FY 2010 BUDGET REDUCTIONS - SUMMARY OF ISSUES
STATE PERSONNEL BOARD

PERSONNEL BOARD FUND

FY 2010 Personnel Board Fund Budget	**329,100**
AGENCY REDUCTION TARGET - GENERAL FUND	$49,365

Priority	Issue Title[1]	Reductions Amount
1	Contract Hearing Officer Services	$49,400
	Issue Total	**$49,400**
	Fund Total as a Percentage of Personnel Board Fund Reduction Target	100%

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

DRAFT

STATE OF ARIZONA
FY 2010 BUDGET REDUCTIONS - ISSUE DESCRIPTIONS

STATE PERSONNEL BOARD

Issue Title: Contract Hearing Officer Services

Issue Priority: 1

Reduction Amounts:
1107-Personnel Board Fund: $49,400

Total: $49,400

THE FUNCTIONS OF THE PROGRAM BEING ELIMINATED OR REDUCED

The Personnel Board has been mandated to hear disciplinary appeals and whistleblower complaints filed by state employees. Courts see the function of the Board as an entity to administrate an impartial assessment of an agency's disciplinary action and if the action is improper, to remedy the same. To that end, the Board contracts with hearing officers to sit as the fact finder in each appeal hearing, to hear testimony from the parties, to review exhibits admitted into evidence, and to make a recommendation on each appeal to the full Board. The Board makes the final decision. The Board's decisions are appealable in Superior Court.

The Personnel Board does not have a number of programs that can be eliminated. In fact, only one program exists at the Board and that is the hearing of appeals and complaints filed by state employees. This is the Board's sole function. As a result, the only program that would be affected by the 15% reduction would be the expeditious and impartial hearing of appeals and complaints. The reduction may ultimately eliminate state employees' constitutional rights to due process which they are entitled to under the 14th Amendment.

THE EFFECTS OF NOT PERFORMING THOSE FUNCTIONS

An appropriation in the amount of $279,700 (total after the 15% reduction) for FY2010 will be insufficient to operate for the entire fiscal year. Because of the cuts in February 2009, the Board had to temporarily cease using contract hearing officers to hear appeals and complaints. It could only operate for eight months of the fiscal year (with an appropriation of $329,100). **The proposed reduction will *prohibit* the Board from utilizing contract hearing officers to hear appeals and complaints in more than 93% of its anticipated caseload for FY2010 and force the Board to rely totally on volunteer hearing officers to administer the state's merit system (which it has been doing since March 2009).**

DRAFT

The Board has been operating at a much reduced level of service and solely on the good grace of Superior Court Judges Pro Tem, who have been donating a few hours a month providing pro bono hearing officer services. *This, however, is a temporary solution and in no way considered a permanent remedy.* The use of volunteers has allowed the Board to continue hearing cases, but has resulted in the majority of them not being heard in a timely manner. (For example, an appeal from an employee who was suspended in November 2008 has yet to be heard because the employee needs an ADA accommodation which the Board cannot provide at this point because it has no funds from which to pay for the services.) Prioritization of appeals and complaints is also taking place with dismissals being heard before any demotions, suspensions, or whistleblower complaints where the employee is still employed.

The average length of the appeal process has increased from 113 days in FY2008 to 122 days in FY2009 to 202 days in FY2010 (to date). This increase is due to the Board's use of volunteer hearing officers who are not as familiar with the Board's procedures, rules, and statutes; and whose schedules, and the fact that they are doing pro bono work, have not permitted hearings to proceed in a timely fashion. Hearing officer reports are not being filed within the 30 days mandated under the law, and hearing dates are being rescheduled because of other commitments at the volunteers' place of employment. The use of volunteers has staved off anticipated lawsuits and allowed the Board to continue to operate, albeit at a reduced capacity. The Board cannot continue to solely rely on volunteer attorneys to hear appeals and complaints. Timeliness is affected, statutory deadlines are not being met, and due process is not being afforded to employees. There are currently 26 cases that do not have a hearing officer assigned to them. The state could very well be placed in a position of defending costly lawsuits filed in court as a result of the Board not hearing cases in a timely manner. Penalties, attorney fees, and larger back pay awards to employees who prevail in a case could also be imposed by the court.

An appropriate level of funding is required to administer the state's merit system and allow for due process. (To be able to comply with statutory timeframes, a legislative change may be in order.)

POSSIBLE ALTERNATIVE WAYS TO FUND THE PROGRAM

Shift from General Fund to Personnel Board Fund: Since its creation, the Personnel Board has been funded by a General Fund appropriation. During the past legislative session, the Board shifted funding from the General Fund to the Personnel Board Fund. The General Government Budget Reconciliation Bill raised the pro rata personnel charge to state agencies from 1.07% to 1.10%. The increased collections are to be deposited in the Personnel Division Fund for use by the Board. To date, the Board has not received any funds as a result of this shift and will not until November 25, 2009. The number of appeals and complaints received has increased by 39 percent over the same period last

DRAFT

year. The lack of an appropriation on July 1st, as well as the unavailability of hearing officers, has contributed to the backlog of cases that have not been scheduled for hearing.

Collection of Fees: The Personnel Board does not collect any fees associated with filing or hearing an appeal or complaint. Implementing any new fees has historically been opposed by the Legislature. The state agency imposing the discipline on an employee does so by issuing the employee a letter. The employee may then file an appeal with the Board. A majority of the appeals received by the Board are from dismissals; therefore, imposing any fees would carry an additional financial burden on the employee. This financial burden is also present in instances where an employee is demoted or suspended.

Appointment of Contract Hearing Officers: The Board's operating statute provides for the appointment of hearing officers to hear appeals. The Attorney General's Office has interpreted the language in the statute to mean the Board itself could be responsible for hearing appeals and complaints should funding not be available for contract hearing officers. The Personnel Board consists of five members appointed by the Governor and confirmed by the Senate. The whole concept of a five member lay board is to review the facts and evidence and determine if a disciplinary action imposed by an agency was appropriate under the circumstances. Board members exercise judgment and use their experience in the personnel field to impartially review disciplinary actions of an agency. The Board serves an administrative function and the process is less formal than court proceedings. Each member of the Board serves basically in a volunteer position, receiving (when funds are available) just $30.00 per meeting. The members are not compensated for their preparatory review of the cases which is done on an individual basis prior to their attendance at a meeting. The members, as well, are employed in private industry and cannot necessarily devote the time required to sit as the fact finder in every appeal and complaint. They have authorized hearing officers to perform this function. The Board schedules approximately eight hearings per month with each lasting an average of six hours. The length of time involved and the quasi-judicial nature of the hearings require contract hearing officers to sit as the fact finder and make a report to the Board.

Full-time/In-house Hearing Officer: The Board does not employee a full-time attorney to hear cases for the following reasons: (1) an attorney's pay would be approximately $60,000 per year plus state benefits; (2) there would be an increase in operating supplies and the need to purchase additional equipment; (3) the Board's caseload would be more than one individual could handle; (4) the appearance of impartiality would be compromised as the hearing officer would be a "state" employee hearing another state employee's discipline; and (5) contract hearing officers provide neutrality, eliminate any conflict of interest issues, and are readily available to hear cases.

PROVIDE A LEGAL CITATION FOR THIS FUNCTION

DRAFT

Statutory Reference: A.R.S. §41-781, §41-782, §41-783 and §41-785
A.R.S. §38-531, et seq.

Arizona Administrative Rules: R2-5.1-101 through R2-5.1-104

Legal Citations Regarding Board's Use of Hearing Officers: Evans vs. State, Ex Rel, 131 Ariz. 569 (1982)

DRAFT