

PERFORMANCE AUDIT

DEPARTMENT OF BUILDING AND FIRE SAFETY

Report to the Arizona Legislature

By the Auditor General

April 1988

88-4

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April 25, 1988

Members of the Arizona Legislature
The Honorable Rose Mofford, Governor
Donald A. Reville, Director
Department of Building and Fire Safety

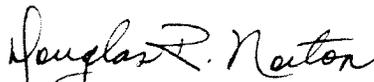
Transmitted herewith is a report of the Auditor General, A Performance Audit of the Department of Building and Fire Safety. This report is in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee.

The report addresses several areas for improvement related to both fire safety and manufactured housing. We found that the Office of State Fire Marshal (SFM) is not conducting regular inspections as required by law, thus exposing the State to potential liability. We also found that the SFM should increase its enforcement efforts to ensure that code violations found during inspections are corrected. Further, we found that the SFM has not established adequate management reporting and control systems.

The Department has effectively and efficiently handled consumer complaints related to manufactured housing. However, the Department could improve its monitoring of local jurisdiction installation inspection programs. Finally, we found that the Department's statutes should be amended to strengthen and clarify its authority to regulate installations of mobile and manufactured homes. The report also contains responses to the twelve statutory Sunset Factors regarding the Department's operations.

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

Sincerely,



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Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Department of Building and Fire Safety in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Department of Building and Fire Safety was established in 1986 through a merger of the Office of Manufactured Housing and the Office of Fire Marshal (now named the Office of State Fire Marshal). According to A.R.S. §41-2141.A, the Department was established to further public safety and welfare by maintaining and enforcing relevant standards and codes.

The Office Of State Fire Marshal's Failure To Conduct Regular Inspections Exposes The State To Potential Liability (see pages 15 through 21)

The Office of State Fire Marshal (SFM) is not conducting regular inspections of State, county and public school buildings as required by law, thus exposing the State to potential liability. Our review of Office records indicates that although Arizona owns approximately 2,866 buildings, only 68 inspections were made by the SFM between September 1, 1986 and September 30, 1987. Further, during the same period the SFM conducted only 54 inspections of county buildings, although the counties have an estimated 1,242 structures.

The Office does not have sufficient personnel to regularly inspect all buildings under its jurisdiction. The SFM estimates the Office will need, at a minimum, five Deputy State Fire Marshals to conduct regular inspections.

In addition to requesting additional staff, the SFM should consider various program alternatives to reduce its workload. One alternative is to narrow the scope of its inspection requirements. For example, the California State Fire Marshal is not required to inspect county buildings, and only inspects public schools in certain areas. Other alternatives are to enter into agreements with local fire prevention bureaus or to deputize local fire service personnel to assist the Office.

The Office Of The State Fire Marshal Should Increase Its Enforcement Efforts To Ensure That Code Violations Are Being Corrected (pages 23 through 29)

Even when inspections are conducted, the SFM inspection staff do not regularly follow up on code violations detected during inspections to ensure that they are corrected. We reviewed 76 public school files and found that these schools received 177 inspections between September 1, 1984 and October 31, 1987. Although code violations were found in over 90 percent of the cases, reinspections were conducted in only 5 percent of these instances. A review of State and county inspection files produced similar results. Our review also found that, in certain instances, serious code violations identified in inspections have received little enforcement action by the SFM. For example, three successive annual inspections of a Tucson high school conducted in 1983, 1984 and 1985 found the fire alarm system to be inoperable.

The Office Of State Fire Marshal Needs Better Management Planning and Control (pages 31 through 35)

The Office of State Fire Marshal does not have basic information needed to properly plan work and staff the Office. The SFM doesn't have an inventory of the buildings it is mandated to inspect, doesn't know how long it takes to conduct various types of inspections, and can't tell from its file system what buildings have been inspected.

In addition, the SFM needs to strengthen its control of field staff. Because time reporting is poor, management cannot be assured that staff spend time productively. Further, the Office needs to develop written policies and a procedures manual to guide staff in carrying out their inspection responsibilities.

The Department Has Effectively And Efficiently Handled Consumer Complaints Related to Manufactured Housing (pages 37 through 39)

The Department has effectively and efficiently handled consumer complaints related to manufactured housing. The Department handles consumer complaints related to the manufacture, sale, or installation of mobile or manufactured homes. During fiscal year 1986-87, the Department received 777 complaints related to the Office of Manufactured Housing. We reviewed 50 complaints received in fiscal year 1986-87, of which 34 had been closed. Our review found that these 34 complaints were not closed until the licensee corrected violations.

Although the Department has an effective State program for handling consumer complaints, a Federal review found problems with Arizona's handling of Federal complaints. In its 1988-89 Budget Request, the Department requested a position to increase the enforcement efforts, with such position being funded by the Department of Housing and Urban Development.

The Department Of Building And Fire Safety Could Improve Its Monitoring Of Local Jurisdiction Installation Inspection Programs (pages 41 through 45)

The Department of Building and Fire Safety could improve its monitoring of local jurisdictions with mobile and manufactured home installation inspection programs. Although the Department is required to monitor local jurisdictions that conduct installation inspections, it has not performed sufficient reviews. As a result, local jurisdictions that are performing inadequately are not detected in a timely manner for corrective action. For example, in one recent audit the Department found a local jurisdiction that had collected monies for permits for the installation of manufactured homes but had not provided the needed inspections. In fact, an estimated 1,140 homes had not been inspected, although permits had been issued.

The Department Of Building And Fire Safety's Statutes Should Be Amended To Strengthen And Clarify Its Authority To Regulate Installations Of Mobile And Manufactured Homes (pages 47 through 50)

The Department of Building and Fire Safety's statutes should be amended to strengthen and clarify its authority to regulate installations of mobile and manufactured homes. The Department should be given authority to disconnect utilities in all instances where the home poses a health and safety risk. Currently, the Department has authority to disconnect utilities of homes on private property where the homes pose a hazard, but may not disconnect utilities of homes in manufactured home parks. The Department's authority to issue permits should also be clarified.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Department of Building and Fire Safety in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Department of Building and Fire Safety was established in 1986 through a merger of the Office of Manufactured Housing and the Office of Fire Marshal. According to A.R.S. §41-2141.A, the Department was established to further public safety and welfare by maintaining and enforcing relevant standards and codes.

The Department is segregated into three offices, by statute. These offices and their functions are as follows.

Office of Manufactured Housing - The Office of Manufactured Housing (OMH) is responsible for maintaining standards of quality and safety for manufactured homes, factory-built buildings, mobile homes, recreational vehicles, and the installation of manufactured and mobile homes.⁽¹⁾ In connection with these responsibilities, OMH performs the following functions.

1. Inspects manufactured home, factory built building, and recreational vehicle plants.
2. Inspects manufactured and mobile home installations.
3. Reviews plans for factory built buildings and for recreational vehicles to ensure they are built to code.
4. Receives and investigates consumer complaints.

(1) Two areas of Arizona's manufactured housing program are regulated by Federal standards. States can be involved in the enforcement of Federal manufactured home construction and safety standards as either a State Administrative Agency (SAA) or as a Primary Inspection Agency (PIA). Arizona has elected to have an SAA program whereby the state is responsible for ensuring effective handling of consumer complaints by manufacturers and for overseeing recalls of defective manufactured homes. Arizona is also a Production Inspection PIA, whereby OMH evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and provides ongoing oversight of the manufacturing process.

Office of Administration – The Office of Administration performs all accounting and personnel functions for the Department. In addition, the Office is responsible for licensing manufacturers, dealers, installers and salespersons; issuing certification insignias; conducting investigations; issuing permits for the installation of manufactured and mobile homes; and conducting hearings.

Office of State Fire Marshal – The Office of State Fire Marshal's purpose is to promote public health and safety and to reduce hazards to life, limb and property. To fulfill its purpose, the Office is responsible for conducting fire safety inspections of buildings within its jurisdiction; and reviewing plans and specifications for new construction, remodeling, alterations and additions to State, county and public school buildings. In addition, the State Fire Marshal may conduct or participate in investigations of fires, prescribe a uniform system of reporting fires, and provide and coordinate training in fire fighting and fire prevention.

Boards and Committees

The Department of Building and Fire Safety is overseen by a Board and two Committees.

- The Board of Manufactured Housing consists of seven members appointed by the Governor. The Board is responsible for adopting and promulgating rules and regulations, establishing fee schedules, and establishing and maintaining licensing standards and bonding requirements.
- The Installation Standards Committee consists of five members appointed by the Governor. The Committee meets as needed to adopt and promulgate rules and regulations relating to installation of manufactured homes, mobile homes and accessory structures.
- The State Fire Safety Committee consists of seven members appointed by the Governor. The Committee is responsible for promulgating a State fire code establishing minimum standards for protection of life and property from fire; prevention of fires; storage, sale and distribution of dangerous chemicals, combustible, flammable liquids, explosives and radioactive materials; installation, maintenance and use of fire escapes, fire protection equipment, fire alarm systems, smoke detectors and fire extinguishing equipment; and adequacy of fire protection and exit in case of fire.

Staffing and Budget

The Department of Building and Fire Safety employs approximately 68 full-time equivalent employees (FTE). The Office of Manufactured Housing employs 20 FTEs including plant inspectors, installation inspectors, complaint staff, engineering staff and training staff. The Office of Administration employs approximately 28 staff including a hearing officer, exam technicians, accounting clerks, compliance auditors, information processing specialists and clerk typists. The Office of State Fire Marshal employs 18 FTEs including fire marshals, training and investigative staff and a plan reviewer. The Director, supported by an Administrative Assistant, oversee the Department as a whole.

The Department of Building and Fire Safety is funded through a General Fund appropriation. For fiscal year 1987-88, the Department's approved budget exceeds \$2.5 million for operations. The Department recovers approximately half of its costs by collecting fees which are deposited into the State General Fund. A summary of the Department's General Fund revenues and expenditures for fiscal years 1985-86 through 1988-89 are presented in Table 1 (page 4).

Scope of Audit

Our audit focuses on the Office of Manufactured Housing and the Office of State Fire Marshal within the Department of Building and Fire Safety. The audit report presents findings and recommendations in six major areas.

- The adequacy of the State Fire Marshal's fire safety inspection program.
- The adequacy of follow-up by the State Fire Marshal on violations of the fire code.
- The effectiveness of the management of the State Fire Marshal's office.

TABLE 1

DEPARTMENT OF BUILDING AND FIRE SAFETY
 GENERAL FUND REVENUES AND EXPENDITURES
 FISCAL YEARS 1985-86 THROUGH 1988-89
 (UNAUDITED)

	<u>Actual 1985-86</u>	<u>Actual 1986-87</u>	<u>Estimated 1987-88</u>	<u>Estimated 1988-89</u>
FTE Positions	63	67	68	72
Revenues: (a)	<u>\$1,165,600</u>	<u>\$1,294,400</u>	<u>\$1,294,400</u>	<u>\$1,294,400</u>
Expenditures:				
Personal Services	\$1,378,800	\$1,445,200	\$1,674,200	\$1,763,400
Employee Related	288,700	301,400	332,100	421,300
Professional and Outside Services	11,600	12,600	4,000	4,400
Travel - In State	122,300	168,800	182,200	192,200
Travel - Out of State	11,300	8,400	9,400	9,400
Other Operating Exp.	162,600	249,600	324,000	350,600
Equipment	<u>120,700</u>	<u>50,300</u>	<u>12,000</u>	<u>80,000</u>
Subtotal	2,096,000	\$2,236,300	\$2,537,900	\$2,821,300
Fire Training School	<u>15,700</u>	<u>17,600</u>	<u>18,000</u>	<u>24,000</u>
Total Expenditures	<u>\$2,111,700</u>	<u>\$2,253,900</u>	<u>\$2,555,900</u>	<u>\$2,845,300</u>

(a) The revenues collected by the Department are deposited in the General Fund. Monies are appropriated from the General Fund for Department expenditures.

Source: Budget Requests submitted by the Department of Building and Fire Safety for fiscal years 1987-88 and 1988-89, and the State of Arizona Appropriations Report, May 1987.

- The effectiveness and efficiency of the Department's consumer complaint program for manufactured homes.
- The need for the Office of Manufactured Housing to provide increased monitoring of local jurisdictions with agreements to conduct installation inspections.
- The need for strengthening and clarification of statutes regarding the Department's authority to regulate the installation of manufactured homes.

This audit was performed in accordance with generally accepted governmental auditing standards.

The Auditor General and staff express appreciation to the Department's Director and employees for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2354, the Legislature should consider the following 12 factors in determining whether the Department of Building and Fire Safety should be continued or terminated.

1. Objective and purpose in establishing the Department

The Department of Building and Fire Safety was established in 1986 through a merger of the Office of Manufactured Housing and the Office of Fire Marshal. According to A.R.S. §41-2141.A, the Department was established to further public safety and welfare by maintaining and enforcing standards and codes.

"A. The department of building and fire safety is established to further the public interest of safety and welfare by maintaining and enforcing standards of quality and safety for manufactured homes, mobile homes, factory-built buildings and recreational vehicles and by reducing hazards to life and property through the maintenance and enforcement of the state fire code. It is also the purpose of the department to establish a procedure to protect the consumer of such products and services."

In connection with its purpose regarding manufactured homes, mobile homes, factory-built buildings, and recreational vehicles, the Department: 1) inspects manufactured homes, factory-built buildings and recreational vehicle plants; 2) inspects manufactured and mobile home installation; 3) reviews plans for factory-built buildings and recreational vehicles to ensure they are built to code; 4) receives and investigates consumer complaints; and 5) licenses manufacturers, dealers, brokers, salespersons and installers.

In connection with its purpose regarding maintenance and enforcement of the fire code, the State Fire Marshal is responsible for: 1) conducting fire safety inspections of buildings within its jurisdiction; and 2) reviewing plans and specifications for new construction, remodeling, alterations and additions to State, county, and public school buildings and grounds. In addition, the State

Fire Marshal may conduct or participate in investigations of fires, prescribe a uniform system of reporting fires, and provide and coordinate training in fire fighting and fire prevention.

2. The effectiveness with which the Department has met its objective and purpose and the efficiency with which the Department has operated

Manufactured Homes - The Department is effectively and efficiently enforcing standards of quality and safety for manufactured and mobile homes. The Department inspects manufactured homes during the manufacturing process in the factory to ensure that the homes are being built to Federal standards. This function is reviewed periodically by the National Conference of States on Building Codes and Standards Inc. (NCSBCS). According to an official from NCSBCS, Arizona has performed exceptionally well in this area, and is among the top in the country for this function.

In addition to inspecting manufactured homes during the manufacturing process, the Department inspects the installation of the manufactured and mobile homes to ensure that homes are installed to established standards. Through our review of installation records, we found that the Department is generally effective in obtaining compliance with installation standards. However, the Department could improve its monitoring of local jurisdictions with agreements to perform installation inspections (See Finding V). Further, the statutes should be amended to strengthen and clarify the Department's authority to regulate installations of manufactured homes (see Finding VI).

Fire Safety - The Office of State Fire Marshal is providing an efficient review of plans. The Office is required to review plans and specifications for new construction, remodeling, alterations and additions to State, county, and public school buildings and grounds within 60 days of receipt. We reviewed plans received for July and August 1987 and found that reviews were generally conducted within the time requirements.

The Office of State Fire Marshal offers training for State firefighters. In September 1987, the Office held its 14th annual fire school with 14 different 24-hour workshops including fire investigation and arson, introduction to the uniform building code, and tactics and procedures for fighting fires. Further, the Office provides seminars to local fire departments throughout the State.

The Department needs to improve its effectiveness and efficiency with regards to fire prevention and protection. The Department has not met its mandate to inspect State, county and public school buildings. Further, the Department's action has been insufficient when violations are found during the inspections. Finally, the management of the Office is inadequate (see Findings I, II and III).

3. The extent to which the Department has operated within the public interest

The Department of Building and Fire Safety operates in the public interest by maintaining and enforcing standards regarding public safety and welfare. The Office of Manufactured Housing enforces standards of quality and safety regarding mobile and manufactured housing, factory-built buildings, and recreational vehicles. The Office of State Fire Marshal enforces the fire code to reduce hazards to life and property.

4. The extent to which rules and regulations promulgated by the Department are consistent with the legislative mandate

As a result of the merging of the Office of Manufactured Housing and the Office of Fire Marshal in 1986, the newly created Department has had to amend the rules and regulations to combine the two agencies. According to a Department official, the Department has been working with its Attorney General representative for review and input into the needed revisions. Once completed, the rules and regulations will be submitted to the Attorney General's Office for certification.

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

The Department has met all statutory requirements of notice and hearing before acting on proposed rules and regulations. The Department posts notices of hearings on rule and regulation changes as required. The Board of Manufactured Housing, which is responsible for promulgation of rules and regulations, holds hearings on rule and regulation changes and is comprised of members from both the industry and the public. According to Department officials, once the rule and regulation changes are published, the Department distributes bulletins to interested parties, provides news releases to the media, and has staff speak at meetings of the industry and consumer associations.

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

The Department has effectively and efficiently handled consumer complaints related to the manufacture, sale, or installation of the manufactured home. However, the Department's State Administrative Agency (SAA) program for complaint handling needs improvement (see Finding IV, page 37).

Although the Office of State Fire Marshal is not involved in licensing, the SFM does receive and investigate complaints. According to the State Fire Marshal, complaints received by the SFM generally involve a variety of potential fire hazards such as weeds and debris, blocked exits, and electrical problems. The Office does not log such complaints nor maintain complaint files. As a result, we were unable to conduct a review of complaint handling for the State Fire Marshal's Office.

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

The Attorney General has authority to prosecute violations of the Department of Building and Fire Safety statutes and rules.

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

According to Department officials, the Department has successfully proposed legislation addressing the following areas relating to the Office of Manufactured Housing.

- A law enacted in 1986, which required homes from out-of-state to meet the State's standard before being allowed in the State.
- A Recovery Fund, enacted in 1980, to reimburse consumers damaged by dealers or brokers of manufactured homes, mobile homes or factory-built buildings.
- Licensure of salespersons of manufactured homes, mobile homes and factory built buildings, enacted in 1984.

The Office of State Fire Marshal has not proposed changes in its legislation.

9. The extent to which changes are necessary in the laws of the Department to adequately comply with the factors listed in the Sunset Laws

Based on our audit work, we recommend that the Legislature consider the following change to the Department of Building and Fire Safety's statutes.

- Amending the statutes to clearly indicate that a mobile or manufactured home cannot be installed in the State without a permit for installation.
- Amending the statutes to allow the Department to order utilities discontinued to mobile or manufactured homes in all instances where the installations constitute a danger to life and property.

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

Termination of the Department would harm the public health, safety and welfare. Termination of the Office of Manufactured Housing may pose both economic and physical harm to consumers of manufactured homes. Further, termination of the State Fire Marshal's office could harm the public safety.

Because plant inspections of manufactured homes are required by Federal standards, this function would be continued if the state program were terminated. However, statewide regulation of the sale and installation of manufactured homes would no longer exist. Further, there would be no specific State agency responsible for handling consumer complaints regarding the manufacture, sale or installation of manufactured homes. Thus, it would be more difficult for consumers to seek assistance if they encountered problems.

Further, inspections of the installation of manufactured homes are important to protect consumer health and safety. Inspections are conducted on proper installation of utilities (gas, water, sewage and electricity); the piers and footings used to support the homes; and accessories such as awnings, porches, skirting, coolers, and heating and refrigeration equipment. Failure to identify and correct violations of installation standards could place homeowners in unsafe housing. For example, failure to identify a leak in a gas line could cause an explosion.

Elimination of the Office of State Fire Marshal could impact fire prevention in the State. Currently, State, county and public school building inspections and plan reviews are solely under state responsibility. Thus, if the Office were terminated, no jurisdiction would be responsible for these inspections and plan reviews. In addition, State licensed buildings such as daycare facilities and nursing homes outside of jurisdictions with inspection programs may be unable to obtain needed inspections. Further, the formal training offered by the Department to local fire departments would be eliminated.

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

Our audit did not identify any needed changes in the level of regulation in the Department of Building and Fire Safety.

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

The Office of State Fire Marshal (SFM) has used private contractors as instructors for training programs provided to firefighters. Instructors are needed for both the annual fire school and for training programs provided throughout the State at various times of the year. One employee from the SFM coordinates all training provided by the Department.

FINDING I

THE OFFICE OF STATE FIRE MARSHAL'S FAILURE TO CONDUCT REGULAR INSPECTIONS EXPOSES THE STATE TO POTENTIAL LIABILITY

The Office of State Fire Marshal is not conducting regular inspections as required by law, thus exposing the State to potential liability. The Office does not regularly inspect State and county buildings, nor has the Office met its goal of annual inspections of all public school facilities. In order to conduct all mandated inspections, the State Fire Marshal will need to increase its staff. In addition to requesting more staff, the Office should consider various program alternatives to reduce its workload.

Regular fire safety inspections are important to minimize the frequency of fires, associated property loss and human casualties. Studies have shown that increased fire prevention activities, including inspections, appear to substantially reduce the incidences of fires.

The Office of the State Fire Marshal is responsible for conducting fire inspections. Per Arizona Revised Statutes §41-2163.A, the Office is responsible for regularly inspecting all State and county buildings, public schools and private schools in cities with populations of less than 100,000. The Office is also required to inspect, as necessary, all other occupancies located throughout the State, except family dwellings with fewer than five residential dwelling units and occupancies located in cities with populations of 100,000 or more. Because of the large scope of responsibility, we limited our review of inspection coverage to State, county and public school buildings.

State, County And Public School Buildings Are Not Being Inspected As Frequently As Needed

The State Fire Marshal (SFM) is not inspecting State, county and public school buildings as frequently as needed. The SFM has not established a regular inspection program for State and county buildings. Further, even though the SFM identified school inspections as a priority, it is not inspecting the schools as planned.

State and county buildings are not inspected on a regular basis - The SFM has conducted few inspections of State and county buildings. The requirement that the SFM inspect State and county buildings on a regular basis was added in August 1986. However, our review of SFM records indicates that since the requirement was added, the SFM has not regularly inspected these buildings. In fact, although the State owns approximately 2,866 buildings,⁽¹⁾ only 68 State facility inspections were made by the SFM between September 1, 1986 and September 30, 1987. Further, we contacted county officials and found there are an estimated 1,242 county structures. However, the SFM conducted only 54 county structure inspections between September 1, 1986 and September 30, 1987. Further, of the 68 State and 54 county inspections performed during this 13-month period, seven of the State and two of the county inspections were of the same facility.⁽²⁾

TABLE 2
STATE AND COUNTY FACILITY INSPECTIONS
CONDUCTED BETWEEN SEPTEMBER 1, 1986 AND SEPTEMBER 30, 1987

<u>Jurisdiction</u>	<u>Total Number of Buildings</u>	<u>Facility Inspections</u>	<u>Multiple Inspections</u>
State of Arizona	2866	68	7
Counties	1242	54	2

Source: Auditor General review of the Office of State Fire Marshal's inspection reports, survey of county officials, and information provided by Department of Administration, Facilities Management Division.

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- (1) Some of these structures may not need to be placed on a regular inspection program. A wide range of buildings types are included in these totals, from small storage sheds and park facilities to multi-story office buildings and correctional facilities.
 - (2) Auditor General staff were unable to determine the actual percentage of buildings inspected because individual inspection reports were not always completed on each structure inspected during an inspection site visit. Some state and county facilities (e.g., jails, prisons, hospitals) have multiple buildings located at specific sites.

All public schools are not inspected annually - Although the SFM has placed a priority on school inspections, the schools have not been inspected annually. SFM policy requires public schools to be inspected annually. As of December 1986 there were 932 public schools in Arizona. We randomly sampled 76 schools. Our review of the 76 school inspection files revealed that one-third of the inspections were overdue for the annual inspection by an average of over 6.5 months. In Maricopa County, which houses nearly 45 percent of the State's public schools, the situation was worse. Of the 30 Maricopa County schools reviewed, over one-half of the schools were overdue for an inspection by an average of nearly seven months (see Table 3).

TABLE 3
LENGTH OF TIME BETWEEN REGULAR SCHOOL
INSPECTIONS (SEPTEMBER 1984 - OCTOBER 1987)

<u>County</u>	<u>Number of School Files Reviewed</u>	<u>Inspections Overdue Number/Percent</u>		<u>Average Time Since Last Inspection</u>
Maricopa	30	16	53.3%	18.8 months
Pima	16	4	25.0	19.8
Other	<u>30</u>	<u>6</u>	<u>20.0</u>	<u>16.6</u>
Total	<u>76</u>	<u>26</u>	<u>34.2%</u>	<u>18.5 months</u>

Source: Auditor General staff review of school inspection files.

Failure to conduct inspections exposes the State to potential liability - By not conducting inspections of State, county and public school buildings as required, the SFM may be exposing the State to potential liability. We contacted Legislative Council to determine whether the State would be liable for death, injury or damage caused by fires in State, county and public school buildings which have not been subject to regularly scheduled inspections by the SFM. According to a January 12, 1988, Legislative Council Opinion, the State would probably be liable for death, injury or damages resulting from a fire when the state failed to conduct an inspection. Specifically, the memorandum states that the situation ". . . appears to involve a clear violation of state law by the state fire marshal and the state would probably be liable."⁽¹⁾

(1) For a complete text of the Legislative Council Opinion, see Appendix.

**In Order To Conduct Inspections,
More Staff Are Needed**

In order to conduct all mandated inspections, the State Fire Marshal would need to increase staff size. Because of limited resources, the SFM has not placed all buildings on a regular inspection program. Although it is clear that additional staff are needed, because the Office lacks the information necessary to determine staffing requirements, it is difficult to determine the Office's true needs.

Not all buildings are on regular inspection schedule - Because of limited resources, not all buildings have been placed on a regular inspection program. The State Fire Marshal maintains that he only has sufficient staff to place public schools, licensed facilities, and recently, jails and prisons on a regular inspection schedule. Other State, county, university and community college buildings are inspected only upon request, in response to a complaint, or when time permits.

In order to adequately comply with a regular inspection program, the SFM has indicated it will need additional staff. The Office currently has 11 deputy fire marshals that are responsible for conducting inspections. However, as was previously noted, these fire marshals have been unable to inspect all buildings within the SFM's jurisdiction. The Assistant Fire Marshal has estimated that to meet minimal inspection requirements, the Office will need at least five additional deputy state fire marshals. The Assistant State Fire Marshal has estimated that the Office will need to conduct 5,800 inspections in calendar year 1988. These inspections include regular inspections of public and private schools, licensed health facilities, daycare centers, county buildings, State buildings, fire protection systems, private commercial buildings, underground tanks, and inspections generated by complaints. During calendar year 1987, the deputy state fire marshals conducted 3,647 such inspections. Thus, with current staff, SFM anticipates they will be unable to meet inspection requirements.

Staffing estimates may need further adjustments - Although we agree the SFM needs additional staff to meet the Office's statutory requirements, the SFM's estimate of five staff may not represent the Office's true staffing needs. The Department lacks the information needed to plan its staffing needs. The Department does not have a comprehensive list of all buildings within

its jurisdiction. Further, it does not have information on the size and complexity of each building, the amount of travel required, the building condition, and other factors necessary for planning inspection needs (see Finding III). Also, the SFM needs to determine how often each building should be inspected. For example, a high rise office building may require several hours for an inspection and may need to have an annual inspection, whereas a rest area may require only a minimal time for inspection and may only need inspection every few years. Finally, because the Office has not conducted adequate follow-up on buildings, the SFM lacks the data needed to estimate the hours needed to conduct follow-up on violations (see Finding II). Thus, although the SFM has estimated a need for five additional staff, this figure will need to be adjusted as the SFM gathers additional information needed to plan its staffing needs.

The State Fire Marshal's Office Should Consider Program Alternatives

In addition to requesting funding for additional staff from the State Legislature, the State Fire Marshal should consider various program alternatives to reduce its workload. Alternatives to the current program include narrowing the scope of the SFM's inspection mandate, entering into agreements with local fire service personnel to conduct required inspections, and deputizing local fire service personnel to conduct inspections within their jurisdictions.

Narrowing scope of inspection mandate – One method to reduce the SFM's inspection program workload is to narrow the scope of buildings requiring inspection. Currently, the SFM is required to inspect all State, county and public school buildings. However, some states have a narrower scope of buildings within their state fire marshal's jurisdiction. The California State Fire Marshal, for example, is not required to inspect county buildings, and only inspects public schools in areas outside of corporate cities and districts providing fire protection. The Utah State Fire Marshal only enforces the fire code regulations on State owned property, and in areas outside of corporate cities and county fire protection districts. ⁽¹⁾

(1) However, upon written request by the local fire chief or local governing body, the Utah State Fire Marshal has the authority to enforce the fire code in corporate cities and county fire protection districts.

Agreements with local jurisdictions to conduct inspections – Another means of reducing the SFM's workload is to enter into agreements with local jurisdictions to conduct needed inspections. Currently, the SFM has agreements with several larger cities to conduct inspections of facilities requiring State licensing, such as daycare centers, nursing homes and supervisory care facilities. However, all inspections of State, county and public school buildings are performed by the SFM. Some states have entered into agreements to have local fire prevention bureaus inspect publicly owned buildings. In Oregon, for example, the State Fire Marshal has agreements with larger metropolitan areas requiring these cities to conduct all inspections normally the responsibility of the State Fire Marshal. The Oregon State Fire Marshal periodically reviews the performance of the local jurisdictions, and will renew agreements only if the review is favorable.

There are some obstacles to obtaining local jurisdiction agreements. In our discussions with local fire prevention officials, some indicated that because of personnel constraints, they would be unable to assume any additional inspection requirements. In addition, the officials indicated that there may be problems with regard to local governments requiring superior governmental entities to meet local and State fire code regulations.

Deputize local fire service personnel – A third method of reducing the workload of the SFM is to appoint volunteer assistant deputies to conduct SFM duties. A.R.S. §41-2162 permits the State Fire Marshal to appoint local fire service personnel and employees of other State agencies as assistant deputies to assist in properly discharging the duties of the Office, although those appointed are not entitled to compensation for performing these duties. Currently, the SFM reportedly has issued deputy fire marshal cards to approximately 200 fire personnel. However, according to the SFM, many of these individuals do not have adequate training or experience in fire code enforcement, and therefore, do not perform SFM duties. The SFM has indicated a desire to establish a training and certification program for volunteer assistant deputies, and use these deputies to assist in conducting SFM inspections.

Utah has developed a certification program for its deputy inspectors. To be appointed as a deputy inspector, the individual must have previous fire service

experience, take a 30-hour training course on building and fire codes, and pass a certification exam. To maintain their certification, the inspectors must attend a 30-hour training course every six months on selected building and fire code topics.

RECOMMENDATIONS

1. The Office of State Fire Marshal should place all publicly owned buildings under its jurisdiction on a regular inspection schedule.
2. The Office should inspect all public schools as required by Office policy.
3. The Office should try to implement, as much as feasible, the following program alternatives.
 - a. Seek legislative changes limiting the scope of the Office of State Fire Marshal's fire code enforcement responsibilities.
 - b. Enter into formal agreements with willing and qualified local jurisdictions to inspect publicly owned buildings in their areas.
 - c. Institute a training and certification program for individuals interested in being assistant deputies.
4. The Office should request funding from the State Legislature for additional staff needed to carry out its fire code enforcement responsibilities.

FINDING II

THE OFFICE OF STATE FIRE MARSHAL SHOULD INCREASE ITS ENFORCEMENT EFFORTS TO ENSURE THAT CODE VIOLATIONS ARE BEING CORRECTED

The State Fire Marshal's Office should improve its enforcement program to ensure that code violations are corrected. Inspections that identified violations have not been followed up to ensure that violations were corrected. The Office's failure to follow up has been caused by staffing shortages and management's lack of pertinent policies and procedures. However, this failure could expose the State to liability losses.

Inspection Violations Not Followed Up

The State Fire Marshal inspection staff do not regularly follow up on code violations detected during inspections to ensure that they are being corrected. Our review of inspection files indicates that follow-up on code violations generally does not occur. Case examples show that serious code violations have persisted with very little corrective action taken.

Files indicate lack of follow-up – Our review of State Fire Marshal inspection files indicates that follow-up on code violations does not occur. We selected a random sample of 76 public school inspection files to determine action taken. We found that the 76 public schools received 177 regular inspections between September 1, 1984 and October 31, 1987 (see Table 4). Code violations were found in more than 90 percent of the cases (161). However, reinspections were conducted in only 5 percent of these instances. Further, in another 3 percent of these cases, building officials submitted written documentation that violations were being addressed.

A review of State and county inspection files produced similar results. We reviewed all inspections conducted on State and county buildings between September 1, 1986 and September 30, 1987 (see Table 4). Of the 122 regular inspections conducted, 75.4 percent (92) had code violations. However, reinspections were conducted in only 4.4 percent of these cases. Further, written documentation of violations being corrected was found in another 5.4 percent of these instances.

TABLE 4
FOLLOW-UP OF STATE, COUNTY AND PUBLIC SCHOOL INSPECTIONS

<u>Jurisdiction</u>	<u>Number of Inspections Performed</u>	<u>Number With Violations Found</u> (b)	<u>Number of Reinspections Conducted</u> (c)	<u>Number With Written Documentation</u> (d)
Public Schools (a)	177	161 (91.0%)	8 (5.0%)	6 (3.7%)
State	68	54 (79.4)	2 (3.7)	1 (1.9)
County	<u>54</u>	<u>38</u> (70.4)	<u>2</u> (5.3)	<u>4</u> (10.5)
Overall	<u>299</u>	<u>253</u> (84.6%)	<u>12</u> (4.7%)	<u>11</u> (4.4%)

(a) A random sample of 76 school inspection files were reviewed.

(b) Percent of all inspections in which code violations were found.

(c) Reinspections as a percent of all inspections with code violations.

(d) Documentation of violations corrected as a percent of inspections with code violations.

Source: Office of the State Fire Marshal inspection files.

Serious code violations not corrected - A review of inspection files indicates that in certain instances, serious code violations have persisted with very little corrective action taken. Not only does the Office fail to conduct follow-up inspections when it discovers serious violations, it has failed to enforce corrective action when regular inspections, conducted a year or two later, find the same problems still exist. The following case examples illustrate the types of code violations not being addressed. The first two examples are of county facilities that did not receive follow-up actions.

Case 1

A December 11, 1986, inspection of a county office building in southern Arizona found that electrical wiring throughout the building was "very substandard." To compound the problem, electrical extension cords were used throughout the building as permanent wiring, in violation of the State fire code. The inspection also determined that there were not enough exit doors and that emergency lighting in the corridors was inadequate. In all, ten code items were cited.

Comment

The inspection report recommended that a fire alarm system be installed because of the condition of the building. It also requested that a copy of this report be returned to the Office when all code violations had been corrected. No documentation existed in the file to indicate that the county had addressed any of the cited building deficiencies.

Case 2

A January 27, 1987, inspection of a county juvenile detention center found that the facility did not have an approved fire alarm system. Nor did the facility have an approved automatic sprinkler system. Furthermore, the inspection found that emergency lighting in the staff quarters and lockup areas was not working. Finally, the facility did not have a fire hydrant in an area that was readily accessible to the fire department in case of an emergency.

Comment

The inspection report requested that the county provide the Office of the State Fire Marshal with a letter of intent to correct these code violations. However, no documentation existed in the inspection files indicating that any of these code deficiencies had been addressed. Furthermore, a prior inspection of this facility on April 19, 1985, identified many of the same violations in the building.

The remaining examples are of public schools that are subject to annual inspections. However, even when facilities are being inspected regularly, serious code violations may persist.

Case 3

Three successive annual inspections of a Tucson high school conducted in 1983, 1984 and 1985 found the fire alarm system to be inoperable. Furthermore, during each inspection numerous exits were chained and locked, in violation of the fire code. These inspections also found that the kiln room did not have a proper exhaust venting system and the spray booth (in the paint shop) was not protected by an automatic fire extinguishing system. Improper storage of flammable liquids was also noted in all three inspection reports. Finally, the inspections determined that exit signs were missing in the chorus room and that exit signs in some other classrooms were not operational and were in need of repair.

Comment

A new fire alarm was installed in September, 1986. The State Fire Marshal indicated that his inspection staff require building officials to remove chains and unlock all exit doors prior to completion of the site inspection. However, he felt that since inspectors do not return to conduct reinspections, school officials will

again chain and lock these exits. No documentation could be found in the inspection file to indicate that other code violations had been addressed. Furthermore, the high school had not received an annual or follow-up inspection since August 1985. This was the case even though the 1983 inspection detected 39 fire code violations, the 1984 inspection 26 code violations, and the 1985 inspection 21 code violations.

Case 4

A January 25, 1986, inspection of an elementary school in Apache Junction found 13 fire code violations, including problems with the fire alarm. An inspection the following year (on January 26, 1987) also found the fire alarm system to be malfunctioning. Furthermore, the 1987 inspection identified additional code violations regarding malfunctioning emergency and exit lighting identical or similar to those found in the February 1986 inspection. Finally, both inspections indicated that the fire extinguisher in Room 413 had not been recharged.

Comment

No documentation could be found in the inspection file to indicate that any code violations listed in either inspection were addressed.

Due To Staff Shortages, Management Does Not Require Staff To Conduct Inspection Follow-Ups

Management has not required that staff reinspect buildings to ensure that code violations have been corrected. Citing lack of sufficient personnel for the job, the Fire Marshal has not established policies and procedures on follow-up and enforcement. However, the National Fire Protection Association (NFPA) very clearly states that adequate follow-up is an essential part of any fire inspection program. Recognizing this need, other jurisdictions have incorporated follow-up into their inspection programs by setting deadlines and requiring detailed written plans for correction.

Citing lack of personnel for the job, the Fire Marshal has not developed formal guidelines establishing circumstances in which follow-up inspections are necessary. As noted in Finding I, the SFM does not have adequate staff to conduct needed inspections. According to the Fire Marshal, because the Office lacks sufficient staff, the Office has taken the approach of inspecting as many buildings as possible and placing limited emphasis on reinspections. In addition, in the few instances in which follow-up is conducted, such decisions are left to the discretion of the inspectors. Further, even when violations are found, no deadlines are set for correction of the problem.

Although it is important for the SFM to inspect buildings within the Office's jurisdiction, it is equally, if not more important, to follow up on code violations found. NFPA very clearly states that adequate follow-up is an essential part of any fire inspection program. NFPA maintains that until code compliance is achieved, an inspection is not considered complete. This may require multiple visits to the property, office research time and possibly court time. According to NFPA, it is generally "better to conduct fewer but more thorough inspections and follow up on all violations than to undertake too many inspections that could be done haphazardly, incompletely, or negligently."

Other local jurisdictions and states follow up on violations found during inspections. At a minimum, once violations are found during an inspection, the inspecting agency should notify the building official of the violation, set a reasonable amount of time to bring the building to code, and ensure that the violation is corrected. Some jurisdictions have incorporated follow-up into their inspection programs by setting deadlines, requiring detailed written plans for correction, and conducting reinspections to ensure that corrections were made.

- The City of Phoenix Fire Department reportedly sets correction dates for all violations and conducts reinspections to ensure that violations were corrected. Cases are not closed until all violations are rectified. According to a Phoenix Fire Department official, the Department is short of staff, and is unable to inspect all buildings on a regular basis. However, he said the Department places a priority on the quality of inspections conducted, which requires follow-up be completed.
- The City of Mesa Fire Department stated it sets deadlines for violations to be corrected and performs reinspections to ensure that these violations have been rectified. For major violations, such as the installation of an approved sprinkler system, the City may allow the inspectee to develop a one to five year plan detailing how corrections will be made. However, progress on the development program is monitored. Cases are not closed until all violations have been corrected.
- The Tucson Fire Department reports that it uses a computer to track reinspections. The computer will generate a reinspection report 3 to 5 days in advance of the scheduled reinspection date. Cases with violations will continue to appear until corrections have been made. Management receives a monthly report indicating all cases with outstanding violations and the history of these violations.

Other jurisdictions use a combination of reinspections and requiring notification from the responsible party that violations have been corrected. For example, The California Fire Marshal's Office requires responsible parties to sign a form, under penalty of perjury, indicating that violations were corrected.

State Liability

The State could be held liable for losses due to inadequate follow-up enforcement. We asked Legislative Council whether the State would be liable for the death, injury or damage caused by fires in buildings where an inspection was conducted by the State Fire Marshal's Office and violations were found, but for which no or insufficient Department follow-up was conducted. According to a Legislative Council Opinion dated January 12, 1988, when inspections disclose a violation of the fire code, the State Fire Marshal is required to use enforcement procedures to correct the violation.⁽¹⁾ Although the State's liability rests on the facts and circumstances of each case, failure of the Department to ensure that violations were corrected could "possibly involve negligence by the department, but no violation of statute." Further, the opinion adds, "[a]s a general rule, however, this state is not immune from lawsuits involving the types of negligence detailed. . . ."

RECOMMENDATIONS

1. When violations are identified during an inspection, the Office of State Fire Marshal should, in conjunction with notifying the responsible party of the code violations:
 - a. Establish a reasonable time frame in which code violations are to be corrected.
 - b. Conduct follow up to ensure that violations were corrected.

(1) For a complete text of the Legislative Council Opinion, see Appendix.

2. The Office of State Fire Marshal should establish policies and procedures defining in what instances reinspections are required, and in what instances the Office can rely on written notification from building officials to ensure that code violations are corrected.
3. In instances where the code violation may require extensive time to correct, the Office should require a detailed plan of action indicating how corrections will be made. This plan should be monitored to ensure that progress is being made.

FINDING III

THE OFFICE OF STATE FIRE MARSHAL NEEDS BETTER MANAGEMENT PLANNING AND CONTROL

The Office of State Fire Marshal (SFM) has not established adequate management reporting and control systems. Management information is inadequate to properly plan work and determine staffing needs. Supervision and control of field staff has also been weak. Until recently, the SFM has not sufficiently recognized the importance of management reporting and control systems and made their development a priority.

Management Information Is Inadequate

The SFM does not have basic information needed to properly plan work and staff the Office. The Office needs to develop an inventory of the buildings it is mandated to inspect,⁽¹⁾ improve its filing system, and record and analyze how long it takes to conduct various types of inspections.

Building Inventory – At the time of our audit, the Office did not have an inventory of State and county buildings the Office is mandated by law to inspect (see pages 18–19). Lacking an inventory, the Fire Marshal cannot meet the Office's responsibility to develop a regular inspection schedule. It is also difficult to estimate staffing needs without knowing its inspection workload.

The Office needs to develop a master inventory file for all buildings under its jurisdiction. The file should contain information regarding the owner, location, size and use of the property. Other information, such as the type of construction, age of the building, occupancy load, and fire protection systems installed, is also important for planning inspections and establishing inspection priorities. Much of this information can be obtained from State and county officials responsible for facilities in their jurisdiction.

(1) The SFM is also required to inspect certain privately owned buildings in cities with populations of less than 100,000 (see Finding I, page 15). However, we limited our review of inspection coverage to State, county and public school buildings.

Filing system - The Office's manual filing system is so poorly maintained it is difficult to determine what buildings have been inspected. Generally, separate files are not maintained for each State and county building inspected. While inspection records of public schools are normally maintained in individual files, we found instances in which inspection records of different schools were also filed together by county and school district. Furthermore, we found several instances of misfiled inspection reports.

National Fire Protection Association (NFPA) literature recommends that a separate file be maintained for each building inspected. These files should summarize information about the property and contain copies of all inspection records, including documentation of all inspections and code enforcement activity, correspondence relating to the property, building plans and specifications (if available), and records of fire incidents at the location. Such files, properly maintained, provide management with essential information for planning and budgeting purposes, and expedite the inspection process.

Time requirements - The Fire Marshal also needs information on the time it takes to perform various types of inspections. This information, along with an inventory of buildings, is needed to properly estimate staffing needs.

Currently, the Office does not capture in sufficient detail the time field staff take to perform their inspections. The amount of time needed to conduct an inspection varies depending on the size and complexity of the property, the amount of travel required, the condition of the building, and other factors. Monthly activity summaries and biweekly time reports completed by field deputies, however, do not differentiate the various types of inspections (e.g., regular, follow-up, new construction and complaint) and record the time spent on each.

By contrast, other fire inspection bureaus record this information and find it useful for planning purposes. For example, Mesa and Tucson fire safety inspection staff are required to complete daily activity logs indicating the types of activities

engaged in and time spent on each activity. The City of Phoenix requests its inspection staff to complete a daily time sheet that provides similar information. According to the NFPA, this type of information is needed to effectively plan and schedule inspections.

Staff Supervision Is Weak

The Fire Marshal's supervision and control of field staff needs to be strengthened. Because time reporting is poor, management cannot be assured that staff spend time productively. Further, there is no documentation to indicate that inspection reports completed by field staff are routinely reviewed by management. Finally, the Office needs to develop written policies and a procedures manual to guide staff in carrying out their inspection responsibilities.

Staff reporting – As noted above, field staff do not report in detail time spent on various inspection activities. Currently, staff complete biweekly time sheets that indicate only the total number of hours worked. The time sheets do not indicate the number of hours spent on specific inspection, and noninspection tasks such as complaints, arson investigations, training or paperwork. Because many field staff work alone and unsupervised on-site, it is impossible for management to know if staff are working at acceptable levels of efficiency and productivity.

Inspection reviews – There is no documentation to indicate that Office management adequately reviews inspection reports completed by field staff. Although the Fire Marshal indicated that reports are examined, we found little evidence that this has occurred regularly. Inspection reports are not initialed by supervisors, and files we reviewed showed very little indication of discussion, revisions, or follow-up resulting from supervisory review. Adequate review of staff reports is needed to ensure quality and consistency in the Fire Marshal's statewide inspection program. The Assistant State Fire Marshal has indicated that the quality of the inspection reports completed by field staff has been an area of concern.

Procedures manual – The Office also lacks written policies and a procedures manual which would guide staff in carrying out their inspection responsibilities. For example, there are no written guidelines establishing appropriate follow-up

procedures for various types of code violations. Decisions regarding follow up are left to the discretion of individual inspectors. As a result, inspectors may be arbitrary and inconsistent in the application of standards, in performing follow up, and in reporting.

According to the NFPA an inspection manual should be prepared to guide field staff. The manual should be organized by occupancy class, and should set forth the various code requirements for each type of property. The Phoenix and Tucson Fire Departments have developed manuals of this type to ensure consistency among their staff in code enforcement and inspection procedures.

Fire Marshal Did Not Consider Management Systems A Priority

In the past, the Fire Marshal has not viewed development of management systems as a priority. He felt it was more important to assign available staff to inspections than to spend time developing management systems. We view this decision as short-sighted, since good management systems and procedures can increase productivity and efficiency. Moreover, some of the systems that are lacking, such as detailed time reporting, do not require extensive time or resources to develop. Many of the other Fire jurisdictions we visited during our audit are busy and perhaps understaffed, yet they took the time to develop and implement needed management systems.

In fairness to the Fire Marshal, turnover in the Assistant Fire Marshal position may have impacted development of management systems. The Assistant has day-to-day responsibility for the inspection program and supervision of inspection staff. In the past three years, however, this position has been filled by three different individuals. Further, due to staff vacancies and shortages, the Assistants have spent a considerable portion of their time conducting inspections rather than managing the inspection program.

The current Assistant Fire Marshal, however, is working to improve management. He is in the process of reorganizing and updating the Office file system, and will also be developing an inspection manual for field staff.

RECOMMENDATIONS

The Office of State Fire Marshal should:

1. Develop a master inventory file of all State, county, school and privately owned properties under its jurisdiction.
2. Establish a time reporting system that tracks in sufficient detail the amount of time field staff spend on inspection and noninspection activities. This report should differentiate types of activities and properties inspected by staff.
3. Adequately review inspection reports for quality, and document this review through supervisory sign-offs or other means.
4. Develop an inspection manual and establish policies and procedures on follow-up of code violations found during inspections
5. Develop a record-keeping and filing system in accordance with NFPA guidelines.

FINDING IV

THE DEPARTMENT OF BUILDING AND FIRE SAFETY HAS EFFECTIVELY AND EFFICIENTLY HANDLED CONSUMER COMPLAINTS RELATED TO MANUFACTURED HOUSING

The Department has effectively and efficiently handled consumer complaints related to manufactured housing. The Department has established an effective complaint process to resolve consumer problems with the manufacture, sale or installation of mobile or manufactured homes. Although the Department process for handling complaints is effective, the Department needs to strengthen its oversight of manufacturers who handle Federal complaints.

Department Complaint Process Is Effective

The Department protects consumers' interests through its complaint process. Consumer complaints are handled in an effective and efficient manner. Further, when the consumers have been harmed economically by a licensed dealer or broker, the Department has compensated the consumers through awards from the Consumer Recovery Fund.

The Department handles consumer complaints related to the manufacture, sale or installation of manufactured homes. During fiscal year 1986-87, the Department received 777 complaints related to the Office of Manufactured Housing. The complaints may cite numerous types of problems. For example, one complaint we reviewed contained 15 items such as a leaking shower door, buckled weather stripping, broken steps, split front door, ceiling fractures and bathroom leaks.

The Department has established an effective process for resolving consumer problems with the manufacture, sale, or installation of mobile or manufactured homes. The Department investigates complaints within its jurisdiction, and if valid, requires the manufacturer, dealer or installer to correct the deficiency. If the complaint is not resolved, the consumer may request that a citation and complaint be issued and a hearing scheduled. The Department's hearing officer is authorized, after a hearing is held, to place a licensee on probation, to suspend or revoke the license, and to fine the licensee up to \$1,000 for each violation.

Our review of consumer complaints filed with the Department show the Department is both effective and efficient in its handling of complaints. We randomly selected 50 complaints received in fiscal year 1986-87 for review. Our review of these complaints found that the complaints within the Department's jurisdiction were not closed until the licensee corrected violations. Further, the Department addressed complaints promptly. Of the 50 complaints reviewed, 34 were closed at the time of our review. Of the 34 that were closed, all but one had been closed within six months of receipt. Of the 16 that were still open, all but one had valid explanations for open status.

In addition, the Consumer Recovery Fund has been effective in returning monies to consumers who have been damaged by licensed dealers or brokers. Dealers and brokers of manufactured homes, mobile homes and factory-built buildings are assessed a fee for each unit sold, which is placed into the Consumer Recovery Fund. We reviewed all payments made from the Fund between January 1986 and May 1987. During this period, \$32,528 was paid from the Fund. The majority of monies were paid to consumers who had placed down payments on homes and were not provided refunds of these monies, or for items which the dealer had agreed upon in the purchase agreement, but did not deliver. According to Department officials, the Department has reimbursed consumers more than \$381,000 since the Funds' establishment in 1980.

Federal Program
Should Be Improved

Although the Department has an effective state program for handling consumer complaints, the State Administrative Agency (SAA) complaint program needs improvement. Manufactured homes are regulated by Federal Construction and Safety standards. States can be involved by establishing State Administrative Agencies. Arizona's Office of Manufactured Housing (OMH) is a State Administrative Agency responsible for overseeing manufacturers' handling of consumer complaints and recalls of defective manufactured homes. When OMH

receives a complaint regarding the manufacture of a home, the Office, under the Federal system, sends copies of complaints to the manufacturer for action. ⁽¹⁾

The manufacturer is required, by Federal law, to investigate the complaint, and determine its seriousness and whether the complaint may exist in a group of homes. The manufacturer must correct all homes that have a serious defect or an imminent safety hazard.

A Federal review of Arizona's SAA complaint program revealed problems with Arizona's handling of Federal complaints. The review report, dated April 28, 1987, found that the Department had not monitored or followed up to determine whether the manufacturer took appropriate action. Further, the review found that the Department had not ensured that manufacturers' logs of complaints were structured so as to be able to identify groups or classes of homes with repeat defects. State and Federal officials have disagreed as to the level of effort required by the Arizona SAA. However, the Department, in its 1988-89 budget request, requested a position to increase the enforcement efforts with such position being funded by the Department of Housing and Urban Development.

RECOMMENDATION:

1. The Department should make improvements in its handling of SAA complaints to monitor manufacturer action on these complaints, and to ensure that manufacturer logs of complaints are structured to identify groups or classes of homes with repeat defects.

(1) The Department will investigate complaints received within one year of the manufacture or purchase of the manufactured home. Complaints received after one year of the manufacture or purchase will be referred to the manufacturer to determine whether action is needed.

FINDING V

THE DEPARTMENT OF BUILDING AND FIRE SAFETY COULD IMPROVE ITS MONITORING OF LOCAL JURISDICTION INSTALLATION INSPECTION PROGRAMS

The Department of Building and Fire Safety could improve its monitoring of local jurisdictions with mobile and manufactured home installation inspection programs. Installation inspections are performed to protect consumers' health and safety. The Department, however, has not adequately performed reviews of the local jurisdictions with agreements to conduct installation inspections. The Department needs to make monitoring a greater priority.

Inspections Provide Protection

Installation inspections are important to protect consumer health and safety. Manufactured and mobile homes are inspected for proper installation of utilities (gas, water, sewage, and electricity); the piers and footings used to support the homes; and accessories such as awnings, porches, skirting, coolers, and heating and refrigeration equipment. Failure to identify and correct violations of installation standards could place homeowners in unsafe housing. For example, an undetected leak in a gas line could result in an explosion.

The Department of Building and Fire Safety's Office of Manufactured Housing oversees the inspection program for the installation of manufactured and mobile homes. Because of the large number of inspections that need to be conducted, the State has entered into agreements with local jurisdictions to conduct the inspections within their jurisdictions. Approximately two-thirds of the installation inspections are performed by local jurisdictions, and one-third are performed by the Department.⁽¹⁾ The jurisdictions are required to follow State standards for these inspections.

(1) This estimate is based on the number of permits issued by the local jurisdictions and the Department. In order to install a manufactured or mobile home, a permit must be obtained. The issuance of a permit obligates the jurisdiction to perform an installation inspection.

The Department of Building and Fire Safety is required by A.R.S. §41-2153.B.5 to monitor the performance of local jurisdictions that have agreements to conduct installation inspections. In order to satisfy the statutory requirement, the Department has established a policy requiring annual reviews of the jurisdictions.

The reviews include an on-site visit to the jurisdiction to review record-keeping and inspection procedures. The reviewer inspects a sample of units previously inspected by the jurisdiction to ensure that State standards were followed. The jurisdiction is informed of violations, and the required corrective action.

Department Is Not Reviewing Local Inspections

The Department has not adequately monitored the local jurisdictions under agreement. The Department has not conducted enough audits of the jurisdictions. As a result, local jurisdictions that are performing inadequate inspections are not detected in a timely manner for corrective action. In addition, when reviews are conducted, follow-up by the Department is inconsistent.

Department has not performed needed reviews - Although the Department is required to monitor local jurisdictions, it has not performed sufficient reviews. We reviewed all local agreement files to determine the Department's adequacy in monitoring local jurisdictions.⁽¹⁾ Since the Department policy requiring annual reviews was effective December 14, 1984, we reviewed the Department's actions for the period of January 1, 1985 through October 20, 1987. Of the 62 local jurisdictions that have retained an agreement since 1985, none of the jurisdictions have been reviewed in accordance with Department policy. The Department had not conducted audits for 64 percent of the local jurisdictions since the policy went into effect. Further, an additional 31 percent of the jurisdictions had received only one review during the period of review (see Table 5).

(1) Our review of local jurisdiction files indicates that many agreements are outdated. We reviewed all local jurisdiction agreement files. We found that 11 (16 percent) of the 68 files with agreements contained only partial agreements. Further, we found that most agreements refer to statutes or rules and regulations which no longer exist. When the Department was created in 1986, the statutes of the Office of Manufactured Housing were transferred and renumbered. However, agreements have not been updated to refer to the current statutes. Further, several of the older agreements refer to outdated rules and regulations, in addition to deleted statutes.

TABLE 5
FREQUENCY OF MONITORING AUDITS OF LOCAL JURISDICTIONS
JANUARY 1, 1985 THROUGH OCTOBER 20, 1987

<u>Number of Audits Conducted</u>	<u>Local Jurisdictions</u>	<u>Percent of Jurisdictions</u>
0	40	64%
1	19	31
2	<u>3</u>	<u>5</u>
	<u>62</u>	<u>100%</u>

Source: Auditor General staff review of local jurisdiction files maintained by the Department of Building and Fire Safety.

Problems with local jurisdictions go undetected - As a result of inadequate reviews, local jurisdictions that are performing inadequate installation inspections are not detected in a timely manner for corrective action. When the local jurisdiction reviews are conducted, the Department frequently identifies deficiencies with the local jurisdiction's inspection program. The Department may then take corrective action such as requiring the jurisdiction to notify the Department when deficiencies are corrected, requiring the jurisdiction's inspectors to attend Department training, conducting follow-up audits to ensure that corrections are implemented, requiring the jurisdictions to sign a full agreement, or in severe instances, taking over the jurisdiction's program. As the Department is not conducting regular reviews of local jurisdiction performance, deficiencies may not be identified.

Examples of the types of problems that are uncovered in local jurisdiction reviews are as follows.

Case 1

A local jurisdiction received a monitoring audit in November 1987. Although the jurisdiction issues over 500 permits annually, no audit had been conducted since the original agreement was signed in 1980. The Department audit of the

jurisdiction revealed that the jurisdiction had collected money for permits for the installation of the manufactured homes, but had not provided the inspections. In fact, an estimated 1,140 homes had not been inspected, although permits had been issued. Further, the audit revealed that the inspectors for the jurisdiction lacked the familiarity or training necessary to properly perform the installation inspections. The Director of the Department agreed to allow the jurisdiction to continue the inspection program provided they sign a stipulation and agreement. The stipulation and agreement required the jurisdiction to inspect homes previously not inspected, send its inspectors for Department training, and to undergo monitoring by the Department every two months to ensure problems are rectified.

Case 2

A local jurisdiction received a monitoring audit on September 12, 1984. As part of the audit, three homes which had previously been inspected by a local jurisdiction inspector were reviewed, and a total of 17 violations of installation standards were identified. Further, the Department found that the jurisdiction was not maintaining records of installation permits, and no reinspections were being conducted when violations of standards were identified. On November 26, 1984, the Department performed a follow-up visit to determine if improvements had been made. The Department inspected two units, and found eight violations of standards. The Department recommended that the inspector receive training. The local jurisdiction inspector attended Department training in January, 1985. However, no audits have been conducted since 1984, despite the jurisdiction's history of noncompliance with standards.

Follow-up performed on audits is inconsistent - In addition to not performing monitoring audits, the Department has not consistently performed follow-up on the audits it has conducted. As stated previously, the Department generally recommends one or more of the following options for audit follow-up - training of inspectors, reauditing to ensure that deficiencies are corrected, notification by the auditee that corrections were made, signing an agreement with an expanded scope of responsibility, or in extreme cases, taking over the jurisdiction's inspection responsibilities. The Department had conducted 28 audits between January 1, 1985 and October 20, 1987. Of these 28, the Department did not conduct needed follow-up to ensure that corrective action was taken in seven of the audits. Further, the Department conducted only partial follow-up in three other audits.

Increased Priority For Audits Needed

The Department needs to increase its priority for conducting monitoring audits. According to Department officials, the monitoring audits have not

been conducted on a regular basis due to the lack of resources to conduct the reviews. Department officials indicated that due to funding shortages, the position intended for conducting the audits was used to conduct installation inspections of manufactured housing. The Department considered installation inspections a higher priority, since these inspections impact a homeowners ability to move into a home and receive needed utilities. However, because the local jurisdictions conduct nearly two-thirds of all inspections statewide, it is important that the Department place a higher priority on these audits. The officials indicated that the Department has received needed funding this year to use the training and compliance officer to perform these audits. Department officials indicated that the officer should be able to complete the audits within the one year time frame.

RECOMMENDATION

The Department should strive to conduct regular reviews of jurisdictions under agreement to perform installation inspections.

FINDING VI

THE DEPARTMENT OF BUILDING AND FIRE SAFETY'S STATUTES SHOULD BE AMENDED TO STRENGTHEN AND CLARIFY ITS AUTHORITY TO REGULATE INSTALLATIONS OF MOBILE AND MANUFACTURED HOMES

The Department of Building and Fire Safety's statutes should be amended to strengthen and clarify its authority to regulate installations of mobile and manufactured homes. The Department should be given authority to disconnect utilities of mobile and manufactured homes in all instances where the home poses a serious health and safety hazard. Further, the Department's authority to issue permits for the installation of mobile and manufactured homes should be clarified.

Authority Should Be Granted To Disconnect Utilities In All Instances

The Department should be given authority to disconnect utilities in all instances where the home poses a health and safety risk. Currently, the Department has authority to disconnect utilities of homes on private property where the home poses a hazard, but may not disconnect utilities of homes in manufactured home parks. At least three other states do not allow utilities to be connected on any home until health and safety violations are corrected.

The Department has authority to order a utility company to discontinue service to a mobile or manufactured home located on private property which poses an immediate danger to life and property. The legislature granted this authority to the Department through House Bill 2217, effective August 1987. Specifically, A.R.S. 41-2153.B.7 states:

"7. If an inspection of the installation of any mobile home or manufactured home not located in a mobile home park reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to article 1 of this chapter and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The Assistant Director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the Assistant Director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service."

Although the Department has authority to discontinue utility service to a mobile or manufactured home on private property, the Department does not have similar authority over homes in parks. According to Department officials, the Department was unable to obtain the authority over parks due to lobbying by park owners against such authority. However, the difference in authority appears arbitrary. Manufactured and mobile homes, may have violations that pose a danger to the health and safety of the occupants regardless of whether they are installed in parks or on private property. ⁽¹⁾ In fact, homes in parks pose a risk not only to the occupants, but to occupants of other homes in the park due to the close proximity of the homes.

Other states have authority - Other states have authority to disallow utility service in all instances in which the installation constitutes a danger to life and property until violations of health and safety standards are corrected. Both California and Nevada require that items related to health and safety be corrected before service is permitted, while New Mexico allows discontinuance of service where a dangerous condition exists.

- **California** California statutes state "Except for test purposes, the electrical system of the mobile home shall not be energized unless an approval tag, signed by a representative of the enforcement agency, is attached to the lot or site service equipment. The mobile home fuel gas piping system shall not be supplied with gas unless an approval tag is attached to the lot or site gas riser."
- **Nevada** Nevada statutes state that "unless the division determines otherwise, the plumbing, heating, cooling, fuel burning and electrical systems of a manufactured home, mobile home, or commercial coach may not be connected or activated until a certificate of installation has been issued and a label of installation affixed to the manufactured home, mobile home, or commercial coach."
- **New Mexico** New Mexico statutes state "An inspector may order or cause the immediate discontinuance of natural gas, LP gas, electrical or other service to a manufactured home determined by him to be dangerous to life or property because of any defects, faulty design, incorrect installation or other deficiency in any manufactured home or component, appliance, part or service equipment in a manufactured home, connected to a manufactured home or provided for service to a manufactured home."

(1) Since receiving authority in August 1987 to discontinue utility service to a mobile or manufactured home on private property, OMH reports it has used the authority twice. One instance involved an extremely hazardous electrical problem, and the other involved a very serious gas violation.

No differentiation is made in any of these states as to whether the home is on private property, or located in a park.

Authority To Issue Permits
Should Be Clarified

The Department's authority to issue permits should be clarified. The Department's statutes do not specifically require permits for the installation of manufactured and mobile homes. By amending the statutes to clarify the legislative intent, the Department would have clear authority to require permits of both homeowners and licensed installers.

The Department's authority to require permits for the installation of manufactured and mobile homes is vague. The Department issues permits to homeowners and licensed installers for the installation of manufactured homes. However, according to a Legislative Council memorandum dated November 20, 1987, the statutes do not specifically require a permit for the installation of a mobile or manufactured home. The legislature has, however, implicitly given the Department the authority for a permit program through other statutes. Specifically, the statutory interpretation states:⁽¹⁾

" The statutes do not specifically require that a permit be obtained before the installation of a mobile or manufactured home. The statutes only specifically require a permit for bringing a mobile home into Arizona. A.R.S. section 41-2144, paragraph 13.

Although the legislature has not required permits, the legislature has impliedly given the board of manufactured housing (board) within the department the authority to implement a permit procedure. The board is required to charge fees for permits. A.R.S. section 41-2144, paragraph 5. Permit fees were required before a permit was required to bring a mobile home into this state (see Laws 1984, chapter 284, section 4), so the legislature envisioned that the department would require other permits . . . "

Amending the statutes would clarify the legislative intent, and would provide clear authority for the Department to require permits of both homeowners and licensed installers. Although the Department implicitly has authority to issue permits, it does not have the authority to require homeowners who conduct their own installations to obtain permits. According to the Legislative Council memorandum

(1) For the complete text of the opinion, see Appendix.

dated November 20, 1987, in order to implement such a permit requirement, the Board of Manufactured Housing must adopt a rule. The Board has adopted such a rule for licensed installers, but it has not done so for homeowners installing their own manufactured home. Although the Board could adopt a similar rule for homeowners, amending the statutes to grant the Department clear authority to require permits of both licensed installers and homeowners would clarify the Legislature's intent.

RECOMMENDATIONS

1. The Legislature should consider amending the statutes to allow the Department to order utilities discontinued to mobile or manufactured homes in all instances in which the installations constitute a danger to life and property.
2. The Legislature should consider amending the statutes to clearly indicate that a mobile or manufactured home cannot be installed in the State without a permit for installation.



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OFFICE OF ADMINISTRATION • OFFICE OF MANUFACTURED HOUSING • OFFICE OF STATE FIRE MARSHAL

April 15, 1988

TO: Mr. Douglas R. Norton, Auditor General

FROM: Don A. Reville, Director
Department of Building and Fire Safety

SUBJECT: Performance Audit Response

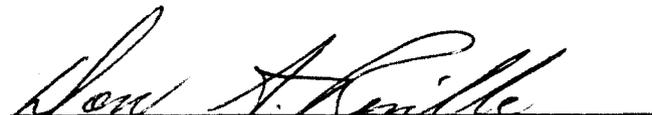
The Department has received the draft performance audit which includes six findings.

Before commenting on the report, I would like to commend the audit team on the professional manner in which it conducted the audit.

The findings identify six areas in which improvements are recommended, and to that end the Department has undertaken corrections that do not require statutory changes. Suggested legislative changes will be sought during the next session and incorporated in the sunset legislation.

The Department supports most of the recommendations offered, and in general does not dispute the findings. Our response will address each of the findings separately and in the order presented.

In conclusion, we wish to again express our appreciation to the audit team, and for the constructive comments regarding the Department's programs.


Don A. Reville, Director

DAR:jd

FINDING I

In this first finding the Auditor General's report indicates that the State Fire Marshal does not inspect state and county buildings on a regular basis, and that not all public schools are inspected annually. This finding also points out that inspections are important to reduce the possibility of fires which could lead to human casualties and property loss. Additionally, in the opinion of the Legislative Council, the lack of inspections may result in State liability should a fire occur in an uninspected building.

The Department recognizes the gravity of the current situation, and has addressed the lack of regularly scheduled inspections by requesting five (5) additional deputy fire marshals in the current budget request. (Please refer to Exhibit A.) As pointed out in this finding, the scope of the mandate far exceeds the size of the staff available to comply, and the positions requested are a minimum number based on the current estimate of the workload. We appreciate the Auditor General's recognition of the inadequacy in staffing and his recommendation for additional personnel. We also concur that the request for five (5) inspectors is based on reasonable estimates; as additional information becomes available the number of deputies required for inspections may change.

In support of the additional staff requested, the Fire Marshal is implementing a program to train and certify volunteers who could assist in public building inspections. Unfortunately, few individuals are willing and able to act as volunteer inspectors, and the Department's authority to take enforcement action based on a volunteer's inspection is debatable. The Department is also cross-training Office of Manufactured Housing inspectors to perform fire inspections in low hazard occupancies. These duties are in addition to the inspectors' current workload.

In summation, the Department anticipates that the additional staff requested, along with the development of a volunteer corps and use of cross-trained personnel, will permit the Fire Marshal to place all public buildings and schools on a regular inspection program.

FINDING II

In this finding, the Auditor General's report correctly notes that the Fire Marshal has not always conducted follow-up inspections. Whenever any imminent safety hazard was discovered, however, correction was immediate and follow-up inspections were conducted. The Fire Marshal has placed a major emphasis on conducting initial inspections, identifying violations and informing the responsible party. Staff shortages, brought out in Finding I, have severely hampered the Fire Marshal in conducting reinspections, and have required him to rely in part on the inspected party to make corrections. Based on a review of inspection policies and this finding, the procedures have been altered to include follow-up inspections in accordance with the severity of the violation cited. Until additional deputies are granted, this will mean a reduction in the number of initial inspections performed. We will continue to work with the various political subdivisions within the state, and allow for planned correction wherever possible.

The Department agrees that more formal procedures are necessary regarding inspections, reinspections and action plans when a period of time is needed to correct violations. The Department is developing these new procedures, which will closely follow the areas identified in the report.

FINDING III

The Auditor General points out that the State Fire Marshal should improve its management and reporting procedures, including the development of an inventory of buildings requiring inspection.

We do not disagree with this finding. The recently appointed Assistant Fire Marshal is compiling a current inventory of buildings which must be inspected and reorganizing the filing system. This project, which has already resulted in an inventory increase of over 1500 occupancies, will be completed by June 30, 1988. A master inventory will then be compiled. A procedures manual will also be completed and implemented by the fall of 1988.

The foregoing activities will soon be facilitated by the entry of inspection report information into the computer, in order to generate reports concerning time utilization and types of inspections conducted.

These efforts will culminate in an information system that will provide insight into field activities, thus helping management to determine workloads and staffing requirements, and will address and satisfy the issues and concerns set out in this finding.

FINDING IV

The Department appreciates the Auditor General's recognition and positive comments regarding the State's consumer complaint program. The Department works very hard to assist consumers in obtaining correction of defects in their mobile/manufactured homes, and to provide an administrative hearing process when a dispute arises.

Recognizing the same problems that are cited in the Auditor General's report, a federal report had rated the Arizona State Administrative Agency Complaint program (intended to determine if a series of homes produced has defects) as only "adequate." We are aware that our performance is at the minimum level, and agree that a higher level of oversight would be desirable and beneficial to consumers. Currently the Department is able to meet the spirit of the law, but unable to achieve the requested level of enforcement. The Department is seeking, within its current budget request, an FTE position to provide the necessary oversight as suggested by the audit. The expenses of this position will be reimbursed by the federal government.

FINDING V

The Auditor General's report and departmental reviews both confirm the need for the regular monitoring of jurisdictions under agreement. In September of 1987, the Department re-established its oversight inspection program, which had been discontinued in previous years due to budget constraints. In the current fiscal year, budget reductions were absorbed in other areas, and the Department has scheduled all jurisdictions to be reviewed within a twelve month period, including reinspections when necessary.

In support of this program, the Department conducts, every four months, a week-long training session, which is particularly helpful to inspectors unfamiliar with manufactured housing. The Department also invites local governments to send their inspectors to seminars, which it offers throughout the state, on proper home installation.

All Intergovernmental Agreements are being updated as oversight inspections are being performed.

The Department feels the necessary corrective actions have been implemented, and will continue to place greater emphasis on this portion of the inspection program.

FINDING VI

The Department is in complete agreement with the recommendations in this finding.

The Department sought authority to discontinue utility service in all instances when improper installation of a home threatened life or property. At that time limited authority was granted, allowing for action on private property only. The Department has used this limited authority judiciously, and will attempt to increase this responsibility to encompass all homes.

The second recommendation is supported by the Department since it will clarify statutory language. The Assistant Attorney General has assured the Department that it has the authority to issue installation permits, but since the current authority is in dispute the Department will develop language to eliminate this cloud.

Both of these issues will be addressed in the statutes being developed by the Department for presentation to the Oversight Committee.

ARIZONA LEGISLATIVE COUNCIL

MEMO

January 12, 1988

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-87-11)

This memo is sent in response to a request made on your behalf by William Thomson in a memo dated December 16, 1987.

FACT SITUATION:

The state fire marshal within the department of building and fire safety (department) is required to establish a regularly scheduled fire safety inspection program for all state and county owned or operated public buildings and all public and private school buildings except private schools in cities with a population of 100,000 or more persons. Arizona Revised Statutes ((A.R.S.) section 41-2163, subsection A, paragraph 4.) In addition, the state fire marshal is required to inspect, as necessary, all other occupancies located throughout the state, except family dwellings having fewer than five residential units, and except occupancies located in cities with a population of 100,000 or more persons. (A.R.S. section 41-2163, subsection A, paragraph 5.)

The Auditor General's review of the state fire marshal's office operations shows that the office is not inspecting state and county buildings on a regular basis. Instead, these buildings are generally inspected on a request basis (except for prisons which were recently placed on a regular inspection schedule). Further, the office has placed public schools as a priority for inspection and has an internal goal to inspect public schools on an annual basis. However, many public schools are not being inspected annually. Finally, all other occupancies located outside of cities with a population of 100,000 or more are inspected on a request basis.

According to A.R.S. section 41-2163, subsection A, paragraph 2, the state fire marshal is required to enforce the fire code. The rules indicate that the 1982 uniform fire code is in effect for Arizona, with modifications. For example, although the uniform fire code indicates that orders or notices for violations of the code shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation, the state fire marshal has deleted this portion of the code.

The Auditor General's review shows that once violations are determined from an inspection, the office does not conduct adequate follow-up to ensure the violations are corrected. Once an inspection is completed, the inspector generally leaves a list of violations with the responsible party for the building, and asks that a signed copy be returned when the items are corrected. The inspector does not provide a time limitation in which the corrections must be made. In addition to not requiring time frames for

correction, the office does not require a detailed plan of how the violations will be corrected, which is a common practice in the field when corrections will be time consuming. Further, the office does not routinely follow up to see that signed correction forms are returned. In some cases the inspector may return to an inspected building to determine whether corrections were made, however, reinspections are made infrequently and generally only in instances where a serious fire hazard exists.

QUESTIONS PRESENTED:

1. Would the state be liable for death, injury or damage caused by fires in state, county and public school buildings which have not been subject to regularly scheduled inspections by the state fire marshal?

2. Would the state be liable for death, injury or damage caused by fires in other occupancies located throughout the state which are in its jurisdiction, but which have not been subject to inspections by the state fire marshal?

3. If an inspection is conducted and violations are found, should the department provide time frames for correction of the violations?

4. What is the state's liability if a time limit is not set for correction of violations and a fire occurs?

5. If an inspection is conducted and violations are found, can the department require a plan of action from the entity inspected detailing how the violations will be corrected?

6. Would the state be liable for death, injury or damage caused by fires in buildings where an inspection was conducted by the state fire marshal and violations were found, but for which no, or insufficient, department follow-up was conducted?

ANSWERS:

See discussion.

DISCUSSION:

For purposes of this discussion, questions numbered 3 and 5 relating to department duties will be considered first, and questions numbered 1, 2, 4 and 6 relating to state liability will be considered together in the second part of the discussion.

1. An examination of A.R.S. title 41, chapter 16 relating to the department of building and fire safety indicates that authority for the following procedures is given to the department and the state fire marshal regarding the use of time limits and plans for correction of identified fire code violations and fire hazards:

(a) The state fire marshal, under the authority and direction of the director of the department, is required to "enforce compliance with the fire code promulgated by the state fire safety committee". (A.R.S. section 41-2163, subsection A, paragraph 2.) Assuming that an inspection by the state fire marshal discloses a hazard or defect that

violates the fire code, this section requires enforcement, although statutory enforcement procedures by the fire marshal are limited to issuing cease and desist orders. (See discussion under subdivision (b) below.)

(b) The state fire marshal may issue a cease and desist order if he has "reasonable cause to believe that any person has committed or is committing a violation of any provision" of law relating to his duties, or any rule or order issued by him, if the violation "does not constitute an immediate and apparent hazard to life or property". (A.R.S. section 41-2196, subsection A.) If the violation is not an immediate threat, the assistant director of the office of administration of the department (assistant director) is authorized to grant to the person alleged to be in violation a reasonable period of time of not fewer than five days to comply with the order. (A.R.S. section 41-2196, subsection B.) If the hazard constitutes an immediate threat, the state fire marshal may either issue a cease and desist order requiring immediate compliance or may file an action in superior court to enjoin the person without issuing a cease and desist order. (A.R.S. section 41-2196, subsection D.) While none of these provisions specifically authorize the state fire marshal or assistant director to provide a plan of action for the entity to follow to correct a violation of law, it is clear that the assistant director may require a period of time within which a violation which is not an immediate threat is to be corrected.

(c) Under A.R.S. section 41-2171, the assistant director is given the authority to provide procedures to ensure compliance with laws and rules relating to the state fire marshal. This broad authority would include both time limitations for corrections of violations of law and plans of action detailing how a violation should be corrected. Contact with an official of the department indicates, however, that such authority has not been exercised to date by the assistant director.

(d) A review of the state fire code, which is promulgated by rule of the state fire safety committee, indicates that the committee has given the state fire marshal numerous powers to abate and correct violations of the code and law, including the authority to correct "any conditions which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of this code or of any other law or standard affecting fire safety". (A.A.C. R8-2-41, subsection A, paragraph 9.)

Therefore in response to questions numbered 3 and 5 of your memo, the department and state fire marshal are clearly authorized to provide both time limitations and plans of action to require correction of violations of law and rule relating to fire hazards and other matters under the jurisdiction of the state fire marshal. None of these procedures, however, appear to be mandatory.

2. Your questions numbered 1, 2, 4 and 6 all relate to whether this state is liable, and to what extent, for inaction or inadequate action by the department or state fire marshal regarding fire hazard inspections or failure to require correction of violations of law or of the state fire code.

Article IV, part 2, section 18, Constitution of Arizona, provides that "the legislature shall direct by law in what manner and in what court suits may be brought against the state". A.R.S. title 12, chapter 7, article 2 prescribes the terms and conditions allowing an action against this state for negligence by public entities or public employees.

A.R.S. section 12-820.02, paragraph 6, provides qualified immunity from liability for a public entity or employee that does not intend to cause injury and who is not grossly negligent if the entity or employee fails to discover violations of any provision of law requiring inspections of property other than property owned by the entity. This section, however, appears to apply only to failure to discover violations if an inspection is conducted, and only if the inspection is of property that is not publicly owned. Your questions relate to noncompliance with the law requiring inspections and follow-up by the department and fire marshal to correct any violations of law.

A.R.S. section 12-820.05, subsection A provides that the rules of governmental immunity from lawsuits are established by case law, common law, statute or the constitution and are applicable regarding public entities and officers if such immunity is not provided for under A.R.S. title 12, chapter 7, article 2.

As a general principle, state immunity from actions for negligence against its entities and employees was abrogated in 1963 in the case of Stone v. Arizona Highway Commission, 93 Ariz. 384, 381 P. 2d 107 (1963). Therefore, absent a specific grant of immunity by statute, the state is liable for negligent actions of its entities and employees.

It is important to note that the question of liability presented by each fact situation presented in your questions numbered 1, 2, 4 and 6 ultimately rests on the facts and circumstances of each case. Question number 1 appears to involve a clear violation of state law by the state fire marshal and the state would probably be liable. The other three questions possibly involve negligence by the department, but no violation of statute. Again, liability depends on facts and circumstances.

As a general rule, however, this state is not immune from lawsuits involving the types of negligence detailed in questions numbered 1, 2, 4 and 6.

CONCLUSIONS:

Although not mandated by law, the department and the state fire marshal have the authority to require time frames and plans of action to correct violations of law and rule relating to fire hazards and the state fire code. Also, this state is not immune from liability for death, injury or damage caused by inaction or inadequate action of the department and the state fire marshal relating to inspection for and correction of fire hazards and other statutory and state fire code requirements.

cc: William Thomson, Director
Performance Audit Division

ARIZONA LEGISLATIVE COUNCIL

MEMO

November 20, 1987

TO: Douglas R. Norton, Auditor General
FROM: Arizona Legislative Council
RE: Request for Research and Statutory Interpretation (O-87-10)

This memo is sent in response to a request made on your behalf by William Thomson in a memo dated November 2, 1987.

FACT SITUATION:

The department of building and fire safety (department) conducts inspections of the installation of manufactured homes pursuant to Arizona Revised Statutes (A.R.S.) section 41-2153, subsection B, paragraph 4. The department requires that a permit be obtained before installation of a manufactured home by both licensed installers and consumers installing their own home. If violations are found during the installation inspection, the department notifies the installer, whether it is a consumer or a licensed installer, that the nonconformances must be corrected. Specifically, the letter sent to the installer states:

Noted nonconformances must be brought into compliance with the standards and codes by _____ within ten (10) working days of the date of this letter.

* * *

If the Office has not been notified of a reinspection date within twenty (20) working days of the date of this letter, a reinspection will be conducted. If the violations have not been corrected, the Office will take appropriate action against the listed party, including possible disconnection of utilities.

Laws 1987, chapter 126 amended A.R.S. section 41-2153, subsection B to allow the assistant director or the department to disconnect the natural gas or electrical connections of homes on private property if the nonconformance constitutes an immediate danger to life and property.

QUESTIONS PRESENTED:

1. May the department require installers to obtain a permit before installing a manufactured home?
2. May the department require consumers who plan to complete their own installations to obtain a permit?
3. May the department conduct inspections of homes installed by a consumer if a permit has not been obtained?

4. If an inspection has been completed, may the department require a consumer who performed his or her own installation to correct the nonconformances?

ANSWERS:

1. Yes.
2. No.
3. Yes.
4. Yes.

DISCUSSION:

1. An administrative agency has no common law or inherent powers. Kendall v. Malcolm, 98 Ariz. 329, 404 P.2d 414 (1965). It only has the powers provided it by statute. An agency cannot give itself powers not granted to it by legislation. Corella v. Superior Court, 144 Ariz. 418, 698 P.2d 213 (App. 1985).

The statutes do not specifically require that a permit be obtained before the installation of a mobile or manufactured home. The statutes only specifically require a permit for bringing a mobile home into Arizona. A.R.S. section 41-2144, paragraph 13.

Although the legislature has not required installation permits, the legislature has impliedly given the board of manufactured housing (board) within the department the authority to implement a permit procedure. The board is required to charge fees for permits. A.R.S. section 41-2144, paragraph 5. Permit fees were required before a permit was required to bring a mobile home into this state (see Laws 1984, chapter 284, section 4), so the legislature envisioned that the department would require other permits. The legislature also understood that one of the other permits could be for the installation of a mobile or manufactured home. A local enforcement agency cannot inspect or charge fees for the installation of a mobile or manufactured home unless the local enforcement agency participates in the department's permit and insignia issuance program for the installation of mobile and manufactured homes. A.R.S. section 41-2155. The department could not conduct such a program if it could not require installation permits.

The board is authorized to adopt rules to implement the department's powers. A.R.S. section 41-2144, paragraph 13. The board has prohibited a licensed mobile or manufactured home installer from installing a unit unless an installation permit has been obtained. A.A.C. R4-34-304. This rule is a valid exercise of the board's authority under A.R.S. section 41-2144, paragraph 13, so an installer must obtain a permit before installing a manufactured home.

2. As indicated in the answer to question 1, installation permits are allowed but not required by the statutes. The board must adopt a rule to implement an installation permit requirement. The board has not adopted such a rule for consumers installing their own mobile or manufactured home. A.A.C. R4-34-304 applies only to licensed installers. The board has set fees for permits, but this provision does not state who must obtain a permit. A.A.C. R4-34-606. Because the board has not adopted an installation permit rule for consumers, the department cannot require consumers who plan to complete their own installations to obtain permits.

3. The board must adopt rules concerning the inspection of the installation of mobile and manufactured homes throughout this state. A.R.S. section 41-2144, paragraph 6. The assistant director of the department's office of manufactured housing is required to inspect the installation of any unit, and the assistant director of the department's office of administration is authorized to make an installation inspection. A.R.S. sections 41-2153 and 41-2193.

A.R.S. section 41-2142, paragraph 16 defines "installation" as:

- (a) Connecting new or used mobile homes or manufactured homes to on-site utility terminals or repairing these utility connections.
- (b) Placing new or used mobile homes or manufactured homes on foundation systems or repairing these foundation systems.
- (c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.

Unlike the definition of "installer", an installation is not limited to activities performed by a "person who engages in the business of performing installations". A.R.S. section 41-2142, paragraph 17. If a person who is not in the business of installing mobile or manufactured homes performs any of the activities described in A.R.S. section 41-2142, paragraph 16, the person is performing an installation. The department is not only authorized but compelled to inspect this installation.

4. The installation standards committee is required to establish rules regarding the installation of mobile and manufactured homes. A.R.S. section 41-2145. The department is required to inspect installations to ensure that these standards have been met. A.R.S. section 41-2153. If a person is in violation of an installment standard, the director of the department may seek an injunction or other court order to compel the person to correct the installation. A.R.S. section 41-2193.

In certain special situations the department has additional powers. If the department finds that an installation is improper while the work is still being performed, the department may order that the work be stopped. A.R.S. section 41-2193, subsection H. If an installation violation concerns improper natural gas or electrical connections for a home not located in a mobile home park, the department can order the appropriate utility to discontinue the utility service. A.R.S. section 41-2153.

These enforcement efforts may be taken for installations performed by a professional installer or a consumer.

CONCLUSIONS:

The legislature has empowered the department to require installation permits. The department has exercised this authority in regard to professional installers but has not required consumers performing their own installations to obtain permits. However, the department may still inspect consumer installations and take enforcement actions if the installations are improper.

cc: William Thomson, Director
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