



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held August 31, 2012, at 9:15 a.m.

4205 North 7th Avenue, Second Floor Conference Room
Phoenix, Arizona

Board Members

Charles Easaw, Department of Education, Chairperson
Matthew A. Scheller, Department of Juvenile Corrections, Vice Chairperson
Chad Campbell, Administrative Office of the Courts
Dale Doucet, 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 10:12 a.m. The following Board members were present: Charles Easaw, Matthew A. Scheller, Dale Doucet, and Kim Pipersburgh. The following Board member was absent: Chad Campbell.

Also in attendance was Dennis Seavers, Executive Director.

CALL TO THE PUBLIC

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

APPROVAL OF MINUTES

Mr. Scheller made a motion to approve the draft minutes from the August 17, 2012 meeting. Mr. Doucet seconded the motion, which passed, 4–0.

REPORT ON FISCAL YEAR 2012 STRATEGIC PLAN

Mr. Easaw referred Board members to Mr. Seavers's report on the fiscal year (FY) 2012 strategic-plan performance (see Attachment 1).

POLICY ON RECONSIDERATIONS UNDER EXPEDITED REVIEWS

Mr. Easaw referred Board members to Mr. Seavers's August 27, 2012 report on the Board's policy on reconsiderations under expedited reviews (see Attachment 2), which included a recommendation to make the Board's pilot program a permanent policy.

Mr. Easaw invited comments from the Board members. Mr. Scheller believed that the program had been a success and recommended making the policy permanent. Ms. Pipersburgh and Mr. Doucet agreed.

Mr. Scheller made a motion to make the policy permanent, and Mr. Doucet seconded. The motion passed 4–0.

ADOPTION OF BUDGET FOR FISCAL YEAR 2013

Mr. Easaw referred Board members to Mr. Seavers's August 14, 2012 memo proposing a budget for FY 2013 (see Attachment 3). (This matter had been tabled at the Board's August 17, 2012 meeting.)

The Board members had technical and clarifying questions about aspects of the budget and discussed the possibility of using tablet computers for Board meetings in the future.

Mr. Scheller made a motion to approve the proposed budget, and Mr. Doucet seconded. The motion passed, 4–0.

RULEMAKING

Mr. Easaw referred Board members to Mr. Seavers's August 27, 2012 memo proposing rule changes (see Attachment 4).

Mr. Scheller made a motion to adopt the proposed rule changes, and Mr. Doucet seconded. The motion passed, 4–0.

SUNSET HEARING AND LEGISLATION

Mr. Easaw said that this part of the meeting was for discussion of the upcoming sunset hearing and any other legislative issues Board members wished to discuss.

Mr. Seavers said that the sunset hearing had not yet been scheduled.

ADJOURNMENT

Ms. Pipersburgh made a motion to adjourn, and Mr. Doucet seconded. The motion passed, 4–0. Mr. Easaw adjourned the meeting at 10:36 a.m.

Minutes approved on March 29, 2013

Dennis Seavers, Executive Director

Arizona Board of Fingerprinting
Fiscal Year 2012 Strategic Plan
July 1, 2011, to June 30, 2012

Legend for progress

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

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

Performance Measure	FY12 Estimate	FY12 Actual					
		Quarter 1	Quarter 2	Quarter 3	Quarter 4	Progress	YTD
Percent of investigator recommendations for expedited reviews accepted	95.00%	95.45%	96.34%	97.98%	98.47%	✓	97.54%
Percent of applications approved	94.00%	97.38%	94.88%	97.41%	95.37%	N/A	96.28%
Percent of approvals by expedited review	90.00%	90.25%	88.82%	94.16%	91.96%	N/A	91.34%
Percent of approvals by administrative hearing	10.00%	9.75%	11.18%	5.84%	8.04%	N/A	8.66%

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

Performance Measure	FY12 Estimate	FY12 Actual					
		Quarter 1	Quarter 2	Quarter 3	Quarter 4	Progress	YTD
Number of applications received	2,300	659	545	621	639	N/A	2,464
Number of applications disposed	2,300	684	622	645	685	N/A	2,636
Ratio of cases opened to cases closed	1:1	1:1.04	1:1.14	1:1.04	1:1.07	N/A	1:1.07
Average number of days to dispose	65.00	50.24	55.58	45.36	44.48	✓	48.75
Average number of days spent processing applications	35.00	30.92	37.47	24.76	29.10	✗	30.44
Average number of days spent processing application from receipt to expedited review	17.00	14.55	15.25	13.02	12.18	✓	13.71
Average days from expedited review to hearing	50.00	61.69	57.12	54.19	51.91	✓	56.34
Percent of applications with an expedited review within 20 days of receipt of a complete application*	95.00%	99.02%	94.39%	99.66%	100.00%	✓	98.39%
Percent of applications with an administrative hearing within 45 days of an expedited review*	60.00%	2.86%	6.02%	8.51%	31.58%	✓	12.68%
Percent of applications decided within 80 days of an administrative hearing*	70.00%	74.29%	49.40%	31.91%	55.26%	✓	54.35%

*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	FY12 Estimate	FY12 Actual					
		Quarter 1	Quarter 2	Quarter 3	Quarter 4	Progress	YTD
Percent of applications complete on initial submission	60.00%	63.74%	65.43%	67.65%	72.99%	✓	67.50%



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: August 27, 2012
SUBJECT Policy on reconsiderations

On June 8, 2012, the Board adopted a policy for reconsiderations under expedited reviews. With this policy, the Board began taking a second look, with more detail, at cases referred to administrative hearings to see whether a hearing was truly necessary. The policy listed two categories of reconsiderations:

- *Initiated by the Board:* in some cases, the Board would indicate at the initial expedited review that it would reconsider a case if the applicant submitted additional information.
- *Initiated by the staff:* for the remaining cases, the staff would identify applications where the Board might be willing to approve the case after the staff provided a more detailed analysis of the application.

The Board adopted this policy as a pilot program, which would be reviewed after 90 days. Since the 90-day period ends on September 6, the Board has three options:

- Make the policy permanent;
- Continue the policy as a pilot program for an additional period of time;
- Allow the policy to expire.

The table below shows the results from the pilot program, excluding the reconsiderations for the August 31 expedited reviews.

Meeting date	Board initiated	Staff initiated	Total
7/6/2012	1	2	3
7/20/2012	0	0	0
8/3/2012	0	2	2
8/17/2012	1	2	3
	2	6	8

All cases that were approved received a unanimous vote. Only one case that the Board asked to reconsider was not approved; the applicant did not respond to the Board's request for additional information, so the case was not presented for reconsideration, and the applicant is scheduled for a hearing.

Under this policy, the Board avoided eight unnecessary hearings, which saved about one week of staff time and will reduce the number of hearings the Board needs to conduct. Since the Board only approves cases where the applicant has demonstrated rehabilitation to the Board's satisfaction, there is no reason to think that the policy will create a risk of approving unworthy applications.

Based on the results from the pilot program, I recommend that the Board make the policy permanent.



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: August 14, 2012
SUBJECT FY 2013 budget proposal

This memo discusses a proposed budget for fiscal year (FY) 2013 for the Board to adopt at its August 17, 2012 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 \$576,190.58 in expenditures. Excluding funds sweeps that the Legislature required in FY 2012, this proposal represents an increase in spending by \$85,810.40 or 17.5%.
- The proposed budget projects \$937,657 in revenues. This projection assumes that DPS will receive 133,951 fingerprint-clearance-card applications in FY 2013.

FUND BALANCE

As of July 31, 2012—the last date when there was an end-of-month reconciliation with AFIS (the state accounting system) data—the Board's fund balance was \$870,075.36.

BUDGET PROPOSAL FOR FY 2013

Attachment 1 proposes a budget that includes \$576,190.58 in expenditures and assumes \$937,657 in revenues. Although the revenue projection is the same as revenues received last year, the proposed expenditures would increase by 17.5%.

Attachment 1 also provides a comparison of FY 2012 actual expenditures and revenues with the FY 2013 budget proposal. The list below explains areas where there are notable differences in spending between FYs 2012 and 2013.

- 6000 – Personal Services. This category refers to expenditures from wages and salaries. This category includes the biggest area of increased spending in my proposal. The increase is due to two factors.
 - As part of the governor's personnel reform that the Legislature passed, certain employees are eligible for a temporary retention pay increase of 5% that would begin partway through the fiscal year. (The increase only lasts until the end of the fiscal year.) The proposed budget assumes that all employees will receive the increase, although currently only three employees are guaranteed the increase. (In order to receive the retention pay, the other two employees would have to agree to become uncovered.) The cost to the Board if all employees take the increase would be about \$9,056.
 - The proposal includes authorization for the executive director to hire up to one additional employee and thus would establish a new position. As the Board has seen in its performance measures, compliance with statutory time frames has been a problem, especially with the time frames for hearings. Also, the Board will be taking on a larger caseload with the addition of central-registry exceptions. This proposal would allow me to hire one administrative law judge at the current salary for that position. However, I also propose that the Board give me the flexibility to spend the money on staffing resources as needed, but not to exceed the maximum in this proposal (\$52,000 plus employment-related expenditures). This would allow me to monitor the impact of central-registry exceptions on the Board's caseload and possibly rely instead on overtime or part-time, temporary, or contract employees.¹ This approach would set limits on my spending authority, and thus allow the Board to retain control over the budget, while giving me the ability to manage staffing resources in the manner best suited for the Board's caseload.
- 6100 – Employee-Related Expenditures. This category refers to expenditures from benefits and withholdings, such as medical benefits, retirement, and Social Security. The increase in the budget proposal is for same reasons described under 6000 above.
- 6299 – Other Professional & Outside Services. This category includes miscellaneous costs from external sources and consultations, such as security, document destruction, and database programming. The proposal includes a significant increase in one-time spending for database programming, as described below.² The Board should note that these proposed costs represent high estimates; the actual costs should be lower.
 - At its July 6, 2012 meeting, the Board approved \$9,480 in spending to create a database for central-registry exceptions.

¹ The Board should note that if it authorizes this spending flexibility, the actual expenditures may appear in different accounting categories. For example, if I use contract employees, the spending may appear under comptroller object code 6222 rather than 6000.

² I recommend that later this year the Board consider a project to move its existing databases to web-based interfaces, since most database interfaces are web based and a different database management system would improve performance. However, that project is not included in this proposal.

- I recommend that the Board authorize \$9,520 in spending for two additional IT projects.
 - Upgrading the existing good-cause-exception database. The purpose of this project would be to improve the features in the Board's existing database and to eliminate programming bugs. (The Board had approved a similar project last year, but as indicated in the FY 2012 budget report, I delayed this project when the Legislature proposed creating central-registry exceptions.)
 - Creating a function for the Board to be able to access confidential files through a network connection or web site. (This project is similar to the one I canceled with ADOA.)
- 7221 – Rental of Land and Buildings. This category refers to rental costs for office space. The Board began a new lease in FY 2012 that was much less expensive than the previous lease.
- 7172 – External Communications (Long Distance); 7179 – Other External Communications. The decrease in spending in these two areas combined is because there were one-time telecommunications expenditures in FY 2012 related to the Board's office move.
- 7321 – Office Supplies. In FY 2012, the Board staff cut office-supply costs as much as possible. The FY 2013 proposal allows for reasonable spending amounts, although the staff will continue to limit expenditures in this area.
- 8531 – Computer Equipment (Non-capital). Last year, the Board approved replacing three computers that over eight years old. In addition, another computer crashed and would have cost almost as much to repair as to replace. For FY 2013, I recommend that the Board replace its remaining two computers, which are six years old, and one laptop for the executive director. Depending on computer costs and the technology available, this spending authorization would also allow me to procure equipment (such as a tablet or projector) that would allow the Board to have easier access to administrative records during Board hearings.
- 8581 – Purchase or license software. This category covers non-capital software expenditures. If the Board authorizes the purchase of new computer equipment, there will be associated costs to purchase standard software. In addition, I recommend that the Board approve costs for computer encryption software. If there were an instance of unauthorized access to the Board's computer equipment (such as a burglary, which the Board previously experienced), the software would protect data on the computer from being accessed. Since the Board maintains confidential data—including criminal-history information, CPS investigative data, and Social Security numbers—I believe the cost of the software (\$408.50 for five licenses) is worthwhile.

Revenues

DPS and the Board typically coordinate their estimates for revenues because the projections are based on the same figure: the expected number of fingerprint-clearance-card applications. I am working with DPS on this projection, but we have not finalized it.

The revenue projection in the proposed budget may change depending on DPS's input, but the change should not be significant.

Attachment 1 - FY13 Budget Proposal

	FY12 Actual	FY13 Budget	Difference
REVENUES			
4900 - Operating Transfers In			
Prior FY Carryover	\$ 558,765.84	\$ 900,242.66	
4901 - Oper. Transfers In	\$ 937,657.00	\$ 937,657.00	\$ -
Total 4900 - Oper. Trans. In	\$ 1,496,422.84	\$ 1,837,899.66	\$ -
TOTAL REVENUES	\$ 1,496,422.84	\$ 1,837,899.66	\$ -
EXPENDITURES			
6000 - Personal Services			
	\$ 241,494.28	\$ 302,550.32	\$ 61,056.04
6100 - Employee-related exp.			
	\$ 123,382.67	\$ 154,300.66	\$ 30,917.99
6200 - Prof. & Outside Svcs.			
6299 - Other Prof. & Out. Svcs.	\$ 5,471.75	\$ 23,200.00	\$ 17,728.25
Total 6200 - Prof. & Outside Svcs.	\$ 5,471.75	\$ 23,200.00	\$ 17,728.25
7000 - Other Operating			
7110 - Insurance & Related Chgs	\$ 2,100.00	\$ 2,100.00	\$ -
7153 - Internal Svc. Data Proc.	\$ 9,572.36	\$ 10,000.00	\$ 427.64
7172 - Ext. Comm. Long Dist.	\$ 5,809.49		\$ (5,809.49)
7179 - Other External Comm.	\$ 11,147.46	\$ 12,838.00	\$ 1,690.54
7221 - Rental of Land & Bldgs.	\$ 58,412.90	\$ 35,991.60	\$ (22,421.30)
7241 - Int Acctg, Budg, Fin Svc.	\$ 3,840.00	\$ 3,840.00	\$ -
7266 - Repair/Maint-Other Equip	\$ 1,534.42	\$ 1,600.00	\$ 65.58
7321 - Office Supplies	\$ 3,976.24	\$ 6,000.00	\$ 2,023.76
7481 - Postage & Delivery	\$ 11,833.75	\$ 12,000.00	\$ 166.25
7511 - Awards	\$ 147.56	\$ 150.00	\$ 2.44
7541 - Books, Subscr., & Pubs.	\$ 199.00	\$ 300.00	\$ 101.00
7599 - Other Misc. Operating	\$ 320.00	\$ 320.00	\$ -
Total 7000 - Other Operating	\$ 108,893.18	\$ 85,139.60	\$ (23,753.58)
8500 - Non-capital Equipment			
8531 - Computer Equip. Non-cap.	\$ 6,963.98	\$ 7,000.00	\$ 36.02
8561 - Tele. Equip. - Non-cap.	\$ -	\$ 200.00	\$ 200.00
8571 - Other Equip. - Non-cap.	\$ 786.11	\$ -	\$ (786.11)
8581 - Purch. or lic. software	\$ 3,388.21	\$ 3,800.00	\$ 411.79
Total 8500 - Non-capital Equip.	\$ 11,138.30	\$ 11,000.00	\$ (138.30)
9100 - Transfers Out			
9101 - Op Trans Out: Fund Sweeps	\$ 105,800.00	\$ -	\$ (105,800.00)
Total 9100 - Oper. Trans. Out	\$ 105,800.00	\$ -	\$ (105,800.00)
TOTAL EXPENDITURES	\$ 596,180.18	\$ 576,190.58	\$ (19,989.60)
NET INCOME	\$ 900,242.66	\$ 1,261,709.08	\$ 19,989.60



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: August 27, 2012
SUBJECT Rulemaking

This memo proposes that the Board approve technical changes to its rules.

Fee

This session, the Legislature amended A.R.S. § 41–1008 to further regulate agencies' authority to establish or increase fees. One new provision of the law states:

Unless the legislature grants an express exemption through statute or session law from all requirements of this chapter for establishing or increasing a fee, an agency shall comply with all applicable rule making provisions to establish or increase the fee. The agency shall not charge or receive the fee until the rule establishing or increasing the fee is effective under the applicable law of this state.

The law's application to the Board is unclear. The Board is exempt under A.R.S. § 41–619.53(A)(2) from the Administrative Procedures Act's rulemaking requirements, and this exemption may qualify as an "express exemption." Since the meaning of "express exemption" is not clear, the Board should consider updating its rule to reflect the current fee. In addition, any fee established or increased in rule after September 30, 2012 is only effective for two years, after which the agency must comply with the normal rulemaking requirements, which include approval by the Governor's Regulatory Review Council.

I recommend that the Board adopt a rule to reflect its current fee of \$7.00. This is **not** a proposal to increase the fee. By adopting this rule, the Board will avoid concerns about its compliance with A.R.S. § 41–1008.

Technical

On August 3, 2012, the Board approved a variety of rule changes, most of which dealt with the application process for central-registry exceptions. While proofreading the rulemaking package, the editor of the *Arizona Administrative Register* suggested technical changes to existing rules provisions, in addition to changes made in the rulemaking package. The editor was not identifying problems with the rulemaking package but rather was suggesting clarifications in other provisions of the Board's rules. Specifically, she requested that a few references to "rules" be clarified, since the term "rules" can be ambiguous.

- R13-11-102(10), as amended by the recent rulemaking package, states:

"Expedited review" means an examination, in accordance with Board rules, of the documents an applicant submits by the Board without the applicant being present.

However, the phrase "Board rules" could be ambiguous, even though the definition comes directly from statute, so the editor requested that the Board amend the rule. In addition, the Board's chairman had requested at the August 3, 2012 meeting that the definition be rewritten in a clearer fashion. Since I knew there would be a second rulemaking package, I did not submit the change proposed on August 3 in order to come up with an even clearer definition. I recommend that the Board adopt the following language for the rule.

"Expedited review" means an examination by the Board, without the applicant being present and in accordance with R13-11-105, of the documents an applicant submits.

- R13-11-109 is a rule describing prohibitions on *ex parte* communications. The rule was modeled on a similar rule adopted by the Office of Administrative Hearings. The rule has three references to "rule" or "rules," and the editor has recommended that the Board clarify their meaning. Since the Board doesn't have adversarial proceedings, the circumstances that the rule attempts to address would rarely be applicable, so changing the rule shouldn't have any negative consequences.

- R13-11-109(A), as amended by the recent rulemaking package, states:

In any good cause exception or central registry exception case, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:

I recommend that the Board strike the phrase " or these rules of procedure."

- R13-11-109(B), as amended by the recent rulemaking package, states:

A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, must place on the record of the proceeding and serve on all parties to the proceeding:

I recommend that the Board replace the phrase “this rule” with “A.A.C. R13-11-109,” since that’s the rule that the phrase is referring to.

- R13-11-109(C) states:

Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

I recommend that the Board strike the phrase “, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules,” since the actions of the Board and its hearing officer must always achieve fairness and comply with applicable laws.