



## **ARIZONA BOARD OF FINGERPRINTING**

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### **Final Minutes for Public Meeting**

Held August 19, 2010, at 9:00 a.m.

3839 North 3rd Street, Suite 107, Phoenix, Arizona

#### **Board Members**

Charles Easaw, Department of Education, Chairperson  
Arthur W. Baker, Department of Juvenile Corrections, Vice Chairperson  
Ellen Kirschbaum, Administrative Office of the Courts  
Mike LeHew, Department of Economic Security  
Kim Pipersburgh, Department of Health Services

#### **Executive Director**

Dennis Seavers

### **CALL TO ORDER AND ROLL CALL**

Mr. Easaw called the meeting to order at 9:02 a.m. The following Board members were present: Charles Easaw, Arthur W. Baker, Ellen Kirschbaum, Brad Willis, and Kim Pipersburgh. No Board members were absent.

Also in attendance was Dennis Seavers, Executive Director, and Joseph Munley, Investigator. As indicated below, Christopher Munns, Assistant Attorney General, attended a portion of the meeting.

### **CALL TO THE PUBLIC**

Mr. Easaw made a call to the public. There were no members of the public present.

## **APPROVAL OF MINUTES**

Mr. Baker made a motion to approve the draft minutes from the March 11, 2010 meeting. Ms. Kirschbaum seconded the motion, which passed 5–0.

## **FISCAL YEAR 2011 BUDGET**

Mr. Easaw referred Board members to Mr. Seavers’s August 16, 2010 memo proposing a budget for fiscal year (“FY”) 2011 (see Attachment 1).

Mr. Seavers noted that when he submits the budget to the Governor’s Office of Strategic Planning and Budgeting, he may use a different figure for the revenue projection. He explained that the budget of both DPS and the Board are based on the estimated number of fingerprint-clearance-card applications. Since that number should be the same for both DPS and the Board, then the two agencies normally consult each other to determine what the projection will be. Mr. Seavers believed that an estimate of 90,000 applications was a safer projection because the increase in fingerprint-clearance-card applications was a recent phenomenon, and there weren’t incontrovertible data to suggest that the trend would remain high. In addition, the number of fingerprint clearance card applications had not been steady from fiscal year to fiscal year. In contrast, DPS believed that the estimate should be based on the number of applications received in FY 2010, which was 102,000. Mr. Seavers believed that both estimates were reasonable, given the limited data available to make projections; but in the interest of consistency, he planned to use the same projection as DPS. Therefore, the revenue estimate would be \$714,000 rather than \$630,000.

Mr. Easaw asked what the Board had decided about terminating the lease of the conference room. Mr. Seavers said that the Board had decided to terminate the lease; he had submitted that request to the Department of Administration, but he had not heard back. He noted that the Board’s cash-flow problem had gone away, so there was no longer a need to get rid of the conference room, unless the Board wished. The Board members commented that having the conference room worked better for conducting hearings and meetings.

Mr. Baker made a motion to approve the proposed FY 2011 budget, and Ms. Kirschbaum seconded. The motion passed, 5–0.

## **EXECUTIVE DIRECTOR’S REPORT**

(Mr. Easaw decided to discuss the agenda item “Administrative-Hearing Process” after the agenda items “Executive Director’s Report” and “Elections.”)

## **FY 2010 budget**

Mr. Easaw referred Board members to Mr. Seavers's August 16, 2010 memo on the Board's FY 2010 budget performance (see Attachment 2). Board members didn't have any questions about Mr. Seavers's budget report.

## **Legislation**

Mr. Seavers referred Board members to his August 16, 2010 memo on recent legislation (see Attachment 3).

Mr. Easaw asked when the Board would need to submit any proposed legislative changes. Mr. Seavers said that November 15, 2010, is the deadline for submitting bill requests to the Legislature. He noted that, ideally, legislation should be reviewed by stakeholders prior to the bill being drafted.

## **Fiscal year 2010 strategic plan**

Mr. Seavers referred Board members to his report on the Board's strategic-plan performance (see Attachment 4).

Mr. Seavers noted that the Board is performing poorly in several measures related to timeliness because of fund sweeps and the February 2010 reduction in force. He noted that the investigator's hard work, coupled with policy changes in the information that the Board requires to be included in investigator summaries, have allowed the staff to make progress toward reducing the wait time for expedited reviews. The Board staff is working on meeting the 20-day time frame from receipt of complete application to expedited review in as many cases as possible. He noted that there is currently a delay in meeting the 80-day time frame from evidentiary hearing to Board decision. This delay is the result of a large number of cases going through the expedited-review process after the investigator was hired and caught up on cases. These cases have overwhelmed the hearing officers and have caused delays. However, this delay should be temporary.

## **ELECTIONS**

Mr. Seavers briefly explained the responsibilities of the chairperson and vice chairperson.

Ms. Pipersburgh nominated Mr. Baker for the position of vice chairperson. Mr. Willis made a motion to elect Mr. Baker as vice chairperson, and Ms. Pipersburgh seconded. The motion passed, 5–0.

Mr. Baker nominated Mr. Easaw for the position of chairperson. Mr. Baker made a motion to elect Mr. Easaw as chairperson, and Mr. Willis seconded. The motion passed, 5–0.

## **ADMINISTRATIVE-HEARING PROCESS**

Christopher Munns, the Board's assistant attorney general, joined this portion of the meeting. Mr. Easaw referred Board members to Mr. Seavers's August 16, 2010 memo on the administrative-hearing process (see Attachment 5). (For the purpose of these minutes, the term "evidentiary hearing" refers to the hearing before the hearing officer and "Board hearing" refers to the hearing where the Board decides whether to adopt, reject, or modify the hearing officer's recommendation.)

Mr. Baker suggested that the Board be able to ask questions at Board hearings and that applicants be given five minutes to talk about any issue they wish. He suggested, though, that as part of this change, the Board require applicants requesting a rehearing or review to make their requests in writing and not be given time to testify.

Ms. Kirschbaum asked about what would qualify as "new evidence" submitted at the Board hearing. She said that it was understandable if applicants had new evidence to submit that they couldn't acquire if they had used reasonable diligence. However, she was concerned about instances where applicants have failed to pay restitution or a fine and, following the evidentiary hearing, they pay the obligation and want to submit proof of payment as new evidence, even though they could have taken care of the fine earlier. Mr. Munns explained that applicants should not withhold documents they have and, on being denied, attempt to present the documents into evidence. He said that a lack of diligence in paying a fine may be a basis for not treating the newly paid fine as new evidence, but that a court could decide that evidence that was not available at the time of the hearing must be considered by the Board, particularly if circumstances (such as changes in the applicant's financial situation) prohibited the applicant from making payment. Mr. Munns said that whether a recently paid fine qualifies as new evidence will be very fact-specific. Mr. Munns noted that he had previously advised that the Board only consider evidence available at the time of the evidentiary hearing. He said that if the Board only relies on the record available to the hearing officer, then the issue of applicants making last-minute payments is largely moot. However, if the Board decides to accept new evidence at the Board hearing, then the Board might not have good grounds for not considering evidence like last-minute payments.

Mr. Easaw said that the Board has accepted new evidence in the past because the new evidence answers questions that the Board members may have at that time. The Board can then make a decision without having the applicant be denied and have to submit the new evidence under a new application or at a rehearing or review. Ms. Kirschbaum expressed concern that accepting new evidence might lead to inconsistency and unfairness, particularly if the Board asks questions of some applicants but doesn't pose questions to other applicants. She said that applicants have plenty of opportunity to present evidence and make their case at the evidentiary hearing and before.

Mr. Munns agreed that the Board should make sure that there is consistency among applicants. He said that applicants who are asked questions by the Board are likelier to be approved than applicants who aren't asked questions or who don't appear at the Board hearing. He said that if the Board wants to accept new evidence, the Board should adopt a practice like the one Mr.

Baker suggested, in which applicants are permitted five minutes to speak. He added that applicants should be notified that they should be prepared to answer Board members' questions. He noted that the Board would need to review the entire administrative record of cases.

Mr. Easaw said that if the Board only considers the issues raised in the evidentiary hearing, then the Board no longer has discretion to act on changed circumstances. Mr. Munns suggested that Board members could send cases back to the hearing officer for consideration, with an expedited hearing date, and the hearing officer could submit a revised recommendation. He said that the hearing would be smaller in scope and quicker. As long as the applicant had a reasonable time to prepare for the hearing, a 20-day notice wouldn't be necessary because the second hearing would essentially be a continuation of the evidentiary hearing. Mr. Easaw said that limiting the Board to just the hearing officer's recommendation is problematic because hearing officers make mistakes and the Board can exercise its discretion appropriately. Mr. Munns said that the Board wouldn't be limited to the hearing officer's recommendation, since the Board also has access to the administrative record; he also noted that applicants may offer testimony at the Board hearing that differs from the testimony at the evidentiary hearing. Mr. Easaw said that the Board should be able to catch discrepancies if the members review the administrative record for each case. Mr. Munns recommended that if the Board considers new evidence, the Board should send the case back to the hearing officer for a continuation of the evidentiary hearing.

Mr. Willis liked the idea of having discretion to review new evidence, and Ms. Pipersburgh agreed. Ms. Kirschbaum wanted to make sure that applicants were treated fairly and consistently, regardless of what the Board decides.

Mr. Seavers said that Board members should be prepared for applicants to bring in new evidence that Board members will need to review. Mr. Munns expressed concern that if the Board accepts new evidence and the applicants bring in a lot of new evidence, the Board hearing will become a second evidentiary hearing. He noted that the purpose of the hearing officer is to wade through the evidence for the Board, but the Board could always conduct the evidentiary hearing itself rather than use a hearing officer.

Mr. Baker suggested that Board members not consider evidence about last-minute payments and that the notice to the applicant make that point clear. Mr. Seavers said that applicants may disregard the instructions in the notice, as currently happens. Mr. Munns cautioned against the proposed limitation because a court may question the legitimacy of any distinctions made by the Board among acceptable types of evidence.

Mr. Easaw said that applicants often say in the evidentiary hearing that they're making progress toward completing sentencing requirements, but by the time they appear before the Board, a month or more has passed and Board members may wonder what additional progress has been made. Mr. Munns said that the hearing officer could keep the record open or continue a hearing to allow the applicant to submit new evidence, and the 80-day time frame wouldn't begin until the end of the continued evidentiary hearing.

Mr. Munns added that the Board may need to allow the applicant more than five minutes at the Board hearing if a longer period of time is necessary to present evidence. The Board would not be able to categorically impose a five-minute limit.

Mr. Seavers wondered what would happen if the Board were to accept new evidence and the applicant failed to appear at the evidentiary hearing, but instead appeared at the Board hearing intending to present evidence. Mr. Munns said that the Board could remand the case to the hearing officer for consideration (if the applicant waives the 80-day time frame).

Ms. Kirschbaum asked what the purpose is of having a hearing officer if the Board is going to consider new evidence itself and be conducting a second hearing. She said that she is comfortable with the quality of work that the hearing officers do; in those instances where the Board disagrees with the hearing officer's assessment, the Board modifies or rejects the recommended order.

Mr. Seavers noted that accepting new evidence at hearings may mean that applicants who live far away will feel obliged to travel to Phoenix to two hearings, which may be burdensome for them. He also said that Board members should be prepared in case applicants only present a part of their evidence at the evidentiary hearing and bring a large amount of new evidence to the Board hearing; he said that Board members would have to consider that new evidence. He emphasized that he didn't have a stake in whether the Board members consider new evidence, but he wanted them to be aware of what Board hearings would be like if members begin accepting new evidence. Mr. Munns said he recognized that the Board wanted to be able to ask questions of the applicant without having the applicant tell his or her life story during the Board hearing. However, he said that a court would wonder how the Board rationally distinguishes between evidence solicited by the Board and evidence presented by the applicant on his or her own.

Mr. Kirschbaum said that there are only a few cases where the Board members have questions for applicants. She said that in those cases, the matter could be remanded to the hearing officer. Mr. Easaw said he believed that relatively few applicants would bring new evidence. Mr. Seavers suggested that the number of applications might increase if applicants are told that they can present evidence or respond to Board members' questions at hearings.

Mr. Easaw informally polled the Board, a majority of which wanted to consider new evidence at the Board hearing. He asked Mr. Seavers to develop draft procedures that the Board could follow if it allowed new evidence at a hearing.

Mr. Baker suggested that the Board consider having a security guard at its hearings. Mr. Seavers said he would research costs and present the information to the Board at the next meeting.

## **FUTURE BOARD MEETINGS**

The Board members did not have any topics to propose for future Board meetings.

## **ADJOURNMENT**

Mr. Easaw adjourned the meeting at 10:49 a.m.

Minutes approved on August 19, 2010

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Dennis Seavers, Executive Director



# Arizona Board of Fingerprinting Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: August 16, 2010  
**SUBJECT FY 2011 budget proposal**

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This memo discusses a proposed budget for fiscal year (FY) 2011 for the Board to adopt at its August 19, 2010 meeting. The memo also provides financial information to assist the Board in its deliberations about the budget.

## **SUMMARY**

- The Board should adopt a budget that includes \$461,854.35 in expenditures and \$13,200 in legislative fund sweeps. The total expenditures would be \$475,054.35.
- The proposed budget projects \$630,000 in revenues. This projection assumes that DPS will receive 90,000 fingerprint-clearance-card applications in FY 2011.

## **FUND BALANCE**

- As of July 31, 2010—the last date when there was an end-of-month reconciliation with AFIS (the state accounting system) data—the Board's fund balance was \$202,300.16.
- As of August 16, 2010, the fund balance was \$186,415.36, with \$68,229 in pending deposits and \$13,200 in pending expenditures (a legislatively mandated fund sweep).
- As of August 16, 2010, the Board's annual-leave liability was \$12,983.25.

## **BUDGET PROPOSAL FOR FY 2011**

Attachment 1 proposes a budget that includes \$461,854.35 in expenditures and assumes \$630,000 in revenues. (The budget also includes \$13,200 in fund sweeps, which are discussed in the section below.)



Attachment 1 also provides a comparison of FY 2010 actual expenditures and revenues with the FY 2011 budget proposal. The list below explains areas where there are notable differences in spending between FYs 2010 and 2011.

- 6000 – Personal Services. This category refers to expenditures from wages and salaries. The budget proposal includes a significant drop in personal-services expenditures. This drop is primarily due to the February 2010 reduction in force (RIF) that the Board authorized. This budget assumes that the Board will continue to operate at the reduced staffing level. Depending on the status of the state budget, which could include future budget cuts, the Board could revisit the issue of its staffing level later in the fiscal year.
- 7221 – Rental of Land and Buildings. This category refers to rental costs for office space. The difference between FYs 2010 and 2011 is solely due to when end-of-FY-2010 payments hit the state's accounting system. In July 2010, the Board made a payment that normally would have appeared in the previous FY. In terms of actual, month-to-month expenditures, the rental costs remain the same.
- 7321 – Office Supplies. In FY 2010, the Board staff cut office supplies as much as possible because the Board had a limited cash flow. The FY 2011 proposal allows for reasonable spending amounts. Even though the FY 2011 budgeted amount is higher than the actual FY 2010 expenditures, the FY 2011 budgeted amount is identical to the amount in the FY 2010 budget.

#### *Fund sweeps and fund balance*

Laws 2010 (Seventh Special Session), Chapter 3, requires all Board employees to take six furlough days in FY 2011 and to transfer the savings in salaries and wages to the General Fund. The actual amount to be transferred, \$13,200, was determined by the Joint Legislative Budget Committee staff, and this transfer was required at the beginning of the FY. (I have already authorized the transfer.)

Although the fund balance will be high compared to recent fiscal years, the Board should be prepared for additional fund sweeps, pending the outcome of the November elections and state revenue collections. Later in the fiscal year, the Board could consider restoring its staff levels to the pre-RIF levels, if the fund balance remains healthy; but the Board is likely to have to keep its current staffing levels for much or all of FY 2011. In addition, a portion of the fund balance may need to be used for emergency IT-related expenditures that are not reflected in the budget. Specifically, most of the Board's computers are over seven years old, and some may need to be replaced if they fail.

#### *Revenues*

The projection for revenues—\$630,000—is about \$60,000 higher than the revenue projection for the FY 2010 proposed budget. This higher projection reflects the addition

of real-estate agents to the fingerprint-clearance-card system. It also reflects an unexpected increase in revenues toward the end of FY 2010 (for more information, please see my August 16, 2010 memo on the Board's FY 2010 budget performance). Although DPS received about 100,000 applications in FY 2010, I assume that DPS will receive 90,000 applications in FY 2011. Part of the reason for this lower estimate is that the number of applications DPS received in FY 2010 was unusually high. Without a clear explanation for the increase, which neither DPS nor I have been able to provide, I would prefer a more conservative estimate, particularly since an overly optimistic estimate may lead the Legislature to believe that we will have more revenues than we actually get and may encourage the Legislature to sweep more than we can afford.

**Attachment 1 - FY11 Budget Proposal (Compared with FY10 Actual)**

	<b>FY10 Actual</b>	<b>FY11 Proposed</b>	<b>Difference</b>
<b>REVENUES</b>			
<b>4900 - Operating Transfers In</b>			
Prior FY Carryover	\$ 162,934.42	\$ 181,692.06	\$ 18,757.64
4901 - Oper. Transfers In	\$ 641,186.00	\$ 630,000.00	\$ (11,186.00)
<b>Total 4900 - Oper. Trans. In</b>	<b>\$ 804,120.42</b>	<b>\$ 811,692.06</b>	<b>\$ 7,571.64</b>
<b>TOTAL REVENUES</b>	<b>\$ 804,120.42</b>	<b>\$ 811,692.06</b>	<b>\$ 7,571.64</b>
<b>EXPENDITURES</b>			
<b>6000 - Personal Services</b>			
	\$ 284,868.66	\$ 225,223.39	\$ (59,645.27)
<b>6100 - Employee-related exp.</b>			
	\$ 116,137.64	\$ 113,534.67	\$ (2,602.97)
<b>6200 - Prof. &amp; Outside Svcs.</b>			
6211 - Bond Issuance Cost	\$ 3,725.98	\$ 3,840.00	\$ 114.02
6271 - Education & Training	\$ -	\$ -	\$ -
6299 - Other Prof. & Out. Svcs.	\$ 404.80	\$ 1,000.00	\$ 595.20
<b>Total 6200 - Prof. &amp; Outside Svcs.</b>	<b>\$ 4,130.78</b>	<b>\$ 4,840.00</b>	<b>\$ 709.22</b>
<b>7000 - Other Operating</b>			
7110 - Insurance & Related Chgs	\$ 2,900.00	\$ 2,900.00	\$ -
7153 - Internal Svc. Data Proc.	\$ 7,985.97	\$ 7,137.01	\$ (848.96)
7172 - Ext. Comm. Long Dist.	\$ 13,777.64	\$ 13,002.84	\$ (774.80)
7179 - Other External Comm.	\$ 2,523.09	\$ 2,400.00	\$ (123.09)
7221 - Rental of Land & Bldgs.	\$ 59,697.55	\$ 70,551.65	\$ 10,854.10
7266 - Repair/Maint-Other Equip	\$ 1,323.59	\$ 1,387.25	\$ 63.66
7321 - Office Supplies	\$ 3,234.92	\$ 6,150.00	\$ 2,915.08
7481 - Postage & Delivery	\$ 9,698.15	\$ 10,000.00	\$ 301.85
7511 - Awards	\$ 24.13	\$ 100.00	\$ 75.87
7541 - Books, Subscr., & Pubs.	\$ 7,951.26	\$ 3,157.54	\$ (4,793.72)
7599 - Other Misc. Operating	\$ 69.00	\$ 470.00	\$ 401.00
<b>Total 7000 - Other Operating</b>	<b>\$ 109,185.30</b>	<b>\$ 117,256.29</b>	<b>\$ 8,070.99</b>
<b>8500 - Non-capital Equipment</b>			
8521 - Furniture Non-cap	\$ (1,719.02)	\$ -	\$ 1,719.02
8583 - PC/LAN Softw. Non-cap.	\$ 225.00	\$ 1,000.00	\$ 775.00
<b>Total 8500 - Non-capital Equip.</b>	<b>\$ (1,494.02)</b>	<b>\$ 1,000.00</b>	<b>\$ 2,494.02</b>
<b>9100 - Transfers Out</b>			
9101 - Op Trans Out: Fund Sweeps	\$ 109,600.00	\$ 13,200.00	\$ (96,400.00)
<b>Total 9100 - Oper. Trans. Out</b>	<b>\$ 109,600.00</b>	<b>\$ 13,200.00</b>	<b>\$ (96,400.00)</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 622,428.36</b>	<b>\$ 475,054.35</b>	<b>\$ (147,374.01)</b>
<b>NET INCOME</b>	<b>\$ 181,692.06</b>	<b>\$ 336,637.71</b>	<b>\$ 154,945.65</b>



# Arizona Board of Fingerprinting Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: August 16, 2010  
**SUBJECT FY 2010 budget report**

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The agenda for the Board's August 19, 2010 meeting includes a report from the executive director on the fiscal year (FY) 2010 budget performance. To help expedite the meeting, I've prepared this memo, which summarizes the Board's budget performance in FY 2010. Attachment 1 details the Board's expenditures and revenues, with a comparison to the approved FY 2010 budget.

## **SUMMARY**

- The fund balance at the beginning of FY 2010 was \$162,934.42.
- The Board had \$641,186 in revenues.
- The Board had \$622,428.36 in expenditures. Of the expenditures, \$109,600, or 17.61%, was for legislatively mandated fund transfers. Thus, the Board's operational expenses were \$512,828.36
- The fund balance at the end of FY 2010 was \$181,692.06.

## **DISCUSSION**

### *Revenues higher than anticipated*

Under the approved FY 2010 budget, the Board anticipated \$560,000 in revenues. The Board actually received \$81,186 more than estimated. At the end of the third quarter of FY 2010 (March 31, 2010), the Board was about 8% below expectations for revenue collections for the year to date. However, in the fourth quarter (April to June 2010), the Board had three unexpectedly high months for revenue; in fact, in that three-month period, the Board received the equivalent of almost 47% of its anticipated FY 2010 revenues. At this point, it is unclear whether these three months are anomalous or represent a new trend in revenues. Neither DPS nor I have been able to definitively

explain why the number of applications submitted toward the end of the FY 2010 was higher than in recent years.

*Total expenditures lower than budgeted, despite fund sweeps*

During FY 2010, the Legislature mandated \$109,600 in fund sweeps as part of the state budget. At the time the Board adopted its FY 2010 budget, it knew about \$67,100 in fund sweeps. The remaining \$42,500 in funds sweeps were required by subsequent legislative sessions. Even though the \$42,500 in later fund sweeps were required after the Board adopted its budget, expenditures were still \$4,643.18 lower than budgeted, largely because of a February reduction in force (RIF) authorized by the Board.

If the Board had not conducted the RIF, it still would have a relatively healthy fund balance. However, the fund balance would only have been healthy because of the unexpectedly high revenues in the fourth quarter, something that the Board could not have anticipated when it authorized the RIF. In fact, revenues could have been much lower, and it would have been poor fiscal management to gamble on high revenues when the historical data suggested the contrary. Although the RIF was unnecessary in a certain sense, I believe it was the correct decision at the time.

*Specific areas of difference between expenditures and budget*

Attachment 1 provides a comparison of actual expenditures and revenues with the FY 2010 budget. The list below explains areas where there are notable differences in spending.

- 6000 – Personal Services. This category refers to expenditures from wages and salaries. As discussed above, the Board authorized a RIF that substantially lowered personnel costs.
- 7153 – Internal Svc. Data Proc. This category refers to non-telephone IT-related costs, such as e-mail, server, and data storage. The cost was lower than anticipated in FY 2010 because of the RIF and because ADOA was able to reduce costs for end users.
- 7221 – Rental of Land & Bldgs. This category refers to the Board's rental costs for office space. The \$5,427.05 difference represents one month of rental costs and is the result of when payments cleared the state's accounting system rather than a reduction in rental payments.
- 7321 – Office Supplies. The reduction in office-supply expenditures is due to a number of factors, including the RIF and related business-process changes (e.g., we no longer have to print out as many applications, since applicants can download the application from online) and efforts by the staff to keep costs low.
- 7481 – Postage & Delivery. As with office supplies, the reduction in expenditures is due to business-process changes related to the RIF, such as not mailing all applications but rather making the application available online.

**ATTACHMENT 1**

**Comparison of Fiscal Year 2010 Budget with Actual Revenues and Expenditures**

	<u>Jul '09 - Jun 10</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
<b>Income</b>				
<b>4900 - Transfers In</b>				
4901 - Operating Transfers In	641,186.00	560,000.00	81,186.00	114.5%
<b>Total 4900 - Transfers In</b>	<b>641,186.00</b>	<b>560,000.00</b>	<b>81,186.00</b>	<b>114.5%</b>
<b>FY09 Carryover</b>	<b>162,934.42</b>	<b>162,934.42</b>	<b>0.00</b>	<b>100.0%</b>
<b>Total Income</b>	<b>804,120.42</b>	<b>722,934.42</b>	<b>81,186.00</b>	<b>111.23%</b>
<b>Expense</b>				
<b>Total 6000 - Personal Services</b>	<b>284,868.66</b>	<b>316,234.56</b>	<b>-31,365.90</b>	<b>90.08%</b>
<b>Total 6100 - ERE</b>	<b>116,137.64</b>	<b>117,571.63</b>	<b>-1,433.99</b>	<b>98.78%</b>
<b>6200 - Prof. &amp; Outside Services</b>				
6210 - Financial Services				
6211 - Bond Issuance Cost	3,725.98	3,945.98	-220.00	94.43%
<b>Total 6210 - Financial Services</b>	<b>3,725.98</b>	<b>3,945.98</b>	<b>-220.00</b>	<b>94.43%</b>
6270 - Education & Training				
6271 - Education & Training	0.00	100.00	-100.00	0.0%
<b>Total 6270 - Education &amp; Training</b>	<b>0.00</b>	<b>100.00</b>	<b>-100.00</b>	<b>0.0%</b>
6290 - Other Prof. & Out. Svcs.				
6299 - Other Prof. & Out. Svcs.	404.80			
<b>Total 6290 - Other Prof. &amp; Out. Svcs.</b>	<b>404.80</b>			
<b>Total 6200 - Prof. &amp; Outside Services</b>	<b>4,130.78</b>	<b>4,045.98</b>	<b>84.80</b>	<b>102.1%</b>
<b>7000 - Other Operating</b>				
7110 - Insurance & Related Chgs				
7111 - Risk Mgmt Chgs to St Agy	2,900.00	2,900.00	0.00	100.0%
<b>Total 7110 - Insurance &amp; Related Chgs</b>	<b>2,900.00</b>	<b>2,900.00</b>	<b>0.00</b>	<b>100.0%</b>

**ATTACHMENT 1**  
**Comparison of Fiscal Year 2010 Budget with Actual Revenues and Expenditures**

	<u>Jul '09 - Jun 10</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
7150 - IT Services				
7153 - Internal Svc. Data Proc.	7,985.97	10,932.33	-2,946.36	73.05%
7172 - External Comm. Long Dist	13,777.64	14,554.86	-777.22	94.66%
7179 - Other External Comm.	2,523.09	1,879.74	643.35	134.23%
Total 7150 - IT Services	<u>24,286.70</u>	<u>27,366.93</u>	<u>-3,080.23</u>	<u>88.75%</u>
7200 - Rental Expenditures				
7221 - Rental of Land & Bldgs.	59,697.55	65,124.60	-5,427.05	91.67%
Total 7200 - Rental Expenditures	<u>59,697.55</u>	<u>65,124.60</u>	<u>-5,427.05</u>	<u>91.67%</u>
7250 - Repair & Maintenance				
7266 - Repair/Main-Other Equip	1,323.59	1,449.32	-125.73	91.33%
Total 7250 - Repair & Maintenance	<u>1,323.59</u>	<u>1,449.32</u>	<u>-125.73</u>	<u>91.33%</u>
7300 - Operating Supplies				
7321 - Office Supplies	3,234.92	6,150.00	-2,915.08	52.6%
Total 7300 - Operating Supplies	<u>3,234.92</u>	<u>6,150.00</u>	<u>-2,915.08</u>	<u>52.6%</u>
7480 - Postage & Delivery				
7481 - Postage & Delivery	9,698.15	11,611.74	-1,913.59	83.52%
Total 7480 - Postage & Delivery	<u>9,698.15</u>	<u>11,611.74</u>	<u>-1,913.59</u>	<u>83.52%</u>
7500 - Miscellaneous Operating				
7511 - Awards	24.13	100.00	-75.87	24.13%
7531 - Dues	0.00	200.00	-200.00	0.0%
7541 - Books, Subscr., & Pubs.	7,951.26	8,810.80	-859.54	90.24%
7599 - Other Misc. Operating	69.00			
Total 7500 - Miscellaneous Operating	<u>8,044.39</u>	<u>9,110.80</u>	<u>-1,066.41</u>	<u>88.3%</u>
<b>Total 7000 - Other Operating</b>	<b>109,185.30</b>	<b>123,713.39</b>	<b>-14,528.09</b>	<b>88.26%</b>

**ATTACHMENT 1**  
**Comparison of Fiscal Year 2010 Budget with Actual Revenues and Expenditures**

	<u>Jul '09 - Jun 10</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
<b>8500 - Non-capital Equipment</b>				
8520 - Furniture Non-cap				
8521 - Furniture Non-capital	-1,719.02	-1,719.02	0.00	100.0%
Total 8520 - Furniture Non-cap	<u>-1,719.02</u>	<u>-1,719.02</u>	<u>0.00</u>	<u>100.0%</u>
8580 - Non-capitalized Software				
8583 - PC/LAN Software Non-cap.	225.00	125.00	100.00	180.0%
Total 8580 - Non-capitalized Software	<u>225.00</u>	<u>125.00</u>	<u>100.00</u>	<u>180.0%</u>
<b>Total 8500 - Non-capital Equipment</b>	-1,494.02	-1,594.02	100.00	93.73%
<b>9100 - Transfers Out</b>				
9101 - Operating Transfers Out	109,600.00	67,100.00	42,500.00	163.34%
<b>Total 9100 - Transfers Out</b>	<u>109,600.00</u>	<u>67,100.00</u>	<u>42,500.00</u>	<u>163.34%</u>
<b>Total Expense</b>	<u>622,428.36</u>	<u>627,071.54</u>	<u>-4,643.18</u>	<u>99.26%</u>
<b>Net Income</b>	<u><u>181,692.06</u></u>	<u><u>95,862.88</u></u>	<u><u>85,829.18</u></u>	<u><u>189.53%</u></u>





# Arizona Board of Fingerprinting Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: August 16, 2010  
**SUBJECT Legislative update**

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The agenda for the Board's August 19, 2010 meeting includes a report from the executive director on legislation. To help expedite the meeting, I've prepared this memo, which offers a summary of bills considered at the last regular legislative session that would have affected or will affect the Board of Fingerprinting. These are bills that I reported on for the Board's last meeting on March 2, 2010.

Budget bills that impacted the Board have been discussed previously and are not addressed in this memo.

**HB 2142 (board of athletic training; omnibus). Status: signed into law and effective on July 29, 2010.**

- The bill allows athletic trainers licensed by the Board of Athletic Training to present a valid fingerprint clearance card in place of meeting that board's normal fingerprinting requirement.
- Based on a discussion with the Board of Athletic Training, I believe the impact on the Board's finances and operations will be negligible.

**HB 2446 (alarm businesses and agents). Status: failed**

- The bill would have established a licensing requirement for businesses that sell alarm systems. The controllers of the businesses and the alarm agents would have been required to have valid fingerprint clearance cards.
- Based on data from the Arizona Department of Fire, Building, and Life Safety, I projected that the Board would have a 1.25% increase in caseload if the bill had passed and that the impact on Board finances and operations would be negligible.
- The bill was held in the Senate and therefore failed.

**HB 2696 (in-home personal care services agencies). Status: failed.**

- This bill would have regulated in-home caregiver agencies and employees. A condition of licensure would have been that all employees have valid fingerprint clearance cards.
- Based on limited data, I anticipated a substantial increase in caseload. The caregiver industry had provided significantly varying estimates on the number of people who would be required to get fingerprint clearance cards. Based on these varying estimates, I projected that the Board's caseload would increase by about 25%–50%. I estimated that the impact on Board finances and operations would be significant and that the legislation would need to address those issues.
- The bill was held in the House and therefore failed.

**SB 1219 (real estate licensees). Status: signed into law and effective on July 29, 2010.**

- This bill requires real-estate licensees to have valid fingerprint clearance cards. Previously, the Arizona Department of Real Estate (ADRE) required fingerprinting (but not fingerprint clearance cards) and examined criminal records internally. ADRE stated that the purpose of the bill was to eliminate the administrative burden and cost of internal fingerprinting checks and instead to require applicants to have a fingerprint clearance card.
- ADRE claimed that the bill would not require licensees to renew the fingerprint clearance cards when they expire after six years. Instead, license applicants would only need to present the fingerprint clearance card on initial application.
- As a result of the bill, the Board should expect an increase of about 150 good-cause-exception applications each year, or about a 7.5% increase in caseload. (This projection is based on estimates from ADRE.)
- The impact on the Board's finances and operations should be discernible but sufficiently minor for the Board to absorb.

**SB 1391 (criminal clearance cards; authorized company). Status: failed.**

- This bill would have made numerous changes to the existing fingerprint-clearance-card process.
  - It would have allowed criminal-background investigation companies (companies) authorized by the Arizona Department of Administration (ADOA) to conduct criminal-history background checks.
  - It would have replaced the term "fingerprint clearance card" with "criminal clearance card."
  - Cards would have expired after two years (rather than the current six years).
- Based on a February 23, 2010 legislative hearing (at which I testified against the introduced version of the bill), it appeared that the stakeholders who pushed the bill intended to create a parallel process to the current fingerprint-clearance-card system. Under this process, agencies or providers that require fingerprint

clearance cards could choose to require employees to have either a fingerprint clearance card or a criminal clearance card. A fingerprint-clearance-card application would be processed in the current manner by DPS and would be good for six years. A criminal-clearance-card application would be processed by the companies, would be valid for two years, and would not include a check of FBI criminal-history records. (The advocates of the bill stated that the companies have access to databases that in some ways are superior to the FBI database. They claim that there are advantages that the companies' background check would have over the DPS check, and agencies or providers could weigh the advantages and disadvantages of these two checks when deciding whether to require fingerprint clearance cards or criminal clearance cards.)

- If the bill is introduced in the next legislative session, there are a number of logistical issues that need to be addressed, such as ensuring that the Board of Fingerprinting gets access to the companies' criminal-history data if the criminal-clearance-card applicant applies for a good cause exception. If the bill is introduced next year and these issues are addressed, the bill may not pose a significant problem for the Board, although the Board would need to discuss its position on the bill at that time.
- The bill may not have a caseload impact on the Board, but it would have other effects on Board operations.
- The bill was held in the Senate and therefore failed.

**Arizona Board of Fingerprinting**  
**Fiscal Year 2010 Strategic Plan**  
July 1, 2009, to June 30, 2010

**Legend for progress**

✓	Progress or consistency in performance since previous quarter
✘	Decline in performance since previous quarter
■ (Green)	Notable progress made since previous quarter (only for outcome measures)
■ (Yellow)	Performance declined since previous quarter, but this decline is not a concern (only for outcome measures)
■ (Red)	Performance declined since previous quarter, and this decline warrants attention (only for outcome measures)

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**Goal 1. To make fair and consistent determinations on good cause exceptions**

Performance Measure	FY10 Estimate	FY10 Actual					
		Quarter 1	Quarter 2	Quarter 3	Quarter 4	Progress	YTD
Percent of investigator recommendations for expedited reviews accepted	93.00%	95.82%	95.58%	95.29%	96.59%	✓	95.71%
Percent of applications approved	90.00%	90.25%	90.79%	93.85%	94.49%	N/A	92.48%
Percent of approvals by expedited review	75.00%	90.74%	84.87%	85.90%	91.25%	N/A	88.59%
Percent of approvals by administrative hearing	25.00%	9.26%	15.13%	14.10%	8.75%	N/A	11.41%

**Goal 2: To provide applicants with timely decisions on their good-cause-exception applications**

Performance Measure	FY10 Estimate	FY10 Actual					
		Quarter 1	Quarter 2	Quarter 3	Quarter 4	Progress	YTD
Number of applications received	2,365	532	365	399	453	N/A	1,749
Number of applications disposed	2,365	489	516	343	669	N/A	2,017
Ratio of cases opened to cases closed	1:1	1:1.92	1:1.41	1:1.86	1:1.48	N/A	1:1.15
Average number of days to dispose	120.00	88.46	94.53	110.62	112.69	✘	102.74
Average number of days spent processing applications	90.00	39.81	39.69	43.05	53.41	✘	44.63
Average number of days spent processing application from receipt to expedited review	22.00	20.82	19.35	24.03	40.61	✘	27.45
Average days from expedited review to hearing	40.00	38.95	40.31	41.85	42.38	✘	40.53
Percent of applications with an expedited review within 20 days of receipt of a complete application*	100.00%	100.00%	99.45%	77.49%	18.46%	✘	69.31%
Percent of applications with an administrative hearing within 45 days of an expedited review*	100.00%	100.00%	100.00%	84.78%	100.00%	✓	96.89%
Percent of applications decided within 80 days of an administrative hearing*	100.00%	100.00%	93.22%	98.25%	59.57%	✘	89.19%

\*Applies only to applications received after September 18, 2007.

**Goal 3. To develop fair and comprehensible rules, policies, and procedures for determining good cause exceptions**

Performance Measure	FY10 Estimate	FY10 Actual					
		Quarter 1	Quarter 2	Quarter 3	Quarter 4	Progress	YTD
Number of requests received	3,616	741	733	499	0**	N/A	1,973
Ratio of requests for good cause exceptions to applications submitted	1:60	1:72	1:50	1:80	N/A**	N/A	1:61
Percent of applications complete on initial submission	40.00%	26.11%	25.96%	42.14%	44.19%	✓	34.82%

\*\* Due to a reduction in force, the Board changed its business process to eliminate the process of submitting requests.



# Arizona Board of Fingerprinting Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: August 16, 2010  
**SUBJECT: Administrative-hearing process**

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At its August 19, 2010 meeting, the Board will revisit its procedures for administrative hearings. Specifically, the Board members will discuss whether to allow applicants who have appeared at an administrative hearing before one of the Board's hearing officers to submit new evidence or testimony when the Board considers the hearing officer's recommendation.

The Board has discussed this issue on two previous occasions. The Board first adopted its current hearing procedures at a September 5, 2008 open meeting. After consulting with its assistant attorney general, the Board adopted a process where applicants could submit a written response to the hearing officer's recommendation and could appear at the Board hearing. However, the applicant generally would not be permitted to speak or present new evidence. At the September 5, 2008 meeting, the Board voted 3-1 to generally exclude new evidence (including testimony) but to consider new evidence in exceptional circumstances.

The Board revisited the issue in a discussion that spanned two Board meetings—August 21, 2009, and September 18, 2009. The Board revisited the issue because its practice did not conform to its policy—applicants were often permitted to present new evidence or testimony, and Board members posed questions to applicants with increasing frequency. Following the discussion, the Board did not alter the policy that it adopted at the September 5, 2008 meeting. Therefore, the Board's current policy is to allow applicants to submit a written response to the hearing officer's recommendation and to attend in person but, in general, not to permit the applicant to speak or present new evidence.

Recently, the Board's practice has again departed from its policy. Applicants who appear are regularly permitted to offer testimony or present new evidence, even though applicants are told in the notices of hearing that they will not be permitted to present

evidence or testimony. In a recent Board meeting, of the four applicants who appeared in person, the Board considered testimony or new evidence from three of the applicants. Also in a recent meeting, the Board even continued the hearing to a later date to allow the applicant to present evidence.

At the August 19, 2010 meeting, the Board will decide whether to alter its current policy. As discussed at previous meetings, Board members may have legitimate reasons for wanting to accept new evidence, although there are legal risks associated with this practice. However, the Board should ensure that its policies and practices match, for the following reasons.

- The Board staff needs clear guidance on what information to include in correspondence with applicants, including in hearing notices. If the Board wants to allow applicants to present new evidence or testimony, then the notices need to be rewritten, since they currently reflect the Board's policy of excluding new evidence or testimony.
- Applicants who don't appear at Board hearings (because they believe they won't be able to present new evidence or testimony) are currently treated differently than applicants who appear in person because applicants who appear may be given an opportunity to present evidence or respond to Board members' questions. Applicants who decide not to attend the Board hearing may have made a different decision if they knew that Board members might pose questions or permit new evidence or testimony.
- Disparities between Board policies and practices could become issues in audits or appeals.
- Inconsistent practices could place the Board in a position where it can't justify denying applicants' requests for the Board to make exceptions to current policies. Board members should keep in mind that applicants may discuss their treatment at Board hearings with their employers or coworkers, and other applicants may want the same treatment. Moreover, we often see the same attorneys representing applicants, and those attorneys may expect consistent treatment among their clients.

To assist your deliberations, I've attached a September 1, 2009 memo that I was asked at the August 21, 2009 meeting to prepare. The memo describes a process that the Board could follow if it were to alter its policy and allow new evidence or testimony to be submitted at the Board hearing. In addition, minutes from the previous Board meetings where this issue was discussed are available at [www.azbof.gov](http://www.azbof.gov) (or you can contact me to request the minutes). Finally, the Board's assistant attorney general will be available to answer questions at the August 19, 2010 meeting.





# Arizona Board of Fingerprinting Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: September 1, 2009  
**SUBJECT Administrative-hearing process**

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At its August 21, 2009 meeting, the Board discussed whether to allow applicants who have appeared at an administrative hearing before one of the Board's hearing officers to submit new evidence or testimony when the Board considers the hearing officer's recommendation. During the meeting, the Board's chairman requested that I prepare draft procedures for the Board to consider. This memo outlines draft procedures for applicants to submit new evidence or testimony after the evidentiary hearing.

The Board should note that I have drafted these procedures at the Board's request. By submitting this proposal, I am not necessarily recommending that the Board adopt the draft procedures. Rather, if the Board were to allow applicants to submit new evidence or testimony, these draft procedures describe a possible process for the Board and applicants to follow.

## **Current procedures**

In the good-cause hearing process, there are two hearings. The first hearing is before a hearing officer. The applicant presents evidence and testimony and answers questions from the hearing officer. For the purposes of this memo, I will refer to this hearing as the "evidentiary hearing." The second hearing is before the Board. At this hearing, the Board adopts, rejects, or modifies the hearing officer's recommendation. For the purposes of this memo, I will refer to this hearing as the "Board hearing."

The Board adopted its current procedures for hearings at its September 5, 2008 meeting. Under these procedures, an applicant may submit a written response to the hearing officer's recommendation and may appear at the Board hearing. However, the applicant is generally not permitted to speak at the hearing. At the September 5, 2008 meeting, the Board considered whether to permit applicants to submit new testimony or evidence at the Board hearing. By a vote of 3-1, the Board passed a motion to

generally exclude new evidence (including testimony) but to consider new evidence in exceptional circumstances.

### **Draft procedures**

Assuming that the Board were to change its policy and permit applicants to submit new evidence or testimony at the Board hearing, the Board could adopt the following procedures.

The notice for the Board hearing would tell applicants the following.

- That they may submit a written response to the hearing officer's recommendation at least 10 days before the Board hearing;
- That they should be prepared to answer any questions by the Board and should have application materials on hand to support their claims;
- That the applicant is not required to attend the Board hearing;
- That unless the Board members have questions, the applicant will not be permitted to speak.

Prior to the hearing, for every case (regardless of whether the Board members plan on asking questions), Board members must review the entire administrative record by reading the entire application file and listening to the audio recording of the evidentiary hearing.

At the hearing, the following would apply.

- If Board members have questions, they would direct the questions through the chairperson.
- If Board members ask the applicant questions, the applicant must first be sworn in by the chairperson.
- If the applicant answers a question, and the testimony could have a bearing on the decision, the Board must modify the hearing officer's recommendation to incorporate relevant findings of fact and conclusions of law and provide a basis for the modifications. Depending on the question asked, the Board may need to offer the applicant an opportunity to make summary comments at some point before the Board takes a vote.