REVISED VERSION

ARIZONA BOARD OF FINGERPRINTING

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Telephone (602) 265-0135 • Fax (602) 265-6240

Notice of Public Meeting

August 24, 2007, at 9:00 a.m.
3839 North 3rd Street, Suite 101, Phoenix, Arizona

Board Members
Mike LeHew, Department of Economic Security, Chair
Kim Pipersburgh, Department of Health Services, Vice Chair
Rand Rosenbaum, Administrative Office of the Courts
Charles Easaw, Department of Education
Arthur W. Baker, Department of Juvenile Corrections

Executive Director
Dennis Seavers

Under Arizona Revised Statutes ("A.R.S.") § 38–431.02, notice is hereby given to the members of the Arizona Board of Fingerprinting ("board") and to the general public that the board will hold a meeting open to the public as specified below. The board reserves the right to change the order of the agenda.

Individuals who wish to acquire background material provided to board members (with the exception of material relating to possible or previous executive sessions) may request them by contacting Dennis Seavers at (602) 265-0135.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Dennis Seavers at (602) 265-0135. Requests should be made as early as possible to allow time to arrange the accommodation.

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DATED AND POSTED THIS 21st day of August 2007 at 6:30 p.m.

Arizona Board of Fingerprinting

By _____
Dennis Seavers, Executive Director

AGENDA

I. CALL TO ORDER AND ROLL CALL — Mr. LeHew or Ms. Pipersburgh

II. CALL TO THE PUBLIC — Mr. LeHew or Ms. Pipersburgh

At this portion of the meeting, the public is invited to make comments. Arizona law prohibits board members from discussing items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to scheduling the matter for further consideration and decision at a later date.

III. APPROVAL OF MINUTES — Mr. LeHew or Ms. Pipersburgh

A. Minutes from April 20, 2007, meeting
B. Minutes from May 31, 2007, meeting (including executive-session minutes)
C. Minutes from June 5, 2007, meeting (including executive-session minutes)
D. Minutes from June 15, 2007, meeting (including executive-session minutes)

IV. *BAKER* CASE — Mr. Seavers

At this portion of the meeting, the board will discuss the case of *Baker* v. *Board of Fingerprinting*, LC2006-000368-001. To respond to this case, the board may adopt business-process policies. The board may schedule further discussion of this case at a future meeting or request that its staff research possible legislation.

V. DISCUSSION OF IMPACT OF HOUSE BILL 2790 — Mr. Seavers

At this portion of the meeting, the board will discuss the possible impact of the 2007 education omnibus reconciliation bill (House Bill 2790). The bill may contain a requirement that all noncertified public-school personnel obtain a fingerprint clearance card. The board may schedule further discussion of this case at a future meeting, or request that its staff propose policies and procedures to cope with the operational impact of the bill or research possible legislation.

REVISED VERSION

VI. REPORTS — Mr. Seavers

A. Fiscal year ("FY") 2007 budget
B. FY 2007 strategic plan
C. Sunset hearing

VII. ADOPTION OF FY 2008 BUDGET — Mr. LeHew or Ms. Pipersburgh

VIII. DISCUSSION OF PROPOSED RULES — Mr. Seavers

At this meeting, the board will consider proposed changes to the rules. The board will not take action to adopt or modify the rule proposal until a later meeting. The primary purpose of the rule proposal is to respond to the time-frame requirements that will become effective on the General Effective Date.

IX. ADJOURNMENT — Mr. LeHew or Ms. Pipersburgh

Percent of applications decided within 60 days of hearing	75.00%	17.33%	90.00%	90.00%	90.00%

Goal 3. To develop fair and comprehensible rules, policies, and procedures, for determining good cause exceptions.					
	FY 2007 Estimate	**FY 2007 Actual**	**FY 2008 Estimate**	**FY 2009 Estimate**	**FY 2010 Estimate**
Number of requests received	3,207	3,236	3,405	3,616	3,840
Ratio of requests for good cause exceptions to applications submitted	1:.65	1:.61	1:.70	1:.70	1:.70
Percent of applications complete on initial submission	45.00%	37.30%	45.00%	50.00%	55.00%

Arizona Board of Fingerprinting

Memo

TO: Board members and alternates

FROM: Dennis Seavers

C:

Date: August 13, 2007

SUBJECT: FY 2008 Budget

At an August 24, 2007 open meeting, the Board will consider the enclosed proposal for the Board's fiscal year ("FY") 2008 budget. This memo summarizes the changes between the FY 2007 and 2008 budgets and highlights notable areas of spending.

Revenues

The proposed budget assumes that the Board will receive $302,589 in fee-based revenues. This projection is based on FY 2007 revenues, which were lower than anticipated. (The Board's FY 2007 budget assumed that DPS would receive 120,000 fingerprint-clearance-card applications. However, DPS received just over 100,000.)

In addition to estimated revenues of $302,589, the Board will carry forward a fund balance of $470,231.64 from FY 2007.[1]

Expenditures

In FY 2007, the Board spent $333,863.88. Under the proposed budget, in FY 2008, the Board would spend $566,741.13.

Much of the increased spending is due the addition of two new staff positions and related expenses. The Board approved the increased spending at its April 20, 2007, meeting. For the purpose of developing a conservative budget, the proposed budget assumes that Board employees will take advantage of the highest level of benefits available, even though actual employee-related expenditures will likely be lower.

In addition to the increased expenses due to new staff positions, the FY 2008 budget reflects $15,000 in information-technology expenses. These expenses, which include database improvements, were approved for the FY 2007 budget. However, due to the imposition of time frames on the Board and a court case that affected the Board's business process, the database upgrades were delayed until the Board could adopt a business process that reflected the impact of the time frames and court case.

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[1] Under A.R.S. § 41–619.56(B), monies in the Board of Fingerprinting Fund are non-lapsing, so the Board carries forward its fund balance from fiscal year to fiscal year.

Finally, the increase includes $6,500 to purchase a new photocopier/scanner. The Board's current copier is breaking down more frequently. In addition, the scanning feature of the new copier would significantly save the administrative assistants time spent preparing scanned files for hearings.

Revenues versus expenditures

Under the proposed budget, spending would outstrip revenues by $264,152.13. The Board's fund balance from FY 2007 would cover the deficit. The Board would end the fiscal year with a fund balance of $206,079.51.

As discussed in its April 20, 2007, meeting, this deficit would eventually require the Board to change its fee, perhaps by the end of FY 2008. The Board may need to increase its portion of the fee by $2.00, if revenues remain at the same level as FY 2007.

Arizona Board of Fingerprinting
Fiscal Year 2008 Budget

	Jul '08 - Jun 09
Income	
4900 - Transfers In	
4901 - Operating Transfers In	302,589.00
Total 4900 - Transfers In	302,589.00
FY07 Carryover	470,231.64
Total Income	772,820.64
Expense	
6000 - Personal Services	279,611.58
6100 - ERE	106,505.89
6200 - Prof. & Outside Services	
6210 - Financial Services	
6211 - Bond Issuance Cost	1,653.00
Total 6210 - Financial Services	1,653.00
6270 - Education & Training	
6271 - Education & Training	32.00
Total 6270 - Education & Training	32.00
6290 - Other Prof. & Out. Svcs.	
6299 - Other Prof. & Out. Svcs.	15,450.00
Total 6290 - Other Prof. & Out. Svcs.	15,450.00
Total 6200 - Prof. & Outside Services	17,135.00
7000 - Other Operating	
7150 - IT Services	
7153 - Internal Svc. Data Proc.	8,400.00
7172 - External Comm. Long Dist	10,800.00
7179 - Other External Comm.	3,100.00
Total 7150 - IT Services	22,300.00
7200 - Rental Expenditures	
7221 - Rental of Land & Bldgs.	60,004.66
7229 - Miscellaneous Rent	344.00
Total 7200 - Rental Expenditures	60,348.66
7250 - Repair & Maintenance	
7266 - Repair/Maint-Other Equip	1,240.00
7269 - Repair & Maint (Other)	6,000.00
Total 7250 - Repair & Maintenance	7,240.00
7300 - Operating Supplies	

Arizona Board of Fingerprinting
Fiscal Year 2008 Budget

	Jul '08 - Jun 09
7321 - Office Supplies	15,000.00
Total 7300 - Operating Supplies	15,000.00
7450 - Conf, Edu, & Training	
7455 - Conf, Edu, & Train Regis	1,400.00
Total 7450 - Conf, Edu, & Training	1,400.00
7470 - Printing & Photography	
7471- Internal Printing	400.00
Total 7470 - Printing & Photography	400.00
7480 - Postage & Delivery	
7481 - Postage & Delivery	15,000.00
Total 7480 - Postage & Delivery	15,000.00
7500 - Miscellaneous Operating	
7511 - Awards	500.00
7541 - Books, Subscr., & Pubs.	11,400.00
Total 7500 - Miscellaneous Operating	11,900.00
Total 7000 - Other Operating	133,588.66
8500 - Non-capital Equipment	
8520 - Furniture Non-cap	
8521 - Furniture Non-capital	15,000.00
Total 8520 - Furniture Non-cap	15,000.00
8550 - EDP Equip PC/LAN Non-cap	
8551 - EDP Equip. Non-cap Purch	11,500.00
Total 8550 - EDP Equip PC/LAN Non-cap	11,500.00
8580 - Non-capitalized Software	
8583 - PC/LAN Software Non-cap.	2,400.00
Total 8580 - Non-capitalized Software	2,400.00
Total 8500 - Non-capital Equipment	28,900.00
9100 - Transfers Out	
9101 - Operating Transfers Out	1,000.00
Total 9100 - Transfers Out	1,000.00
Total Expense	566,741.13
Net Income	**206,079.51**

A.A.C. R13-11-101. Applicability

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card ~~pursuant to~~ UNDER A.R.S. § 41—1758.03.

A.A.C. R13-11-102. Definitions

In this Article, the following definitions apply, unless the context otherwise requires:

1. "Appellant" means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board ~~pursuant to~~ UNDER A.R.S. § 41–1758.03; and who submits a request ~~pursuant to~~ ACCORDING TO R13-11-103(A).
2. ""Applicant" means a person who applies for a fingerprint clearance card ~~pursuant to~~ UNDER A.R.S. § 41–1758.03.
3. "APPLICATION" MEANS ALL OF THE DOCUMENTS REQUIRED BY A.A.C. R13-11-104(A).
~~3~~ 4. "Board" means the Board of Fingerprinting.
~~4~~ 5. "Department" means the Department of Public Safety.
~~5~~ 6. "Department's notice" means the notice of denial or suspension of a fingerprint clearance card that the Department sends to an applicant ~~pursuant to~~ UNDER A.R.S. § 41–1758.04.
~~6~~ 7. "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant submits by the Board or its hearing officer without the appellant being present.
~~7~~ 8. "Good cause exception" means the issuance of a fingerprint clearance card to an appellant ~~pursuant to~~ UNDER A.R.S. § 41—619.55.
~~8~~ 9. "Hearing officer" means an administrative law judge or other person ~~hired~~ APPOINTED by the Board~~, or if an agreement exists between the Board and the Office of Administrative Hearings, appointed by the director of the Office of Administrative Hearings,~~ to determine good cause exceptions.
~~9. "Office" means the Office of Administrative Hearings.~~
10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception ~~pursuant to~~ UNDER A.R.S. § 41–619.55, along with a copy of all pages of the Department's notice. A person's dated signature on the Department's notice shall suffice as a written indication.

A.A.C. R13-11-103. Request for good cause exception

A. A person who meets the requirements of A.R.S. § 41–1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department's notice.
B. The Board shall send an application package within five business days to an applicant if one of the following applies:
    1. The applicant meets the requirement of R13-11-103(A).

2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.
3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board shall determine a request incomplete if the request lacks one of the following:
    a. A written indication that the applicant wishes to appeal for a good cause exception ~~pursuant to~~ UNDER A.R.S. § 41–619.55, or
    b. The Department's notice or any of its pages.

C. Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.

D. The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days if one of the following applies:
1. The applicant submits a request in excess of 30 days of the date on the Department's notice, except as provided for in R13-11-103(B)(2).
2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41–1758.03.

A.A.C. R13-11-104. Good Cause Exception Application

A. An appellant shall submit the following materials to the Board to establish good cause for an exception:
1. The good cause exception application form prescribed by the Board. This form shall be notarized.
2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
    a. Both letters of reference shall be from individuals who have known the appellant for at least one year; and
    b. At least one letter of reference shall be from the appellant's current or former employer or from an individual who has known the appellant for at least three years.
3. If the Department's notice indicates that the Department could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the appellant either do not exist or have been purged.
4. For any ~~arrests~~ CHARGES that occurred five years or less prior to the date on the Department's notice, regardless of whether the ~~arrests~~ CHARGES were listed on the Department's notice, the police report for each ~~arrest~~ CHARGE and documents from the appropriate court showing the disposition of the charge.
5. For every criminal conviction, regardless of whether the offenses were listed on the Department's notice, documents from the appropriate court showing that the

appellant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the appellant either do not exist or have been purged. If the appellant has not met all judicially imposed obligations or sentencing conditions, the appellant shall provide a written statement indicating or documents from the appropriate court showing the status of the appellant's efforts toward meeting the obligations.

6. A statement written by the appellant that explains each ~~arrest~~ CHARGE, regardless of whether the ~~arrests~~ CHARGES were listed on the Department's notice.

B. The Board OR ITS HEARING OFFICER ~~shall~~ MAY accept any other documents an appellant submits to demonstrate good cause for an exception.

~~C. A good cause exception application shall be complete if it meets all the requirements of R13-11-104(A). A good cause exception application shall be incomplete if it does not meet all the requirements of R13-11-104(A).~~

A.A.C. R13-11-105. Expedited Review

A. Within ~~30~~ 20 ~~business~~ days of receiving ~~a~~ AN ~~complete~~ application ~~package~~, the Board or its hearing officer shall conduct an expedited review. When determining whether the appellant should receive a good cause exception under an expedited review, the Board or its hearing officer shall consider the following:

1. The criteria listed in R13-11-108(A); and
2. Whether the documentation submitted in support of a good cause exception is sufficient to allow the Board or its hearing officer to grant a good cause exception, or whether the Board or its hearing officer require further documentation or oral testimony.

B. If the Board or its hearing officer ~~determine~~ DETERMINES that the appellant is eligible for a good cause exception under an expedited review, the Board or its hearing officer shall grant the appellant a good cause exception.

C. If the Board or its hearing officer determines that an appellant is not eligible for a good cause exception under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule~~, or request that the Office schedule,~~ a hearing ~~and inform the appellant of the determination in writing~~. The Board's executive director shall give the appellant reasonable notice of the hearing in accordance ~~with the provisions of~~ A.R.S. § 41–1061. THE HEARING SHALL TAKE PLACE WITHIN 45 DAYS AFTER THE EXPEDITED REVIEW.

R13-11-108. Hearings

A. When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:

1. The extent of the appellant's criminal record;

2. The length of time that has elapsed since the offense was committed;
3. The nature of the offense;
4. Any applicable mitigating circumstances;
5. The degree to which the appellant participated in the offense; and
6. The extent of the appellant's rehabilitation, including:
    a. Completion of or progress toward completing probation, parole, or community supervision;
    b. Completion of payment or progress toward paying restitution or other compensation for the offense;
    c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;
    d. Personal references attesting to the appellant's rehabilitation; and
    e. Witness testimony ~~that the appellant submits~~.

B. Absent good cause, if the appellant or his or her representative fail to appear at a hearing, the Board or its hearing officer ~~shall proceed with the hearing and~~ MAY deny the applicant a good cause exception for failure to appear at the hearing. An appellant demonstrates good cause by showing that the appellant could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An appellant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board or its hearing officer shall determine whether good cause exists.

C. THE BOARD OR ITS HEARING OFFICER SHALL GRANT OR DENY A GOOD CAUSE EXCEPTION WITHIN 80 DAYS OF THE HEARING.

R13-11-110. Rehearing or Review of Decision

A. An appellant may seek a review or rehearing of a Board OR HEARING-OFFICER decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board OR ITS HEARING OFFICER ~~must~~ SHALL grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:
    1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
    2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
    3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
    4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.

B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the appellant's rights were materially affected.

C. The Board OR ITS HEARING OFFICER may grant a rehearing or review for any of the reasons in subsection A. The Board or its hearing officer may take additional

testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.

D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

R13-11-111. Notification of Decision for Good Cause Exception

A. The Board shall notify the appellant in writing of the ~~Board's~~ BOARD OR ITS HEARING OFFICER'S decision and~~, if the good cause exception is granted at a hearing,~~ transmit findings of fact and conclusions of law.

B. When the Board or its hearing officer ~~grant~~ GRANTS a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.