to it from other funds, not directly deposited into it. Federal grants supply 28% of the fund, with an additional 39% coming from other non-appropriated sources. The remaining 33% of the fund originates in appropriated funds that are derived from fees, such as charges for the Vehicle Emission Inspection program and landfill tipping fees.

RS/DH:ss



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Patrick J. Cunningham
Acting Director

March 18, 2009

The Honorable Russell K. Pearce, Chair
Joint Legislative Budget Committee
Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

The Honorable John Kavanagh, Chair
House Appropriations Committee
Arizona House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Re: Indirect Cost Recovery Fund

Dear Chairman Pearce and Chairman Kavanagh:

Pursuant to a footnote in Laws 2007, House Bill 2781, Chapter 255 (General Appropriation Act), Section 31, page 53, lines 20-26, the Department of Environmental Quality (ADEQ) requests Committee review of the intended uses of Indirect Cost Recovery Funds in excess of \$10,531,100. The footnote is listed below:

All indirect cost fund recovery revenues received by the department of environmental quality in excess of \$10,531,100 in fiscal year 2007-2008 and \$10,531,000 in fiscal year 2008-2009 are appropriated to the department. Before the expenditure of indirect cost recovery fund receipts in excess of \$10,531,100 in fiscal year 2007-2008 and \$10,531,000 in fiscal year 2008-2009, the department of environmental quality shall submit the intended use of the monies for review by the joint legislative budget committee.

After standard adjustments the \$10,531,100 for fiscal year 2008-2009 listed in the footnote is adjusted to \$10,748,200. In addition, the Department was authorized by Laws 2008, 48th Legislature, 2nd Regular Session, House Bill 2209: Chapter 285, Section 40, page 67, Lines 20 through 23 to expend \$2,000,000 as a supplemental offset to the Department's State General Fund Reduction. Therefore, the accompanying documentation uses \$12,748,200 as the current authorized expenditure ceiling for the Indirect Fund.

The Indirect Cost Recovery Fund is used to pay for all administrative operating obligations of ADEQ programs. ADEQ has expended approximately \$9.6 million through the second quarter

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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

The Honorable Russell K. Pearce
The Honorable John Kavanagh
March 18, 2009
Page 2 of 2

of FY 09 and projects an additional \$4.4 million will be needed to meet required obligations for the remainder of FY 09. In comparison, ADEQ spent \$12.2 million in FY 08. The Department would like to note that this fiscal year's overall expenditure authorization request is less than the amount expended in FY 08; after the supplemental offset to the Department's State General Fund Reduction is taken into account. Attached is a list that details these estimated costs for the Indirect Cost Recovery Fund.

The Indirect Cost Recovery Fund is appropriated, however approximately 67% of the revenues deposited into the fund are from non-appropriated funding sources, including 28% from federal funding sources.

ADEQ does not have another funding source to pay the estimated \$1.131 million of critical operating expenditures above \$12,748,200 and is requesting a favorable review of the intended use for the Indirect Cost Recovery Fund.

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,



Patrick J. Cunningham
Acting Director

cc: ✓ Richard Stavneak, Director, JLBC
Eileen Klein, Director, OSPB
Dan Hunting, Analyst, JLBC
Marcel Benberou, Analyst, OSPB

Arizona Department of Environmental Quality Indirect Cost Recovery Review

FY 2008 - 2009

The Arizona Department of Environmental Quality (ADEQ) is requesting a favorable review of the Indirect Cost Recovery Fund and submits the following use of monies above \$12,746,200 for obligations in FY 2009: NOTE: The \$12,746,200 includes the "Supplemental Funding to Offset a State General Fund Reduction" appropriated by Laws 2008, 48th Legislature, 2nd Regular Session, House Bill 2209: Chapter 285, Section 40, page 67, Lines 20 through 23.

Through the second quarter of FY 09, ADEQ has expended \$9,526,500 or roughly \$4.76 million a quarter. For the remainder of FY 2009, ADEQ estimates expenditures at \$4.4 million or roughly \$2.2 million a quarter to meet obligations as listed below:

Personal Services	\$ 1,940,000; projected salary costs for the following: (Management, Accounting, Payroll, Budget, Business Services, Information Technology, Human Resources, Procurement, and General Services)
Employee Related Expenditures:	\$ 856,500; fringe benefits related to Personal Services
Professional & Outside Services	\$ 63,200; building security
In State and Out of State Travel	\$ 12,800; motor pool
Building Rent	\$ 1,048,400; occupying ADEQ buildings
Building repair/Maintenance	\$ 11,600; routine items like carpet cleaning, locksmith, plumbing
Microsoft Office & Printing	\$ 70,800; Microsoft Office licenses for the entire agency and printing for Administration
Phone	\$ <u>370,300</u> ; telecommunication services for the entire agency

3rd & 4th Quarter

Projected expenditures **\$ 4,373,600**

1st & 2nd Quarter Actuals **\$ 9,526,500**

Total FY 09 expenditures **\$13,900,100**

Current appropriation **(\$12,746,200)**

Requested Authority **\$ 1,153,900**

It is important to note that ADEQ does not have another funding source to pay for the \$1.15 million in obligations listed above.

STATE OF ARIZONA

Joint Legislative Budget Committee

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VIC WILLIAMS

DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Amy Upston, Senior Fiscal Analyst

SUBJECT: AHCCCS – Review of Revised Acute Care Capitation Rate Changes – Agency Request

Request

Pursuant to a footnote in the General Appropriation Act, the Arizona Health Care Cost Containment System (AHCCCS) is required to report capitation and fee-for-service inflationary rate changes with a budgetary impact to the Committee for review prior to implementation. AHCCCS proposes reducing the Acute Care capitation rates beginning May 1, 2009.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review to the contract year-ending (CYE) 2009 capitation rates proposed by AHCCCS.

The proposed rates would cost \$(1,371,800) less from the General Fund than budgeted in FY 2009, taking into account the enhanced federal matching rate associated with the federal American Recovery and Reinvestment Act of 2009.

Analysis

AHCCCS proposes 3 changes which would impact the FY 2009 budget:

- reducing the physician services component of the Acute Care capitation rates;
- eliminating dental sealants for primary teeth as a covered service; and
- shifting costs from the Department of Economic Security's (DES) State Only Developmental Disabilities program to AHCCCS' Acute Care program.

Relative to the revised FY 2009 budget, these 3 changes are expected to save approximately \$(1,371,800) from the General Fund during the remainder of FY 2009. AHCCCS has indicated that these changes are being made midyear to help the agency address the approximately \$10.9 million in net lump sum General Fund reductions incurred in the revised FY 2009 budget bill.

(Continued)

Beginning on February 1, 2009, AHCCCS reduced the Physician Fee-for-Service rate schedule by (5)%. Since many of the AHCCCS health plans base their rates on the AHCCCS fee schedule or a percentage of the AHCCCS fee schedule, AHCCCS proposes reducing the physician services component of the Acute Care capitation rates beginning on May 1, 2009. In addition to payments to physicians, the rate schedule also includes reductions to durable medical equipment, radiology, and drugs administered in a physician's office. These changes will save approximately \$(1,366,800) from the General Fund in FY 2009.

In addition to the physician rate fee reduction, AHCCCS proposes 2 other changes:

- AHCCCS would end coverage of dental sealants for primary teeth. According to AHCCCS, recent published studies suggest that usage of dental sealants on primary teeth is not an effective method of preventing dental decay. Eliminating this coverage will save approximately \$(55,000) from the General Fund in FY 2009.
- DES intends to increase their referrals to the Acute Care program for nursing, therapy, and other clinical services for members enrolled in the State Only Developmental Disabilities program. These individuals do not meet the qualifications for the Arizona Long Term Care System (ALTCS) program, so many of their needed services are paid for by the state funded program. However, many of these people are already in AHCCCS' Acute Care program and DES is going to begin referring more services to the Acute Care program. This should provide a cost savings to DES of about \$(200,000) but increase General Fund costs by \$50,000 in the Acute Care program in FY 2009. The cost to AHCCCS is less than the savings to DES because DES has been paying for the services with 100% General Fund while AHCCCS will draw down matching federal funds.

RS/AU:ss



Janice K. Brewer, Governor
Anthony D. Rodgers, Director

Our first care is your health care

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

801 East Jefferson, Phoenix, AZ 85034

PO Box 25520, Phoenix, AZ 85002

Phone: 602 417 4000

www.azahcccs.gov

April 13, 2009

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



SUBJECT: Arizona Health Care Cost Containment System Acute Care Capitation Rate Adjustment

Dear Representative Kavanagh:

In compliance with the General Appropriations Act, I am notifying you of a capitation rate adjustment to the contract year-ending (CYE) 2009 AHCCCS Acute Care capitation rates effective May 1, 2009. The Arizona Legislature recently passed a bill to close the expected \$1.6 billion shortfall in the State Fiscal Year 2009 budget. That bill requires several specific AHCCCS expenditure reductions, but also requires that the Agency reduce its overall budget by approximately \$15 million in General Fund unspecified cuts between now and June 30, 2009. As part of its efforts to accomplish this, the Agency is reducing its capitation payments to Acute Care contracted health plans.

Effective February 1, 2009, AHCCCS reduced the Physician Fee Schedule (also including DME, radiology, and drugs administered in a physician's office) by 5% for all codes within this fee schedule. Because many providers of these services are contracted with the AHCCCS Health Plans based on the AHCCCS fee schedule or a percentage of this fee schedule, AHCCCS is reducing the physician services component of the Acute Care capitation rates effective May 1, 2009. The reduction is expected to produce a total fund savings of approximately \$15 million through the end of CYE 2009 (September 30, 2009).

It is important for the legislature to recognize that reducing AHCCCS provider reimbursement rates must be a thoughtful process. The Medicaid program is obligated to make reasonable efforts to ensure that both FFS and enrolled members have adequate access to care. Capitation rates must be actuarially sound and those actuarial estimates should be based, at least in part, on assumptions regarding payments to providers that assist Managed Care Organizations in developing and maintaining adequate networks. AHCCCS has been conducting ongoing internal analysis associated with rate reductions. A memo that summarizes the analysis and monitoring procedures that are in place to ensure network adequacy has been attached.

Also effective May 1, 2009, AHCCCS will no longer cover dental sealants for primary teeth. Current evidence, based on published studies, does not support continued use of dental sealants on primary teeth as an efficacious method of preventing dental decay. The estimated total fund savings is expected to be approximately \$550 thousand through the end of CYE 2009.

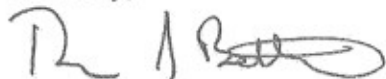
In addition, the Division of Developmental Disabilities (DDD) will increase their referrals to the Acute Care Program for nursing, therapy and other clinical services for members enrolled in the state-only DDD program; a program for people who are not eligible for the Arizona Long Term Care System (ALTCS) program. Many of these state-only enrolled DDD recipients are AHCCCS Acute Care enrolled members. AHCCCS Acute Contractors are responsible for providing, and reimbursing for, medically necessary EPSDT services - including these services previously provided with DDD state only funds. As a result, AHCCCS Acute Contractors will see an increase in requests for these types of services if determined medically necessary. The additional services have an expected total fund impact of approximately \$500 thousand through September 2009.

As required by the Federal Balanced Budget Act of 1997, Title XIX and Title XXI managed care programs must have actuarially sound capitation rates. These capitation rate adjustments have been sent to the Centers for Medicare and Medicaid Services (CMS) for their review and approval. The table below summarizes the revised capitation rates on a statewide basis effective May 1, 2009.

Rate Cell	CYE09 Projected MMs (05/01/09 - 09/30/09)	Current CYE09 Rate	Proposed CYE09 Rate	Based on CYE09 Projected Member Months (05/01/09 - 09/30/09)		Percentage Impact on CYE 09 estimated current capitation
				Estimated Current CYE09 Capitation	Estimated Proposed CYE09 Capitation	
Prospective	5,111,697	\$ 284.68	\$ 281.88	\$ 1,455,212,907	\$ 1,440,902,634	-1.0%
PPC	306,482	\$ 573.44	\$ 570.24	\$ 175,749,747	\$ 174,769,436	-0.6%
Total				\$ 1,630,962,655	\$ 1,615,672,070	-0.9%

If you have any questions, please do not hesitate to contact me at (602) 417-4483.

Sincerely,



Thomas Betlach
 Deputy Director

c: Senator Russell Pearce, Arizona State Senate
 Beth Kohler Lazare, Office of Governor Jan Brewer
 Eileen Klein, Office of Strategic Planning and Budgeting
 Richard Stavneak, Joint Legislative Budget Committee

Acute Care Updated Actuarial Memorandum for CYE 2009

I. Purpose

This memorandum presents a discussion of the revision to the acute capitation rates for the period May 1, 2009 to September 30, 2009. This update to the rates is required as a result of a reduction to the Arizona Health Care Cost Containment System (AHCCCS) Physician Fee Schedule, discontinuance of coverage of dental sealants for primary teeth, and referral to the Acute Care Program of state-funded nursing and therapy services to Acute enrolled children due to budgetary constraints within the State of Arizona.

II. Overview of Changes

Effective May 1, 2009, AHCCCS is reducing the Physician Fee Schedule (also including DME, radiology, and drugs administered in a physician's office) by 5% for all codes within this fee schedule. Many providers of these services are contracted with the AHCCCS Health Plans based on these fees or a percentage of this fee schedule. The reduction is expected to produce savings of approximately \$15 million.

Also effective May 1, 2009, AHCCCS will no longer cover dental sealants for primary teeth. The estimated savings is expected to be approximately \$550 thousand.

In addition, the Division of Developmental Disabilities (DDD) will be referring to the Acute Care Contractors all nursing, therapy and other clinical services requests for members enrolled in the state-only DDD program (a program for people who are not eligible for the Arizona Long Term Care System (ALTCS) program) who are also AHCCCS Acute Care enrolled members. AHCCCS Acute Contractors are responsible for providing, and reimbursing for, medically necessary EPSDT services - including these services previously provided by DDD. As a result, AHCCCS Acute Contractors should see an increase in requests for these types of services. If determined medically necessary, AHCCCS Acute Care members under the age of 21 that were previously receiving these services through DDD will be able to receive these same EPSDT services through their AHCCCS Acute Contractor. These services previously provided by DDD were not built into the base rates and thus need to be added to the capitation rates. The additional services have an expected impact of approximately \$500 thousand.

III. Overview of Methodology for Rate Impact

The reduction to the capitation rates to account for the Physician Fee Schedule reduction was calculated primarily using information provided by the AHCCCS Contractors. Due to the short notice of this Physician Fee Schedule reduction, AHCCCS believes that Contractors will only be able to reduce reimbursement for non-contracted providers, and those providers whose contracts are tied to the AHCCCS fee schedule rates. Thus AHCCCS did not reduce the entire physician component of the capitation rate by 5%. The information provided to AHCCCS

delineated the percentage of non-contracted provider payments, and the percentage of Physician Fee Schedule related payments by GSA that are based on the AHCCCS fee schedule. A cap (floor and ceiling) was applied to the percentages to limit the outliers. This percentage was then applied to approximately a 5% reduction. The new percentage was then applied to the average amount of Physician Fee Schedule related costs by GSA and risk group.

We note, however, that AHCCCS is planning to reduce the full physician component of the cap rate for rates effective October 1, 2009. This early notification provides AHCCCS contractors additional time to negotiate contracts, particularly those contracts with rates not automatically tied to the AHCCCS fee schedule.

For the elimination of coverage of dental sealants for primary teeth AHCCCS pulled historical encounter date for this service. This encounter data was trended forwarded by GSA on a PMPM basis and then subtracted from the current rates.

For the referral of DDD state-only services, AHCCCS received a file from DDD that included costs incurred by DDD for these services for those members under age 21 and enrolled in an AHCCCS Acute health plan. This data was used to estimate the PMPM impact for this change.

IV. Proposed Revised Capitation Rates and Their Impact

Table I below summarizes the changes from current CYE09 capitation rates and the estimated budget impact, effective for the period May 1, 2009 through September 30, 2009 on a statewide basis for the impacted rate cells.

Appendix I shows a more detailed budget impact by risk group on a statewide basis.

Table I: Proposed Statewide Capitation Rates and Budget Impact

Rate Cell	CYE09 Projected MMs (05/01/09 - 09/30/09)	Current CYE09 Rate	Proposed CYE09 Rate	Based on CYE09 Projected Member Months (05/01/09 - 09/30/09)		Percentage Impact on CYE 09 estimated current capitation
				Estimated Current CYE09 Capitation	Estimated Proposed CYE09 Capitation	
Prospective	5,111,697	\$ 284.68	\$ 281.88	\$ 1,455,212,907	\$ 1,440,902,634	-1.0%
PPC	306,482	\$ 573.44	\$ 570.24	\$ 175,749,747	\$ 174,769,436	-0.6%
Total				\$ 1,630,962,655	\$ 1,615,672,070	-0.9%

APPENDIX I: Detail Budget

Title XIX Waiver Group	Proj CYE09 MMs (05/01/09 - 09/30/09)	Current Cap Rate-'09 Wt actual 09 MMs	Total Dollars CYE '09 before Mid-Year Changes	Cap Rate-'09 reduce for Mid- Year Changes Wt actual 09 MMs	Total Dollars CYE '09 after Mid-Year Changes	Difference	% Increase
Prospective-MED	24,820	\$ 1,361.10	\$ 33,782,568	\$ 1,348.63	\$ 33,473,062	\$ (309,506)	-0.9%
PPC-MED	6,800	\$ 7,575.78	\$ 51,511,745	\$ 7,535.22	\$ 51,235,956	\$ (275,789)	-0.5%
Total MED			\$ 85,294,312		\$ 84,709,017	\$ (585,295)	-0.7%
Prospective-non-MED	626,950	\$ 561.97	\$ 352,327,282	\$ 556.66	\$ 348,998,176	\$ (3,329,106)	-0.9%
PPC -non-MED	63,101	\$ 1,186.47	\$ 74,867,917	\$ 1,180.30	\$ 74,478,581	\$ (389,336)	-0.5%
Total non-MED			\$ 427,195,199		\$ 423,476,757	\$ (3,718,442)	-0.9%
Total TWG			\$ 512,489,511		\$ 508,185,774	\$ (4,303,737)	-0.8%
TXIX							
<1	275,864	\$ 514.83	\$ 142,023,014	\$ 510.18	\$ 140,740,247	\$ (1,282,767)	-0.9%
1-13	2,057,768	\$ 112.69	\$ 231,889,909	\$ 111.52	\$ 229,482,320	\$ (2,407,589)	-1.0%
14-44F	939,433	\$ 243.05	\$ 228,329,229	\$ 240.21	\$ 225,661,238	\$ (2,667,990)	-1.2%
14-44M	424,810	\$ 145.85	\$ 61,958,594	\$ 144.50	\$ 61,385,100	\$ (573,494)	-0.9%
45+	139,923	\$ 406.73	\$ 56,910,740	\$ 402.12	\$ 56,265,697	\$ (645,043)	-1.1%
SSI w/Med	318,701	\$ 156.98	\$ 50,029,610	\$ 155.01	\$ 49,401,770	\$ (627,840)	-1.3%
SSI w/o Med	269,199	\$ 742.54	\$ 199,890,955	\$ 737.20	\$ 198,453,433	\$ (1,437,522)	-0.7%
SFP	19,519	\$ 19.13	\$ 373,355	\$ 18.92	\$ 369,359	\$ (3,997)	-1.1%
Delivery Supplemental Payment	14,710	\$ 6,641.68	\$ 97,697,652	\$ 6,571.97	\$ 96,672,233	\$ (1,025,419)	-1.0%
Total Prospective-non-TWG			\$ 1,069,103,058		\$ 1,058,431,396	\$ (10,671,661)	-1.0%
PPC<1	8,549	\$ 1,217.36	\$ 10,406,803	\$ 1,210.79	\$ 10,350,638	\$ (56,165)	-0.5%
PPC<1-13	108,291	\$ 64.57	\$ 6,992,321	\$ 64.22	\$ 6,954,419	\$ (37,902)	-0.5%
PPC<14-44F	70,793	\$ 256.28	\$ 18,142,915	\$ 254.29	\$ 18,002,036	\$ (140,879)	-0.8%
PPC<14-44M	28,306	\$ 218.55	\$ 6,186,176	\$ 217.46	\$ 6,155,323	\$ (30,853)	-0.5%
PPC<45+	8,175	\$ 446.50	\$ 3,650,030	\$ 443.75	\$ 3,627,550	\$ (22,481)	-0.6%
PPC<SSI w/Med	4,380	\$ 134.74	\$ 590,098	\$ 133.01	\$ 582,521	\$ (7,577)	-1.3%
PPC<SSI w/o Med	8,088	\$ 420.57	\$ 3,401,744	\$ 418.18	\$ 3,382,412	\$ (19,331)	-0.6%
PPC All non-TWG rate codes	236,581		\$ 49,370,086		\$ 49,054,900	\$ (315,187)	-0.6%
Total Title XIX-non-TWG			\$ 1,118,473,144		\$ 1,107,486,296	\$ (10,986,848)	-1.0%
Grand Total Capitation			\$ 1,630,962,655		\$ 1,615,672,070	\$ (15,290,585)	-0.9%

V. Actuarial Certification of the Capitation Rates:

I, Windy J. Marks, am an employee of Arizona Health Care Cost Containment System (AHCCCS). I am a Member of the American Academy of Actuaries and a Fellow of the Society of Actuaries. I meet the qualification standards established by the American Academy of Actuaries, and have followed the practice standards established from time-to-time by the Actuarial Standards Board.

The rates were developed using generally accepted actuarial principles and practices and are considered to be actuarially sound. The rates were developed to demonstrate compliance with the CMS requirements under 42 CFR 438.6(c) and are in accordance with applicable laws and regulations. The rates are appropriate for the Medicaid populations covered and Medicaid services to be furnished under the contract. The rates may not be appropriate for any other purpose. The documentation has been included with this certification. The actuarially sound capitation rates that are associated with this certification are effective for the five-month period beginning May 1, 2009.

The actuarially sound capitation rates are a projection of future events. It may be expected that actual experience will vary from the values in the rates.

In developing the actuarially sound current capitation rates, I have relied upon data and information provided by the health plans, DDD and the AHCCCS internal databases. I have accepted the data without audit and have relied upon the health plan auditors and other AHCCCS employees for the accuracy of the data.

This actuarial certification has been based on the actuarial methods, considerations and analyses promulgated from time-to-time through the Actuarial Standards of Practice by the Actuarial Standards Board.


Windy J. Marks

03/31/09
Date

Fellow of the Society of Actuaries
Member, American Academy of Actuaries

STATE OF ARIZONA

Joint Legislative Budget Committee

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VIC WILLIAMS

DATE: April 22, 2009

TO: Representative John Kavanagh, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Jack Brown, Fiscal Analyst

SUBJECT: Arizona State Schools for the Deaf and the Blind – Review of Intended Use of
Voucher Fund Expenditures

Request

Pursuant to a footnote in the FY 2008 General Appropriations Act (Laws 2007, Chapter 255), the Arizona State Schools for the Deaf and the Blind (ASDB) requests Committee review of the expenditure plan for their FY 2009 Voucher Fund adjustment. ASDB received an \$878,500 appropriation to the Voucher Fund Adjustment Special Line Item for FY 2009 to pay for expenses associated with projected enrollment growth and inflation. The footnote requires ASDB to seek Committee review of the expenditure plan prior to spending any Voucher Fund monies.

Recommendation

The Committee has at least the following 2 options:

1. A favorable review of the proposed \$878,500 expenditure plan.
2. An unfavorable review.

Analysis

The Voucher Fund Adjustment Special Line Item represents ASDB's expected increase in funding from the ASDB Fund. The ASDB Fund consists of special education voucher monies, which represent ASDB's reimbursement from the Arizona Department of Education (ADE) for educational costs based on enrollment. These monies are reflected within a special line item to

(Continued)

give ASDB flexibility in allocating the increased funding across its 4 program areas (Phoenix Day School for the Deaf, Preschool Programs, Regional Cooperatives, and Tucson Residential Campus).

A summary of ASDB's proposed expenditure plan follows on *Table 1*:

Table 1	
FY 2009 Voucher Fund Adjustment Expenditure Plan	
Teachers/Instructional Assistants	\$ 562,600
Educational Interpreters/Tutors	126,000
Other Personnel	84,000
Supplies and Materials	<u>105,900</u>
Total	\$ 878,500

A more detailed summary of the proposed Voucher Fund expenditures are contained in *Attachment 1*.

RS/JBr:lm
Attachment



Agency Administration
P.O. Box 88510
Tucson, AZ 85754
520.770.3280 V/TDD
520.770.3711 FAX
www.asdb.state.az.us

Tucson Campus
P.O. Box 85000
Tucson, AZ 85754
520.770.3468 V/TDD
520.770.3007 FAX

Phoenix Campus
7654 N. 19th Avenue
Phoenix, AZ 85021
602.771.5300 V/TDD
602.771.5364 FAX

Desert Valleys
Regional Cooperative
8055 N. 24th Ave., Ste.
103
Phoenix, AZ 85021
602.544.1670 V/TDD
602.544.1704 FAX

Southeast
Regional Cooperative
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Tucson, AZ 85745
520.770.3200 V/TDD
520.770.3782 FAX

Southwest
Regional Cooperative
1047 S. 4th Avenue
Yuma, AZ 85364
928.317.0429 V/TDD
928.317.0447 FAX

North Central
Regional Cooperative
1000 E. Butler Ave., Ste
115
Flagstaff, AZ 86001
928.774.0655 V/TDD
928.773.9229 FAX

Eastern Highlands
Regional Cooperative
1607 N. Navajo Blvd.
Holbrook, AZ 86025
928.524.6770 V/TDD
928.524.6779 FAX

March 18, 2009

Honorable John Kavanagh
Chairman – Appropriations Committee Chairman
1700 W. Washington, #114
Phoenix, AZ 85007

Dear Representative Kavanagh:

We respectfully request that the Arizona Schools for the Deaf and the Blind be placed on the next JLBC agenda for the purpose of reporting our use of Voucher Fund Adjustment monies, as required by Appropriation footnote.

For your convenience we have attached the disposition of the \$878,500 Voucher Fund Adjustment.

Thank you for your consideration of this request. If you need additional information regarding this request, please contact Mark Carroll at (520) 770-3279.

Sincerely,

Harold E. Hoff, Ph.D.
ASDB Superintendent

HEH/MC/dg

cc: Honorable Russell K. Pearce
Richard S. Stavneak
Eileen I. Klein
Stephen Schimpp
Jack A. Brown
Mark Carroll
File



ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND (ASDB)
Expenditure of Voucher Fund Adjustment FY2009

	<u>Funds</u>
<u>TUCSON CAMPUS</u>	
<u>School for the Deaf (ASD)</u>	
Teacher HI	\$40,000
Instructional Assistant	\$15,000
Educational Interpreter/Tutor	\$50,000
Bus Drivers/Chaperones	\$36,000
Classroom supplies, materials	\$15,000
<u>School for the Blind (ASB)</u>	
Teacher (VI)	\$60,000
Instructional Assistant	\$30,000
Braille text, supplies	\$25,000
<u>PHOENIX DAY SCHOOL FOR THE DEAF (PDSD)</u>	
Teacher (HI)	\$120,000
Instructional Assistant	\$67,000
Educational Interpreter/Tutor	\$58,000
Bus Drivers/Chaperones	\$36,000
Classroom supplies, materials	\$30,000
<u>PRESCHOOLS</u>	
Teacher (HI-2; VI-1)	\$130,000
Instructional Assistant	\$20,000
Classroom supplies, materials	\$20,720
Employer Related (19%)	\$125,780
TOTAL EXPENDITURES	\$878,500

STATE OF ARIZONA

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DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Attorney General – Review of Allocation of Settlement Monies - State vs. Countrywide

Request

The General Appropriation Act (Laws 2007, Chapter 255) 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 a \$200,000 allocation to the AG from a consent judgment with Countrywide Financial Corporation, an entity operated by the Bank of America.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plan from the Countrywide consent judgment. The allocation plan is 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

In October 2008, the AG and 30 other states entered into a consent judgment with Countrywide as a result of their consumer fraud investigation of Countrywide's lending practices. The settlement does not constitute an admission of liability on the part of Countrywide.

The settlement requires Countrywide to pay \$200,000 to the AG. This amount will be deposited into the Consumer Fraud Revolving Fund for attorneys fees, investigation costs, and to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act.

(Continued)

The settlement also requires Countrywide to pay Arizona \$4,098,300. Half of this will be paid by Countrywide to Arizona borrowers who have experienced a home foreclosure and the other half will be used for foreclosure relief and mitigation programs administered by the AG.

RS/MZ:ss



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

March 18, 2009

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



Re: State v. Countrywide Financial Corporation

Dear Gentlemen:

Arizona recently joined with over 30 other state Attorneys General to settle a multi-state action against Countywide Financial Corporation and related entities, now owned and operated by the Bank of America ("Countrywide"). The settlement, in the form of a Consent Judgment, does not constitute an admission of liability. Under the terms of the settlement Countrywide will consider certain borrowers who are sixty days or more behind on their mortgage payments and others who are likely to fall behind for a streamlined loan modification program. The loans included in the program are subprime and pay option adjustable rate mortgage loans. The State believes that about 13,000 Arizona borrowers will be assisted under the program, which will be in effect until June 30, 2012.

Countrywide will also provide relocation assistance to borrowers who have been subject to a foreclosure. It is estimated that approximately 35,000 borrowers nationwide will receive assistance totaling \$70 million.

In addition, the Consent Judgment requires Countrywide to pay a total of \$150 million for foreclosure relief to the participating states. Arizona's share of the settlement is

The Honorable Robert L. Burns
The Honorable Kirk Adams
The Honorable John Kavanagh
March 18, 2009
Page 2

\$4,098,299. Of this amount, 50 percent will be paid to by Countrywide directly to Arizona borrowers who have experienced a foreclosure and 50 percent will be used for foreclosure relief and mitigation programs administered by the Attorney General's office.

The Attorney General office will also receive \$200,000 for attorney's fees and investigation costs. That money will be deposited in the consumer fraud revolving fund pursuant to A.R.S. § 44-1531.01.

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 settlement 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.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me at dena.epstein@azag.gov or (602) 542-7717.

Sincerely,



Dena Rosen Epstein
Acting Section Chief Counsel
Consumer Protection and Advocacy Section

DRE/sp
Enclosure

cc: The Honorable Russell K. Pearce
The Honorable Jorge Luis Garcia
The Honorable David Lujan
Mr. Richard S. Stavneak
Ms. March Zilla
Mr. Joe Kanefield
Ms. Ruben Alonzo
Mr. Greg Stanton
Mr. John T. Stevens, Jr.

#412039

STATE OF ARIZONA

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VIC WILLIAMS

DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Attorney General – Review of Allocation of Settlement Monies - State vs. Eli Lilly

Request

The General Appropriation Act (Laws 2007, Chapter 255) 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 a \$2,205,705 allocation to the AG from a consent judgment with Eli Lilly, a pharmaceutical company.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plan from the Eli Lilly consent judgment. The allocation plan is 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

In October 2008, the AG and 32 other states entered into a consent judgment with Eli Lilly as a result of their consumer fraud investigation of Eli Lilly's prescription drug olanzapine, marketed under the name Zyprexa, which is FDA-approved for treatment of certain bipolar disorders. The investigation determined that Eli Lilly misrepresented the drug's uses during a wide-spread marketing campaign in 2000. Eli Lilly marketed Zyprexa for uses that were not FDA approved, also known as "off-label" uses. Physicians can prescribe drugs for off-label uses, but the drugs cannot be marketed as such.

(Continued)

The settlement requires Eli Lilly to pay \$2,205,705 to the AG. This amount will be deposited into the Consumer Fraud Revolving Fund for attorneys fees, investigation costs, and to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act.

The settlement also requires Eli Lilly to ensure that medical staff develops and approves medical references to Zyprexa and that Zyprexa is not promoted outside its FDA approved uses.

RS/MZ:ss



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

December 18, 2008

The Honorable Timothy S. Bee
President of the Senate
1700 West Washington Street
Phoenix, AZ 85007

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

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



Re: State v. Eli Lilly and Company

Dear Gentlemen:

Arizona recently joined with 32 other state Attorneys General to settle a multi-state action against Eli Lilly and Company ("Lilly") based on its allegedly unlawful promotion of the antipsychotic drug Zyprexa®.

The settlement, in the form of a Consent Judgment, resolves the States' one and one half year investigation of Lilly's promotional practices. (A copy of the signed Judgment is attached). Zyprexa® is the brand name for the prescription drug olanzapine. The drug was first marketed for use in adults with schizophrenia in 1996. Since then, the Food and Drug Administration ("FDA") has approved Zyprexa® for the treatment of certain types of bipolar disorder.

Zyprexa® belongs to a class of drugs traditionally used to treat schizophrenia and commonly referred to as "atypical antipsychotics." When these drugs were first introduced to the market in the 1990s, experts thought atypical antipsychotics would be less likely to produce side effects seen in the first generation of antipsychotics, such as motion disorders like tardive dyskinesia, and therefore could be used in the long-term treatment of

schizophrenia. While atypical antipsychotics may reduce some risks, according to the settlement documents they also produced dangerous side effects, including weight gain, hyperglycemia, diabetes, cardiovascular complications, and an increased risk of mortality in elderly patients with dementia. Zyprexa® has allegedly been associated with a high risk of weight gain, hyperglycemia, and diabetes.

As alleged in the Complaint, Eli Lilly began an aggressive marketing campaign called "Viva Zyprexa!" in late 2000. As part of that campaign, the company marketed Zyprexa® for a number of uses that were not approved by the FDA ("off-label" uses). For example, Lilly marketed Zyprexa® for pediatric use, for use at high dosage levels, for the treatment of symptoms rather than diagnosed conditions, and in the elderly for the treatment and/or chemical restraint of patients suffering from dementia. While a physician is allowed to prescribe drugs for off-label uses, the law prohibits pharmaceutical manufacturers from marketing their products for off-label uses. The FDA has never approved Zyprexa® for use in children, for use to treat symptoms rather than diagnosed conditions, or for the treatment of dementia in the elderly.

The Consent Judgment contains a number of restrictions to ensure that Lilly does not promote Zyprexa® for off-label uses and that it markets Zyprexa® in compliance with law. Among other things, under the Judgment Eli Lilly shall:

- Not make any false, misleading or deceptive claims regarding Zyprexa®;
- Not promote Zyprexa® using selected symptoms of the FDA-approved diagnoses unless certain disclosures are made regarding the approved diagnoses;
- Require its medical staff, rather than its marketing staff, to have ultimate responsibility for developing and approving the medical content for all medical letters and medical references regarding Zyprexa®, including those that may describe off-label information. This information shall not be distributed unless certain criteria are met;
- Provide specific, accurate, objective and scientifically balanced responses to unsolicited requests for off-label information from a health care provider regarding Zyprexa®;
- Not use grants to promote Zyprexa®, or condition CME funding on Eli Lilly's approval of speakers or program content;
- Contractually require continuing medical education providers to disclose Eli Lilly's financial support of their programs and any financial relationship with faculty and speakers; and
- Register clinical trials and submit results as required by federal law; register Zyprexa® Eli-Lilly sponsored Phase II, III and IV clinical trials beginning after July 1, 2005;

The Honorable Robert Burns
The Honorable Kirk Adams
The Honorable Russell K. Pearce
December 18, 2008
Page 3

and post on a publicly accessible website all Eli-Lilly sponsored Phase II, III and IV clinical trials completed after July 1, 2004.

In addition, the Consent Judgment requires Lilly to pay a total of \$62 million to the participating states. Arizona's share of the settlement is \$2,205,705. This recovery is to be deposited in the Consumer Fraud Revolving Fund, pursuant to the terms of the Judgment as well as A.R.S. § 44-1531.01(B). These monies are used pursuant to statute for investigating violations of the Consumer Fraud Act and enforcing its provisions, as well as for consumer education. A.R.S. § 44-1531.01(C).

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.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me at dena.epstein@azag.gov or (602) 542-7717.

Sincerely,



Dena Rosen Epstein
Acting Section Chief Counsel
Consumer Protection and Advocacy Section

DRE/sp
Enclosure

cc: The Honorable Russell K. Pearce
The Honorable Marsha J. Arzberger
The Honorable Phillip M. Lopes
Mr. Richard S. Stavneak
Ms. Leah B. Ruggieri
Ms. Leezie Kim
Ms. Sheryl A. Rabin
Mr. David Gass
Mr. John T. Stevens, Jr.

#334118v2

STATE OF ARIZONA

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JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Attorney General – Review of Allocation of Settlement Monies - State vs. Great Expectations

Request

The General Appropriation Act (Laws 2007, Chapter 255) 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 a \$275,000 allocation to the AG from a consent judgment with Sun West Video, Inc., doing business as Great Expectations, a referral dating service.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plan from the Great Expectations consent judgment. The allocation plan is 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

In February 2009, the AG entered into a consent judgment with Great Expectations as a result of their consumer fraud investigation of Great Expectations' sales and representation practices.

The settlement requires Great Expectations to pay \$275,000 to the AG. This amount will be deposited into the Consumer Fraud Revolving Fund for attorneys fees, investigation costs, and to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act.

(Continued)

The settlement also requires Great Expectations to pay Arizona consumers \$250,000. This will be paid on a pro rata basis to the consumers who have previously filed complaints with the AG concerning their memberships with Great Expectations.

Great Expectations is also prohibited from misrepresenting their membership data, membership marriage rates, and refund policies.

RS/MZ:ss



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

April 14, 2009

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



Re: State v. Sun West Video, Inc. d/b/a Great Expectations

Gentlemen:

Arizona recently settled a case against Sun West Video, Inc., doing business as Great Expectations ("Great Expectations"), a dating referral service.

After conducting an extensive investigation prompted by consumer complaints, the State sued Great Expectations, John Meriggi, its principal owner, and others under the Arizona Consumer Fraud Act and the Arizona Dating Referral Services Act. The Complaint alleged that Great Expectations exaggerated its success in making matches between singles, used coercive sales tactics, misrepresented the qualifications or numbers of its members and used deceptive membership agreements that violated Arizona law.

The lawsuit was settled by way of a Consent Judgment. While the Consent Judgment does not constitute an admission of liability, Great Expectations has agreed to correct the business practices that gave rise to the lawsuit. Among other things, the Consent Judgment specifically prohibits Great Expectations from:

- Misrepresenting the number or type of people who are members of the local Great Expectations data base;

The Honorable Robert L. Burns
The Honorable Kirk Adams
The Honorable John Kavanagh
April 14, 2009
Page 2

- Using photographs and descriptions of members without verifying that they are still active in Great Expectations;
- Misrepresenting the number of marriages that occur as a result of Great Expectations' services;
- Accepting deposits without clearly disclosing that the deposits are refundable only within three (3) business days of signing the membership agreement; and
- Obtaining a prospective member's credit report without clear, written authorization from the consumer.

Moreover, Great Expectations must comply with the Dating Referral Services Act and the Arizona Consumer Fraud Act under the terms of the settlement.

The Judgment further requires Great Expectations to pay \$250,000 for consumer restitution, to be distributed on a pro rata basis to those consumers who previously filed complaints with the Attorney General's Office. Great Expectations will also pay \$250,000 for civil penalties as well as \$25,000 for investigation costs and attorneys' fees, which will be deposited in the consumer fraud revolving fund in accordance with Arizona law, A.R.S. § 44-1531.01.

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 settlement 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.

Thank you. 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
Acting Section Chief Counsel
Consumer Protection and Advocacy Section

cc: The Honorable Russell K. Pearce
The Honorable Jorge Luis Garcia
The Honorable David Lujan
Mr. Richard S. Stavneak
Ms. March Zilla
Mr. Joe Kanefield
Ms. Ruben Alonzo
Mr. Greg Stanton
Mr. John T. Stevens, Jr.

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
SENATE

RUSSELL K. PEARCE
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PAULA ABOUD
AMANDA AGUIRRE
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JIM WARING

1716 WEST ADAMS
PHOENIX, ARIZONA 85007

PHONE (602) 926-5491

FAX (602) 926-5416

<http://www.azleg.gov/jlbc.htm>

HOUSE OF
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OLIVIA CAJERO BEDFORD
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MATT HEINZ
JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Attorney General – Review of Allocation of Settlement Monies - State vs. Pfizer, Inc.

Request

The General Appropriation Act (Laws 2007, Chapter 255) 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 a \$2,500,656 allocation to the AG from a consent judgment with Pfizer, Inc., a pharmaceutical company.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plan from the Pfizer consent judgment. The allocation plan is 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 Attorney General and 31 other states entered into a consent judgment with Pfizer as a result of their consumer fraud investigation of Pfizer's marketing and sale of Bextra, a pain medication. The investigation determined that Pfizer marketed Bextra for uses that were not FDA approved, including for acute pain.

The settlement requires Pfizer to pay \$2,500,656 to the AG. This amount will be deposited into the Consumer Fraud Revolving Fund for attorneys fees, investigation costs, and to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act.

The settlement also requires Pfizer to provide complete scientific data and medical information to doctors and prescribers and to fully disclose conflicts of interest for promotional speakers.

RS/MZ:ss



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

December 19, 2008



The Honorable Timothy S. Bee
President of the Senate
1700 West Washington Street
Phoenix, AZ 85007

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

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

Re: State v. Pfizer, Inc.

Dear Gentlemen:

Arizona, together with 31 other state Attorneys General, recently settled a multi-state action against Pfizer, Inc. ("Pfizer") based on its allegedly unlawful marketing of pain medication Bextra®.

The settlement, in the form of a Consent Judgment, resolves the States' three year investigation of Pfizer's practices. A copy of the signed Judgment is attached.

Bextra® is a pain medication that is part of the "Cox 2" class of drugs. Pfizer promoted this medication as safer and more effective than existing medicines such as naproxen and ibuprofen, which can cause gastro-intestinal side effects. The Complaint, however, alleges that Bextra® was not more effective than traditional medications at relieving pain or reducing serious side effects. Further, Bextra® allegedly increased the risk of cardiovascular problems, which Pfizer did not disclose to doctors. Pfizer also aggressively promoted Bextra® for uses beyond those approved by the FDA, specifically for acute or post-operative pain. Among other things, Pfizer allegedly distributed studies that supported off-label use of Bextra® without also providing negative information about

The Honorable Timothy S. Bee
The Honorable James P. Weiers
The Honorable Robert L. Burns
December 19, 2008
Page 2

the drug (including the fact that the FDA had disapproved Bextra® for the very uses Pfizer was promoting).

The Consent Judgment contains a number of restrictions to ensure that Pfizer promotes its products lawfully in the future. Pfizer agreed to refrain from the following practices:

- Deceptive use of scientific data when marketing to doctors.
- "Ghost writing" of articles and studies.
- Failing to adequately disclose conflicts of interests for Pfizer promotional speakers when these consultants speak at Continuing Medical Education events.
- Distributing samples in order to encourage off-label prescribing.
- Providing unbalanced medical information to prescribers.
- Using medical grants to influence doctors in prescribe Pfizer products.

In addition, Pfizer must submit proposed direct to consumer television ads for pain medication to the FDA for review and approval and comply with state and federal consumer protection laws.

Finally, the Consent Judgment requires Pfizer to pay a total of \$60 million to the participating states. Arizona's share of the settlement is \$2,500,656. This recovery is to be deposited in the Consumer Fraud Revolving Fund, pursuant to the terms of the Judgment under A.R.S. § 44-1531.01(B). These monies are used pursuant to statute for investigating violations of the Consumer Fraud Act and enforcing its provisions, as well as for consumer education. A.R.S. § 44-1531.01(C).

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.

The Honorable Timothy S. Bee
The Honorable James P. Weiers
The Honorable Robert L. Burns
December 19, 2008
Page 3

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me at dena.epstein@azag.gov or (602) 542-7717.

Sincerely,



Dena Rosen Epstein
Acting Section Chief Counsel
Consumer Protection and Advocacy Section

DRE/sp
Enclosure

cc: The Honorable Russell K. Pearce
The Honorable Marsha J. Arzberger
The Honorable Phillip M. Lopes
Mr. Richard S. Stavneak
Ms. Leah B. Ruggieri
Ms. Leezie Kim
Ms. Sheryl A. Rabin
Mr. David Gass
Mr. John T. Stevens, Jr.

#350445

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
SENATE

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CHAIRMAN 2010
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AMANDA AGUIRRE
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MATT HEINZ
JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

DATE: April 22, 2009

TO: Representative John Kavanagh
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Diné College – Review of Funding Compact

Request

A.R.S. § 42-5031.01 requires Joint Legislative Budget Committee (JLBC) review of a proposed 10-year renewal of the existing funding compact between the Navajo Nation, Diné College, and the State of Arizona. A.R.S. § 42-5301.01 allows 10% of the Transaction Privilege Tax (TPT) revenues collected within the Navajo Nation, up to \$1,750,000, to be used for maintenance, renewal, and capital expenses for Diné College. The TPT revenues can only be retained by the Navajo Nation if it maintains a compact with the State of Arizona.

Recommendation

The Committee has at least the following options:

1. A favorable review and a renewal of the compact for up to 10 years.
2. An unfavorable review.

Analysis

The TPT revenue is transmitted to the Navajo Nation on a monthly basis and is designated for maintenance, renewal, and capital expenses for the college. The revenue that is received is also subject to an annual audit.

(Continued)

The existing compact is included as *Attachment 1*. The proposed renewal compact would be identical.

The current compact outlines the guidelines for the TPT revenue calculation to determine the amounts to be transferred to Diné College for maintenance, renewal, and capital expenses. It also requires Diné College to annually submit a schedule of expenditures to the Auditor General and designates how the Department of Revenue will allocate the funds to the college. Diné College is also required to submit work plans for capital projects to the Department of Administration.

RS/MZ:ss
Attachment

THE NAVAJO NATION, DINÉ COLLEGE – STATE OF ARIZONA
FUNDING COMPACT

Executive Summary

On May 6, 1999, Governor Jane Dee Hull signed House Bill 2676 ("HB 2676"). HB 2676 amends Arizona's tax code to allow the distribution of Transaction Privilege Tax revenues collected on the Navajo Nation to Diné College. This revenue is designated to support the maintenance, renewal and capital expenses of Diné College and is transmitted to the Navajo Nation on a monthly basis. Under this law, the Navajo Nation will receive up to \$1.75 million per year.

Under HB 2676, the State of Arizona and the Navajo Nation are required to enter into a Compact for the distribution of Transaction Privilege Tax revenues collected on the Navajo Nation. This agreement is intended to implement HB 2676 to ensure that the Navajo Nation receives state funding to improve Diné College.

The Compact is ten years in duration and the funding will assist the building improvements at Diné College. The Nation and the State have also agreed that the revenue received for Diné College is subject to an annual audit.



Declaration of Policy & Purpose

WHEREAS, the Navajo Nation ("Nation") and the State of Arizona ("State") are separate sovereigns; and

WHEREAS, Diné College, the primary beneficiary of this Compact, is a college operating on the Navajo Nation and under the jurisdiction of the Navajo Nation and has participated in the development and implementation of this Compact; and

WHEREAS, Laws 1999, Chapter 183 requires the transfer of Transaction Privilege Tax revenues collected from sources located on a qualifying Indian tribe reservation for the exclusive purpose of maintenance, renewal and capital expenses of one or more community colleges owned, operated or chartered by a Qualifying Indian Tribe; and

WHEREAS, the Nation and the State have negotiated the terms and conditions of this Compact to provide a framework for the transfer and monitoring of Transaction Privilege Tax revenues;

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the Nation and the State agree as follows:

This Compact is entered into by and between the NATION and the STATE, in accordance with A.R.S. § 42-5031.01, for the purpose of distributing revenues to support the maintenance, renewal and capital expenses of community colleges located on an Indian Reservation.

Section 1. Title

This document shall be referred to as "The Navajo Nation, Diné College - State of Arizona Funding Compact."¹

Section 2. Definitions

"Capital Expenses" means the cost of construction of buildings, structures, facilities and supporting site improvements for the use or benefit of Diné College.

"Community College" means an educational institution providing a program not exceeding two years training in the arts, sciences and humanities beyond the twelfth grade of the public or private high school course of study or vocational education, including terminal courses of a technical and vocational nature and basic education courses for adults.

"Diné College" means a tribally controlled college, chartered by the Navajo Nation for the purpose of offering a two or four year college program.

"Financial Feasibility" means a work plan for capital expenses, renewal or maintenance that is capable of being completed with Transaction Privilege Tax revenues and other funds allocated by any other source.

"Maintenance" means the repair and replacement of a building or infrastructure component that has a useful life less than three years and a cost is less than \$1,000 per unit.

"Qualifying Indian Tribe" means an Indian Tribe that owns, operates and charters any community college located on its reservation in this state.

"Renewal" means the major repair or reworking of a building and the supporting infrastructure that will result in extending the expected useful life of a building and/or its supporting infrastructure. Renewal does not include new building additions, new infrastructure additions, landscaping and area beautification, routine maintenance or demolition and removal of a building.

"State Treasurer" means the elected official and constitutional officer serving as Arizona's State Treasurer.

¹ The term Navajo Nation, Diné College is intended to reflect the dual responsibility of the Nation and Diné College under this Compact. All parties acknowledge that the Nation, as the sovereign, is the compacting party. Diné College, as a subdivision of the Nation, is also an integral part of the compacting process. It is anticipated that the Nation and Diné College will resolve how these responsibilities are divided.

"Transaction Privilege Tax" means a municipal transaction privilege license tax, use tax or similar tax and includes for purposes of this section any penalty assessed by a city or town for nonpayment, delinquent payment or failure to timely report or file a return, and any interest assessed because of late payment of taxes.

Section. 3 Audit and Record Requirements

- A. *Reporting Requirements* – No later than September 30th of each year that the Navajo Nation, Diné College receives revenues pursuant to this Compact, the Navajo Nation, Diné College shall submit a Schedule of Expenditures to the State Auditor General. The State Auditor General will audit the Schedule of Expenditures.
- B. *Records Retention* - The Navajo Nation, Diné College must retain all data and other records relating to the receipt and expenditure of state funds in accordance with this Compact. All records shall be subject to inspection and audit by the State Auditor General upon reasonable request. Upon request, the Navajo Nation, Diné College shall produce a legible copy of any or all such records.
- C. *Financial Records* - Financial Records shall, as applicable, meet the following standards:
 - 1. Include records of the source of all receipts and the deposit of funds received by the State Treasurer under the Compact.
 - 2. Include original copies of invoices, statements, sales tickets, billings for services, etc. and a cash disbursement journal and cancelled checks to reflect all disbursements from this source of funds.
 - 3. Include a complete general ledger with accounts for the collection of all costs and/or fees applicable to the Compact.
 - 4. Include a copy of a written, approved cost allocation plan to reflect the manner in which costs were to be allocated under the Compact.
 - 5. Include copies of any construction agreements that in any way affect Compact expenditures.
- D. *Separate Accounting* – All records and transactions related to this Compact must be maintained separately from other records related to the Nation or Diné College.

- E. At any time during the term of this Compact, and at any time within five years after the termination of the Compact, the Navajo Nation, Diné College's books and records shall be subject to audit by the State Auditor General to the extent that the books and records relate to the performance of the Compact.

Section 4. Assignment and Delegation.

No duty under this Compact may be assigned or delegated by the State or the Nation other than those administrative duties assigned by the Nation to Diné College.

Section 5. Authority.

This Compact is entered into pursuant to A.R.S. § 42-5031.01 under the authority of the Governor of the State and the President of the Nation. Changes to the Compact directed by an unauthorized State employee or made unilaterally by Navajo Nation, Diné College employees are violations of the Compact and/or applicable law. Such changes, including unauthorized written contract amendments, shall be void and without effect.

Section 6. Limitations

Pursuant to A.R.S. § 42-5031.01(D), the State Treasurer shall not transmit more than One Million Seven Hundred Fifty Thousand dollars to the Navajo Nation, Diné College during any fiscal year with the exception of Fiscal Year 2000-2001, where the State Treasurer shall not transmit more than One Million Five Hundred Thousand dollars.

Section 7. Tribal Reimbursement of Arizona Department of Revenue Expenses

The Arizona Department of Revenue, pursuant to A.R.S. § 42-5031.01(B)(4), shall use Transaction Privilege Tax Revenues collected on the Nation's reservation for reimbursement of the Department's start-up costs associated with the implementation of this Compact. The Department shall not use more than One Hundred Fifty Thousand dollars of Transaction Privilege Tax revenues for this purpose.

Section 8. Payments

- A. The Navajo Nation, Diné College shall receive Transaction Privilege Tax Revenues pursuant to A.R.S. § 42-5031.01(A);
- B. Designation of Account – The Navajo Nation, Diné College shall designate an account for receipt of Transaction Privilege Tax revenues. The State Treasurer shall be notified of the designated account by the date on which revenues are transferred or May 1, 2000, whichever comes first.
- C. The State Treasurer shall transmit Transaction Privilege Tax revenues on a monthly basis.

Section 9. Payment Recoupment.

The Navajo Nation, Diné College must reimburse the State of Arizona upon demand or the State of Arizona may deduct from future payments the following:

- A. Any amounts received by the Navajo Nation, Diné College from the State of Arizona in excess of the statutory ceiling for any fiscal year (\$1.5 million in year one (FY 2000-01) and \$1.75 million in all following years);
- B. Any amounts received by the Navajo Nation, Diné College from the State of Arizona that, as determined by the Auditor General, were not used for Maintenance, Renewal or Capital Expenses at Diné College.

The State may withhold subsequent Transaction Privilege Tax revenues to recoup overpayments or funds misused by the Navajo Nation, Diné College. If payments cannot be withheld, the State may demand payment. Any repayments by the Nation are subject to statutorily mandated Navajo Nation Council appropriation. The Nation agrees to use its best efforts to seek approval of such appropriation in the event that an overpayment or misuse of funds occurs.

Section 10. Visitation, Inspection and Copying

The Nation, Diné College's facilities, services, books and records pertaining to this Compact shall be available for visitation, inspection and copying by the State Auditor General. Upon reasonable notice to the Nation's designated representative, the State Auditor General may visit, inspect and copy records at any time during regular business hours. If the State Auditor General determines that an emergency situation exists, it may visit, inspect and copy records related to this Compact upon demand, during normal working hours.

Section 11. Amendments

Any amendment to this Compact shall be in writing and signed by both parties. The terms and conditions of this Compact shall remain in effect until amended, modified or terminated. The State and the Nation agree to use their best efforts to resolve any issue that requires an amendment to the Compact.

Section 12. Non-Severability

All provisions in this Compact shall constitute a single agreement. If a court of competent jurisdiction finds any provision in this Compact to be invalid or unenforceable, it is the intent of the parties that the remaining provisions shall be voided.

Section 13. Third Party Beneficiaries

This Compact is not intended to create any third-party beneficiaries and is entered into solely for the benefit of the Navajo Nation, Diné College and the State.

Section 14. Notices

All notices required or authorized to be served under this Compact shall be served by certified mail (return receipt requested), commercial overnight courier service or by personal delivery, at the following addresses or such other address as either party shall hereafter inform the other by written notice:

State: The State of Arizona
ARIZONA DEPARTMENT OF ADMINISTRATION
1700 W. Washington
Phoenix, Arizona 85007
Attn: Director

ARIZONA ATTORNEY GENERAL
1275 W. Washington
Phoenix, Arizona 85007
Attn: Attorney General

Nation: The Navajo Nation
P.O. Box 9000
Window Rock, Arizona 86515
Attn: President Kelsey A. Begaye

Navajo Nation Attorney General
P.O. Drawer 2010
Window Rock, Arizona 86515

Section 15. Calculation of Time

In computing any period of time prescribed or allowed by this Compact, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday under the Nation's laws, state law or federal law, or when the act to be done is the filing of or providing access to any report or document, and the last day of the period falls on a day in which the weather or other conditions have made the offices in which the report or document is to be filed inaccessible, in which event the designated period shall extend until the end of the next day the office is accessible, which is not one of the previously mentioned excluded days.

Section 16. Counterparts

This Compact is executed in five original documents; one shall be maintained by the President of the Nation, one shall be maintained by the Governor of the State, one shall be maintained by the State Auditor General, one shall be maintained by the President of Diné College and one shall be maintained by the Arizona State Treasurer.

Section 17. Effective Date and Duration

- (a) *Conditional Effectiveness; Effective Date.* This Compact shall not be effective, and no rights, duties or obligations of the State or the Nation shall arise thereunder unless and until fully executed by the Governor of the State and the President of the Nation.
- (b) *Duration.* This Compact shall be in effect for a term of ten years from the effective date.
- (c) *Termination.* This Compact may be voluntarily terminated by mutual agreement of the parties.

Section 18. Dispute Resolution

- A. *Notice of Dispute.* In the event the State has a dispute or controversy with the Navajo Nation, Diné College, including, but not limited to disputes or controversies over the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, continuance or termination of this Compact, the State shall notify the Nation, in writing, of the nature of the dispute and the State's intent to withhold Transaction Privilege Tax revenues because of the dispute or controversy.

- B. *Nation's Response.* Fourteen days after receipt of the State's notice of dispute, the Navajo Nation, Diné College, shall respond to the State detailing its response to the State's concerns.
- C. *State Withholding of Transaction Privilege Tax Revenues.* Should the State not agree with the Navajo Nation, Diné College's response to the Dispute, the State may unilaterally withhold Transaction Privilege Tax revenues until the dispute is resolved. The state shall notify the Nation of its intent to withhold within 14 days after receiving a response from the Nation.
- D. *Mediation.* Should the State and Nation not agree on the merits of the dispute and the State elect to withhold Transaction Privilege Tax revenues, the Nation can seek non-binding Mediation through the American Arbitration Association, 333 E. Osborn Rd., #310, Phoenix, Arizona 85012-2365; (602) 234-0950. The Navajo Nation, Diné College shall seek mediation within 30 days of receiving notice of the State's intent to withhold Transaction Privilege Tax revenues.
- E. *State Court Resolution.* Should mediation fail to resolve any dispute over Transaction Privilege Tax revenues, the Navajo Nation, Diné College, can seek a remedy in Arizona state court.

Section 19. Entire Agreement

This Compact contains the entire agreement of the parties with respect to the matters covered by this Compact and no other statement, agreement or promise made by any party, officer or agent of any party shall be valid or binding.

Section 20. Authority to Execute

Each of the undersigned represents that he or she is duly authorized and has the authority to execute this agreement on behalf of the party for who he/she is signing and that this Compact is a contractual agreement that is valid, enforceable and binding upon the parties.

Section 21. General Indemnification

The Navajo Nation, Diné College shall defend, indemnify and hold harmless the State from any claim, demand, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) arising out of or relating to injury, disease or death of persons or damage to or loss of property resulting from or in connection with the use of funds arising out of this Compact by the Nation, its agents, employees, contractors, students or subcontractors or anyone for whom the Nation may be responsible. Neither

the State nor the Nation waives its sovereign immunity respecting claims made by third parties.

Section 22. Termination By Law

In the event that the A.R.S. § 42-5031.01 is repealed, this Compact shall be rendered null and void.

Section 23. Notification of Building Plans

- A. *Notice:* Sixty days prior to receipt of Transaction Privilege Tax revenues, the Navajo Nation, Diné College shall submit to the State's Department of Administration a work plan that details the proposed building maintenance, renewal or capital expense plans for the year in which the Navajo Nation, Diné College has designated state funds for building maintenance, renewal or capital expenses.
- B. *Plan Specifications:* The Navajo Nation, Diné College's work plan shall include the location of construction, construction plans, estimated costs and costs to be paid by other sources.
- C. The Navajo Nation, Diné College shall submit work plans beginning FY 2001 (June 30th 2000), and every year thereafter.
- D. *Subsequent or Amended Work Plans:* In the event that any work plan arises after the beginning of any fiscal year or any work plan submitted to the Department of Administration is amended, the Navajo Nation, Diné College shall notify the Department of Administration 30 days prior to construction.
- E. *Financial Feasibility:* Within 45 days of receipt of the Navajo Nation, Diné College's work plan, the Department of Administration shall review the Navajo Nation, Diné College's work plan to ensure that completion of any construction project at Diné College is financially feasible. If the Department of Administration concludes that the work plan is financially feasible, considering Transaction Privilege Tax revenues and other contributions, the Navajo Nation, Diné College shall receive Transaction Privilege Tax revenues in accordance with A.R.S. § 42-5031.01. If the Department of Administration determines that the work plan is not financially feasible, the Department of Administration shall: (1) notify the Nation and request a revised plan that demonstrates financial feasibility; and (2) notify the State Treasurer to withhold Transaction Privilege Tax revenues pending certification of financial feasibility. The Department of Administration shall set forth in detail the reasons for which the Nation's work plan is not financially feasible. If the Department of Administration does not act within

the 45-day period, it shall be deemed that the work plan submitted by the Navajo Nation, Diné College is financially feasible. The Department of Administration may seek a 14-day extension of time to respond.

EXECUTED this 19th day of October, 1999.

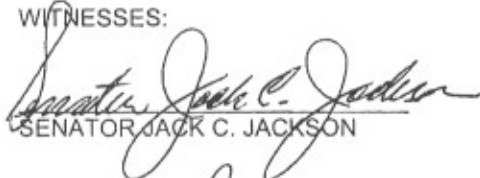
STATE OF ARIZONA

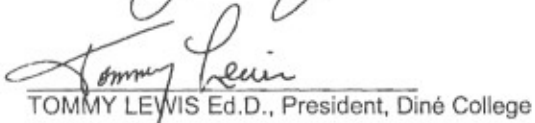
NAVAJO NATION


JANE DEE HULL, Governor


KELSEY A. BEGAY, President

WITNESSES:


SENATOR JACK C. JACKSON


TOMMY LEWIS Ed.D., President, Diné College

Approved as to form:


KENNETH S. COUNTRYMAN
Deputy General Counsel
Office of the Governor