

THE INDUSTRIAL COMMISSION OF ARIZONA



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October 1, 2009

Ms. Eileen Klein, Director
Governor's Office of Strategic Planning & Budgeting
1700 W. Washington Street, Suite 500
Phoenix, AZ 85007

Re: September 18, 2009 Request for FY 2010 Budget Reductions

Dear Ms. Klein,

This letter and attachments are submitted in response to your September 18, 2009, e-mail. As explained below, while we have submitted the requested list, we look forward to a continuation of the approach utilized in H.B. 2643 for the FY 2010 budget as it relates to the Industrial Commission of Arizona ("Commission").

At the outset, we would like to acknowledge the efforts of the Governor's staff and the Legislature in working with the Commission to address our concerns associated with the prior budget proposals. The Commission expressed concern that imposing expenditure reductions upon the Commission's administrative fund may not result in funds available to transfer to the State's general fund because the Commission would likely have to reduce the rate of the administrative tax that supports its administrative fund. Under that scenario, if the Commission's budget base were reduced, then the Commission would be unable to collect sufficient revenue to produce the amount needed for any proposed fund transfer.

To maximize the Commission's ability to transfer funds from its administrative fund to the State's general fund, the Commission asked that consideration be given to keeping its budget base at its full level. For FY 2010, based on a combination of projected revenue collections (based on that budget base) and other budget saving measures implemented by the Commission, we believed that we would have sufficient funds to satisfy the proposed fund transfer of \$3,673,000. After months of hard work by everyone involved, this approach was utilized in the FY 2010 budget. H.B. 2643 requires the Commission's administrative fund to transfer \$3,673,900 to the State's general fund and the Commission's budget base was restored to \$19,859,700. As required under this budget, the Commission will be making the required transfer in three separate installments over FY 2010.

October 1, 2009

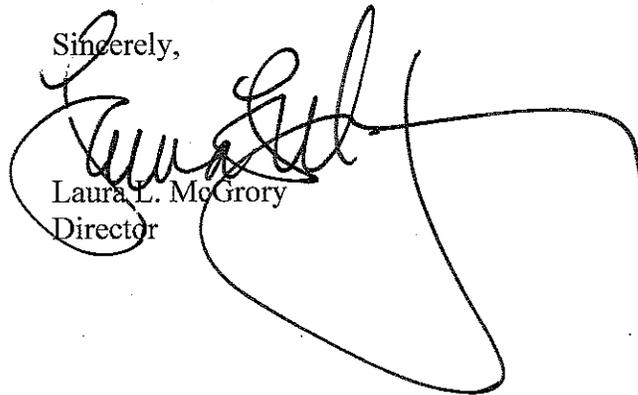
Re: Industrial Commission of Arizona FY 2010 Budget Reductions

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This approach ensures a better result for the State and the Commission. For this reason, it is our hope that we can continue to use this approach to the extent that the Commission is impacted by the continuing fiscal crisis confronting the State. Rather than looking at reductions to our appropriated budget, we would request that we focus on other potential solutions, which may include whether additional funds are available to transfer to the State's general fund from the Commission's administrative fund.

For purposes of this exercise, we were instructed to use the Commission's appropriated budget of \$19,859,700 without regard for the \$3,673,900 that is required to be transferred under H.B. 2643. We have complied with this instruction, although it should be pointed out that our ability to transfer the \$3,673,900 is because we are self-imposing expenditure reductions from the Commission's administrative fund.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Laura L. McGrory', is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

Laura L. McGrory
Director

cc: Thomas Soteros-McNamara, OSPB Staff Analyst
(via e-mail)

Attachments

LLM:th

**FY 2010 BUDGET REDUCTIONS - SUMMARY OF ISSUES
INDUSTRIAL COMMISSION OF ARIZONA**

ALL NON-GENERAL FUNDS

FY 2010 All Non-General Funds Budget (less Federal Funds) **19,859,700**

AGENCY REDUCTION TARGET - ALL NON-GENERAL FUNDS (w/o Federal Funds) **\$2,978,955**

Fund	Reductions Amount	Percent Reductions
Administration Fund	\$3,011,903	101.1%
Issue Total	\$3,011,903	
All Non-General Funds Total as a Percentage of Agency Non-GF Reduction Target		101%

**FY 2010 BUDGET REDUCTIONS - SUMMARY OF ISSUES
INDUSTRIAL COMMISSION OF ARIZONA**

ADMINISTRATION FUND

FY 2010 All Non-General Funds Budget (less Federal Funds) 19,859,700

AGENCY REDUCTION TARGET - ALL NON-GENERAL FUNDS (w/o Federal Funds) \$2,978,955

Priority	Issue Title¹	Reductions Amount
1	Reduction of Operating Expenses-Administrative Fund	\$983,466
2	Elimination of Vacant Positions-Administrative Fund	\$1,343,937
3	Court Reporting Service-Administrative Fund	\$475,000
4	Professional Witness Fees-Administrative Fund	\$209,500
	Issue Total	\$3,011,903
	Fund Total as a Percentage of Non-General Fund Reduction Target	101%

¹ Please complete the attached Description and Impact Statement for each issue.

**STATE OF ARIZONA
FY 2010 BUDGET REDUCTIONS - ISSUE DESCRIPTIONS**

Industrial Commission of Arizona

Issue Title: Reduction of General Operational Expenses

Issue Priority: 1

Reduction Amount:

Administration Fund: \$983,466

Total: \$983,466

Issue Description and Statement of Effects

Through implementation of internal efficiency/credit measures, and in order to meet the required \$3,673,000 transfer under H.B. 2643, the Commission has/will reduce expenses from its administrative fund in the following categories of expenditures: Professional & Outside Services, Travel (in-state and out-of-state) and Other Operating Expenditures (IT services, rental expenditures, repair/maintenance, operating supplies, education/training, printing, postage/delivery, miscellaneous operating). To maximize the Commission's ability to complete this transfer, H.B. 2643 restored the Commission's budget base to \$19,859,700. Although the Commission has the authority to spend up to its appropriation, the Commission has self-imposed expenditure reductions from its administrative fund in order to generate revenue to fund the foregoing transfer. If the Commission's authority to spend under its appropriated budget is reduced 15% (effective January 1, 2010), then the self-imposed expenditure reductions would become permanent.

As explained in the attached cover letter, reducing the Commission's appropriated budget may not result in funds available to transfer to the State's general fund and will likely jeopardize the ability of the Commission to complete the foregoing transfer of \$3,673,000. To maximize the Commission's ability to transfer funds from its administrative fund to the State's general fund, the approach utilized in H.B. 2643 for FY 2010 budget (as it relates to the Commission) should be continued. This approach ensures a better result for the State and the Commission.

October 9, 2009

**STATE OF ARIZONA
FY 2010 BUDGET REDUCTIONS - ISSUE DESCRIPTIONS**

Industrial Commission of Arizona

Issue Title: Elimination of Vacant Positions

Item Priority: 2

Reduction Amount:

Administration Fund: \$1,343,937

Total: \$1,343,937

Issue Description and Statement of Effects

In order to meet the required \$3,673,000 transfer under H.B. 2643, the Commission has/will reduce personnel expenses from its administrative fund through vacancy savings. To maximize the Commission's ability to complete this transfer, H.B. 2643 restored the Commission's budget base to \$19,859,700. Although the Commission has the authority to spend up to its appropriation, the Commission has self-imposed expenditure reductions from its administrative fund in order to generate revenue to fund the foregoing transfer. If the Commission's appropriated budget is reduced 15% (effective January 1, 2010), then the "vacancy savings" would become permanent (the vacant positions would be eliminated).

As explained in the attached cover letter, reducing the Commission's appropriated budget may not result in funds available to transfer to the State's general fund and will likely jeopardize the ability of the Commission to complete the foregoing transfer of \$3,673,000. To maximize the Commission's ability to transfer funds from its administrative fund to the State's general fund, the approach utilized in the H.B. 2643 for FY 2010 budget (as it relates to the Commission) should be continued. This approach ensures a better result for the State and the Commission.

October 9, 2009

**STATE OF ARIZONA
FY 2010 BUDGET REDUCTIONS - ISSUE DESCRIPTIONS**

Industrial Commission of Arizona

Issue Title: Court Reporting Services-Administrative Fund
A.R.S. §§ 23-941(E), 23-943(C)

Issue Priority: 3

Reduction Amount:

Administration Fund: \$475,000

Total: \$475,000

Issue Description and Statement of Effects

Pursuant to A.R.S. § 23-941(E) a record of hearing proceedings is required to be made. Additionally, A.R.S. § 23-943(C) provides that the record of the proceeding shall be transcribed at the expense of the Commission when a request for review is filed. The Commission currently pays all costs associated with the recording and transcription of workers' compensation hearings.

1. Court reporting costs will be eliminated by requiring that the costs be borne by one or more parties appearing before the Commission.
2. 5,128 hearings were held in FY 2009, with 374 requests for review being filed. Costs may vary from case to case, but can run several hundred dollars to over a thousand dollars per case
3. Injured workers will be the most adversely affected if the costs of transcription are shifted to them. Injured workers who cannot afford to pay the transcription costs will be effectively foreclosed from pursuing their workers' compensation claims, resulting in the denial of benefits to which they would otherwise be entitled under law. The number of cases in which review is sought will likely decrease under this scenario because of the potentially prohibitive cost of transcription. If the cost is shifted to the other participants in the system (workers' compensation insurance carriers/self-insured employers), then this cost may impact workers' compensation rates. Other adverse economic impacts will likely be experienced. Additionally, if hearings are only transcribed at the expense of a party upon the filing of a request for review, then administrative law judges will not have the benefit of a hearing transcript as part of their decision making process. This will likely

impact the quality of the decisions issued as well as increase the time within which a decision is issued.

4. The workers' compensation system is mandated by the state constitution and in that sense was constitutionally created. ARIZ. CONST. ART. 18, § 8 provides in pertinent part:

The Legislature shall enact a Workmen's Compensation Law applicable to workmen engaged in manual or mechanical labor in all public employment whether of the State, or any political subdivision or municipality thereof as may be defined by law and in such private employments as the Legislature may prescribe by which compensation shall be required to be paid to any such workman, in case of his injury and to his dependents, as defined by law, in case of his death, by his employer, if in the course of such employment personal injury to or death of any such workman from any accident arising out of and in the course of, such employment, is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its agents or employee or employees to exercise due care, or to comply with any law affecting such employment. . .

From existing caselaw, it can be argued that no action may be taken that conflicts with the constitutional mandate to have a functioning workers' compensation system. A substantial portion of the ICA's Administrative Fund is for the purpose of enforcing the laws that comprise the workers' compensation system. *See, e.g.,* A.R.S. § 23-107(A)(2). Accordingly, the state may face litigation if it reduces the ICA's expenditures or otherwise sweeps monies from the Administrative Fund to the extent that it limits or impairs the implementation of the workers' compensation system. Any action that brings about this result would likely be met with constitutional challenges. Additional legal restrictions exist to shifting court reporting costs if applicable statutes are not amended.

**STATE OF ARIZONA
FY 2010 BUDGET REDUCTIONS - ISSUE DESCRIPTIONS**

Industrial Commission of Arizona

Issue Title: Professional Witness Fees-Administrative Fund
A.R.S. §§ 23-921; A.A.C. R20-5-141(C)

Issue Priority: 4

Reduction Amount:

Administration Fund: \$209,500

Total: \$209,500

Issue Description and Statement of Effects

Pursuant to A.A.C. R20-5-141(C), the Commission pays the witness fees of all medical witnesses testifying in workers' compensation hearings at a rate set under the Commission's fee schedule. The current rate is \$110 for the first hour and \$55 for each additional hour.

1. Medical witness fees will no longer be paid by the ICA. Costs for these fees will be borne by one or more of the parties appearing before the ICA.
2. 5,128 hearings were held in FY 2009. Although the ICA does not maintain statistics regarding the number of physicians testifying at the ICA, physicians testify in ICA case on a regular basis.
3. Injured workers who cannot afford to pay these witness fees will be effectively foreclosed from pursuing their workers' compensation claims, resulting in the denial of benefits to which they would otherwise be entitled under law. The number of cases in which a request for hearing is sought will likely decrease under this scenario because of the potentially prohibitive costs of paying for the testimony of physicians. If the cost is shifted to the other participants in the system (workers' compensation insurance carriers/self-insured employers), then this cost will adversely impact workers' compensation rates. Other adverse economic impacts will likely be experienced. Additionally, physicians will be less inclined to testify at ICA hearings if they are not paid for their testimony from a reliable source. This will adversely impact the ability of the parties to meet their respective burdens of proof.

4. The workers' compensation system is mandated by the state constitution and in that sense was constitutionally created. ARIZ. CONST. ART. 18, § 8 provides in pertinent part:

The Legislature shall enact a Workmen's Compensation Law applicable to workmen engaged in manual or mechanical labor in all public employment whether of the State, or any political subdivision or municipality thereof as may be defined by law and in such private employments as the Legislature may prescribe by which compensation shall be required to be paid to any such workman, in case of his injury and to his dependents, as defined by law, in case of his death, by his employer, if in the course of such employment personal injury to or death of any such workman from any accident arising out of and in the course of, such employment, is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its agents or employee or employees to exercise due care, or to comply with any law affecting such employment. . .

From existing caselaw, it can be argued that no action may be taken that conflicts with the constitutional mandate to have a functioning workers' compensation system. A substantial portion of the ICA's Administrative Fund is for the purpose of enforcing the laws that comprise the workers' compensation system. *See, e.g.,* A.R.S. § 23-107(A)(2). Accordingly, the state may face litigation if it reduces the ICA's expenditures or otherwise sweeps monies from the Administrative Fund to the extent that it limits or impairs the implementation of the workers' compensation system. Any action that brings about this result would likely be met with constitutional challenges. Additional legal restrictions exist if applicable rules and fee schedules are not amended.