



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Department of Fire, Building and Life Safety

September • 2011
REPORT NO. 11-13



Debra K. Davenport
Auditor General

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September 29, 2011

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Mr. Gene Palma, Director
Department of Fire, Building and Life Safety

Transmitted herewith is a report of the Auditor General, *A Performance Audit and Sunset Review of the Department of Fire, Building and Life Safety (Department)*. This report is in response to a November 3, 2009, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Department of Fire, Building and Life Safety agrees with all of the findings and plans to implement all of the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on September 30, 2011.

Sincerely,

Debbie Davenport
Auditor General

Attachment

**REPORT
HIGHLIGHTS**
PERFORMANCE AUDIT

Our Conclusion

The Department of Fire, Building and Life Safety (Department) includes the Office of the State Fire Marshal (Office) and the Office of Manufactured Housing. The Office has not been able to address long-standing problems in conducting fire safety inspections. Despite some progress, staff reductions and inadequate building records have negatively affected inspections. The Office should better manage its fire safety inspection processes, and the Department should seek legislation to charge fees to cover inspection costs. The Department, through the Office of Manufactured Housing, should ensure that the fees it charges cover the full cost of regulating the State's manufactured housing and modular building industries. Finally, the Department incorrectly spent some Mobile Home Relocation Fund monies in fiscal years 2009 through 2011 and should implement procedures to ensure it correctly uses these monies.



2011

State Fire Marshal's Office should ensure adequate fire safety inspection coverage and establish fees to cover costs

Office responsible for fire safety inspections of certain buildings—The Office is responsible for ensuring that regular fire safety inspections are conducted for buildings under its jurisdiction. The Office also reviews construction plans for these buildings to ensure compliance with the state fire code. Inspections may be done by local fire authorities or private vendors pursuant to agreements with the state fire marshal.

Office has history of inspection coverage deficiencies—In our 1988 and 1999 audit reports, we found that the Office did not conduct regular inspections because of either having too few inspectors, not having an accurate and complete inventory of buildings, and/or not prioritizing how often buildings should be inspected. The Office addressed several of these issues as reported in our 2001 performance audit report, but it did not sustain the progress. The Office does not have complete and accurate inspection information for buildings requiring inspection. It also does not adequately prioritize inspections based on fire risk. The Office has also experienced a reduction in staff from 13 inspectors in 2008 to 5 inspectors as of June 2011. The Office is developing a new database, which it should use to more effectively track all inspection activities.

Office should increase number of agreements and establish oversight—As of June 2011, the Office reported that it had 37 agreements with local fire authorities and 2 agreements with a private vendor covering separate jurisdictions to perform inspections.

The Office should solicit additional agreements to help provide greater inspection coverage, increase efficiency, and reduce costs. The Office should also establish oversight of these agreements.

Department should seek authority to establish fees to recover inspection costs—Statute allows local fire authorities to charge fees to recover inspection costs. However, the Office can charge fees only for permits, plan submissions and reviews, and reinspections—not for regular inspections. If the Office had authority to charge fees, it could cover its regular inspection costs. The Department should use a structured approach to evaluate its current fees and propose new fees. This approach should take into consideration the efficiency of operations, track direct and indirect costs, and identify the actual costs for specific activities. The Department should then seek legislation allowing it to charge fees to recover its costs for fire safety inspections.

Recommendations

The Office should:

- Use its new database to better manage fire safety inspections; and
- Solicit additional agreements with local fire authorities or private vendors and establish oversight of these agreements.

The Department should:

- Use a structured approach to develop a fee proposal and then seek legislation allowing it to charge fees to recover its fire safety inspection costs.

Fees should fully cover Department's manufactured housing and modular building regulatory costs

Department performs state and federal regulatory activities—The Department, through the Office of Manufactured Housing, regulates the manufactured housing and modular building industries. The U.S. Department of Housing and Urban Development has designated the Department as the state agency responsible for handling consumer complaints; inspecting the construction of manufactured homes and their installation; and resolving disputes between manufacturers, retailers, and installers.

Fees do not fully cover regulatory costs—The Board of Manufactured Housing (Board) is statutorily required to set fees that cover 95 to 105 percent of the Department's manufactured housing and modular building regulatory costs. For example, fees are charged for licenses, permits, plan reviews, and inspections. However, because the Department has applied statute on a more limited basis, it did not consider all of its regulatory costs, such as overhead and licensing costs, to establish its fees. As a result, the fiscal year 2011 fees covered, at

most, 90 percent of the Department's regulatory costs, and the actual amount is likely lower.

The Department has begun to develop cost estimates for its regulatory functions. For example, the fee for a manufactured home installation permit is \$123, which allows for up to three inspections to ensure that the home is properly set and the utilities are properly connected. However, the Department estimated that the cost for performing this function can range from \$89 to \$237, excluding overhead.

Using the same approach that it develops to review its fire safety inspection costs and fees, the Department should evaluate its manufactured housing and modular building regulatory costs and fees, develop new fees, and propose them to the Board.

Recommendation:

The Department should develop a structured approach to assess its fees and propose new fees to the Board.

Department has incorrectly spent some Mobile Home Relocation Fund monies

The Mobile Home Relocation Fund (Fund) assists people who relocate in certain circumstances, such as when their mobile home park closes, is redeveloped, or there is a qualifying rent increase. Fund monies may also be used for the Department's costs to administer the Fund and to support the Department's hearing function. The Department used about three-fourths of the fund monies spent in fiscal year 2011 for salaries and benefits, excluding monies paid to mobile home tenants, totaling nearly \$543,000. About three-fourths of fund monies spent in fiscal years 2009 and 2010 were also used for salaries and benefits. This level of spending does not appear warranted based on limited department data and fund activity. Additionally, the Department used fund monies to pay for more than \$6,000 of out-of-state travel in fiscal years 2009 and 2010, but could not show how this travel pertained to the Fund's purposes.

The Department should develop a methodology for charging appropriate direct and indirect costs to the Fund, ensure costs are correctly charged to the Fund, and determine whether monies should be repaid to the Fund. The Department indicated it will continue its efforts to fully identify and track costs and activities that the Fund should cover.

Recommendations:

The Department should:

- Establish a methodology for charging costs to the Fund;
- Implement policies to ensure costs are correctly charged to the Fund; and
- Seek advice from its Assistant Attorney General to determine whether the Fund should be repaid for the incorrect expenditures.

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INTRODUCTION

Scope and Objectives

The Office of the Auditor General has conducted a performance audit and sunset review of the Department of Fire, Building and Life Safety (Department) pursuant to a November 3, 2009, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq. This performance audit and sunset review addresses (1) the Department's efforts to fulfill its responsibilities regarding fire safety inspections of public buildings; (2) the need to revise the Department's fees for regulating manufactured housing and modular buildings; and (3) the Department's incorrect use of Mobile Home Relocation Fund monies. The report also includes responses to the statutory sunset factors.

Department enforces state fire code and manufactured housing and modular building regulations

Responsibilities, organization, and staffing

The Department was established in 1986 through a merger of the Office of the Fire Marshal and the Office of Manufactured Housing. Statute requires the Department to further public safety and welfare by maintaining relevant standards and codes for manufactured housing and fire safety. The Department is headed by a governor-appointed director and has 31 additional full-time equivalent (FTE) positions, of which 4 were vacant as of June 30, 2011. The Department is organized into the following three offices and one division:

- **Office of the State Fire Marshal (8 FTEs, 2 vacancies)**—The Office of the State Fire Marshal is charged with enforcing the state fire code, except in cities with populations of 100,000 or more that have adopted their own fire codes and that have enacted an ordinance to assume such jurisdiction. Specifically, the Office is required to establish a regularly scheduled fire safety inspection program for certain buildings in the State. These include state- and county-owned public buildings; all public and private school buildings throughout the State, except for private schools in cities with a population of 100,000 or more; and some privately owned buildings in unincorporated areas of the State. According to the Office's inspection database, there are more than 13,750 facilities in its inventory of buildings that require regular inspections (see Finding 1, pages 7 through 16, for additional information).¹

The Office also approves the construction plans for newly constructed or modified state, county, and public school buildings to ensure compliance of the proposed fire safety systems with the state fire code. In addition, the Office inspects above-ground fuel storage tanks. Finally, the State Fire Marshal can enter into agreements with local fire authorities, such as fire departments or fire districts, or private vendors to review construction plans and conduct fire safety inspections within their jurisdictions on the State's behalf (see Finding 1, pages 7 through 16, for additional information on these agreements).

- **Office of Manufactured Housing (14 FTEs, 2 vacancies)**—The Office of Manufactured Housing regulates the manufactured housing and

¹ The Office of the State Fire Marshal's inventory of buildings is incomplete because it is missing newly constructed buildings under the jurisdiction of local fire authorities (see Finding 1, pages 7 through 16, for additional information).

factory-built building, or modular building, industries in the State (see textbox). The manufactured housing industry is governed by federal regulations, while modular buildings are governed by state law. As discussed in Finding 2 (see pages 17 through 23), the Office carries out agreements with the U.S. Department of Housing and Urban Development (HUD) to enforce federal standards for the construction and installation of new manufactured homes. The

Office also reported that it inspects each manufactured home and randomly inspects modular buildings constructed in Arizona manufacturing plants to ensure their construction adheres to design requirements.

Homeowners or businesses wishing to install a manufactured home, mobile home, or modular building must obtain a permit from the Office prior to installation. As part of issuing the permit, these structures are inspected to ensure utilities are properly connected and the structure is securely set on its lot (see Photo 1 for a picture of an installation inspection). These installation inspections are conducted by either the Office or one of 66 cities, towns, and counties that have agreements with the Department to conduct inspections within their jurisdictions. Approximately three-fourths of the Office's installation permits are for manufactured or mobile homes, and the other one-fourth are for modular buildings.

- **Office of Administration (6 FTEs, 0 vacancies)**—The Office of Administration provides the administrative services necessary to operate the Office of the State Fire Marshal and the Office of Manufactured Housing. Its employees provide information technology, financial accounting, and human resource services, as well as customer services at the Department's front desk.

- **Compliance Division (3 FTEs, 0 vacancies)**—The Compliance Division supports the Office of Manufactured Housing by licensing manufacturers, dealers, installers, and salespersons, and handling consumer complaints against these licensees. In addition, it administers the Mobile Home Relocation Fund (see budget discussion, page 4, and Finding 3, pages 25 through 30, for additional information) and processes petitions for hearings or re-hearings conducted by the Office of Administrative Hearings from mobile home owners/tenants or landlords, buyers of manufactured homes and residential modular buildings, and members of condominium and planned communities. In addition, the Division facilitates hearings regarding department actions or determinations. For example, a licensee may ask for a hearing

Structures regulated by the Department

Manufactured homes—Homes built in a factory on or after June 15, 1976, based on federal standards.

Mobile homes—Homes built in a factory prior to the adoption of federal manufactured housing standards in 1976.

Factory-built buildings—More commonly known as modular buildings, these buildings are nonresidential or residential buildings other than manufactured and mobile homes that are built off-site and assembled on-site. Nonresidential modular buildings may include classrooms, banks, hotels, and other commercial buildings. Modular buildings are regulated by the State, not federal regulations.

Source: Auditor General staff analysis of 24 CFR 3282.1, A.R.S. §§41-2141 and 2142, and the Modular Building Institute's Web site.

Photo 1: Department employee conducting an installation inspection



Source: Arizona Office of the Auditor General.

regarding a disciplinary action that he/she disagrees with, or a consumer may appeal how the Department resolved a complaint (see Finding 3, pages 25 through 30, for additional information).

State Fire Safety Committee and Board of Manufactured Housing

Statute also establishes the State Fire Safety Committee and the Board of Manufactured Housing within the Department. Both have several duties related to fire safety and building codes. Specifically:

- **State Fire Safety Committee (Committee)**—The Committee consists of nine members the Governor appoints for 3-year terms, representing municipal fire chiefs, architects, and chief building officials from cities, towns, and counties, and the general public (see Sunset Factor 5, pages 38 through 39, for information about committee member vacancies). A.R.S. §41-2146(D) requires the Committee to establish fees for permits; plan submissions and reviews, which entails the Department's reviewing construction documents to ensure fire code compliance; and reinspections (see Finding 1, pages 7 through 16, for additional information). The Committee is also responsible for adopting rules governing the state fire code and administering the Arson Detection Reward Fund established under A.R.S. §41-2167. This fund receives monies from legislative appropriations, donations, and monies from fines and bail forfeiture collected from arson-related offenses. People providing information about acts of arson may receive a reward of up to \$10,000 from this fund. As of June 30, 2011, the Arson Detection Reward Fund's fund balance was \$58,071.
- **Board of Manufactured Housing (Board)**—The Board consists of nine members the Governor appoints for 3-year terms, representing the industry and the public. There is no limit on the number of terms board members can serve. The Board is responsible for adopting rules for constructing and installing manufactured housing and modular buildings. It has adopted federal standards for manufactured housing, and international and national standards for modular buildings. In addition, the Board establishes licensing requirements for manufacturers, dealers, brokers, and installers of these buildings. As required by A.R.S. §41-2144, the Board also establishes fees that the Department charges for conducting inspections and plan reviews, issuing licenses and permits, and performing various administrative functions, such as processing returned checks.

Department budget

As shown in Table 1 (see page 5), the Department's revenues were approximately \$4.2 million in fiscal year 2011, including approximately \$2 million in State General Fund appropriations. The Department remitted approximately \$1.3 million of its revenues, mostly from permits, fees, and manufactured housing/modular building licenses, to the State General Fund in fiscal year 2011. The Department also received a significant amount of funding from the following two nonappropriated funds:

- **Mobile Home Relocation Fund**—This fund pays mobile home tenants who relocate or abandon their homes under specific circumstances prescribed by statute, such as closure of their mobile home park. It should also be used to pay for the Departments' costs to administer the fund, support its administration of its hearing function, and process complaints related to mobile home park manager education requirements (see Finding 3, pages 25 through 30, for additional information). This fund receives revenues primarily from tax assessments collected from mobile home owners who do not own the land upon which their mobile home is located, and also from interest earnings. The Department spent \$858,365 from this fund in fiscal year 2011, and the fund had a fund balance of more than \$7 million on June 30, 2011.
- **Federal Grant Fund (Intergovernmental)**—This fund consists primarily of monies received from HUD to help pay employee salaries and related expenses related to carrying out federal regulations for manufactured housing. The Department spent \$195,829 from this fund in fiscal year 2011, and the fund had a fund balance of \$78,740 on June 30, 2011.

The Department's expenditures totaled more than \$3 million for fiscal year 2011. More than two-thirds of these expenditures were for employee salaries and benefits. These expenditures decreased by 34 percent from fiscal years 2009 to 2011, reflecting lower staffing levels brought on by state budget reductions.

Table 1: Schedule of Revenues, Expenditures, and Changes in Fund Balances¹
Fiscal Years 2009 through 2011
(Unaudited)

	2009	2010	2011
Revenues:			
State General Fund appropriations	\$ 3,112,455	\$ 2,140,705	\$ 1,997,536
Licenses and fees	1,141,307	949,419	1,065,744
Homeowner tax assessments ²	769,379	741,064	648,950
Charges for goods and services	405,701	279,897	246,566
Intergovernmental ³	176,273	209,893	157,577
Interest on investments	121,503	71,665	44,779
Fines, forfeits, and penalties	17,541	28,760	43,991
Other	82,025	91,074	52
Gross revenues	5,826,184	4,512,477	4,205,195
Credit card and on-line transaction fees	(1,599)	(1,895)	(1,339)
Remittances to the State General Fund ⁴	(1,538,157)	(1,179,157)	(1,268,640)
Net revenues	4,286,428	3,331,425	2,935,216
Expenditures and transfers:			
Personal services and related benefits	3,267,992	2,569,997	2,146,407
Professional and outside services	267,215	146,297	31,827
Travel	282,451	240,790	185,936
Food	10,174		
Aid to individuals ⁵	118,864	42,567	187,993
Other operating	567,067	453,524	492,622
Equipment	31,263	15,868	35,432
Total expenditures	4,545,026	3,469,043	3,080,217
Transfers to the State General Fund ⁶		141,000	64,658
Transfers to Office of Administrative Hearings	11,262		
Total expenditures and transfers	4,556,288	3,610,043	3,144,875
Net change in fund balance	(269,860)	(278,618)	(209,659)
Fund balance, beginning of year	7,942,208	7,672,348	7,393,730
Fund balance, end of year ⁷	\$ 7,672,348	\$ 7,393,730	\$ 7,184,071

¹ The table includes department financial activity except for the Manufactured Housing Cash Bond Account and Manufactured Housing Consumer Recovery Funds established by A.R.S. §§41-2179 and 41-2188, respectively, because these monies are held for others and are not available for the Department's use.

² Assessed on mobile home owners who rent the land their mobile homes are located on. These taxes are deposited in the Mobile Home Relocation Fund.

³ Consists primarily of monies received from the federal government.

⁴ The Department remits certain revenues to the State General Fund such as licenses and fees as required by A.R.S. §§41- 2144, 2174, and 2175; filing fees as required by A.R.S. §41-2198.01; and civil penalties as required by A.R.S. §41-2198.02.

⁵ Consists of relocation payments to mobile home owners from the Mobile Home Relocation Fund.

⁶ Amount consists of transfers to the State General Fund in accordance with Laws 2009, 5th S.S., Ch. 1, §2; and Laws 2010, 7th S.S., Ch. 1, §§113 and 148, and 7th S.S., Ch. 3, §7.

⁷ Includes approximately \$7.2 million in fiscal years 2009 and 2010 and \$7 million in fiscal year 2011 in the Mobile Home Relocation Fund.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2009 through 2011 and the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2009 through 2011.

FINDING 1

The Department of Fire, Building and Life Safety (Department) has been unable to resolve long-standing problems with providing building inspections. In 1988 and 1999, the Office of the Auditor General found that the Office of the State Fire Marshal (Office) had not effectively managed its fire safety inspection program to ensure buildings were regularly inspected. This audit found that progress made in 2001 has not been maintained. Reduced staffing levels may be contributing to the problem, but the Office's building inventories and inspection records were not accurate or complete enough to determine how much effect these reductions had between fiscal years 2010 and 2011. Auditors identified four steps that can help: (1) Use the Office's inspection database to better track, prioritize, and monitor inspections; (2) Increase the number of agreements with local fire authorities or private vendors to perform inspections and plan reviews on the Office's behalf, as well as ensure oversight of these agreements; (3) For buildings that remain under the Office's jurisdiction, establish a process to prioritize inspections based more fully on fire risk; and (4) Seek legislative changes that would allow the Office to charge fees to recover its costs.

State Fire Marshal should ensure adequate inspection coverage and establish fees to cover costs

Office has history of inspection coverage deficiencies

Two earlier performance audits conducted by the Office of the Auditor General in 1988 and 1999 identified inadequate coverage and scheduling of fire safety inspections for buildings within the Office's jurisdiction, placing these buildings at risk for fire. A 2001 Office of the Auditor General performance audit showed that the Office was making progress in remedying the situation. Specifically:

- A 1988 performance audit found that the Office did not regularly inspect state and county buildings and schools as required by state law (see Report No. 88-4). The audit also found that the Office did not have a sufficient number of inspectors to inspect all buildings under its jurisdiction. During the time of the audit, the Office had 11 inspectors. The Office also lacked basic information needed to develop a regular inspection schedule. For example, the Office did not have an inventory of the buildings it was required to inspect. Further, the Office did not track information regarding the time it took to complete an inspection and whether the inspection was a regularly scheduled, follow-up, or new construction inspection. Therefore, the Office could not effectively plan an inspection schedule for the buildings it was required to inspect.
- A 1999 performance audit found that even though the Office had increased its inspection staff to 14, it still experienced similar issues with inspection coverage and scheduling (see Report No. 99-16). Specifically, the audit found that the Office did not have complete records of inspection reports. Further, it found that the Office did not have an accurate and complete inventory of buildings requiring inspection and a method for prioritizing how often buildings needed inspections based on fire risk. However, in an effort to expand inspection coverage, the Office had established agreements with local fire authorities to conduct fire safety inspections on its behalf.
- A 2001 performance audit found that the Office had increased inspection coverage and improved inspection planning through improvements to its fire safety inspection program (see Report No. 01-23). These improvements included developing an accurate building inventory; assessing building fire risk based on occupancy, number of stories, and potential property loss to prioritize its inspections; and developing an inspection database to identify buildings due for inspection. These improvements

helped the Office determine which buildings it was required to inspect and how frequently the Office should inspect a building based on the potential fire risk.

Office has not been able to sustain progress

This current audit found that the Office has not been able to sustain the improvements reported in 2001 because the Office lacks information and processes needed to manage its inspections. In addition, according to the Office, staffing reductions resulting from budget cuts have affected the Office's ability to conduct required inspections. However, because of limitations in the Office's management information, auditors could not determine the effect of these staffing reductions on the number of inspections conducted between fiscal years 2010 and 2011. More specifically:

- **Office does not have complete and accurate inspection information—** Although the Office has a database that includes a building inventory and some inspection information, the Office reported that the database reports of inspection activity are inaccurate because of inconsistent data entry. Instead, the Office has instituted a procedure for compiling inspection information from individual inspector tracking sheets into a monthly report, such as the type and number of inspections performed. However, the information in these monthly reports is inaccurate and incomplete. Specifically, auditors reviewed monthly reports and associated individual tracking sheets for fiscal years 2010 and 2011 and found that some inspection totals on individual inspector tracking sheets did not match the inspection totals listed for those inspectors on the monthly reports. In addition, auditors identified individual tracking sheets that did not show inspection activity, even though the associated monthly reports indicated inspection activity for an inspector. Further, auditors identified instances where the total number of inspections listed in the monthly reports was not accurate because some of the inspectors' totals were not included within the monthly totals for the Office. Further, neither the database nor the monthly reports contain information on the type of violations found during inspections. Such information would be helpful for ensuring that appropriate follow-up actions are taken. As a result, the Office does not have complete and accurate information regarding its fiscal years 2010 and 2011 inspection activities.
- **Office does not have an effective process to prioritize inspections—**The Office reported that it no longer uses the Office's inspection database to prioritize which buildings need an inspection. Before January 2009, the Office used the database to generate monthly reports indicating which buildings were due for an inspection based on the buildings' fire risk. However, the Office stated that it discontinued the use of these reports in January 2009 because of inaccuracies in its database's building inventory. Although the Office took steps to address the inaccuracies in its database in 2009, the Office reported that it still does not

The Office does not have complete and accurate information regarding its fiscal years 2010 and 2011 inspection activities.

use the database reports to identify buildings that need inspections because it does not have enough staff to complete all of the inspections that are due. The Office also reported that because of its reduced staffing, it has had to prioritize and limit its inspection activities to newly constructed building inspections, inspections resulting from customer complaints, and school inspections. Specifically, if a newly constructed building requires an inspection or when the Office responds to a customer complaint, the Office indicated that inspectors will also inspect nearby schools that have not been inspected within the last 2 years. Therefore, inspections of newly constructed buildings or inspections resulting from customer complaints determine when and what schools are inspected. This approach does not ensure all buildings in the Office's jurisdiction, including all school buildings, receive inspections on a regular basis, as required by A.R.S. §41-2163(A)(4) (see pages 12 through 13 for further discussion).

- **Office does not track buildings inspected by local fire authorities on its behalf**—The Department has entered into agreements with local fire authorities and a private vendor to perform inspections on its behalf (see pages 10 through 12 for further information). The building inventory in the Office's database includes a data field for indicating which jurisdiction is responsible for inspecting each building; however, the field is blank for the majority of buildings listed in the inventory. As a result, the Office cannot use the database to identify which buildings in its inventory are covered by agreements. Further, according to the Office, information on inspections conducted under these agreements is not entered into its database. The Office also reported that newly constructed buildings in jurisdictions covered by agreements are not entered into the database, which affects the completeness of the Office's building inventory. As a result, the Office cannot use the database to ensure local fire authorities or the private vendor are conducting regularly scheduled fire safety inspections of buildings entrusted to them.
- **Office staff reductions may affect its ability to perform all required inspections**—According to the Department, the Office has experienced staff reductions from 13 inspectors in 2008 to 5 inspectors as of June 2011. According to office staff, this staff reduction has resulted from budget cuts and has affected the number of inspections the Office can complete. Auditors attempted to determine trends in the Office's inspection activities for fiscal years 2010 and 2011, but the limitations discussed earlier in the Office's inspection database and reporting procedures meant that reliable information on the number of inspections performed in these 2 years could not be obtained. As a result, auditors could not determine the effect, if any, of these staffing reductions between fiscal years 2010 and 2011.

The Office has experienced staff reductions from 13 inspectors in 2008 to 5 inspectors as of June 2011.

Office should strengthen information for managing inspection program

Although the Office is responsible for adequately inspecting all of the facilities under its jurisdiction, an important first step is developing the information needed for a clear understanding of which buildings need to be inspected, which jurisdiction is responsible for inspecting them, whether they are being inspected, and which inspections are most critical. As discussed earlier, the Office's progress in these areas has not been maintained through the years. Absent this information, the Office is in a weakened position to effectively manage its fire safety inspection program.

The Office reported that it is developing a new database system, although the new database had not been implemented as of August 2011. According to the Office, the new database will help it better manage its inspection information. To better manage, track, and prioritize its own inspections, and ensure oversight of inspections done by local fire authorities, the Office should implement and use this new database to address the following:

- Ensuring more complete tracking of all inspection activities, including specific information on violations found during inspections. This information is needed, for example, to help accurately determine the number of inspections being conducted, the extent to which all buildings are receiving inspections as required, and the type of follow-up inspection activities that should be conducted on specific buildings.
- Establishing an effective system for prioritizing inspections based on fire risk. Such a system seems particularly important in present conditions, when office officials say they lack sufficient numbers of inspectors to regularly inspect all buildings within its jurisdiction (see pages 12 through 13 for more information).
- Ensuring that buildings covered by agreements with local fire authorities are inspected by (1) identifying all buildings in its database that are covered by these agreements, (2) ensuring that newly constructed buildings in jurisdictions covered by these agreements are included in the database, and (3) tracking inspection information for these buildings in the database.

Office should increase number of agreements with local fire authorities or private vendors and improve oversight

The Office should expand its practice of delegating inspection and plan review responsibilities to local fire authorities or private vendors, but should better track and

The Office reported that it is developing a new database to better manage its inspection information.

monitor these activities. By entering into agreements with more local fire authorities or private vendors, the Office will delegate some of its responsibilities and help offset staff reductions and increase inspection coverage. However, the Office should strengthen oversight of these agreements by ensuring inspection reports are submitted and reviewed.

Office should increase number of agreements with local fire authorities or private vendors—To help ensure that all buildings receive inspections, the Office should continue to increase the number of agreements it has with local fire authorities or private vendors. This approach seems particularly appropriate given the decrease in inspection staff within the Office itself. In response to the Office of the Auditor General's 1988 performance audit, the Office began establishing agreements with local fire authorities to perform inspections on the Office's behalf (see Report No. 88-4). By the 1999 performance audit, the Office had established agreements with 23 local fire authorities (see Report No. 99-16). Since then, the Office has continued to expand the use of these agreements and, as of June 2011, the Office reported that it had 37 agreements with local fire departments or fire districts, and 2 agreements with one private vendor covering separate jurisdictions. These agreements generally require the fire authorities to perform plan reviews and fire safety inspections for either newly constructed buildings or regularly scheduled inspections of state, county, and school buildings within their jurisdiction (see textbox).¹ The agreements also allow the fire authorities to collect fees as authorized by their political subdivisions to recover their plan review and inspection costs. In addition, the agreements require these authorities to submit to the Office quarterly reports that list the buildings inspected and the construction plans reviewed. As of June 2011, the Department also had agreements with all three state universities, which authorize the universities to inspect their own buildings, and had an agreement with another private contractor to conduct plan reviews for the Office.

Plan review—An examination and approval by a fire code official of construction documents relating to fire safety aspects to ensure compliance with the fire code.

Fire safety inspection—An inspection conducted by a fire code official to determine the extent of compliance with the fire code.

Source: Auditor General staff review of the 2003 International Fire Code.

The Office should seek to enter into more of these agreements to help provide greater inspection coverage. Specifically, the Office should pursue agreements with local jurisdictions and private vendors that would help to reduce its inspection and plan review workload, increase its efficiency, and reduce inspection costs such as travel time. For example, the Department's inspection efficiency is reduced and its costs are increased when its inspectors must travel long distances to various areas of the State to conduct inspections. Department records indicate that inspectors spent as much time traveling to buildings for inspections as they did actually inspecting the buildings in fiscal years 2010 and 2011.

¹ According to the Office, some agreements do not require the local fire authority to conduct regularly scheduled inspections. The Office maintains responsibility for performing these inspections when the local fire authority does not have this responsibility.

Auditors' review found that the Office does not ensure local fire authorities or private vendors submit required inspection reports.

Office should ensure oversight of agreements with local fire authorities or private vendors—The Office should establish and implement an oversight process for agreements with local fire authorities or private vendors, and ensure that agreements have been signed. Oversight of these agreements becomes especially important if the Office increases the number of agreements it has with local fire authorities or private vendors in the future. As previously mentioned, the agreements with local fire authorities and private vendors require that they submit quarterly inspection reports to the Office. These reports should list the buildings for which plan reviews and inspections were performed. According to the Office, it does not have a process in place to ensure that quarterly inspection reports are submitted. Auditors' review of 9 agreement files showed that only 2 had quarterly inspection reports, and only one file contained up-to-date quarterly inspection reports. Additionally, the Office reported that staff do not review the reports they receive and, as discussed earlier, do not enter the inspections completed by the local fire authorities into the inspection database to ensure they are inspecting all of the buildings. The Office should implement an oversight process for these agreements that includes enforcing its quarterly inspection report requirement, reviewing the information in these reports, and entering inspection information into its database.

Further, the Department should ensure that the agreements with local fire authorities or private vendors are signed by both parties. Auditors' review of the 9 agreement files found that only 5 of the agreements reviewed were signed by both the local fire authority and the state fire marshal. These agreements should be signed by the local fire authorities and the state fire marshal to ensure both parties accept the terms of the agreement.

Office should develop prioritization method for its own inspections

As previously mentioned, because of reduced staff levels, the Office has had to prioritize and limit its inspection activities to newly constructed buildings, inspections resulting from customer complaints, and inspections of schools in the surrounding vicinity of these other inspections. However, as staff resources permit, the Office should establish a process to prioritize inspections for buildings that are not under the jurisdiction of local fire authorities. Before January 2009, the Office had a process to prioritize inspections based on a risk scale of one through six. The Office assigned a risk level to each building based on the potential for loss of life and property. The level of risk was then associated with a frequency schedule for inspections. For example, a building with low risk required an inspection every 3 to 5 years, whereas a building with high risk required an inspection every 1 to 2 years. The Office's database would then generate a report indicating which inspections should be

completed. However, in January 2009, the Office discontinued using the report because of database changes that affected the building inventory.

Therefore, as staff resources permit, the Office should establish a process to prioritize inspections more fully based on fire risk for buildings that have not been delegated to local fire authorities. This process would allow the Department to determine how frequently buildings should be inspected and then prioritize inspections accordingly. In developing its risk-based approach, the Office could consider risk-based programs used in other jurisdictions, such as the Cities of Tempe and Glendale. For example, according to a Tempe Fire Department official, the City of Tempe requires one inspection every 2 to 3 years for low-risk buildings such as banks and car washes. High-risk buildings, such as hospitals and high-rise structures, require an annual inspection. The risk levels are based on the type of business, the occupancy, and the amount of hazardous material present. Additionally, according to a City of Glendale Fire Department official, the City of Glendale uses similar risk factors to identify how often buildings should be inspected.

The Office should establish a process to prioritize inspections more fully based on a building's fire risk.

Department should seek legislation allowing Office to establish fees to recover costs

The Department should seek legislation to allow the Office to charge fees to recover the cost of fire safety inspections. Although statute allows local fire jurisdictions to recover inspection costs, it does not allow the Office to do so. Allowing the Office to charge fees that cover inspection costs would potentially provide an additional source of revenue to augment staffing, thus providing for more thorough inspection coverage. To develop fees that would cover its inspection costs, the Department should use a structured process to determine appropriate fees, propose the fees to the State Fire Safety Committee (Committee), and seek legislation to allow it to recover its inspection costs through these fees. Further, the Department should work with the Governor's Office to appoint members to the Committee.

Statute limits Department's ability to recover inspection costs—

Although statute allows local fire authorities to fully recover their plan review and fire safety inspection costs, it limits the Department's ability to do so. Specifically, Arizona Revised Statutes (A.R.S.) §41-2162(E) allows city, town, and county fire inspectors to charge fees that recover the costs of plan reviews and fire safety inspections. Additionally, A.R.S. §41-2162(C) allows local fire authorities who have agreements with the Office to charge fees to recover costs of plan reviews and fire safety inspections performed on the State's behalf. A.R.S. §41-2146(D) allows the Department, through the Committee, to establish fees only for permits, plan submissions, plan reviews, and reinspections (see Introduction, page 3, for further information on the Committee and textbox, page 14, for the definition of a reinspection). However, according to the Office, the Department does not charge fees for rein-

Reinspection—For construction-related inspections, a subsequent inspection of work or an installation that did not meet minimum fire code standards. For regularly scheduled fire safety inspections, a subsequent inspection conducted to ensure violations posing an immediate threat to life and property are addressed.

Source: Office of the State Fire Marshal.

specifications of regularly scheduled fire safety inspections, and statute does not allow it to charge fees for regularly scheduled fire safety inspections.

These limitations create inconsistencies, in that a facility inspected by a local fire authority under agreement with the Office may be charged a fee to cover the inspection cost, while a facility inspected by the Office cannot be charged a fee to cover inspection costs. Auditors' survey of other states' fire safety programs found that 20 of the 28 states that responded recover costs for various fire safety functions through fee revenue.¹ Some of these states charge fees to recover fire safety inspection costs. For example, according to a Colorado Division of Fire Safety official, Colorado's State Fire Marshal Office receives 90 percent of its funding from various fire safety function fees. These include fees for fire fighter certification, construction reviews, and regularly scheduled fire safety inspections and reinspections.

Department should use structured process to propose new fees for legislative consideration—The Department should follow a structured process, such as the one suggested in Finding 2 (see pages 20 through 23), to develop a proposal for fees that would cover the Office's fire safety inspection costs. This process should include assessing the Office's efficiency to minimize costs where possible; ensuring it has a method for tracking and allocating costs for both direct and indirect costs; developing fees for specific activities that are based on actual costs to help ensure fees are appropriate and equitable; considering the effect fee increases have on inspected facilities; and obtaining stakeholders' input in developing the fees. Once it has developed its proposed fees, the Department should seek legislation that would allow it to charge the proposed fees to recover costs for all fire safety inspections similar to the statutory authority granted to local fire authorities. If the proposed fees are significantly higher than current fees, the Department might also recommend increasing fees gradually. As required by statute, fee changes must be approved by the Committee and be established through administrative rule. However, according to the Department, as of June 2011, there was only one active member on the Committee, and the Committee requires a quorum to make any fee changes. Therefore, the Department should work with the Governor's Office to solicit applications and appoint members to the Committee.

Recommendations:

- 1.1 The Office should implement and use its new inspection database to better manage, track, and prioritize inspections conducted by the Office and ensure

¹ Auditors sent surveys to fire marshals' offices in 48 other states and the Honolulu, Hawaii, Fire Department.

oversight of inspections conducted by local fire authorities that have agreements to conduct inspections on the Office's behalf. Specifically, the Office should:

- a. Track all inspection activities and specific information on violations found during inspections in its database.
 - b. Establish a system within its database to prioritize inspections based on fire risk, in conjunction with recommendation 1.4.
 - c. Identify buildings in its database that are covered by agreements with local fire authorities, ensure newly constructed buildings in jurisdictions covered by the agreements are entered in its database, and enter inspection data for these buildings in its database.
- 1.2 The Office should solicit additional agreements with local fire authorities or private vendors to provide greater inspection coverage that would significantly reduce its inspection or plan review workload and/or reduce inspection costs, such as travel time.
- 1.3 The Office should establish and implement an oversight process for agreements with local fire authorities and private vendors, and ensure that agreements have been signed by both the Office and the agreement holder. This process should include enforcing the Office's quarterly inspection report requirement, reviewing the information from these reports, and entering inspection information into its database, in conjunction with recommendation 1.1.c.
- 1.4 As staff resources permit, the Office should establish a process to prioritize inspections based more fully on fire risk for buildings that have not been delegated to local fire authorities, which would allow it to determine how frequently buildings should be inspected and then prioritize inspections accordingly based on available resources.
- 1.5 The Department should develop or adopt a structured approach to evaluate current fees and propose new fees that would recover office costs. In developing this approach, the Department should do the following:
- a. Assess the efficiency of its operations to ensure costs are as low as possible and document the results of its assessment. The Department should seek to minimize costs where possible.
 - b. Develop a method for tracking and allocating relevant department costs, including both direct and indirect costs.
 - c. Identify the actual costs for specific activities for which fees are charged to help ensure fees are appropriate and equitable.

- d. Consider the effect that proposed fee changes may have on inspected facilities and obtain their input when developing the proposed fees.
- 1.6 Once the approach is developed or adopted, the Department should use it to propose new fees to the State Fire Safety Committee that recover its costs. If proposed fees are significantly higher than current fees, the Department should consider recommending increasing fees gradually.
- 1.7 Once the Department has developed its proposed fees and obtained approval for these proposed fees from the State Fire Safety Committee, it should seek legislation modifying statute that allows it to charge the proposed fees to recover its inspection costs, similar to local fire authorities.
- 1.8 The Department should work with the Governor's Office to solicit applications and appoint members to the State Fire Safety Committee.

FINDING 2

The Department of Fire, Building and Life Safety (Department) should take steps to ensure that the fees it charges to regulate the manufactured housing and modular building industries cover the cost of regulation. Statute gives the Board of Manufactured Housing (Board) authority to set fees that fully recover the Department's costs for this regulation, and it specifically requires that fees be set at a level to cover 95 to 105 percent of anticipated expenditures for the year. However, because the Department has historically interpreted this statute on a more limited basis, it did not use all of the costs it incurred to regulate the manufactured housing and modular building industries to propose appropriate fee levels to the Board. When considering all known regulatory costs, auditors estimated that fee revenue covered at most 90 percent of the Department's costs for this regulation in fiscal year 2011, and the actual amount is likely lower. The Department should adopt a structured approach for analyzing its fees and propose new fees for the Board's approval that would fully cover all costs and ensure that each type of fee is appropriate for the specific activities involved.

Department should ensure fees fully cover manufactured housing and modular building regulatory costs

Department carries out federal and state regulatory activities for manufactured homes and modular buildings

The Department, through its Office of Manufactured Housing and Compliance Division, carries out a wide range of regulatory activities related to manufactured homes, mobile homes, and factory-built or modular buildings.¹ For manufactured homes, federal law establishes construction and installation standards, which are enforced through the U.S. Department of Housing and Urban Development (HUD). However, HUD's policy is to involve state agencies to the maximum extent possible to enforce the associated federal standards. In Arizona, HUD has designated the Department as the entity responsible for implementing and enforcing manufactured housing laws and regulations in the State.

Through agreements with HUD, the Department is responsible for the following four functions related to manufactured homes:

- **State Administrative Agency**—As the designated state administrative agency, the Department handles consumer complaints regarding manufactured home defects, monitors manufacturers' compliance with investigating and correcting manufactured home defects, submits monthly reports to HUD, and can impose administrative penalties for violations of manufactured home regulations.
- **Primary Inspection Agency**—As a designated primary inspection agency, the Department is responsible for evaluating manufacturers' quality control procedures, inspecting each manufactured home at some point in the construction process, and ensuring manufactured homes conform to approved designs.

¹ See the Introduction, pages 1 through 3, for further explanation of these terms and how the Department's Office of Manufactured Housing, Office of Administration, and Compliance Division, help carry out associated regulatory activities.

- **Installation Program**—Through its HUD-approved installation program, the Department trains and licenses manufactured home installers, and inspects the initial installations of new manufactured homes. The Department delegates some installation inspections to local jurisdictions through agreements (see Sunset Factor 2, page 35, for more information).
- **Dispute Resolution Program**—Through its HUD-approved dispute resolution program, the Department resolves disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction of defects in manufactured homes that are reported within 1 year of installation.

Regulatory activities related to mobile homes and modular buildings are established in state statute and rule.¹ They include such matters as administering the Mobile Home Relocation Fund (see Finding 3, pages 25 through 30, for more information). Similar to the regulation of manufactured housing, the Department regulates the modular building industry by issuing licenses to manufacturers, dealers, and installers; inspecting modular buildings being built in factories; and inspecting modular building installations.

Department fees do not fully recover costs

Although statute requires the Department to charge fees that are at or close to fully covering its costs, current fees appear to fall short of this mark. To meet statutory requirements, fees should be at 95 to 105 percent of the Department's expenditures for regulating the manufactured housing and modular building industries. However, because the Department has historically interpreted this statute on a more limited basis, it did not consider all of the costs related to performing these regulatory functions when proposing fees to the Board. When considering all known regulatory costs, auditors estimated that fee revenue covered at most 90 percent of the Department's regulatory expenditures in fiscal year 2011.

Statute allows full cost recovery—A.R.S. §41-2144(A)(4) requires the Board to establish a schedule of fees for inspections, licenses, permits, plan reviews, and administrative functions so that the total annual fee revenue is between 95 and 105 percent of anticipated expenditures for the operation of the Office of Manufactured Housing to regulate the manufactured housing and modular building industries. The Department has historically interpreted this statute to require the Board to set fees so that fee revenue covers only the expenditures incurred by the Office of Manufactured Housing. However, this statute applies not just to the Office of Manufactured Housing, but also to the Compliance Division, which handles licens-

¹ Mobile homes are homes built in a factory prior to the adoption of federal manufactured housing standards in 1976. Modular buildings are nonresidential or residential buildings other than manufactured or mobile homes that are built off-site and assembled on-site.

Auditors estimated that fee revenue covered at most 90 percent of the Department's regulatory expenditures in fiscal year 2011.

ing and complaints for the manufactured housing and modular building industries. It also applies to overhead costs that should be allocated to the Office of Manufactured Housing and the Compliance Division for administrative support provided by the Office of Administration and the department director.

Statute exempts the Board from following the rulemaking process in setting fees. Instead, Arizona Administrative Code R4-34-501 requires the Board to set fees annually before May 15 for the following fiscal year (see textbox for examples of fiscal year 2012 fees). Fee revenue is remitted to the State General Fund and helps offset State General Fund appropriations to the Department.

Examples of fiscal year 2012 fees for office operations

Manufacturer license	\$864 new license \$432 annual renewal license
Retailer license	\$556 new license \$278 annual renewal license
Installer license	\$741 new license \$370 annual renewal license
Manufactured home permit ¹	\$123
Residential modular permit	\$412 per transportable section
Plan review	\$103 per hour (1-hour minimum)
Manufacturing plant inspection	\$51 per hour, plus mileage

¹ This permit fee includes up to three installation inspections, if necessary. The fee for additional inspections is \$82 per hour, plus mileage at \$0.445 per mile.

Source: Auditor General staff analysis of department fee schedule.

Department did not consider all regulatory costs when developing and proposing fees—

Because the Department applied the cost recovery statute on a more limited basis prior to the audit, it has not developed and provided sufficient information to the Board to allow it to appropriately establish fees that would fully cover all department costs related to the Office of Manufactured Housing’s operations, such as Compliance Division and overhead costs. As a result, the Department’s fees do not fully cover its regulatory costs, and the Department may be remitting less monies to the State General Fund than it should. Specifically:

- **Information provided to Board does not include all regulatory costs—** Because of the Department’s more limited application of the cost recovery statute, the information it provided to the Board for establishing the fiscal year 2012 fees included Office of Manufactured Housing costs, but not Compliance Division or overhead costs, as discussed above. The Department was unable to provide this additional cost information because it has not developed a method to allocate these costs to the Office of Manufactured Housing’s regulatory activities. Without this information, the Board cannot ensure that the fees it sets fully cover the Department’s costs.
- **Fees do not fully cover costs—** Although total fee revenue covered 94 percent of the Office of Manufactured Housing’s State General Fund expenditures in fiscal year 2011, this percentage does not factor in Compliance Division and overhead costs incurred to support the Office of Manufactured Housing’s

The Department is remitting less monies to the State General Fund than it could be.

regulation of the manufactured housing and modular building industries. The Department created the Compliance Division in November 2010 and began tracking division expenditures at that time. When factoring in the known Compliance Division's State General Fund expenditures, total fee revenue only covered at most 90 percent of the Department's regulatory costs.¹ Specifically, the Department collected \$652,588 in fee revenue but spent at least \$729,540 in State General Fund monies, excluding any applicable overhead costs. As a result, the Department is remitting less monies to the State General Fund than it could be if it were charging fees that fully covered all of the Department's regulatory costs.

- **Appropriateness of specific fees unknown**—The Department cannot confirm whether the fees charged for specific activities, such as issuing installation permits or inspecting manufacturers, are appropriate. According to fee-setting literature, fees should be based on the actual costs of performing those activities, including any indirect or overhead costs that should be allocated to the activities (see next section below).² However, the Department has not fully developed a method for tracking and allocating costs for specific activities, although it has begun to do so. As a result, the Department cannot ascertain whether specific fees are too high or too low for the associated activity.

The Department's preliminary cost estimates for one regulatory function indicate that the associated fee may not be adequate. Specifically, the fee for an installation permit for a manufactured home is \$123, which includes up to three installation inspections to verify the home is properly set and that electric, gas, water, and sewer systems have been properly connected. However, according to preliminary department estimates, the cost of processing an installation permit and performing the associated inspections is between at least \$89 and \$237, excluding any overhead costs that should be allocated to this function, depending on how many inspections are needed. Consequently, the current fee may not be sufficient to recover the cost of some installations.

Department should work with Board to set appropriate fees

The Department should develop or adopt a structured approach to evaluate current fees and propose new fees to the Board that would (1) fully cover all department costs related to the regulation of manufactured housing and modular building

¹ Because the Compliance Division was created in November 2010, only 8 months of its expenditure data was available for fiscal year 2011.

² Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS: Author.

industries and (2) ensure that specific fees are appropriate for the specific activities. Mississippi's Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) developed an approach for evaluating and setting fees that may assist the Department and the Board.¹ PEER's approach consists of a decision model for establishing or increasing government fees, called the Theory of Fee Setting in Government, as well as guidance on implementing new fees.²

PEER has developed a decision model for establishing or increasing government fees.

Figure 1 (see page 22) summarizes key concepts from PEER's approach. The approach the Department takes should include the following:

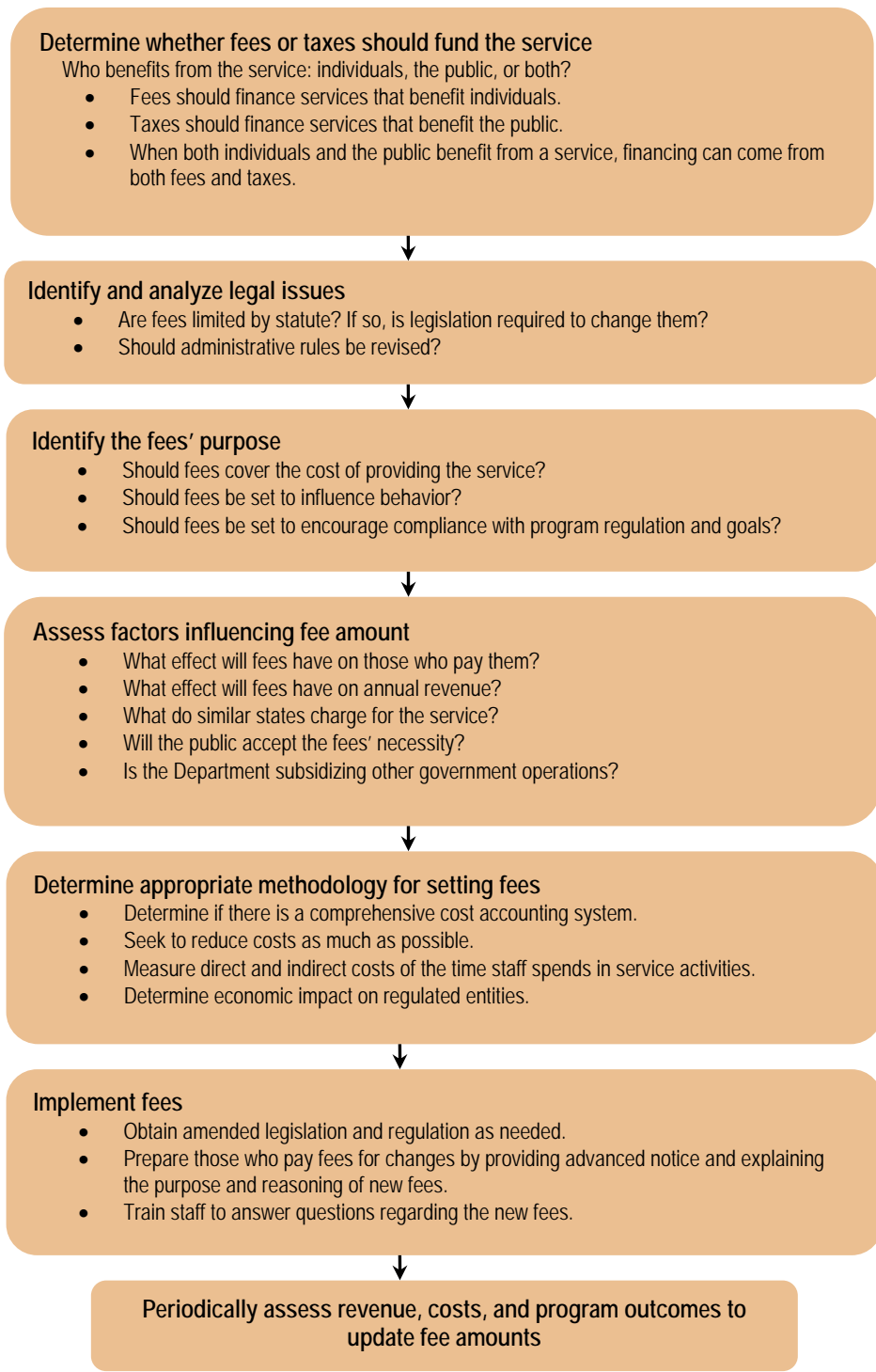
- **Assessing efficiency of operations**—The Department should continue its efforts to assess the efficiency of its operations to ensure costs are as low as possible and document the results of its assessment. The Department began reviewing its operations in April 2010 by documenting the steps staff take to complete various activities and identifying ways to streamline or automate steps. As the Department assesses the efficiency of its operations, it should continue seeking to minimize costs where possible.
- **Developing a cost accounting method**—The Department should develop and finalize a method for tracking and allocating relevant department costs, including both direct and indirect costs. For example, to track personnel costs, the Department could use its new time accounting system and its revised monthly time-tracking reports to determine the amount of time staff spend on activities that support the regulation of the manufactured housing and modular building industries.
- **Developing fees based on relevant costs**—To help ensure fees are appropriate and equitable, the Department should identify the actual costs for specific activities for which fees are charged. In addition, fees should take into account factors that affect the cost of a specific activity. For example, as previously described, the cost of processing a manufactured home installation permit varies depending on the number of inspections needed to ensure proper installation of the home. As recommended in the Office of the Auditor General's 2001 performance audit on the Department, the fee should take into account this factor (see Report No. 01-23).

Once developed or adopted, the Department should use this approach to assess its fees and propose new fees to the Board. The Board should consider the effect that proposed fee changes may have on the affected industries and obtain their input when reviewing the fees. If proposed fees are significantly higher, the Board might recommend increasing fees gradually. In addition, the Department should develop

¹ PEER, 2002.

² According to PEER, the approach was based on a review of academic literature, economics theory, and policies and procedures from various states and the United States and Canadian governments.

Figure 1: Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review Structured Fee-Setting Process Developed for State Government



Source: Auditor General staff analysis of fee-setting model included in *State agency fees: FY 2001 collections and potential new fee revenues* report prepared by the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review.

and implement policies and procedures for using the method to propose the annual fees to the Board.

Recommendations:

- 2.1 To ensure its fees more fully reflect its costs, the Department should develop or adopt a structured approach to evaluate current fees and propose new fees to the Board that would fully cover all department costs related to the regulation of the manufactured housing and modular building industries, and ensure that specific fees are appropriate for the specific activities. In developing this approach, the Department should do the following:
 - a. Continue its efforts to assess the efficiency of its operations to ensure costs are as low as possible and document the results of its assessment. As the Department assesses the efficiency of its operations, it should continue seeking to minimize costs where possible.
 - b. Develop and finalize a method for tracking and allocating relevant department costs, including both direct and indirect costs. For example, to track personnel costs, the Department could use its new time accounting system and its revised monthly time-tracking reports to determine the amount of time staff spend on activities that support the regulation of the manufactured housing and modular building industries.
 - c. Identify the actual costs for specific activities for which fees are charged to help ensure fees are appropriate and equitable. In addition, fees should take into account factors that affect the cost of a specific activity.
- 2.2 Once developed or adopted, the Department should use this approach to assess its fees and propose new fees to the Board. If proposed fees are significantly higher than current fees, the Department might recommend increasing fees gradually. The Board should consider the effect that proposed fee changes may have on the affected industries and obtain their input when reviewing the fees.
- 2.3 The Department should develop and implement policies and procedures for using the method to propose the annual fees to the Board.

FINDING 3

The Department of Fire, Building and Life Safety (Department) has incorrectly spent some Mobile Home Relocation Fund (Fund) monies in fiscal years 2009 through 2011 on activities that did not support the Fund's purpose or exceeded the level of support needed for statutorily approved functions. The Fund was established primarily to help mobile home tenants who decide or are forced to relocate or abandon their mobile homes for such reasons as a closure of their mobile home park. Although statute allows the Department to use fund monies to pay for the costs of administering the Fund, as well as certain other activities, the Department has used fund monies to pay for personnel and other costs that appear beyond the level of support needed for statutorily approved functions. The extent to which monies may have been incorrectly allocated cannot be precisely determined because the Department did not sufficiently track employees' time or other resources used to carry out these activities. As a result, the Department should develop an appropriate method to charge direct and indirect costs to the Fund, ensure costs are correctly charged to the Fund, and determine if incorrectly allocated expenditures should be paid back to the Fund.

Department has incorrectly spent some Mobile Home Relocation Fund monies

Fund established for mobile home relocations and specific department administrative costs

In 1987, the Legislature established the Mobile Home Relocation Fund, which is used to pay mobile home tenants who are required or choose to relocate or abandon their mobile homes in certain situations (see textbox). The Department reviews requests from tenants for fund monies and determines the amount of monies eligible claimants may receive. In addition, Arizona Revised Statutes (A.R.S.) §33-1476.02 requires fund monies to be paid to the Department for the following administrative activities, which include activities not directly related to relocation:

Circumstances for which mobile home tenants may request fund monies

- Tenants can receive limited monies from the Fund for relocating their mobile homes when their mobile home park closes down, is redeveloped, has a qualifying rent increase, or is changed from an age-restricted community to an all-age community;
- Rather than relocating, tenants in some circumstances can abandon their mobile homes and collect one-fourth of the maximum allowable moving costs from the Fund; and
- Under certain conditions, a mobile home owner may receive up to \$1,000 from the Fund when moving a mobile home to pay for the cost of bringing it into compliance with current standards.

Source: Auditor General staff analysis of A.R.S. §§33-1476.01, 33-1476.02, 33-1476.04, and 41-2157, and Laws 2011, Ch. 283.

- **Administering the Fund**—Monies in the Fund should pay for the Department's costs to administer the Fund, including direct and indirect costs. Direct costs may include personnel costs for the time employees spend reviewing applications and supporting documentation, inspecting and photographing homes prior to relocation, approving or denying requests, inspecting installations of homes after relocation unless done by a local jurisdiction, and processing checks. Indirect costs may include an appropriate portion of overhead costs such as general administrative services, technical support, and equipment.

- **Facilitating hearings**—If monies are available, they should be used, as necessary, to support the Department's administration of its hearing function. Specifically, the Department processes petitions for hearings or re-hearings conducted by the Office of Administrative Hearings from mobile home owners/tenants or landlords, buyers of manufactured homes and residential modular buildings, and members of condominium and planned communities. For example, a mobile home tenant may request a hearing if the tenant believes that the landlord has not maintained fit and habitable premises. In addition, the Department must provide for a hearing when buyers of manufactured homes and residential modular buildings file claims if they are damaged as a result of an act or omission by a licensed dealer. Further, a member of a condominium or planned community may request a hearing if he/she has a complaint regarding a violation of laws or condominium/planned community documents that govern his/her community. In addition, the Department facilitates hearings regarding department actions or determinations. For example, a licensee may ask for a hearing regarding a disciplinary action that he/she disagrees with, or a consumer may appeal how the Department resolved a complaint.
- **Processing mobile home park manager education complaints**—If monies are available, they should be used, as necessary, to support the Department's handling of tenants' complaints against park managers for not completing 6 hours of educational programs every 2 years as required by statute.

The Fund receives revenue from two primary sources—property tax assessments from mobile home owners who do not own the land upon which their mobile home is located and interest earnings. Once the fund balance reaches \$8 million, statute requires that tax assessments no longer be collected. Assessments resume when the fund balance at the end of a fiscal year is less than \$6 million. As shown in Table 2 (see page 27), total fund revenues were \$694,174 and total fund expenditures were \$858,365 in fiscal year 2011. The Fund's fund balance totaled more than \$7 million as of June 30, 2011.

Department likely used fund monies to support nonfund activities

Consistent with a May 2009 audit conducted by the Arizona General Accounting Office, this audit found that the Department likely used fund monies in fiscal years 2009 to 2011 to pay for personnel and other expenditures that either did not support or exceeded the level of support needed for fund activities. The word "likely" must be used here because the Department did not sufficiently track employees' time or other resources used to carry out fund activities. Without this information, it is impossible to determine the actual cost of activities that should be paid from the

Table 2: Mobile Home Relocation Fund
Schedule of Revenues, Expenditures, and Changes in Fund Balance
(Unaudited)

	2009	2010	2011
Revenues:			
Homeowner tax assessments	\$ 769,379	\$ 741,064	\$ 648,950
Interest on investments	121,503	71,665	44,779
Other			445
Total revenues	<u>890,882</u>	<u>812,729</u>	<u>694,174</u>
Expenditures:			
Personal services and related benefits	915,612	604,107	542,943
Professional and outside services	65,528	23,587	510
Travel, in-state	113,067	63,906	10,216
Travel, out-of-state	2,278	3,874	177
Building rent	44,377	122,322	99,448
Other operating	44,611	33,732	6,871
Equipment	9,931	5,844	10,207
Subtotal	<u>1,195,404</u>	<u>857,372</u>	<u>670,372</u>
Payments to mobile home tenants	<u>118,864</u>	<u>42,567</u>	<u>187,993</u>
Total expenditures	<u>1,314,268</u>	<u>899,939</u>	<u>858,365</u>
Net change in fund balance	(423,386)	(87,210)	(164,191)
Fund balance, beginning of year	<u>7,695,316</u>	<u>7,271,930</u>	<u>7,184,720</u>
Fund balance, end of year	<u>\$ 7,271,930</u>	<u>\$ 7,184,720</u>	<u>\$ 7,020,529</u>

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2009 through 2011 and the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2009 through 2011.

Fund. Still, some expenditures the Fund paid for appear incorrect or excessive. Specifically:

- Personnel cost allocations appear excessive**—Although fund expenditures for the Department’s personal services and related benefits decreased from approximately \$916,000 to nearly \$543,000 for fiscal years 2009 through 2011, these expenditures represented approximately three-fourths of the Fund’s expenditures each year, excluding payments to mobile home tenants. For fiscal year 2011, the Department allocated a portion of 21 employees’ personnel costs to the Fund. However, the personnel costs allocated to the Fund do not appear reflective of the actual time department staff spent on authorized activities. For example, the Department allocated 25 percent of the personnel costs for four inspectors who performed some work related to fund activities in fiscal year 2011. However, during the audit, the Department estimated that an inspector spends only 3 to 4 hours per relocation, abandonment, or rehabilitation. Given the small

number of these activities—only 38 in fiscal year 2011—it did not appear to require 25 percent of the inspectors' time. Specifically, based on the Department's estimate of 4 hours per relocation, abandonment, or rehabilitation, less than 2 percent of each of the 4 inspector's time, on average, would be needed to conduct inspections for these 38 activities. Additionally, the Department could not support the accuracy of its personnel cost allocations to the Fund for fiscal years 2009 through 2011 because it did not sufficiently track the time its employees spent on fund activities that should be paid from the Fund.

- **Other expenditures appear questionable**—The Department has also used fund monies to pay for other expenditures that appeared inconsistent with the level of associated fund activity. As discussed previously, statute allows the Department to use fund monies to pay for certain department activities, including direct and indirect costs to administer the Fund and to support its administrative hearing function. However, even though the number of relocations, abandonments, rehabilitations, and hearings decreased in fiscal year 2010, the Department significantly increased the amount of fund monies it used to pay for building rent—from \$44,377 in fiscal year 2009 to \$122,322 in fiscal year 2010 (see Table 3 for this decrease in activities). In addition, the Department used

fund monies to pay for more than \$6,000 of out-of-state travel, including airfare, in fiscal years 2009 and 2010. The Department could not support how these travel costs pertained to the Fund's purposes, but reported that all of its employees' travel expenditures are automatically paid from the Fund at the same percentage as each employee's salary and benefits are paid from the Fund. For example, if 25 percent of an employee's salary is paid from the Fund, then 25 percent of that employee's travel expenditures are automatically paid from the Fund, even if the travel is not related to activities that fund monies should cover.

Table 3: Mobile Home Relocation Fund
Volume of Work for Eligible Fund Activities
Fiscal Years 2009 through 2011

Fiscal Year	Relocations/ Abandonments/ Rehabilitations	Administrative Hearings	Mobile Home Park Manager Complaints
2009	33	88	N/A ¹
2010	6	44	2
2011	38	33	2

¹ The Department did not have records for park manager complaints from fiscal year 2009.

Source: Auditor General staff analysis of department records and the AFIS Accounting Event Transaction File for fiscal years 2009 through 2011.

By incorrectly allocating costs to the Fund, the Department has reduced the amount of these monies that can be used for their intended purpose. Additionally, the incorrect allocation of these monies potentially impacts the mobile home owners who pay the property tax assessments into the Fund. As mentioned earlier, once the Fund's fund balance reaches \$8 million, tax assessments should no longer be collected. Incorrect and/or excessive expenditures would have caused the Fund's fund balance to be lower than it potentially should be. As shown in Table 2 (see page 27), the Fund's fund balance decreased from nearly \$7.7 million at the beginning of fiscal year 2009 to just more than \$7 million at the end of fiscal year 2011. However, the impact of the Department's incorrect spending of fund monies on the Fund's fund balance and the payment of the property tax assessment is difficult to determine

because the Department lacks complete and accurate information regarding the appropriate cost allocations to the Fund.

These findings are consistent with a May 2009 audit conducted by the Arizona General Accounting Office (GAO), which found that the Department was charging excessive, unsupported costs to the Fund for processing relocation applications. The audit recommended the Department establish an appropriate methodology to charge costs to the Fund, including personnel costs for staff time spent on authorized activities, and review cost allocations at least quarterly to ensure only reasonable costs are charged to the Fund. As of June 2011, the Department was in the process of implementing some of GAO's recommendations.

Department should ensure fund monies are used only for fund activities

The Department recognizes the need to ensure that fund monies are used to support only fund activities and indicated it will continue with its efforts to fully identify and track costs and activities that the Fund should cover. The Department should also take the following actions:

- **Develop a methodology for charging costs to the Fund**—As recommended by the GAO in its 2009 audit, the Department should establish a methodology for charging appropriate direct and indirect costs to the Fund. As part of this methodology, it should identify and track the costs associated with activities that can be paid from the Fund. As part of an effort that it began in April 2010, the Department has undertaken a step-by-step review of the activities it performs to support its mandated functions and operations. This includes the activities the Department performs to support the Fund's operations. For example, the Department is estimating the time employees spend processing relocation applications and the associated personnel costs. It should continue this effort for the other administrative activities that can be charged to the Fund. In addition, the Department could use its new time accounting system and its revised monthly time-tracking reports to track the actual time employees spend on all activities that can be paid from the Fund. Further, the Department should consider asking for the GAO's assistance as needed to help ensure that it charges appropriate costs to the Fund.
- **Ensure costs are correctly charged to the Fund**—After developing a methodology to charge direct and indirect costs to the Fund, the Department should develop and implement policies and procedures to ensure that the costs charged to the Fund accurately reflect the activities it needs to perform to support the Fund's purpose and that resulting expenditures are periodically reviewed. For those expenditures that were incorrectly paid from the Fund, the Department

The Department should identify and track costs for activities that can be paid from the Fund.

needs to determine how they should be paid in the future. For example, if these expenditures are related to the Office of Manufactured Housing's regulatory functions, the Department should pay for these expenditures from an appropriate fund, such as the Department's State General Fund appropriation, and work with the Board of Manufactured Housing to ensure these costs are recovered through fee revenues as discussed in Finding 2 (see pages 17 through 23).

- **Determine whether monies should be repaid to the Fund**—The Department should consult with its Assistant Attorney General to determine whether any money should be repaid to the Fund, and if so, the amount to be repaid and an appropriate timetable for repayment.

Recommendations:

- 3.1 The Department should continue with its efforts to establish a methodology for charging appropriate direct and indirect costs to the Mobile Home Relocation Fund by:
 - a. Identifying and tracking the costs associated with activities that can be paid from the Fund;
 - b. Tracking the actual time employees spend on all activities that can be paid from the Fund; and
 - c. Considering GAO's assistance as needed to help ensure that it charges appropriate costs to the Fund.
- 3.2 The Department should develop and implement policies and procedures to ensure that the costs charged to the Fund accurately reflect the activities it needs to perform to support the Fund's purpose and that resulting expenditures are periodically reviewed. For those expenditures that were incorrectly paid from the Fund, the Department needs to determine how they should be paid in the future.
- 3.3 The Department should consult with its Assistant Attorney General to determine whether any money should be repaid to the Fund, and if so, the amount to be repaid and an appropriate timetable for repayment.

Sunset Factors

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the factors included in this report in determining whether the Department of Fire, Building and Life Safety (Department) should be continued or terminated.

This analysis includes recommendations for the Department to continue efforts to monitor agreements with local jurisdictions for conducting manufactured home and modular building installation inspections (see Sunset Factor 2, page 35), to adopt administrative rules required by statute (see Sunset Factor 4, pages 37 through 38), and to ensure department reports assess compliance with required complaint-handling time frames (see Sunset Factor 6, pages 39 through 40).

Sunset factor analysis

1. **The objective and purpose in establishing the Department and the extent to which the objective and purpose are met by private enterprises in other states.**

The Department was established in 1986 through a merger of the Office of the Fire Marshal and the Office of Manufactured Housing. Statute requires the Department to further the public safety and welfare by maintaining relevant standards and codes for fire safety, manufactured housing, and factory-built or modular buildings.¹ To fulfill its statutory obligations and purpose, the Department is organized into three offices and one division:

- **Office of the State Fire Marshal**—The Office of the State Fire Marshal is charged with enforcing the state fire code adopted by the State Fire Safety Committee and ensuring compliance with state laws relating to fire prevention and protection. For example, the Office is statutorily required to establish a regularly scheduled fire safety inspection program for certain buildings around the State. These include state- and county-owned buildings; all public and private school buildings throughout the State, except for private schools in cities with a population of 100,000 or more; and some privately owned buildings in unincorporated areas of the State. In addition, the Office is charged with approving aspects of fire safety in building plans for new construction, remodeling, alterations, and building additions for these types of buildings.

According to auditors' survey of other states' fire marshal's offices, only 4 of the 28 states' offices who responded to the survey reported using private contractors to carry out some fire safety functions.² For example, Idaho reported contracting for plan reviews of automatic sprinklers, and Colorado reported contracting for both plan reviews and fire prevention inspections. Similarly, the Office has entered into agreements with two private vendors for plan reviews and fire safety inspections.³ However, some states' fire marshal's offices have entered into agreements with local fire authorities to perform various fire safety functions.

¹ Manufactured homes are homes built in a factory on or after June 15, 1976, based on federal standards. Factory-built buildings, more commonly known as modular buildings, are nonresidential or residential buildings other than manufactured and mobile homes that are built off-site and assembled on-site.

² Auditors sent surveys to fire marshals' offices in 48 other states and the Honolulu, Hawaii, Fire Department.

³ The Office of the State Fire Marshal reported that it has entered into 2 agreements with one of the private vendors to perform fire safety inspections and plan reviews for separate jurisdictions.

For example, Colorado uses local fire authorities to assist with code enforcement, plan reviews, or fire safety inspections. The Office reported that it has also entered into agreements with 37 local fire authorities as of June 2011 to carry out some fire safety functions, including plan reviews and fire safety inspections of schools and state and county buildings. In addition, the Office has agreements with all three state universities.

- **Office of Manufactured Housing**—The Office of Manufactured Housing regulates the manufactured housing and modular building industries in the State. The Office inspects manufactured homes and modular buildings constructed in Arizona manufacturing plants to ensure that their construction adheres to federal- or state-approved design requirements. Statute also requires that every manufactured home or modular building installed in the State be inspected to ensure utilities are properly connected and the structure is securely set on its lot. As of July 2011, the Office had entered into intergovernmental agreements with 12 Arizona counties and 54 Arizona cities and towns to enforce installation standards in their respective jurisdictions (see Sunset Factor 2, page 35). Additionally, the Department performs its manufactured housing regulatory functions under agreement with the U.S. Department of Housing and Urban Development (HUD) to enforce federal standards for the construction and installation of new manufactured homes and to investigate and resolve consumer complaints concerning these homes.

Private companies and state agencies perform work in Arizona and some other states to enforce standards for the construction of new manufactured homes. Specifically, in 13 of the 22 states with active manufactured home factories, private companies have been designated by HUD as Primary Inspection Agencies responsible for evaluating manufacturers' quality control procedures, inspecting each manufactured home at some point in the construction process, and ensuring manufactured homes conform to approved designs. In the remaining 9 states, including Arizona, HUD has designated state agencies to carry out this responsibility. In addition, private companies have been designated by HUD to evaluate and approve manufactured home designs in Arizona and all but one of the other states with active manufactured home factories.

- **Office of Administration**—The Office of Administration provides administrative support to the Office of the State Fire Marshal and the Office of Manufactured Housing. Specifically, it provides information technology, financial accounting, and human resource services, as well as customer services at the Department's front desk.
- **Compliance Division**—The Compliance Division supports the Office of Manufactured Housing by licensing manufacturers, dealers, installers, and salespersons; and handling consumer complaints against these licensees.

In addition, it administers the Mobile Home Relocation Fund, which pays mobile home tenants who relocate or abandon their homes under specific circumstances prescribed by statute, and processes petitions for hearings or re-hearings conducted by the Office of Administrative Hearings from mobile home owners/tenants or landlords, buyers of manufactured homes and residential modular buildings, and members of condominium and planned communities. In addition, the Division facilitates hearings regarding department actions or determinations. For example, a licensee may ask for a hearing regarding a disciplinary action that he/she disagrees with, or a consumer may appeal how the Department resolved a complaint.

2. The extent to which the Department has met its statutory objective and purpose and the efficiency with which it has operated.

The Department has generally met several of its statutory objectives and purposes, but should improve in some areas. Some examples of where the Department is efficiently meeting its objectives and purposes include:

- **Timely review of construction plans for fire safety**—Generally, the Office of the State Fire Marshal reviews and approves fire safety system plans for new construction and remodeling of state, county, and public school buildings regarding fire safety within the required 60-day statutory time frame.¹
- **Licenses manufacturers, dealers, salespersons, and installers in a timely manner**—Department rules require the Department to issue licenses to manufacturers, dealers, salespersons, and installers of manufactured homes and modular buildings within 19 business days of receiving an application, excluding time requirements that are the responsibility of the applicant. In reports to the Governor’s Regulatory Review Council, the Compliance Division indicated that in fiscal years 2009 through 2011, it had processed 100 percent of the 3,368 applications received within the required time frames. Further, to improve its efficiency, the Department has posted licensing application forms and related information on its Web site.
- **One of the first state agencies nation-wide to implement manufactured housing installation program**—According to the Department, the Office of Manufactured Housing was one of the first state agencies in the country to implement an installation program approved by HUD in October 2008. To be approved, programs must have a method to inspect the initial installations of new manufactured homes, and ensure installers are trained and licensed. A national manufactured housing trade organization representative indicated that she has encouraged other states to review the Department’s installation

¹ For the 25 plan reviews auditors reviewed, one plan review was completed within 62 days, and auditors could not determine how long it took another plan to be reviewed because of missing information.

program because it delegates installation inspections to local agencies to ensure inspections are timely and to save on travel costs. In addition, the Department reported that it has redesigned its annual installer training course by focusing on recent installation violations in an effort to reduce such violations in the future.

- **Helped to improve manufactured housing factories' quality assurance programs**—The Office of Manufactured Housing successfully implemented a HUD initiative to help manufactured housing factories improve their quality assurance programs. Specifically, the Office of Manufactured Housing trained factory management, observed the factories' work processes, provided factories with specific recommendations for improvement after reviewing their quality assurance manuals, and audited factories to ensure quality assurance procedures were adequately implemented. From June through September 2010, the Office of Manufactured Housing reported to HUD that the five factory production lines regularly producing manufactured homes in Arizona had appropriate quality assurance programs. It further reported that the quality assurance initiative greatly improved factory performance. Specifically, according to the Office of Manufactured Housing's fiscal year 2011's inspection results, the average number of manufactured home units sequentially produced without violations increased in all five production lines as compared to the prior fiscal year. For example, one factory increased the average number of units sequentially produced without violations from 5.5 in fiscal year 2010 to 23.6 in fiscal year 2011.

However, the audit found that the Department can better meet its statutory objectives by:

- **Modifying fire safety inspection management practices**—In order for the Office of the State Fire Marshal to manage its inspections of all buildings under its jurisdiction, it should strengthen the information needed for managing these inspections. According to the Office of the State Fire Marshal, it is developing a new database system to better manage its inspection information. The Office of the State Fire Marshal should continue to develop and use its new database to better manage, track, and prioritize its own inspections, and ensure oversight of inspections done by local fire authorities. Additionally, the Office of the State Fire Marshal should solicit more agreements with local fire authorities or private vendors to inspect buildings on its behalf. For the buildings that remain under its jurisdiction and as staff resources permit, the Office of the State Fire Marshal should establish a process to prioritize building inspections based more fully on fire risk. Lastly, the Department should seek legislative changes that would allow the Office of the State Fire Marshal to charge fees to recover its inspection costs, just as statute currently allows local fire authorities to do (See Finding 1, pages 7 through 16, for more information).

- **Ensuring manufactured housing and modular building fees cover costs**—Statute requires the Department to charge fees that are at or close to fully recovering its costs for regulating the manufactured housing and modular building industries. However, because the Department applied the cost recovery statute on a more limited basis prior to the audit, it has not developed and provided sufficient information to the Board to allow it to appropriately establish fees that would fully cover all department costs related to the Office of Manufactured Housing’s operations, such as Compliance Division and overhead costs. Auditors found that fee revenues covered at most 90 percent of the regulatory costs in 2011 based on the Office of Manufactured Housing’s and Compliance Division’s State General Fund expenditures.¹ To ensure its fees more fully reflect its costs to regulate the manufactured housing and modular building industries, the Department should adopt or develop a structured approach to evaluate current fees and costs, and propose new fees to the Board of Manufactured Housing for approval (See Finding 2, pages 17 through 23, for more information).
- **Continuing efforts to monitor local agencies’ installation inspections**—A.R.S. §41-2153 requires the Office of Manufactured Housing to monitor local agencies’ installation inspections to ensure consistency with the Office of Manufactured Housing standards. As of July 2011, the Office of Manufactured Housing had entered into intergovernmental agreements with 12 Arizona counties and 54 Arizona cities and towns to enforce standards in their respective jurisdictions for the installation of manufactured homes and modular buildings.² The Office of Manufactured Housing reported that, as of July 2011, it had periodically audited these local agencies. Through these audits, it checks whether the agencies comply with statutes, standards, or practices during the permit process and the on-site inspection.

Additionally, in January 2011, the Office of Manufactured Housing changed its agreements with the local agencies to require them to submit monthly reports. These reports include a list of all installation inspections conducted by the agency in the prior month so that the Office of Manufactured Housing can more frequently monitor state-wide inspections and ensure installations are completed in compliance with its standards. However, according to Office of Manufactured Housing records, it has tried to collect local agencies’ monthly reports, but as of June 30, 2011, some local agencies were still 1 to 3 months behind on submitting these reports. The Office of Manufactured Housing should continue its efforts to collect these reports and ensure that all local agencies adequately enforce installation standards.

¹ Because the Compliance Division was created in November 2010, only 8 months of its expenditure data was available for fiscal year 2011.

² In 4 of the 54 cities with intergovernmental agreements, the Office of Manufactured Housing, rather than the city, is responsible for enforcing installation standards for modular buildings.

- **Ensuring the Mobile Home Relocation Fund is used appropriately—**
The Mobile Home Relocation Fund (Fund) was established primarily to provide monetary assistance to mobile home tenants who are required or choose to relocate or abandon their mobile homes in certain situations, such as mobile home park closures, and to pay for certain department costs. The Fund receives revenues primarily from tax assessments collected from mobile home owners who do not own the land upon which their mobile home is located. However, the Department likely used fund monies to pay for personnel and other expenditures that either did not support or exceeded the level of support needed for fund activities. The extent to which monies may have been incorrectly spent cannot be precisely determined because the Department did not sufficiently track employees' time or other resources used to perform statutorily approved activities. For example, even though the number of relocations and hearings decreased in fiscal year 2010, the Department significantly increased the amount of fund monies it used to pay for building rent—from \$44,377 in fiscal year 2009 to \$122,322 in fiscal year 2010. As a result, the Department should take several steps to more accurately determine and charge costs to the Fund, including developing a method to charge costs appropriate to the Fund, and determine whether any money should be paid back to the Fund (see Finding 3, pages 25 through 30, for more information).

3. The extent to which the Department serves the entire State rather than specific interests.

The Office of the State Fire Marshal's (Office) efforts to serve the entire State have produced mixed results. The Office is responsible for enforcing the state fire code for state- and county-owned buildings and public and some private school buildings throughout the State. However, the Office no longer uses its inspection database for prioritizing these inspections. Instead, given its reduced staffing levels, the Office prioritizes inspections based on newly constructed buildings, responses to customer complaints, and schools in close proximity to those inspections. As a result, schools not in close proximity to new buildings needing inspections and other types of buildings may not receive regular inspections. Additionally, the Office does not have a process to determine how often buildings should be inspected based on fire risk. However, the Office has increased fire safety inspection coverage around the State by entering into agreements with local fire authorities and a private vendor to perform these functions. This audit provides recommendations for improving the Office's ability to serve the entire State by improving its management of fire safety inspections and pursuing more agreements with local fire authorities or private vendors to conduct required inspections in their jurisdictions (see Finding 1, pages 7 through 16, for more information).

The Office of the State Fire Marshal serves the entire State by ensuring cigarettes sold in the State are certified. Effective May 2008, A.R.S. §§ 41-2170 through 41-2170.08 established cigarette standards to ensure that unattended lit cigarettes are more likely to safely self-extinguish. Manufacturers are required to submit cigarette samples for lab testing and be certified as Fire Standards Compliant. The Office of the State Fire Marshal reviews manufacturers' applications and lab certifications, and posts a list of compliant cigarettes on its Web site.

The Office of Manufactured Housing serves the interests of those who purchase new and used manufactured homes or mobile homes, and those who purchase or lease new and used modular buildings throughout the State. According to estimates from the Arizona Association of Manufactured Homes and RV Owners, Arizona may have over 1,800 mobile home parks and approximately 150,000 mobile home tenants. No estimates were available on the number of modular buildings in the State. According to an Office of Manufactured Housing official, the Office of Manufactured Housing helps ensure that inspections of manufactured home and modular building installations are timely regardless of location by having inspectors stationed throughout the State and by delegating this responsibility to local agencies (see Sunset Factor 2, page 35, for more information).

4. The extent to which rules adopted by the Department are consistent with the legislative mandate.

General Counsel for the Auditor General has analyzed the Department's rule-making statutes and believes that the Department has adopted rules required by statute, with the following exceptions:

- **A.R.S. §33-1476.01(H)**—The Department has not adopted required rules for the payment of monies from the Mobile Home Relocation Fund. Mobile home tenants can receive limited monies from this fund for relocating or abandoning their mobile homes when their mobile home park closes down or is redeveloped (see Finding 3, pages 25 through 30, for more information). When relocating for these reasons, A.R.S. §33-1476.01(H) outlines time frames for tenants to submit requests for monies from this fund and for the department director to approve requests. However, statute does not specify the time frames for when the Department must provide fund monies to the tenants requiring assistance and instead requires the Department to make these payments according to rules it establishes. Therefore, the Department should adopt rules for the payment of fund monies to mobile home tenants.
- **A.R.S. §§41-2146(E) and 41-2167(A)**—The Department's State Fire Safety Committee (Committee) has not adopted required rules for the administration and allocation of monies from the Arson Detection Reward Fund. The purpose of this fund is to provide reward monies for certain arson information and to promote awareness of the fund. A.R.S. §41-2167(A) requires this fund

to be administered according to rules and provides only minimal guidelines to administer the fund such as limiting rewards to \$10,000 and allowing reward amounts to be based on factors deemed relevant by the Committee. Although the Office of the State Fire Marshal reported that it uses guidance from bylaws of the Arizona Chapter of the International Association of Arson Investigators, it should ensure its guidance is adopted in rules and is consistent with statutory requirements. In addition, as recommended in the Office of the Auditor General's 2001 performance audit on the Department, the Department should adopt rules addressing how fund monies should be allocated as required by A.R.S. §41-2146(E) (see Report No. 01-23). Specifically, rules should specify how monies for this fund's two purposes—providing reward monies and promoting awareness of the fund—will be allocated.

According to the Department, four awards were approved in fiscal year 2011, but only two were claimed, one for \$575 and another for \$900. In addition, unclaimed monies remain in the fund. The Department also reported that some eligible recipients do not collect the rewards for fear that income reporting requirements will make their names public. Although statute prohibits the Committee from disclosing records that reveal the identity of a confidential informant, the Committee could adopt rules to define when an informant's identity should remain confidential.

In addition, the Department has not developed rules for three other statutes, although these statutes appear to provide adequate direction to the Department and the public regarding required actions without rules. Specifically, A.R.S. §33-1476.04(C)(3) requires rules to be adopted for the payment of monies to tenants from the Mobile Home Relocation Fund when the relocation is due to a rent increase. However, the statute already prescribes when the payment must be made; therefore, it is not apparent that a rule is needed. Further, A.R.S. §§41-2182(C) and 41-2182.04(C) address manufactured home buyer complaints and require that rules be adopted to determine the date of a manufactured home installation and to establish procedures to schedule repair and replacement of buyers' complaint items. However, the statutory guidance appears sufficient to fulfill these duties without the need for additional explanation in rules.

5. The extent to which the Department has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

The Department has encouraged input from the public before adopting its rules. For example, it notified the public of its proposed rules for the sale and use of authorized fireworks and allowed for public feedback. The final rules were posted on the Department's Web site and published in the Arizona Administrative Register in February 2011. In addition, the Department notified the public of proposed updates to its rules that specify building codes for manufactured

housing and modular buildings. The proposed updates were available to the public in the Board of Manufactured Housing's (Board) meeting packet—posted to the Department's Web site—and open for public discussion in the April 2011 board meeting. The Department reported that as of August 2011, the proposed updates to these rules were still in the process of being finalized.

The Department appears to comply with the State's open meeting laws. According to the Department, it posts physical and electronic public meeting notices more than 24 hours in advance of meetings. Auditors observed that the Department posted notice of the April 2011 board meeting on its Web site more than 24 hours before the meeting. In addition, as of August 2011, the Department's Web site states where all physical and electronic public meeting notices will be posted for the Board as required by §38-431.02(A)(1)(a). Further, the Department reported that audio recordings of board meetings are available for the public within 3 working days as required by §38-431.01(D). The Department later posts written board meeting minutes to its Web site.

In addition, according to department officials, the State Fire Safety Committee (Committee) has not met since May 2008. The Department reported that the Committee has only one of nine positions filled and cannot create a quorum to conduct business. This potentially reduces the effectiveness of the State Fire Marshal because the Committee is charged with adopting rules on behalf of the State Fire Marshal and for maintaining and updating the state fire code. A.R.S. §41-2146 requires that the Governor appoint committee members.

Finally, the Department uses its Web site to inform the public. For example, its Web site includes the state fire code, construction and inspection requirements from the State Fire Marshal, and a cost calculator for permits issued by the State Fire Marshal. In addition, its Web site includes manufactured housing standards and regulations; steps to file a complaint against manufactured housing manufacturers, dealers, or installers; and forms such as requests for monies from the Mobile Home Relocation Fund in situations where tenants must relocate due to increased rents or park reclassification. Further, its Web site includes department statutes and rules, fee schedules, and lists of local agencies that have agreements to conduct work the Department delegates.

6. The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction.

As part of its role in maintaining standards of quality and safety for manufactured homes and modular buildings, the Department is responsible for investigating consumer complaints filed by buyers of these buildings. Department reports show that in fiscal year 2011, the Department received 97 complaints and closed 99 complaints from consumers of manufactured homes, some of which were received prior to fiscal year 2011. In addition, as of June 30, 2011, it had 20 open complaints, 4 of which were received from prior fiscal years. According to a

department official, factors delaying complaint resolution beyond department time frames generally involve issues outside the Department's control, such as requests for hearings. The Department received and closed one consumer complaint related to modular buildings in fiscal year 2011.

The Department also investigates allegations that manufactured housing or modular building licensees violated a provision of department statutes and allegations of unlicensed persons inappropriately performing regulated activities. Department management reported that investigations can be initiated by the Department, consumer complaints, and reports from others such as licensees, park managers, or anonymous individuals. For example, management reported that an investigation may entail determining whether an installer performed work outside of the scope of his/her license. Department records show that it conducted 323 investigations of licensees and 16 investigations of unlicensed persons in fiscal year 2011.

However, the Department should better monitor its timeliness for resolving consumer complaints. Although statutes and rules do not specify time frames for complaint resolution, HUD has approved the Department's administration of a dispute resolution program for resolving certain complaints. As part of this program, the Department agreed to resolve disputes involving manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction of defects in manufactured homes. Further, the Department agreed to resolve these disputes within 120 days from the date the complaint was received, or 60 days if an imminent safety/hazard issue is present. According to the Department, a staff member tracks the progress of each complaint to ensure timely resolution. Although the staff member submits monthly reports to a department official regarding the number of complaints still open from the current or prior fiscal years, the reports do not indicate the number of disputes subject to the required time frames or the extent to which the time frames are met. Therefore, the Department should ensure its management reports assess compliance with the required 60- and 120-day time frames.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

A.R.S. §41-2141(D) authorizes the Attorney General's Office to act for the Department in all legal actions or proceedings and to advise the Department on all questions of law. Proceedings may also include actions before Superior Court to enforce cease and desist orders regarding a fire safety hazard to life or property, or from engaging in manufactured housing or modular building businesses without being licensed as required by law. In addition, the director or deputy director may refer a matter of potential fraud in an investigation to a county attorney according to A.R.S. §41-2193(G).

8. The extent to which the Department has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

The Department reported that it has not sought statutory changes to address deficiencies in its statutes. However, the Legislature passed laws in 2011 that affect the Department:

- Laws 2011, Ch. 185, amended A.R.S. §41-2141 to require the Department to interpret and enforce mobile home park rental agreements (see Finding 3, pages 25 through 30, for more information about the Department's responsibility to facilitate hearings for mobile home tenants). Additionally, it requires the Department to apply and enforce statutes regulating condominiums.
- Laws 2011, Ch. 239, amended A.R.S. §41-2180 to require each dealer or broker to establish an independent escrow account with an independent financial institution or escrow agent for each transaction involving new and some existing manufactured homes and residential modular buildings beginning July 1, 2012. It also prescribes the dollar amount of a dealer bond, which provides a source of money to pay for future claims against such industry professionals. Further, it requires licensees to disclose escrow account information to the buyer that includes agent contact details and account terms and conditions. The Department reported that it is working with stakeholders to create written escrow instructions that will be the basis for enforcing this law when it goes into effect.
- Laws 2011, Ch. 283, added A.R.S. §33-1476.05, which permits mobile home owners to receive monies from the Mobile Home Relocation Fund if their park changes from an age-restricted park to an all-age park and if the mobile home owner submits a request for relocation to the department director within 180 days of the effective date of notification of the change. It also requires the director's approval decision within 15 days of receiving the home owner's request for relocation, requires relocation of the home by a licensed moving company within 45 days after notice from the director, and specifies the amount of money allotted based on the actual relocation costs and size of the home.

9. The extent to which changes are necessary in the laws of the Department to adequately comply with the factors listed in this sunset law.

This audit identified one needed change to the Department's statutes. As discussed in Finding 1 (see pages 7 through 16), the Department should seek legislation to allow the Office of the State Fire Marshal to charge fees that recover its fire safety inspection costs. Although statute allows local fire authorities to charge fees to recover inspection costs, it does not allow the Office of the State Fire Marshal to do so. Allowing the Office of the State Fire Marshal to charge fees

to recover these costs would provide an additional source of revenue to potentially augment staffing, thus providing for increased inspection coverage.

10. The extent to which the termination of the Department would significantly affect the public health, safety, or welfare.

Without transferring its functions to other agencies, terminating the Department would significantly affect the public's health, safety, and welfare. Specifically:

- The Department is responsible for enforcing the state fire code at buildings under its jurisdiction, which helps reduce the risk of fire at state, county, and school buildings. The state fire code adopted by the State Fire Safety Committee is based on the 2003 International Fire Code. Further, the enforcement of the state fire code appears appropriately placed at the state level. Forty-nine states have a state fire marshal's office, and, according to a National Association of State Fire Marshals (Association) survey, most of these offices are responsible for enforcing their state fire codes.¹ Additionally, according to the Association, a sensibly organized and reasonably empowered state fire marshal's office can best achieve the integration and coordination of fire policies and programs that effectively address a state's fire problem.²
- The Department is also responsible for maintaining and enforcing construction and installation standards that help ensure the safety of manufactured homes and modular buildings. If the Department did not regulate the manufactured housing industry, another state agency would need to be designated to do so or the federal government would be required to step in and regulate this industry. However, stakeholders auditors interviewed reported that the regulation of the manufactured housing and modular buildings industries is appropriately placed at the state level. In addition, stakeholders representing the federal government, national trade organizations, mobile home owners, and landlords in general provided positive feedback that the Department is responsive and fair in enforcing manufactured housing standards.

11. The extent to which the level of regulation exercised by the Department compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.

This audit found that the current level of regulation exercised by the Department is similar to other states and is generally appropriate. Specifically:

¹ State fire marshal's office duties survey. (n.d.). Retrieved August 10, 2011, from <http://www.firemarshals.org/members/contact-information/principal-members-list/sfm-office-duties/>

² National Association of State Fire Marshals. (2002). *A profile of a state fire marshal's office: Advocate for fire prevention & control*. Washington, DC: Author.

- As discussed in Sunset Factor 10 (see page 42), most states, including Arizona, have a state fire marshal's office that is responsible for fire code enforcement. According to a National Association of State Fire Marshals survey, most states' fire marshal's offices conduct plan reviews and fire safety inspections, similar to Arizona's.¹ However the survey also indicated that the majority of states' fire marshal's offices performed additional functions, which Arizona's fire marshal's office does not, including fire investigations, fire service training, fire data collection and analysis, public fire education, and fire legislation development. The Department used to conduct fire investigations for all school, state, and county buildings and provide fire fighter training; however, the Department discontinued these functions in 2010 because of budget reductions. Lastly, the survey indicated that many states' fire marshal's offices also regulate fireworks. Similar to these states, the Arizona Legislature added A.R.S. §36-1609, effective December 1, 2010, which requires the State Fire Marshal to adopt rules for regulating fireworks, including the adoption of the 2006 National Fire Protection Association code for the manufacture, transportation, storage, and retail sales of fireworks.
- In addition, many states regulate the manufactured housing and modular building industries, similar to the Department. HUD's policy is to involve state agencies to the maximum extent possible to enforce manufactured housing standards. As of June 2011, HUD had designated agencies within several states, including the Department, to be responsible for the following four functions described in Finding 2 (see pages 17 through 23), as follows:
 - 37 state agencies were designated as State Administrative Agencies;
 - 9 state agencies—in the 22 states with active manufactured housing factories—were designated as a Primary Inspection Agency responsible for inspecting each manufactured home at some point in the construction process;²
 - 32 state agencies were participating in HUD's manufactured home installation program; and
 - 27 state agencies had established dispute resolution programs.

Further, many other states regulate the modular building industries in their states. For example, although the federal government does not regulate the modular building industry, HUD's Web site indicates that it relies on 31 states' modular housing regulations, including Arizona's, to approve materials and components used in housing construction under HUD mortgage insurance

¹ State fire marshal's office duties survey. (n.d.). Retrieved August 10, 2011, from <http://www.firemarshals.org/members/contact-information/principal-members-list/stm-office-duties/>

² Private companies have been designated by HUD to evaluate and approve manufacture home designs in Arizona and all but one of the other states with active manufactured home factories.

programs. Similarly, according to a representative of an international commercial modular building organization, many states, like Arizona, also regulate commercial modular buildings.

12. The extent to which the Department has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Department uses private contractors on a limited basis to carry out its functions. Specifically:

- The Office of the State Fire Marshal has entered into agreements with two private vendors to perform fire safety functions, including fire safety inspections and plan reviews.¹ Similar to Arizona, other states' fire marshal's offices infrequently contract out fire safety functions to private vendors. Based on auditors' survey of other states' fire marshal's offices, only 4 of the 28 states' offices who responded to the survey reported they use private contractors to carry out various fire safety functions, such as code enforcement, plan reviews, and fire safety inspections. However, as of June 2011, the Office reported that it had also entered into agreements with 37 local fire authorities and the three state universities to perform fire safety functions within their jurisdictions. Similar to Arizona, at least 7 other states have entered into agreements with local jurisdictions to perform various fire safety functions. For example, Colorado has established agreements with local fire authorities to assist with code enforcement, plan reviews, and fire safety inspections, and contracts with private vendors for plan reviews and fire safety inspections.
- The Department's Office of Manufactured Housing rarely uses private contractors, but has entered into agreements with local agencies. As of June 2011, the Department had one contract with a private company to inspect the HUD-approved alternate construction of manufactured homes and reported it had used the services of this contractor only eight times in fiscal year 2011. Manufactured housing officials in five other western states indicated that, similar to Arizona, they use private contractors for very few functions or do not use or them at all to assist with their duties.² The Office of Manufactured Housing has entered into intergovernmental agreements with 12 Arizona counties and 54 Arizona cities and towns to enforce standards in their respective jurisdictions for the installation of manufactured homes and/or modular buildings. According to information compiled by Florida manufactured housing officials, 23 of the 32 state agencies with

¹ The Office of the State Fire Marshal reported that it has entered into 2 agreements with one of the private vendors to perform fire safety inspections and plan reviews for separate jurisdictions.

² Auditors contacted manufactured housing officials from California, Colorado, Idaho, New Mexico, and Nevada. Officials in California, Colorado, and Idaho also oversee modular building regulation.

HUD-approved installation programs have delegated all or part of installation inspection responsibilities to local governmental agencies.

This audit identified one area where the Department could increase its use of private vendors. Specifically, the Office of the State Fire Marshal should expand its practice of delegating inspection and plan review responsibilities by entering into additional agreements with either private vendors or local fire authorities (see Finding 1, pages 7 through 16, for additional information). However, this audit did not identify any other areas where the Department should consider using private contractors.

APPENDIX A

Methodology

This appendix provides information on the methods auditors used to meet the audit objectives.

This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Department of Fire, Building and Life Safety's (Department) Director and his staff for their cooperation and assistance throughout the audit.

Auditors used various methods to study the issues addressed in this report. These methods included compiling and analyzing unaudited information about the Department from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2009 through 2011 and the AFIS Management Information System *Status of General Ledger—Trial Balance* screen for fiscal years 2009 through 2011. Auditors also reviewed federal laws and regulations, state statutes and administrative rules, and fee-setting literature.¹ In addition, auditors reviewed the Department's policies and procedures, agreements with the U.S. Department of Housing and Urban Development (HUD) to enforce federal manufactured housing regulations, agreements with Arizona local jurisdictions to assist in its fire safety enforcement and manufactured housing and modular building regulation, and internal reports and other documents. Further, auditors surveyed other states' fire marshal's offices and analyzed responses from all 28 states that responded, attended the Board of Manufactured Housing's (Board) April 2011 board meeting, and interviewed department officials and staff and a board member.²

Auditors also used the following specific methods to address the audit's objectives:

- To assess the Office of the State Fire Marshal's (Office) efforts to fulfill its responsibilities regarding fire safety inspections of public buildings, auditors observed an office inspector conduct fire safety inspections of two charter schools in April 2011, and reviewed Office of the Auditor General performance audits of the Department from 1988, 1999, and 2001 (Report Nos. 88-4, 99-16, and 01-23). Auditors also evaluated the accuracy and content of the Office's inspection records by reviewing its inspection database and inspection reports for fiscal years 2010 and 2011. In addition, auditors reviewed 9 judgmentally selected local fire authority agreement files and risk-based fire inspection programs in the Cities of Glendale and Tempe, and analyzed the other state survey mentioned above to determine how many charge fees to recover costs for regular inspections.
- To determine whether fees cover the Department's costs to regulate the manufactured housing and modular building industries, auditors analyzed the Department's revenues and expenditures, and its cost estimates for processing installation permits and conducting inspections. In addition,

¹ Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS: Author.

² Auditors sent surveys to fire marshals' offices in 48 other states and the Honolulu, Hawaii, Fire Department.

auditors reviewed the Department's staff time sheets and time accounting system, the Board's fee schedule, and an April 2011 board meeting information packet.

- To determine whether the Department appropriately used the Mobile Home Relocation Fund, auditors analyzed the Department's fund expenditures for fiscal years 2009 through 2011 and its fiscal year 2011 allocation of staff salary expenditures to the State General Fund, federal funds, and the Mobile Home Relocation Fund. Auditors also reviewed the Department's cost estimate to process a relocation claim, its efforts to develop a cost allocation method, and the Arizona Department of Administration General Accounting Office's May 2009 audit of the Department's use of the Mobile Home Relocation Fund.
- To obtain additional information used in the Introduction section, auditors reviewed the Joint Legislative Budget Committee's fiscal year 2012 baseline book and its fiscal year 2011 appropriations report, and the Department's organizational charts.
- To obtain additional information used in the sunset factors, auditors observed the April 2011 board meeting and associated public meeting notices/agenda, and reviewed the Board's meeting minutes. In addition, auditors contacted five other states' manufactured housing officials, and interviewed a Colorado fire safety official, representatives from national and state organizations in the manufactured housing or modular building industries, and HUD staff.¹ Further, auditors reviewed the Department's and HUD's Web sites, the Department's reports to the Governor's Regulatory Review Council on licensing timeliness, and a National Association of State Fire Marshals report and information from its Web site.²
- Auditors' work on internal controls focused on department policies and procedures for ensuring compliance with various statutes. For example, auditors reviewed department procedures related to enforcing the state fire code (see Finding 1, pages 7 through 16); assessed how the Department ensures that it complies with the statutory requirement to have fees cover 95 to 105 percent of the cost to regulate the manufactured housing and modular building industries (see Finding 2, pages 17 through 23); and assessed its procedures for ensuring that Mobile Home Relocation Fund monies are used to support only fund activities (see Finding 3, pages 25 through 30). Auditors' conclusions on these internal controls are reported in Findings 1 through 3 of the report.

¹ Auditors contacted manufactured housing officials in California, Colorado, Idaho, New Mexico, and Nevada. Officials in California, Colorado, and Idaho also oversee modular building regulation.

² National Association of State Fire Marshals. (2002). *A profile of a state fire marshal's office: Advocate for fire prevention & control*. Washington, DC: Author; State fire marshal's office duties survey. (n.d.). Retrieved August 10, 2011, from <http://www.firemarshals.org/members/contact-information/principal-members-list/sfm-office-duties/>

AGENCY RESPONSE



JANICE K. BREWER
Governor

GENE PALMA
Director

**DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY
OFFICE OF THE DIRECTOR**

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September 26, 2011

Debra K. Davenport
Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport:

The Arizona Department of Fire, Building and Life Safety has reviewed the preliminary report draft of the performance audit and sunset review factors analysis. Please find the Department's attached response to the audit's findings and recommendations, as well as, the Department's reply to the sunset factor analysis.

The Department sincerely appreciates the time devoted by your audit team to understand the Department's operations, processes and procedures. I also would like to commend your staff for their professionalism throughout the audit process.

The recommendations identified in the report, which in some cases are already in the process of being implemented, will assist the agency in continuing its commitment to excellence in providing public safety, protecting consumers and facilitating commerce.

Thank you, again, for your consideration.

Respectfully,

Gene Palma

Final Audit Response
Department of Fire, Building Life and Safety
September 26, 2011

Background

The Department of Fire, Building and Life Safety ("Department") is looking forward to implementing the Auditor General's Office ("auditor") recommendations. Many of those cited by the audit are in areas that the Department had identified for improvement. The audit provides the Department impetus toward completing these projects and moving forward with other initiatives.

In 2010, as part of implementing the General Accounting Office's 2009 recommendations from its internal audit, the Department began implementing an activity analysis approach to evaluate the costs of the Department's activities, processes, procedures and tasks. This is an ongoing process that serves to assess the Department's cost efficiency and service effectiveness and when completed will provide the Department with a valuable management and budgetary tool.

As a result of going through the process the Department has already experienced improvement by:

- Creating separate department budgets and increased budget awareness and accountability.
- Identifying actual costs of processes and resources used to provide services
- Streamlining permitting and reporting processes
- Automating receipting and invoicing processes
- Electronically tracking staff resources and activity
- Specifically creating a position to manage the increased use of intergovernmental agreement and their compliance
- Implementing a new Fire Marshal database to better manage inspection activity.
- Increasing the public's online access to the Department license records

All of the above accomplishments have been achieved in the last 15 months and the Department thinks it is moving in a very positive direction. The Department realizes that much hard work still remains to be done. It has committed to making continuous improvement part of its operating philosophy and culture. The Department views this audit and its' recommendations as a springboard to gather constituent and legislative support to achieve its' objectives.

Finding 1: State Fire Marshal should ensure adequate inspection coverage and establish fees to cover costs.

Recommendations:

- 1.1 The office should implement and use its new inspection database to better manage, track, and prioritize inspections conducted by the Office and ensure oversight of inspections conducted by local fire authorities that have agreements to conduct inspections on the Office's behalf. Specifically, the Office should:
 - a. Track all inspections and specific information on violations found during inspections in its database.
 - b. Establish a system within its database to prioritize inspections based on fire risk, in conjunctions with recommendation 1.4.
 - c. Identify buildings in its database that are covered by agreements with local fire authorities, ensure newly constructed buildings in jurisdictions covered by the agreements are entered in its database, and enter inspection data for these buildings in its database.

The finding of the Auditor General is agreed to and the audit recommendations will be implemented.

The Department has recently implemented a new Fire Marshal database that is designed to better manage, track and prioritize inspections, and inspection information.

The capability to also track and oversee inspections done by local fire authorities is a feature that is planned to be added to the database in Spring 2012.

- 1.2 The office should solicit additional agreements with local fire authorities or private vendors to provide greater inspection coverage that would significantly reduce its inspection or plan review workload and/or reduce inspection costs, such as travel time.

The finding of the Auditor General is agreed to and the audit recommendation has been implemented.

The Office has increased the amount of agreements in place and is working diligently toward securing more. However, there are many local jurisdictions that, due to budget cuts and recent loss of fire inspection and plan review personnel, determine that participation in an agreement is not financially viable. Nevertheless, the Office will seek to increase the number of agreements especially in non-metro areas where the costs to the Office for providing services increase exponentially due to travel and lodging costs. Additionally, it should be noted that the Office is

statutorily limited to specific areas where private vendors may be appointed as Office designees.

- 1.3 The Office should establish and implement an oversight process for agreements with local fire authorities and private vendors, and ensure that agreements have been signed by both the Office and the agreement holder. This process should include enforcing the Office's quarterly report requirement, reviewing the information from these reports, and entering inspection information into its database, in conjunctions with recommendation 1.1.c.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Based on a program recently initiated in the Manufacture Housing Department, the Department will develop an oversight process for agreements with local fire authorities and private vendors to ensure that proper administrative procedures are in place. The program will also confirm compliance of state statutory requirements.

- 1.4 As staff resources permit, the Office should establish a process to prioritize inspections based more fully on fire risk for buildings that have not been delegated to local fire authorities which would allow it to determine how frequently buildings should be inspected and then prioritize inspections accordingly based on available resources.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

As staff resources permit, the Department will look into a system of prioritizing building inspections based on fire risk.

- 1.5 The Department should develop or adopt a structured approach to evaluate current fees and propose new fees that would recover Office costs. In developing this approach, the Department should do the following:
 - a. Assess the efficiency of its operations to ensure costs are as low as possible and document the results of its assessment. The Department should seek to minimize costs where possible.
 - b. Develop a method for tracking and allocating relevant costs, including both direct and indirect costs.
 - c. Identify the actual costs for specific activities for which fees are charged to help ensure fees are appropriate and equitable.
 - d. Consider the effect that proposed fee charges may have on inspected facilities and obtain their input when developing the proposed fees.

The finding of the Auditor General is agreed to and the audit recommendations have been implemented.

In order to assess the Department's cost efficiency and service effectiveness, in 2010, the Department began implementing an activity analysis approach to evaluate the costs of the Department's activities, processes, procedures and tasks. While this process has enabled the Department to apprise some of the existing fee structure regarding cost recovery, it is an ongoing process that has yet to be completed.

Additionally, the Department has changed its fire marshal timesheets to better reflect their activities and is reviewing methodology suggested by the auditors' for use in the allocation of indirect costs. Furthermore, the new fire marshal database will integrate timekeeping within its operation. Its reports tracking activity will give the Department more accurate and timely information to assess costs and effectiveness.

Finally, the Department has invested in user friendly software that accurately tracks fire marshal administrative time. The amount of time each user spends on a particular task or activity is tracked. This facilitates an accurate measure of time spent on a process or project making it easier to assign costs to that process or project.

- 1.6 Once the approach is developed or adopted, the Department should use it to propose new fees to the State Fire Safety Committee that recover its costs. If the proposed fees are significantly higher than the current fees, the Department should consider recommending increasing fees gradually.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

- 1.7 Once the Department has developed its proposed fees and obtained approval for these proposed fees from the State Fire Safety Committee, it should seek legislation modifying statute that allows it to charge the proposed fees to recover its inspection costs, similar to local fire authorities.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

The Department will begin discussions with the appropriate parties to explore legislative changes that would enable the Department to charge fees to recover its inspections costs, just as present statute allows local jurisdictions to do.

- 1.8 The Department should work with the Governor's Office to solicit applications and appoint members to the State Fire Safety Committee.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

The Department will contact the Governor's Office to fill the vacancies on the State Fire Safety Committee.

Finding 2: Department should ensure its fees fully cover its manufactured housing and modular building regulatory costs.

2.1 To ensure its fees more fully reflect its costs, the Department should develop or adopt a structured approach to evaluate current fees and propose new fees to the Board that would fully cover all department costs related to the regulation of the manufactured housing and modular building industries, and ensure that specific fees are appropriate for the specific activities. In developing this approach, the Department should do the follows:

- a. Continue its efforts to assess the efficiency of its operations to ensure costs are as low as possible and document the results of its assessment. As the Department assesses the efficiency of its operations, it should continue seeking to minimize costs where possible.
- b. Develop and finalize a method for tracking and allocating relevant department costs, including both direct and indirect costs. For example, to track personnel costs, the Department could use its new time accounting system and its revised monthly time-tracking reports to determine the amount of time staff spend on activities that support the regulation of the manufactured housing and modular building industries.
- c. Identify the actual costs for specific activities for which fees are charged to help ensure fees are appropriate and equitable. In addition, fees should take into account factors that affect the cost of a specific activity.

The finding of the Auditor General is agreed to and the audit recommendations will be implemented.

In order to assess the Department's cost efficiency and effectiveness, the Department has adopted an activity analysis approach to analyze the Department's activities, processes, procedures and tasks. This analysis will enable the Department to assess the existing fee structure relative to its ability to recover costs.

In 2010 the Department began gathering data about the various types of installations and steps in each process to determine the number of inspection trips, inspection time spent, and average mileage used for each type of installation. However, the Department has not yet finalized a cost analysis of installation permit fees. Additionally, the Department implemented time tracking spreadsheets for all inspectors to record the time spent on their specific tasks. This data will assist in determining resource availability for cross training and reallocation. In 2011, these

sheets were modified and implemented by all Department inspectors, including Deputy Fire Marshals. The Department is also reviewing indirect cost allocation methodologies to determine the appropriate cost allocation methodology for the entire Department.

However, as discussed under the finding, "Department fees do not fully recover costs" the auditor's premise for this finding is based on a different interpretation of A.R.S. §41-2144(A)(4), than the Department has historically employed. The Department's method of cost calculation in presenting data to the Board of Manufactured Housing ("Board") when considering fees has not previously been questioned nor been an issue of concern.

The auditor, however, includes the costs of Licensing, Audits and Complaints (functions) in its cost recovery calculation. Because A.R.S. §41-2171 establishes and defines the purpose of a separate Office of Administration, ("... to provide the administrative services necessary to facilitate the operation of the office of manufactured housing and office of state fire marshal, including procedures to ensure compliance with laws and rules relating to these offices.") and because those functions fall under the purview of the Office of Administration, the Department has not considered their cost part of OMH. As such the Department has not included such expenditures in its cost calculations to the OMH Board for the purpose of reviewing fees.

2.2 Once developed or adopted, the Department should use this approach to assess its fees and propose new fees to the Board. If proposed fees are significantly higher than current fees, the Department might recommend increasing fees gradually. The Board should consider the effect that proposed fee changes may have on the affected industries and obtain their input when reviewing the fees.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

The ultimate authority in setting fees is the Board and the Department is committed to providing the Board the information necessary to make informed decisions. Therefore, in its role as information facilitator the Department is willing to present to the Board a new perspective on cost calculation and accordingly implement the Board's decision.

2.3 The Department should develop and implement policies and procedures for using the method to propose the annual fees to the Board.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

It should be noted that any methodology developed must be adjusted by unknown variables such as trends in the housing industry's production and sales. Variability in these areas directly impacts the Board and the Department's ability to estimate

with any approximate accuracy the revenue that will be derived from fees and thus the extent to which costs will be covered.

Finding 3: Department has incorrectly spent some Mobile Home Relocation Fund Monies.

- 3.1 The Department should establish a methodology for charging appropriate direct and indirect costs to the Mobile Home Relocation Fund by:
 - a. Identifying and tracking the costs associated with activities that can be paid from the Fund.
 - b. Tracking the actual time employees spend on all activities that can be paid from the Fund; and
 - c. Considering GAO's assistance as needed to help ensure that it charges appropriate costs to the Fund.

The finding of the Auditor General is agreed to and the audit recommendations will be implemented.

While the Department has agreed to the finding it believes that a clarification is necessary. There is no disagreement that excessive use of the Fund can be attributed to insufficient tracking of staff time and resources related to Fund activities. However, because inspector activity tracking and cost analysis of Department activities did not occur until 2010 there was no allocation method available other than basing funding on past activity. Since 2008 was a high activity year it provided a "conservative" estimate in the sense that whatever monies that were allocated would most probably cover the resource costs incurred. The allocation and use, of Relocation Fund monies have been based on 2008 activity levels.

Therefore, the term "incorrect" means that an employee whose relocation activity was minimal; may have had his/her salary over allocated from the relocation fund based on past recorded activity. However, all activities that were initially funded were related, directly or indirectly to Fund purposes.

- 3.2 The Department should develop and implement policies and procedures to ensure that the costs charged to the Fund accurately reflect the activities it needs to perform to support the Fund's purpose and that resulting expenditures are periodically reviewed. For those expenditures that were inappropriately paid from the Fund, the Department needs to determine how they should be paid in the future.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

In order to assess the Department's cost efficiency and service effectiveness In 2010, the Department began implementing an activity analysis approach to evaluate the costs of the Department's different activities, processes, procedures and tasks. The process has allowed the Department to identify the costs for certain processes and potential areas for improvement.

Timesheets have been modified to better identify inspector activities and resources. Finally, the Department has invested in user friendly software that accurately tracks administrative time associated with relocation fund activities. The amount of time each user spends on a particular task or activity is tracked. This facilitates an accurate measurement of time spent on a process or project making it easier to assign costs to that process or project.

The Department is also reviewing cost allocation methodology suggested by the auditors' for use in the allocation of indirect costs.

Clarification

The Department needs to clarify the auditor's assertion that by "incorrectly allocating costs to the Fund" the Fund has been kept from reaching \$8 million, a point at which tax assessments should no longer be collected. While the Department has agreed with the finding that the Department has "incorrectly" spent some Fund monies, as described above, the Department thinks it is important to provide further context.

It is imperative to point out that tax assessments and relocation payments, both NOT in the Department's control, are also part of the formula that makes up the fund balance. During the same time period identified by the auditor, tax assessments have decreased 16%, thus less has been added to the Fund balance by tax receipts. More importantly, relocation payments to mobile home tenants increased 441% over last year, again, significantly impacting reduction of the Fund balance.

Finally, the Department's 44% overall decrease in Fund use must be acknowledged, as well as, noting that the Fund balance decrease identified by the auditor actually represents only a 9% decrease from 2009 to 2011. Decreased tax receipts and very significant increased use of government aid to individuals are both factors that are common during challenging economic periods such as the country and state are currently experiencing.

All of the above referenced data is based on the same data, Table 2 in the audit, which the auditors utilized.

- 3.3 The Department should consult with its Assistant Attorney General to determine whether money should be repaid to the Fund, and if so, the amount to be repaid and an appropriate timetable for repayment.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Sunset Factors Recommendations

Sunset Factor 2

The Office of Manufactured Housing should continue its efforts to monitor agreements with local jurisdictions for conducting manufactured home and modular building inspections by collecting monthly reports and ensuring all local agencies adequately enforce installation standards.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Sunset Factor 4

The Department should adopt administrative rules for the payment of monies from the Mobile Home Relocation Fund as required in A.R.S. §33-1476.01(H).

To comply with A.R.S. §41-2167(A), the Office of the State Fire Marshal should ensure its guidance from bylaws of the Arizona Chapter of the International Association of Arson Investigators is adopted in administrative rules and is consistent with statutory requirements.

As recommended in the Office of the Auditor General's 2001 performance audit on the Department, the Department should adopt administrative rules addressing how monies from the Arson Detection Reward Fund should be allocated as required by A.R.S. §41-2146(E) (Report No. 01-23). Specifically, rules should specify how monies for this fund's two purposes—providing reward monies and promoting awareness of the fund—will be allocated.

The finding of the Auditor General is agreed to and the audit recommendations will be implemented.

Sunset Factor 6

The Department should better monitor its timeliness for resolving consumer complaints by ensuring its management reports assess compliance with the required 60- and 120-day time frames.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Performance Audit Division reports issued within the last 24 months

09-09	Arizona Department of Juvenile Corrections—Suicide Prevention and Violence and Abuse Reduction Efforts	11-01	Department of Public Safety—Followup on Specific Recommendations from Previous Audits and Sunset Factors
09-10	Arizona Department of Juvenile Corrections—Sunset Factors	11-02	Arizona State Board of Nursing
09-11	Department of Health Services—Sunset Factors	11-03	Arizona Department of Veterans' Services—Fiduciary Program
10-01	Office of Pest Management—Restructuring	11-04	Arizona Medical Board
10-02	Department of Public Safety—Photo Enforcement Program	11-05	Pinal County Transportation Excise Tax
10-03	Arizona State Lottery Commission and Arizona State Lottery	11-06	Arizona Department of Veterans' Services—Veteran Home
10-04	Department of Agriculture—Food Safety and Quality Assurance Inspection Programs	11-07	Department of Corrections—Oversight of Security Operations
10-05	Arizona Department of Housing	11-08	Department of Corrections—Sunset Factors
10-06	Board of Chiropractic Examiners	11-09	Arizona Department of Veterans' Services—Veterans' Donations and Military Family Relief Funds
10-07	Arizona Department of Agriculture—Sunset Factors	11-10	Arizona Department of Veterans' Services and Arizona Veterans' Service Advisory Commission—Sunset Factors
10-08	Department of Corrections—Prison Population Growth	11-11	Arizona Board of Regents—Tuition Setting for Arizona Universities
10-L1	Office of Pest Management—Regulation	11-12	Arizona Board of Regents—Sunset Factors
10-09	Arizona Sports and Tourism Authority		

Future Performance Audit Division reports

Arizona Game and Fish Department—Heritage Fund

