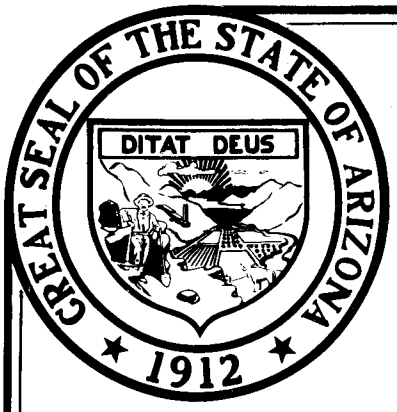

PERFORMANCE AUDIT

INDUSTRIAL COMMISSION

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

ARIZONA EMPLOYMENT ADVISORY COUNCIL

BOILER ADVISORY BOARD

Report to the Arizona Legislature
By the Auditor General
November 1984
84-10

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

November 29, 1984

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Harry G. Kelley, Director
Industrial Commission of Arizona

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Industrial Commission of Arizona. The report also contains limited reviews of the Occupational Safety and Health Advisory Committee, the Occupational Safety and Health Review Board, the Arizona Employment Advisory Council, and the Boiler Advisory Board. An April 27, 1983, resolution of the Joint Legislative Oversight Committee authorized the Auditor General to conduct this audit as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

This report is submitted to the Arizona State Legislature for use in determining whether to continue the Industrial Commission of Arizona and its committee, council, and boards beyond their scheduled termination date of July 1, 1986. The report makes recommendations to 1) improve claims processing efficiency, 2) ensure employers obtain workers' compensation insurance, 3) eliminate Industrial Commission licensing of employment agencies, and 4) reduce a serious backlog of boiler inspections.

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

Respectfully submitted,

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SUMMARY

INDUSTRIAL COMMISSION OF ARIZONA

The Office of the Auditor General has conducted a performance audit of the Industrial Commission of Arizona (ICA) in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Industrial Commission of Arizona was created in 1925 to administer the Workers' Compensation Fund. Since then the enabling statutes have been revised, substantially modifying ICA's purpose. Today, the five-member Commission is responsible for various duties, most administered by the ICA director. These duties include: 1) ensuring that workers' compensation carriers are processing claims as required, 2) investigating complaints and enforcing laws to ensure that jobs and job sites are safe for employees, 3) regulating elevators and boilers to ensure their safety, 4) arbitrating wage disputes between employers and employees, 5) regulating applicant-paid-fee employment agencies, and 6) administering a special revenue fund.

The Workers' Compensation Process Is Efficient But A Few Improvements Are Needed (pages 13-22)

ICA processes workers' compensation claims efficiently despite its substantial work load. Effective management techniques, such as periodic status reports and temporary staff reassignments, allow ICA to maintain a stable work flow and to process claims in a timely manner. However, a few improvements could further increase claims processing efficiency. A statutorily required protest period of 90 days is excessive and may harm some claimants, particularly if the claimant's employer had not obtained workers' compensation insurance. Likewise, the 90-day protest period unnecessarily delays some claimants' permanent benefits. Finally, the current process of handling most disputed claims formally produces a

backlog of cases and may not be the most efficient way to resolve all cases.

The Legislature should consider amending A.R.S. §23-947 to reduce the 90-day protest period to 45 days. ICA should expand its use of informal resolution of disputed claims in the initial phase of the protest process.

ICA Has Not Ensured That Employers Obtain Workers' Compensation Insurance (pages 23-32)

ICA policies and statutes do not ensure that all employers obtain workers' compensation insurance as required by law. Over the past 5 years ICA has paid more than $2.6 million in compensation payments to injured workers because employers had failed to obtain the required insurance. Though ICA paid these claims from the Special Fund designed for this and other purposes, it is the properly insured employer who pays for this fund through taxes on workers' compensation insurance premiums. ICA has taken a passive approach to identifying uninsured employers. However, even when uninsured employers are identified the Commission lacks sufficient authority and penalties to ensure compliance. Other agencies in Arizona and other states have successfully developed programs that ICA could adapt and use to identify uninsured employers before their employees are injured, as well as programs to increase public awareness of workers' compensation requirements. Other states also have harsher penalties.

The Legislature should consider authorizing ICA to impose more stringent and effective penalties against uninsured employers. This should include: 1) increasing the existing penalty against uninsured employers, applied after ICA receives an uninsured claim, to at least cover ICA's costs, and 2) authorizing ICA to impose penalties on employers without the required workers' compensation insurance, whether or not their employees have filed workers' compensation claims. These penalties should be paid to the ICA Special Fund. ICA should develop programs to increase compliance with workers' compensation insurance requirements, similar to those used by other agencies.

Licensing Employment Agencies Is Not Necessary To Protect Consumers (pages 33-44)

Licensing applicant-paid-fee employment agencies does not effectively protect consumers. The current licensure process does not ensure that employment agencies are competent to perform their services. Although consumers risk some financial harm when contracting for placement services, they can protect themselves without ICA involvement if they are given sufficient information about contract terms and fees. This can be accomplished by strengthening employment agency laws to require that consumers be given adequate information. These strengthened statutes can exist as a self-contained body of law independent of a specific regulatory entity, making ICA supervision of this industry unnecessary.

The Legislature should consider: 1) eliminating employment agency licensure and deleting all other requirements regarding ICA supervision of private employment agencies, 2) strengthening employment agency laws to require that consumers be provided sufficient information, and 3) establishing effective penalties for violations of these laws. While considering these changes the Legislature should also consider amending the definition of employment agencies to include career counselors.

Arizona Division of Occupational Safety And Health Boiler Inspection Program Is Inadequate (pages 45-52)

The Arizona Division of Occupational Safety and Health (ADOSH) Boiler Section does not have an adequate inspection program. Most of the Section's required safety inspections are overdue, some by more than 1 year. This is in part because the Section's poor records preclude it from scheduling the inspections efficiently. The Boiler Section cannot determine from its records how many boilers it should be inspecting regularly. In addition, inspection schedules are not grouped by boiler location thus causing excessive travel, and follow-up inspections are not limited to boilers with serious violations.

The Boiler Section should improve its inspection program by: 1) updating the record-keeping system to provide accurate information on inspection needs, 2) grouping certificate expiration dates according to location, and 3) limiting on-site follow-up inspections to boilers with serious violations.

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The Office of the Auditor General has also conducted limited reviews of these four agencies in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. These reviews were conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379. An introduction, Sunset Factor evaluation and agency response are included for each of these agencies.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Industrial Commission of Arizona (ICA) in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The Arizona Legislature created ICA in 1925. Initially, the Commission's responsibilities included the administration of the Worker's Compensation Fund. Major revisions in the statutes, especially the creation of the State Compensation Fund as a separate agency, modified the Commission's functions.

Organization and Personnel

The Governor appoints the five members of the Commission, who are solely responsible for promulgating rules and regulations, reviewing requests for lump sum commutations,* licensing self-insurers for worker's compensation, and hiring the ICA director. The statutes allow the Commission to delegate the following powers to the ICA director:

- Investigate complaints to determine whether employment or places of employment are injurious or otherwise unsafe to the welfare of employees.

- Administer and enforce all laws for the protection of the life, health, safety and welfare of employees.

* A.R.S. §23-108.03 grants the Commission the authority to pay workers' compensation awards as a lump sum rather than in monthly installments.

- Act as the regulatory agency ensuring that workers' compensation carriers are processing claims in accordance with the law.

- Administer the Special Fund.

- Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

- Regulate applicant-paid-fee employment agencies.

ICA employs approximately 215 full time equivalent employees (FTEs). Six operating divisions carry out ICA's statutory functions, as described below:

- Claims Division (70 FTEs) supervises and evaluates all workers' compensation claims for compliance with the law and determines ICA Special Fund compensation payments.

- Administrative Law Judge Division (42 FTEs) adjudicates disputed workers' compensation claims and occupational safety and health cases.

- Labor Department (7 FTEs) administers and enforces the laws relating to the payment of wages, employment practices, the employment of children and the licensing of private employment agencies.

- Arizona Division of Occupational Safety and Health (ADOSH) (52 FTEs) enforces the Arizona Occupational Safety and Health Act to ensure safety at the work place, and administers the elevator safety inspection program and the boiler safety inspection program.

- Special Fund Department (5 FTEs) determines benefits available from the Special Fund* for supportive care, rehabilitation and second injuries not covered under regular workers' compensation insurance.

- The Administrative Division (39 FTEs) provides support to the entire ICA, including legal counsel, accounting and computer services.

Budget

ICA does not receive any funding from the General Fund. All operations except the Federally financed portions of the Arizona occupational safety and health program are funded through its administrative fund from a 3 percent tax paid by employers on their workers' compensation insurance premiums. In addition to the 3 percent assessed for operations, employers pay a 1.5 percent premium tax to support the ICA Special Fund. Currently the Special Fund's balance is approximately $63.6 million, although most of these funds must be reserved for future commitments. The Industrial Commission's operational revenues and expenditures for fiscal years 1981-82 through 1983-84 are shown in Table 1.

* ICA administers the Special Fund, a special revenue fund established to provide some supportive medical and injury benefits and rehabilitation programs to extend the benefits available under regular workers' compensation insurance coverage. In addition, the Special Fund pays regular benefits to employees who are not insured by their employer. These employers become liable to the Fund for the amounts paid plus a penalty charge.

TABLE 1

ICA REVENUES AND EXPENDITURES[1]
FISCAL YEARS 1981-82 THROUGH 1983-84

	Actual 1981-82	Actual 1982-83	Estimated 1983-84
FTEs	254	219	215
Revenues			
Premium assessments	$7,440,475	$5,885,950	$6,097,000
Federal sources	725,100	893,700	763,800
Total	$8,165,575	$6,779,650	$6,860,800
Expenditures			
Administrative Division	$ 979,000	$ 936,500	$1,148,300
Claims Division	1,645,000	1,581,700	1,632,600
Administrative Law Judge Division	2,170,900	2,001,200	2,147,600
Occupational Safety and Health Division	930,200	827,900	847,600
Labor Department	171,400	177,700	186,400
Special Fund	121,400	119,700	134,500
Fire Marshal[2]	203,500		
Federal Funds[3]	725,100	893,700	763,800
Total Expenditures[4]	$6,946,500	$6,538,400	$6,860,800

(1) ICA revenues and expenditures do not include the Special Fund revenues and expenditures.

(2) Includes an amount for the Fire Marshal's Office, which became part of the Division of Emergency Services on January 1, 1982.

(3) For fiscal years 1982-83 and 1983-84, all Federal funds supported the Occupational Safety and Health Administration program assigned to the Occupational Safety and Health Division. A small portion of 1981-82 Federal funds also contributed to other programs, such as the Fire Marshal.

(4) The difference between revenues and expenditures is placed in the Special Fund, with the exception of excess federal funds which revert to the federal government.

Scope of Audit

Our audit focuses on ICA's ability to perform its statutory duties. The audit report presents findings and recommendations in four major areas:

- The efficiency of ICA's workers' compensation claims processing system;
- The extent to which ICA ensures compliance with workers' compensation insurance requirements;
- The need to regulate applicant-paid-fee employment agencies; and
- The adequacy of the boiler safety inspection program.

In addition, we developed information on the Arizona occupational safety and health program. The section Other Pertinent Information presents this information.

Due to time constraints, we were unable to address all potential issues identified during our preliminary audit work. The section Areas For Further Audit Work describes these potential issues.

We also reviewed four boards, listed below, which were identified separately in the Sunset Law and have functions related to ICA's. The scope and results of these limited reviews are presented on pages 67 through 104.

- Occupational Safety and Health Advisory Committee
- Occupational Safety and Health Review Board
- Arizona Employment Advisory Council
- Boiler Advisory Board

The Auditor General and staff express appreciation to the executive director and ICA employees for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Industrial Commission of Arizona (ICA) should be continued or terminated.

1. The objective and purpose in establishing the Commission

The enabling statutes do not contain specific statements of objectives and purpose for the Industrial Commission. However, the objectives and purpose of the ICA can be inferred from its powers under A.R.S. §23-107, which include:

- Formulate and adopt rules and regulations affecting the purpose of this article.
- Administer and enforce all laws for the protection of the life, health, safety and welfare of employees.
- Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
- License and supervise private employment agencies, and collect and publish employment information.
- Ensure that workers' compensation carriers are processing claims in accordance with the law.
- Investigate complaints to determine if employment conditions are unsafe or injurious to employees.

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

To examine overall Commission effectiveness and efficiency, it is necessary to analyze each Commission function. Following is a summary of the items we analyzed:

Workers' Compensation - ICA has generally met its objectives and purposes efficiently and effectively, although some improvements are possible. Effective management has resulted in efficient claims

processing (Finding I, page 15). In addition, ICA conducts seminars to keep the workers' compensation insurance industry informed on requirements of the law. However, efficiency could be increased if the Legislature reduced the protest period for challenges against compensation awards (Finding I, page 16) and if ICA adopted an informal claim resolution process (Finding I, page 19). ICA's effectiveness could be strengthened if ICA took steps to increase compliance with workers' compensation laws (Finding II, page 23).

Occupational Safety and Health - We were unable to determine whether the Federal government can administer occupational safety and health programs more effectively than the Arizona Division of Occupational Safety and Health (ADOSH). Although ADOSH's program is expected to receive final Federal approval in fall 1984, therefore being deemed as effective as the alternative Federal program, no valid measures of effectiveness are available (Other Pertinent Information, page 53). The Boiler Section, on the other hand, has not effectively performed inspections in accordance with ICA rules and regulations. Boiler inspections are backlogged with many inspections overdue by more than 1 year (Finding IV, page 45).

Labor - The Labor Department recently initiated legislative changes increasing its enforcement powers, which may substantially improve its effectiveness in resolving wage claims. However, the Department's regulation of private employment agencies does not provide effective protection. Strengthening laws to provide adequate consumer information would eliminate the need for ICA involvement in this area (Finding III, page 33). Additionally, the statutory requirement that ICA provide employment information is unnecessary, since other private and State entities provide this service.

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

ICA has operated in the public interest by administering its statutorily required functions. These include workers' compensation

claims processing, ADOSH compliance investigations, and boiler and elevator regulation. However, as noted in Sunset Factor 2, improvements are possible and employment agency regulation is unnecessary.

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

The ICA legal counsel and the Attorney General review new rules and regulations to determine whether they are consistent with ICA's legislative mandate.

5. The extent to which the Commission 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

ICA notifies the public of Commission meetings and hearings in accordance with Arizona's open meeting law. Hearings held by the Administrative Law Judge (ALJ) Division are exempt from the law.

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

ICA's divisions are authorized to investigate and resolve several types of complaints or disputes. The Claims Division responds to workers' compensation claim complaints and inquiries informally by providing information about statutes, administrative procedures and claim status. The ALJ Division renders decisions on disputed claims. Complaints about potential occupational safety and health violations are investigated and resolved by ADOSH. The Boiler and Elevator Sections within ADOSH work to ensure boiler and elevator safety, respectively. Finally, the Labor Department arbitrates disputed wage claims and investigates and resolves complaints about employment agencies.

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

ICA employs its own legal counsel who generally represents the ICA in noncriminal matters. The Attorney General or county attorneys are responsible for the prosecution of criminal actions.

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

ICA has initiated or supported several changes to eliminate deficiencies in the enabling statutes. For example, the Commission initiated statutory changes pertaining to wage claims enforcement (House Bill 2519, passed second regular session 1984) and increases in surety bond requirements for employment agencies (House Bill 2396, passed May 1979).

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

The Legislature should consider the following changes to ICA's statutes.

Workers' compensation laws (Findings I and II):

- Amend A.R.S. §23-947 to reduce the 90-day protest period to 45 days.
- Amend A.R.S. §23-907.C to increase the penalty on claims for which the employer has failed to obtain insurance, to at least cover the 33.3 percent collection charges ICA must pay.
- Authorize ICA to impose a mandatory penalty on employers without required workers' compensation insurance. This penalty should be paid to the ICA Special Fund.

Employment agency laws (Finding III):

- Delete all requirements regarding Industrial Commission supervising and licensing of private employment agencies (A.R.S. §§23-522 through 23-526, §§23-528 through 23-532, and §23-536).
- Protect consumers of applicant-paid-fee employment agencies by strengthening employment agency laws. The revised laws should:
  - Retain current statutes relating to fee splitting and surety bonds (A.R.S. §§23-535 and 23-527).
  - Incorporate into statute existing rules relating to contracts and forms, copies of contracts and receipts, rights of referral and placement, agency records, protection against placement in nonexistent job openings, talent and modeling agencies, and advertising.
  - Require employment agency contracts to provide consumers with detailed information about the terms of placement transactions.
  - Require contracts to spell out the circumstances entitling a consumer to a refund and define the conditions obligating them to pay their fee.
  - Establish a specific time requirement for consumer refunds.
  - Prohibit the charging of advance or registration fees as a condition of placement, and require this prohibition to be included in contracts.
  - Authorize city and county attorneys and the Attorney General to enforce this law.
  - Provide for the recovery of attorney fees and incidental expenses of trials for contractual disputes.
  - Expand the current definition of employment agency to include career counseling firms.

- The Legislature should consider establishing penalties for violations of the private employment agency law to provide the proper incentives for agencies to comply with the provisions of the act.

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

Termination of the Commission may deprive workers of protection because ICA oversees workers' compensation insurance carriers' handling of compensation claims and adjudicates compensation disputes. ICA has specialized knowledge to perform these functions. In addition, the Commission's Special Fund provides workers' compensation coverage to uninsured employees.

We specifically questioned the need for two ICA functions. As noted in Sunset Factor 2, we could not determine whether replacing ICA's OSHA program with a Federally operated program would benefit or harm the public. However, termination of employment agency regulation would not harm consumers of private employment agencies.

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

Major changes to the scope of regulation under the ICA's jurisdiction do not appear necessary, except that ICA's role in regulating employment agencies should be discontinued (Finding III, page 33).

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

ICA has used outside contractors including collection services and court reporters. In addition, the Commission intends to use private janitorial services to maintain the ICA building, presently under construction.

FINDING I

THE WORKERS COMPENSATION PROCESS IS EFFICIENT BUT A FEW IMPROVEMENTS ARE NEEDED

Although the Industrial Commission of Arizona (ICA) processes workers' compensation claims efficiently, changes could further increase claims processing efficiency. Statutory requirements unnecessarily delay processing for some claims. In addition, ICA should actively seek to resolve disputed claims through informal methods.

In 1925 Arizona enacted workers' compensation legislation to provide satisfactory means of handling occupational injuries. The law relieves employers of liability in legal suits involving negligence and alleviates an injured worker's loss of income. According to one authority, workers' compensation laws have three objectives:

- To provide sure, prompt, and reasonable income and medical benefits regardless of fault, to work-accident victims, or income benefits to their dependents;

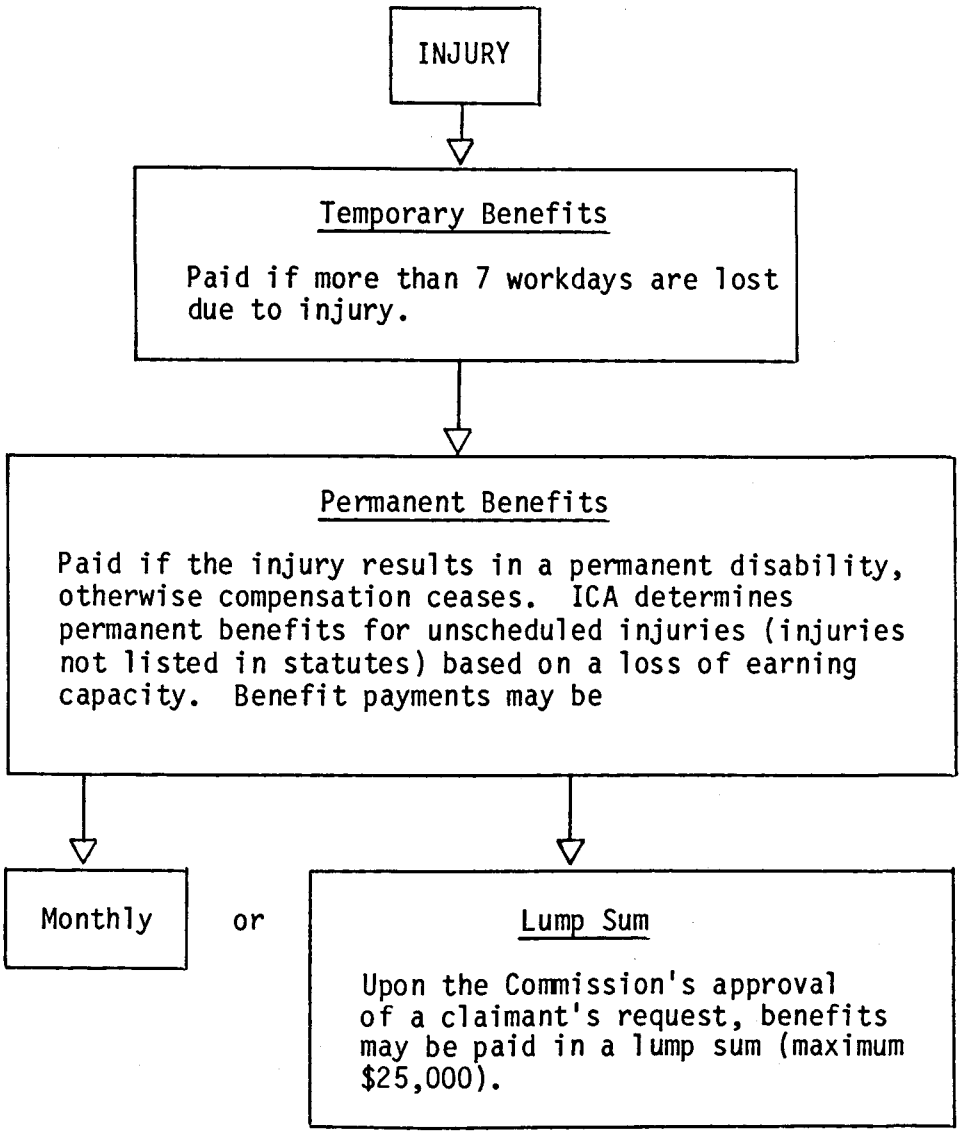
- To provide a single remedy and reduce court delays, costs, and work loads of personal-injury litigation; and

- To relieve public and private charities of financial drains incident to uncompensated industrial accidents.

Arizona Revised Statutes require employers to have some form of workers' compensation insurance or proof of ability to pay direct compensation. A worker injured on the job is eligible for workers' compensation benefits. An injured worker may receive temporary or permanent benefits or both (see Figure 1).

FIGURE 1

FLOW OF WORKERS' COMPENSATION BENEFITS



Source: Prepared by Auditor General staff from Claims Division documents

ICA is responsible for supervising and evaluating claims processed by insurance carriers and self-insured employers. In 1983, 148,293 new claims were reported to and monitored by ICA.

Claims Processing Is Efficient

Despite their substantial work loads, the Claims and Administrative Law Judge (ALJ) Divisions perform their functions efficiently. Effective management techniques allow the Divisions to maintain a stable work flow and to process claims in a timely manner.

Processing workers' compensation claims is ICA's dominant activity, and the two Divisions principally responsible for these cases have considerable work loads. The Claims and ALJ Divisions comprise 59 percent of ICA's total personnel and 55 percent of its total budget. In addition to monitoring claims processed by insurance carriers, self-insured employers, and the State Compensation Fund, the Division also designates guardians for injured minors, determines compensation for injured workers with facial disfigurement, and determines benefits for workers whose employers do not have insurance. The major function of the ALJ Division is to adjudicate disputed compensation claims, and in 1983 it received 4,183 new cases for hearing.

Because processing workers' compensation claims is a critical function of ICA, the Auditor General staff performed an extensive review of the Claims Division process,* including a productivity study and a work flow analysis. The results indicate that claims are handled in a timely manner, claims staff productivity is high and work flow is efficient. Management uses weekly and monthly status reports to identify possible delays. To avoid or alleviate backlogs, staff is temporarily reassigned or on occassion, temporary help is hired.

* In 1980 the Joint Legislative Budget Committee (JLBC) staff performed a management study for the Claims Division. Several recommendations were made, principally for improvements in data processing. The Claims Division has implemented many of the recommendations and reports increased efficiency. However, according to ICA, some of the recommendations have yet to be implemented due to budget constraints and the anticipated move to the new ICA facility. Those areas in which improvements have not yet been implemented were not studied by this audit team, as they had been addressed in the 1980 JLBC report.

Statutory Requirements Delay Some Cases

Although claims processing is generally efficient, statutory requirements unnecessarily delay processing of some cases. The 90 day protest period is not needed and in some cases may harm the claimant. The lengthy protest period is particularly harmful for injured workers of uninsured employers. Likewise, Loss of Earning Capacity (LEC) awards are delayed due to the 90-day requirement.

A protest period is mandated by statute (A.R.S. §23-947.A) so any involved parties may protest decisions or determinations made on workers' compensation claims. The protest period applies to almost every action taken on a claim, and no action becomes final until the protest period is completed. In some instances, the excessive time delays payment. This is especially true with no-insurance cases and LEC awards.

Ninety Days Is Not Needed - The 90-day protest period is excessive and should be reduced to 45 days. Although the protest period is intended to provide parties with opportunity to seek reconsideration, no formal or legal preparation is needed to file a request for hearing. The protesting party need only notify ICA by letter or by the request form that it disagrees with a decision in the case. Most protests are filed within 45 days and the average number of days for filing is even lower (see Table 2).

TABLE 2

DISTRIBUTION OF FILING REQUESTS FOR HEARING

Days to File	Percentage of People Requesting Hearing By Type of Coverage (1)	
	Carrier Coverage	No-Insurance
Less than 30 days	54%	54%
Less than 45 days	68	63
Less than 60 days	77	69
Less than 75 days	84	77
More than 90 days(2)	3	11
Average days	36.6	44.5
Total cases	201	95

(1) Carrier coverage cases are handled by private carriers, the State Compensation Fund, or self-insured employers. No-insurance cases are handled by ICA.

(2) According to statute, a request for hearing must be filed within 90 days; however, a request submitted after 90 days may still be heard. If a request is filed after the deadline, the administrative law judge determines if the case can be heard based on exemptions outlined in A.R.S. §23-947.

Source: Compiled by Auditor General staff from ICA records - carrier coverage files from March 28, 1984 through May 4, 1984 and no-insurance open case files from January 1, 1983 through May 23, 1984

Payment Is Delayed to Uninsured Workers - The lengthy protest period prohibits timely benefits payment to uninsured workers. The employers' right to protest prevents ICA from beginning payment on no-insurance claims before the protest period is completed.

A no-insurance claim is one in which the employer does not have workers' compensation insurance, in violation of the law. In these cases, the

No-Insurance Section within the Claims Division acts as the insurance carrier and makes the necessary determinations. Although employers are liable for workers' medical and compensation costs incurred due to an injury, they frequently do not pay. ICA pays those costs and takes legal action to seek reimbursement from the employer.*

Once the No-Insurance Section is notified of a case and makes the initial determination of compensability, the 90-day protest period must pass before the injured worker can receive any money for medical bills or compensation. Frequently, the employer is uncooperative or cannot be located and the No-Insurance Section has difficulty obtaining needed information. The 90-day protest period and the difficulties in obtaining information result in an average wait of 154 days,** or five months, before uninsured workers begin receiving medical or compensation payments. In contrast, workers with compensable claims whose employers have coverage must, by statute, receive compensation within 21 days.

The discrepancy between first payment in carrier covered and uninsured cases is a result of the employers' right to protest in no-insurance cases. According to legal counsel, employers have the right to due process. ICA cannot begin payment because employers are liable for any funds dispersed. An employer has the right to protest a determination of compensability, and the 90-day protest period must expire before the due process requirement is satisfied. The result, however, is that the injured worker is penalized because the employer was without coverage.

Loss of Earning Capacity Awards Also Delayed - The 90-day protest period also conflicts with statutory requirements for LEC awards. Arizona statutes require ICA to issue LEC awards within 90 days after the Claims Division is notified of a claim. The 90-day protest period prevents ICA from doing so.

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* As noted in Finding II (page 23), ICA is seldom successful in recovering these costs.

** The 154 days is the average time for 135 no-insurance claims filed between July 1, 1983 and December 31, 1984.

ICA is responsible for determining LEC awards. LEC award processing begins when Claims personnel are notified that a worker's condition has stabilized and the disability is permanent. Claims personnel determine the effect of the disability on the worker's future earning capacity. A.R.S. §23-1047 specifies that awards should be determined within 30 days but grants a maximum of 90 days from the time Claims is notified.

Concurrently, the worker receives notice that his condition is stable and temporary disability benefits will cease. The worker is also notified of any permanent loss of function on which permanent disability benefits are based. The notice regarding temporary benefits carries a 90-day protest clause. The protest period must elapse before ICA can issue an LEC award for permanent disability benefits. Consequently, ICA cannot comply with statutory requirements for issuing LEC awards.

Before 1980 ICA was able to issue LEC awards within the required time. At that time the protest period was 60 days. Claims staff still had 30 days to issue an award after the protest period expired. In 1980 the Legislature extended the protest period to 90 days without amending A.R.S. §23-1047, thereby creating conflicting time requirements for ICA.

Informal Resolutions May Decrease Costs

The Industrial Commission should consider expanding its use of informal methods for resolving disputed cases. With the current formal hearing procedures all protested claims cannot be processed in a timely manner. Greater use of informal resolution may provide additional savings and reduce the case backlog.

Formal Hearing System Overburdened - The formal hearing system cannot expeditiously process all disputed cases. When a party protests a decision and requests a hearing, the Claims Division does the initial processing and prepares the case file. The case is sent to the ALJ Division, which schedules and holds the hearing. ICA employs 16 administrative law judges, and each hears an average of one case per day,

according to the chief judge. However, the ALJ Division still cannot hear each case within 90 days.* Consequently, the Claims Division holds about 200 cases at any one time for approximately 45 days before sending them to the ALJ Division. To process the 200 cases in the holding tank, an additional full-time judge would be necessary for at least 1 year. We did not examine the feasibility of this option because informal resolution would be less costly.

Savings From Informal Resolution - Expanded use of informal resolution could result in savings for ICA. Although the Claims Division uses informal methods to a limited extent, it does not vigorously pursue informal resolution. Other states using informal methods note high success rates. A more active approach could result in savings.

Although ICA resolves some cases by informal methods, it does not actively pursue informal resolution while cases are in the holding tank. ICA reports that approximately 15 percent of the disputed cases are resolved informally. Informal resolution may result from negotiation among the parties without any ICA involvement. Claims personnel may also promote informal resolution by contacting the parties to provide information. While the staff does attempt informal resolution of cases that indicate that a party has an insufficient understanding of the statutes or workers' compensation procedures, it does not try to resolve cases requiring more than a brief written or oral explanation.

Kansas and Maine are two states that aggressively pursue informal resolution before or early in the protest process. Within their workers' compensation departments they have established offices to assist in protest resolution. Kansas' Claimant Advisory Section maintains a toll-free number that involved parties may call if they have questions about their claims. The Section employs three full-time paralegals, averages 1,000 first time calls each month, and estimates a 90 percent

* Although not required by statute, the ALJ Division attempts to hear all cases and issue the awards within 90 days after the Division receives a request for hearing. According to the ALJ Division, in 1983 it averaged a 93.2 day turnaround time.

resolution rate. Because of the Section's high success rate, litigation has significantly decreased and resulted in savings for all involved parties, according to the director of the Kansas Division of Workers' Compensation.

Maine employs 10 people in its Office of Employee Assistance, which handles 600 to 800 protests a month. When a protest is filed, staff members contact the involved parties to collect and provide information regarding the case. If a case is not resolved within 21 days, it goes to an informal hearing not subject to formal rules of evidence. If resolution is not achieved, the parties may choose to pursue a formal hearing. The chairman of Maine's Workers' Compensation Commission stated that the Office of Employee Assistance has been very successful during its first 5 months of operation, and the informal hearing process resolves approximately 75 percent of the cases reaching that level.

A more active approach to informal resolution by ICA could result in significant savings. Although expanding ICA's use of informal resolution methods would create additional expenses, it would cost less than the formal hearings. For example, a 15 percent increase in the informal resolution rate would save ICA an estimated $475,000 while costing approximately $41,000 for personnel. The Claims Division manager estimates than an expanded informal resolution program would require one claims specialist and one examiner. Salaries and benefits for the two positions would total approximately $41,000. Assuming that the expanded program doubled the current informal resolution rate of 15 percent,* Claims Division personnel could resolve approximately 950 additional cases each year. For each case resolved informally, ICA would save the average formal hearing cost of $500.

ICA could benefit by greater use of informal resolution methods. Informal methods allow more timely resolution, reduce the number of formal hearings, and decrease costs for the Workers' Compensation

* A 30 percent resolution rate is a conservative estimate when compared with programs in Kansas and Maine. See pages 20 and 21 for informal resolution rates in those states.

Department, insurance companies and claimants. ICA should develop a method for informal resolution early in the protest process.

CONCLUSION

Although ICA processes workers' compensation claims efficiently, statutory requirements delay some cases. The 90-day protest period is excessive and delays payment of uninsured workers claims and LEC awards. In addition, ICA's current formal resolution process is overburdened and expensive.

RECOMMENDATIONS

1. A.R.S. §23-947 should be amended to reduce the 90-day protest period to 45 days.

2. ICA should expand its use of informal resolution in the intitial phase of the protest process.

FINDING II

ICA HAS NOT ENSURED THAT EMPLOYERS OBTAIN WORKERS' COMPENSATION INSURANCE

The Industrial Commission of Arizona (ICA) policies and statutes do not ensure that all employers obtain workers' compensation insurance. Although uninsured employers cost the Commission more than $2.6 million over the past 5 years, ICA takes only limited action to enforce compliance with insurance requirements. The Commission could develop programs to increase compliance and reduce payments.

Uninsured Employers Have Caused Substantial Payments

Employers without workers' compensation insurance have resulted in substantial payments from the Special Fund. Many employers have not insured their employees for workers' compensation benefits. As a result, the ICA Special Fund* disbursed more than $2.6 million in compensation payments to uninsured workers in the past 5 years. These costs burden employers who properly insure their workers.

Many Employers Are Not Insured - Many employers have failed to provide their employees with workers' compensation insurance as required by law. A.R.S. §23-902 requires most employers to obtain workers' compensation insurance. Noncompliance is a class 2 misdemeanor (A.R.S. §23-932). Although uninsured employers are liable for all compensation benefits arising from employees' work related injuries and diseases, ICA must pay these claims out of the Special Fund and then attempt to obtain reimbursement from the employer. In the past 5 years, ICA received more than 7,600 claims from employees not covered by workers' compensation insurance, affecting at least 7,000 employers. Thus, a substantial portion of Arizona's estimated 60,000 employers may not be in compliance with workers' compensation insurance requirements.

* See footnote, page 3 for a description of the ICA Special Fund.

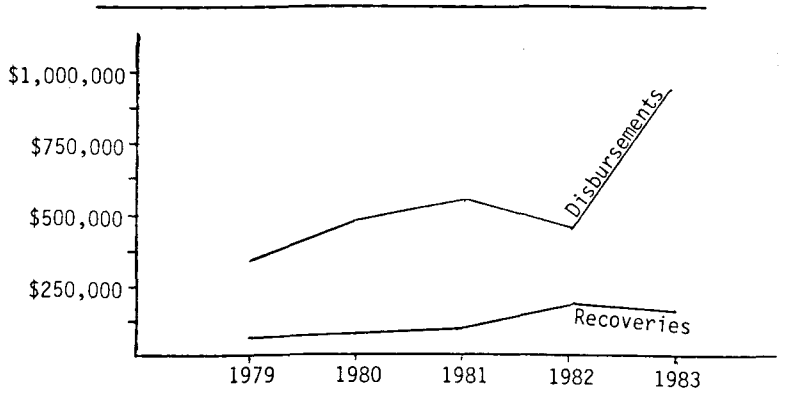
ICA Payments Are Sizeable and Increasing - Uninsured employers are responsible for $2.6 million in Special Fund unreimbursed payments over the past 5 years. These payments are rising and are an increasing burden on the fund.

During the 5 years from 1979 to 1983 ICA paid more than $3.1 million from the Special Fund for no-insurance claims, but only about $500,000 was recovered from the employers responsible for these claims. As of December 31, 1983, the difference of $2.6 million had not been recovered. In addition, the ICA administrative fund* spends more than $151,000 a year in administrative salaries (four full-time clerks and most of the ICA Legal Department's time) to process no-insurance claims. Supervisory and overhead costs, such as supplies, computer support, utilities and office rent are not included in this figure.

The gap between compensation benefits paid to uninsured employees and the amounts recovered from their employers, including a 10 percent penalty (per A.R.S. §23-907.C), is increasing. Figure 2, a 5-year analysis of the Special Fund's no-insurance disbursements and the amounts recovered, illustrates the growth of these payments, from $362,000 in 1979 to $816,000 in 1983.

FIGURE 2

SPECIAL FUND DISBURSEMENTS AND RECOVERIES, 1979 THROUGH 1983



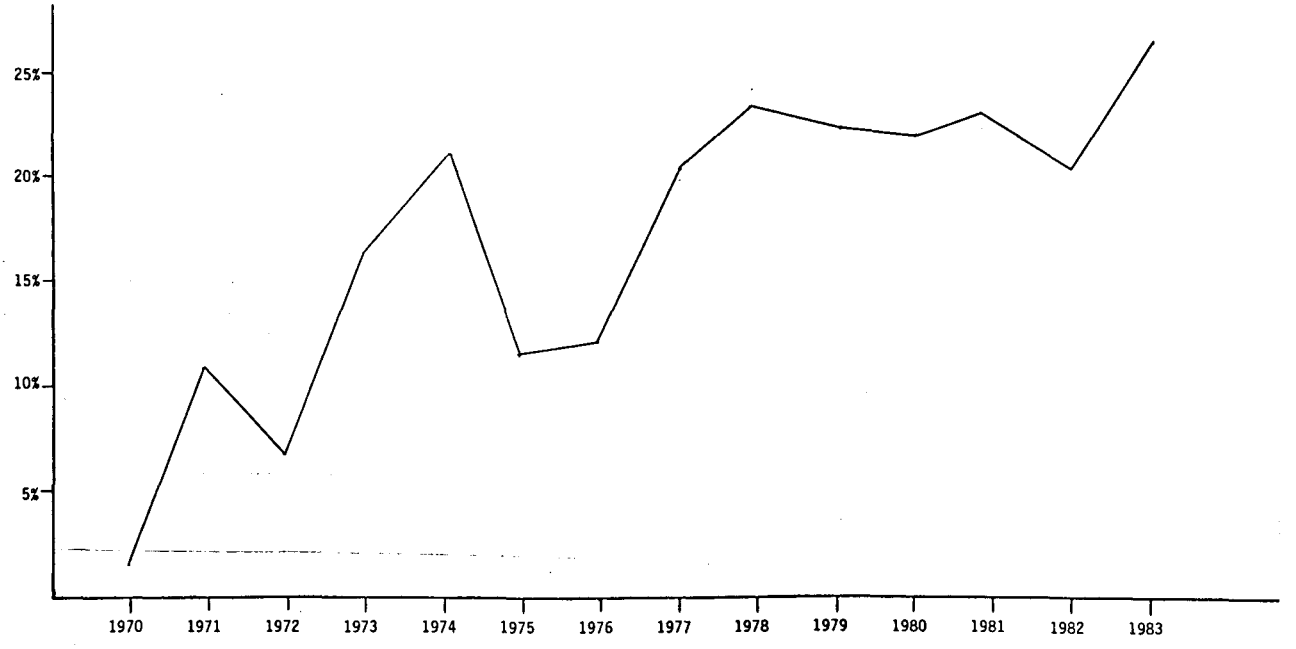
Source: ICA Special Fund reports

* See page 3 for a description of the ICA administrative fund.

Likewise, the proportion of total Special Fund disbursements for no-insurance claims is also increasing. No-insurance claims have increased from less than 10 percent of total disbursements in 1970 to approximately 25 percent of total disbursements in 1983 (Figure 3). It is doubtful that such an engagement of the Special Fund's resources was expected when it was assigned the responsibility for no-insurance claims.

FIGURE 3

NO-INSURANCE DISBURSEMENTS AS PROPORTION
OF TOTAL SPECIAL FUND DISBURSEMENTS



Source: ICA Special Fund disbursement reports

Other Employers Pay Costs of Unreimbursed Claims - Although employers who violate workers' compensation laws impose substantial cost to ICA, properly insured employers must carry the financial burden through a tax on compensation insurance premiums. ICA is funded entirely through a tax levied on workers' compensation premiums, accounted for in the administrative fund and the Special Fund. The administrative fund pays the processing costs of no-insurance claims, averaging $99 per claim. The Special Fund pays no-insurance claims on behalf of any employer who fails to pay within a specified period. ICA then attempts to recover the disbursement from the uninsured employer but is unsuccessful in many cases, losing an average of $342 per claim received. As a result, properly insured employers carry the financial burden of both the costs incurred when uninsured employers fail to reimburse the Special Fund and the processing costs paid from the administrative fund.

ICA Takes Limited Action To Enforce Compliance

ICA efforts to increase compliance with workers' compensation laws have been minimal. The Commission takes little action to identify uninsured employers. Even if uninsured employers are identified, ICA lacks sufficient authority and penalties to ensure compliance.

Passive Response to Uninsured Employers - Currently, ICA takes a passive approach to dealing with uninsured employers. The Commission does not identify noncomplying employers and require them to insure their workers before claims are made. Rather, it first becomes aware of employers without workers' compensation insurance when claims for benefits (usually received from physicians) cannot be matched with an existing insurance policy. Once they are identified in this manner, ICA requires the uninsured employers to obtain insurance and, if the claims result in liabilities to the ICA Special Fund, attempts to recover the amount owed plus a 10 percent penalty from each employer.

In 1981 ICA attempted to identify uninsured employers by comparing its computerized listings of properly insured employers to the Department of Economic Security (DES) file of employers with Federal unemployment insurance. Federal unemployment insurance requirements affect substantially the same employers who require workers' compensation insurance. ICA planned to identify those employers who were listed on DES records as having unemployment insurance but not on ICA's file of properly insured employers, and investigate them for possible noncompliance with workers' compensation laws. Two years later ICA abandoned the unfinished effort. Since the computer was unable to match the names of employers unless they were recorded identically and many names were recorded somewhat differently in the two files, ICA had to match the files manually. The labor involved made the project impractical.

Penalties For Noncompliance Are Not Effective - Even when ICA becomes aware of an uninsured employer, it lacks effective penalties for enforcing workers' compensation insurance requirements and protecting the Special Fund. The Commission has been unable to fine uninsured employers because it feels that prosecution through the courts is impractical. In addition, the penalties currently imposed are not sufficient to minimize the Special Fund's no-insurance payments. As a result, some employers benefit from violating workers' compensation insurance requirements.

ICA cannot impose available penalties because they require court action. A.R.S. §23-932 makes noncompliance with workers' compensation laws a class 2 misdemeanor for which a court can impose fines up to $10,000 on enterprises and $750 on individuals. The Attorney General is responsible for the prosecution of these cases (A.R.S. §23-929), and refers such prosecutions to the appropriate local jurisdiction. However, according to ICA legal counsel, heavy work loads on these jurisdictions and the court system have made prosecuting uninsured employers impractical. As a result, the approximately 1,500 uninsured employers who come to ICA's attention each year are not penalized for violating workers' compensation requirements.

Even when ICA succeeds in recovering no-insurance payments from employers, the existing 10 percent penalty on recoveries does not cover collection costs. A.R.S. §23-907.C authorizes ICA to recover any disbursements made from the Special Fund for uninsured employers plus a 10 percent penalty. This penalty does not cover the cost of professional collection services, which receive one-third of the amounts recovered. ICA refers most claims to professional collectors. Other states impose similar penalties of up to 100 percent.

Finally, the Commission cannot impose and collect mandatory fines to offset some of its payments. On the average, it costs ICA more than $99 in administrative salaries alone to process a no-insurance claim and the Special Fund loses $342 for each no-insurance claim received. The effect of these unrecovered expenditures could be reduced if ICA were authorized to impose and collect mandatory penalties from uninsured employers. As many as 24 states impose mandatory penalties on uninsured employers. These penalties vary between states, including the following possibilities: 1) fines of $1 per employee for each day of noncompliance, and 2) up to twice the insurance premiums that would have been paid over the previous 3 years.

Employers can gain from violating insurance requirements because the limited sanctions do not outweigh the potential benefits. Uninsured employers suffer no penalty if no compensation award is made against them or if they pay an award before the Special Fund does. ICA merely ensures that these employers obtain workers' compensation insurance immediately. An uninsured employer can therefore benefit from saving on workers' compensation insurance premiums during the period of noncompliance. The annual premium can range between $16 and $2,262 for each $10,000 of payroll, depending on industry risk. If ICA were empowered to impose a mandatory penalty on all violators, employers could no longer save on workers' compensation insurance with impunity.

ICA Could Develop Programs To Increase Compliance

ICA could increase compliance through a combination of enforcement and public relations efforts. Even a small increase in compliance could reduce the ICA Special Fund payments for unreimbursed claims. Programs designed to identify uninsured employers and increase public awareness have been developed by agencies comparable to ICA. ICA could adapt and use these programs to increase compliance with workers' compensation laws.

Uninsured employers identified and forced to obtain workers' compensaton insurance before they become liable for compensation claims would not become a burden on the ICA Special Fund. A combination of aggressive enforcement and public relations efforts would likely reduce the number of uninsured employers and, consequently, the number of no-insurance claims. For example, the average annual losses to the Special Fund totaled $520,000 over the past 5 years. Thus, a 20 percent reduction in no-insurance claims could save the Special Fund an estimated $104,000 a year.

Programs to Identify Uninsured Employers - Comparable agencies in Arizona and other states have developed programs that ICA could adapt and use to identify uninsured employers. We have identified three such programs.

- Computer match between DES and ICA files Although ICA was unsuccessful with an attempt to match these files, the problems encountered with matching employers' names could be overcome if the DES identification number were used instead. ICA files already contain the DES number for employers on record as of 1981. A computer run matching the DES numbers on file with ICA against all DES numbers issued would produce the names of the employers not on ICA records. All of these employers could receive a computer generated letter requesting the name of their workers' compensation insurance carrier and insurance policy number. Employers who cannot or will not provide the requested information would be potential violators who ICA could further investigate. A computer match could be conducted as a pilot

project. The project would require that the ICA files be updated with the post-1981 DES numbers. The resource requirements and results of this pilot project should be carefully recorded and evaluated to determine the scale and frequency of any future repetitions of the project.

- Monitor DES registrations Investigators in several other states routinely review new registrations for unemployment insurance and DES audit reports. ICA could do the same and follow up any new registrations that are not on its records. A comparison of a sample of 25 known uninsured employers (selected from ICA records) with DES employer records showed that 16 (64 percent) were on record with DES, some for more than 10 years.

- Business listings search Other agencies compare business listings with their records in their search for violators. The Arizona Department of Revenue and the Alaska Workers' Compensation Board use telephone directories to search for employers not on their records. Alternatively, the Montana Uninsured Employers Fund finds the Dunn and Bradstreet business listings very helpful in its effort to reach uninsured employers.

Statistical sampling methods and analyses of known uninsured employer data can help match the enforcement effort to available resources, if necessary. An Auditor General analysis of Special Fund debtors shows that employers from three general areas of endeavor - service/retail, food/lodging and construction - account for as much as 50 percent of the Special Fund losses. Based on this information it can be expected that a review of companies in these areas listed in the telephone book might produce a substantial number of uninsured employers. Of 25 known uninsured employers selected from ICA files, at least 12 (48 percent) were listed in the telephone directory 6 months or more before the first claim was filed against the employer.

Programs to increase public awareness - In addition to identifying noncomplying employers, ICA could adapt methods used by other agencies to increase public awareness of workers' compensation requirements. Current ICA public relations efforts consist largely of about 12 seminars per year, given upon request or as part of a combined effort between ICA and another organization such as the Small Business Administration. In addition, ICA publishes two brochures on insurance requirements and benefits, which are handed out at seminars, following telephone inquiries and over the ICA information counter.

Public relations efforts could be substantially improved at minimal cost if ICA followed the lead of the Arizona Department of Revenue (DOR). DOR has aggressively used free media services to inform the public of the need to comply with the law, the consequences of failing to do so and the place to call to report offenders. The DOR Fair Share project is credited with about $6 million in additional tax revenues. The project cost DOR only $16,000 for publicity because DOR relied heavily on free media support. DOR also experienced a substantial increase in the number of tax filers in a period for which a drop had been forecast.

CONCLUSION

ICA has not effectively enforced workers' compensation insurance requirements. Substantial costs resulted from a combination of the Commission's inadequate enforcement efforts and ineffective penalties. ICA does not aggressively identify employers who fail to properly insure workers, and current penalties are insufficient to ensure compliance.

RECOMMENDATIONS

1. The Legislature should consider:

   a. Amending A.R.S. §23-907.C to increase the penalty on no-insurance claims to at least cover the 33.3 percent collection charges.

   b. Authorizing ICA to impose mandatory penalties on employers who do not have required workers' compensation insurance. This penalty should be paid to the ICA Special Fund.

2. ICA should develop programs to increase compliance with workers' compensation insurance requirements, including:

   a. A pilot project to match DES and ICA employer files electronically using DES identification numbers.

   b. A routine program to ensure that newly established employers who fail to obtain workers' compensation insurance will come to ICA's attention.

   c. A public relations program designed to inform employers and the public of the requirement for workers' compensation insurance and the consequences if the requirement is violated.

FINDING III

LICENSING EMPLOYMENT AGENCIES IS NOT NECESSARY TO PROTECT CONSUMERS

The Industrial Commission of Arizona (ICA) does not need to license private employment agencies in order to protect job seekers. The existing licensure process does not effectively ensure practitioner competence and is unnecessary. Strengthening laws to ensure that consumers obtain sufficient information about employment agency fees and contracts would allow consumers to protect themselves from the few abuses that occur, making ICA involvement unnecessary. Statutory changes may also be needed to protect consumers from similar abuses by career counseling firms.

ICA Licenses Only A Segment Of The Employment Agency Industry

Currently, the Industrial Commission only licenses applicant-paid-fee employment agencies (APFs). APFs provide their services to individual job seekers as opposed to employers. In March 1981 Arizona deregulated employer-paid-fee agencies (EPFs). EPFs provide their services to employers and advertise their positions as "fee-paid." Increasingly, the trend in the employment agency industry is to have employers pay all agency fees or a sizeable portion of them. As of May 1984, 99 APFs were licensed in Arizona. These include general employment agencies, talent and modeling agencies, babysitting services and nurse registries.

The ICA Labor Department administers and enforces employment agency laws, rules and regulations. The Industrial Commission delegated employment agency program administration to the ICA Labor Department in 1978. The director, one full-time investigator, one office supervisor, and one secretary carry out these duties.

Employment Agency Licensure Is Not Effective

Licensing employment agencies in Arizona does not effectively protect consumers. The licensure process for employment agencies does not attempt

to address the question of competency. ICA's license examination tests only for a general knowledge of employment agency statutes and rules, and requires no further evidence of competency. Furthermore, the license renewal process provides no additional assurances that employment agency staff are adequately skilled. As a result, job seekers may assume falsely that licensed employment agencies are competent to provide placement services.

The ICA Labor Department's objective for licensure differs from the traditional purpose of occupational licensure. Traditionally, licensing attempts to ensure practitioner competence. Benjamin Shimberg in Occupational Licensing: A Public Perspective, defines licensure as the

> ". . . process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety and welfare will be reasonably well protected. Before a license is granted, the applicant must meet certain requirements as set forth in the law. These usually include training and experience . . ." (emphasis added)

However, the primary purpose of Arizona's licensing process for employment agencies is to ensure worker protection, by keeping track of state employment agencies* and reviewing applications to minimize the potential for criminal infiltration of the industry, according to the ICA Labor Department director. The Department makes no attempt to evaluate the competency of employment agents.

Specifically, the employment agency license examination fails to meet the criteria established for most occupational licensing examinations that measure abilities and skill levels. The examination tests applicants only

* The Labor Department's objective to keep track of employment agencies is accomplished to some extent by other state entities. More than 53 percent of licensed employment agencies are corporations registered with the Corporation Commission. In addition, many of the remaining agencies are registered with the Secretary of State or county or municipal clerk's offices and are on tax rolls.

for general knowledge of statutes, rules and regulations concerning employment agencies and does not test their competency.* Moreover, license applicants may take the same examination as many times as necessary to achieve a passing score. The exam has not been revised for 3 years. Besides the examination, license applicants are screened only for their moral character, general business and management experience, and financial status. Thus, ICA does not require license applicants to have any prior experience in or demonstrate knowledge about the placement profession.

The license renewal process does nothing more to ensure practitioner competence. The only renewal requirement is that licensees respond to a questionnaire which requests limited information on business operations not related to practitioner competence. There are no continuing education or experience requirements.**

As a result of the minimal licensing and renewal requirements, job applicants may assume incorrectly that a licensed employment agency's staff possess a level of competency or proficiency necessary to provide placement services. A license displayed in the agency's place of business may indicate to the consumer that the State has determined that this agency's staff has skills and knowledge to provide competent service. In fact, the license merely shows that the applicant has no record of defrauding the public. The licensure process does not ensure competency and was not designed to do so.

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* The ICA Labor Department tests all people determined to be involved in the actual operation of an employment agency, but issues only one license (A.R.S. §23-526.B and regulation R4-12-303 subsection E).

** Although the State does not attest to the professional competency of employment agents, the American College Testing Program prepares and administers an examination that judges practitioner competence. Candidates for the exam must have at least 2 years professional experience in a private placement firm; be an owner, partner, manager or personnel consultant of a private personnel firm; and subscribe to the National Association of Personnel Consultants Code of Ethics. This examination is given to members of professional trade associations as well as nonmembers.

Adequate Consumer Information Is Needed To Help Preclude Abuses

Although consumers risk some financial harm when contracting for placement services, they can protect themselves if they have sufficient information about fees and contract terms. The few reported abuses could be prevented by strengthening employment agency statutes to require agencies to provide needed information to consumers, thereby eliminating the need for any direct involvement by ICA. Arizona regulates other industries without any direct State agency involvement. Without ICA licensing and enforcement efforts, consumers would still have several options for resolving their problems with employment agencies.

Strengthening Statutes To Prevent Abuses - Laws designed to provide sufficient information to consumers to prevent abuses would eliminate the need for ICA regulation of the employment agency industry. The few reported abuses stem largely from deficiencies in statutes, resulting in consumer uncertainty as to fee obligations, refund entitlements and other contract specifications. To provide adequate statutory protection some of the current rules and regulations need to be clarified and transferred to statute. Additional statutes must be added to provide more complete job seeker protection. Finally, some existing statutes should be retained in their current form.

Industry-wide abuses have been minimal. The Labor Department only received 41 complaints against licensed agencies during fiscal years 1982-83 and 1983-84. The number of complaints being filed has significantly decreased in recent years.

Even though the number of complaints has diminished, statutory deficiencies still cause consumers some problems. Vague contractual language resulting from weak laws has minimized the amount of information available to consumers during placement transactions. Statutes do not require employment agency contracts to define fee obligations, refund entitlements, or procedural rights of job seekers. Following is a summary of current problems.

- Fees - Confusion about agency fees has led to improper fee charging. Sometimes applicants have been asked to pay their placement fee for positions in which the fee was already paid by the employer. In some cases agencies simply refused to honor the terms of placement contracts. Finally, employment agencies have taken advantage of consumers by charging registration or advance fees as a condition of obtaining an interview for employment. Although ICA rules and regulations prohibit advance fees, statutes do not. Consumers may not know advance fees are prohibited because they are not specifically mentioned in employment agency contracts. Twenty-eight states that regulate employment agencies prohibit advance fees in statute.

- Refund Entitlements - Consumers may also be unaware of the conditions for fee refunds because they are not included in an agency's placement contract. Statutes do not require agencies to provide consumers with detailed statements of how refunds are computed. Consequently, consumers are often uncertain if they are entitled to a refund or how much they can receive. Furthermore, statutes do not state a specific time period in which refunds must be made. A.R.S. §23-532.B only states that refunds will be made upon demand. This requirement has not succeeded in ensuring that consumers are provided with timely refunds, as complaint files reveal instances of consumers getting their money months after ICA directed an agency to pay. Also most employment agency contracts simply inform applicants that they are entitled to pay a partial fee or get a partial refund if they are terminated through no fault of their own. However, the agency's fee schedule contained in the contract fails to define termination for fault or termination without fault. Statutes make no specific mention of these conditions nor do they require agency contracts to clearly

define the conditions. Most complaints filed recently center around the interpretation of these terms.

- Consumer Rights - Statutes do not require contracts to outline the procedural rights of job seekers. Arizona, as well as other states, has adopted statutes for other regulated industries such as health spas and buying clubs. These statutes require: 1) specific contractual language detailing the appropriate bodies to contact in case of a complaint (their names, addresses and telephone numbers), and 2) statements referring to the sections of the statutes that clarify consumer rights.

To address these deficiencies, several existing rules and regulations should be modified and incorporated into employment agency statutes to improve the law's effectiveness. Rules requiring that consumers receive a clear statement of their rights and responsibilities should be enacted into law. Statutes should specify that contracts delineate the exact conditions under which fees are due, under what circumstances a job seeker is not obligated to pay a fee and under what circumstances job applicants can obtain refunds. The law should also require that specific fee adjustment policies be stated in the contract.

Other rules and regulations that require no modifications should also be incorporated into employment agency statutes. These include rights of referral and placement, agency record requirements, consumer protection against nonexistent job openings, and false advertising prohibitions. The rule requiring that job applicants receive a copy of the contract should also be transferred to law.

Abuses could be further prevented and thereby reduced if other statutes were added. First, statements are needed showing how fees are computed and telling consumers who they could contact and what statutes consumers

could reference if they have a complaint. This statement would list the names, addresses and phone numbers of entities aggrieved consumers could contact.

The other statutory addition needed is a specific provision relating to penalties. Without ICA industry supervision and employment agency licensing, current penalty provisions would no longer be in existence and alternative penalty provisions should be considered. Several industries regulated by self-contained acts provide for civil penalties (court fines) and criminal penalties or both. These acts provide for fines and allow consumers to recover court costs. Several states have placed criminal penalties in their laws to provide agencies with incentives to comply with the law. New York's General Business Law and Colorado's Private Employment Agency Act provide for imprisonment of agents who violate provisions of the law or fail to make timely refunds. Courts could determine the seriousness of the violations and levy the appropriate penalties.

Finally, several present employment agency statutes should be retained. Two of these concern fee splitting and surety bonds.

- A.R.S. §23-535 prohibits agencies from dividing or sharing directly or indirectly, a fee, charge or compensation received from an applicant for employment with an employer who obtains new workers from an employment agency. Consumers should be protected from additional costs, which they shouldn't have to pay.

- A.R.S. §23-527 requires each license applicant to post up to a $5,000 surety bond or post a cash deposit, with the condition that employment agents conform to laws. The cash deposit shall initially be for $1,000, but before a license is issued, a cash deposit must be increased to $5,000 or replaced by a surety bond in that amount. If a license is approved and granted, a cash deposit or surety bond must be maintained at $5,000. The purpose is to enable consumers to obtain fee refunds should an agency go out of business or fail financially.

Separate Laws Sufficient in Other Industries - Though the employment agency industry has unique characteristics and needs that require specific regulation, several industries with similar contractual abuses are being effectively regulated through legislation without agency involvement. This legislation includes the Dance Studio Act, Health Spa Act, Home Solicitation Act, Multi-Level Marketing Act and the Buying Club Act. Like employment agencies, these industries require minimal state supervision; therefore, a specialized enforcement body to police these industries is unnecessary. For effective enforcement, most of these acts contain provisions for shared jurisdiction between city and county attorneys' offices and the office of the Attorney General. These enforcement agencies have formal complaint mechanisms for aggrieved consumers. Having courts and other entities handle the disputes is not likely to place significant additional burdens on existing complaint resolution mechanisms.

Consumer Alternatives For Complaint Resolution and Information - Even without ICA regulation consumers have several options for obtaining assistance. Consumers can currently seek assistance regarding employment agency problems and questions from entities besides the Industrial Commission. These entities also provide job applicants with detailed consumer information. In addition, other laws coexist with current employment agency laws to protect consumers.

Job seekers aggrieved by employment agencies can refer complaints to private and public organizations that already provide complaint resolution services. Among these entities are the Better Business Bureau (BBB), the Arizona Association of Personnel Consultants (AAPC), nursing and talent agency trade organizations, private newspapers, and private mediation and conciliation services. The BBB and the AAPC Ethics Committees maintain staff to resolve consumer complaints. In fact, the Labor Department shares information with the AAPC and even refers some complaints to the AAPC Ethics Committee for informal resolution. The BBB also provides a

free conciliation and mediation service to resolve disputes when both parties opt for this type of solution. Some newspapers provide consumer complaint columns that attempt to settle complaints. For a small fee, consumers can seek arbitration through private mediators whose decisions have the effect of a lower court ruling. In addition, several county and city attorneys' offices maintain consumer affairs units that attempt to mediate disputes to avoid court trials. The Office of the Attorney General stated it will undertake cases in which a pattern of consumer abuse has been established with a firm and there is a strong possibility of recovering lost monies. Finally, consumers can file their cases in Small Claims, Justice or Superior Court, depending upon the amount of money involved in the dispute.*

The AAPC and the BBB also provide consumers with detailed information on employment agency business practices. The AAPC and the BBB have worked to assist consumers with job placement search by answering consumer inquiries, providing background information on individual agencies, and providing brochures on employment agencies.

Finally, several State and Federal laws already exist in addition to the Private Employment Agency Law, and are designed to protect consumers from fraud, misrepresentation, and intimidation tactics. These are the Fair Trade Act, Equal Employment Opportunity Act and false advertising statutes.

Employment Agency Laws Should Clearly Include Career Counseling Firms

Career counseling firms, which are similar to regulated employment agencies, may not be under the jurisdiction of current laws. Though the problems associated with these firms are often similar to those of regulated employment agencies, a vague statutory definition of employment

* Filing fees are nominal in each of these courts. If consumers seek recovery of fees in cases arising out of contractual disputes and win a case, A.R.S. Title 12 provides for the recovery of attorney fees and incidental expenses arising out of a trial. In addition, several courts offer mediation services to consumers as an alternative to trial.

agencies has caused the Labor Department to interpret career counseling firms as being outside its present scope of regulation.

The current definition of an employment agency does not specifically mention career counseling firms that often operate similarly to applicant-paid-fee employment agencies. These firms have committed the same types of fee abuses and made similar contractual misrepresentations as APF agencies.* Their advertising implies consumers will be able to find jobs. However, career counselors disclaim any obligation to find jobs for, or even provide leads to their clients. Articles appearing in law journals, newspapers and family magazines indicate these firms have been found to make job offer claims, collect fees and fail to deliver the services contractually agreed upon. For instance, advertisements placed in national newspapers proclaim job offers or proclaim that career counseling firms have the contacts that can lead to meaningful job interviews. These advertisements also refer to a "hidden" or "unpublished" job market. The Federal Trade Commission is investigating career counseling firms engaged in unfair and deceptive trade practices.

The ICA Labor Department has failed to seek clarification as to whether these firms fall within the scope of current statutes and regulations. In Arizona, career counselors may fall within the scope of the definition of employment agent, thereby possibly affording consumers some statutory protection. Though counselors are not specifically mentioned in the definition of an employment agent, the definition states agents are, "all persons, firms or corporations or associations which for a fee, commission or charge that is collected from persons seeking employment, furnish persons seeking employment information enabling or tending to enable the persons to secure employment." Ten states and the District of Columbia have adopted some form of legislation to deal with potential abuses awaiting the consumers who use career counseling firms. Legislation in other states now defines firms not only by what they do, but what they say they will do.

* As with APF agencies, the abuses of these firms have been minimal in Arizona.

CONCLUSION

ICA does not need to license employment agencies or supervise the employment agency industry. Programs exist that judge the professional competency of many employment agency personnel. In addition, ICA's complaint resolution and consumer information efforts duplicate those of private sector and other governmental agencies. The few abuses that still prevail are not serious and could be handled with some statutory changes. Stronger statutes would prevent these problems from occurring by providing the consumer with adequate information about contract terms and fees. These strengthened statutes could exist as a self-contained body of law, independent of a specific regulatory entity, making ICA supervision of this industry unnecessary. While considering these changes the Legislature should consider amending the definition of employment agencies to include career counselors.

RECOMMENDATIONS

1. The Legislature should consider deleting all statutory requirements regarding Industrial Commission supervision and licensing of the private employment agency industry (A.R.S. §§23-522 through 23-526 and §§23-528 through 23-532, and §23-536).

2. The Legislature should consider protecting consumers who use applicant-paid-fee employment agencies through an act relating to employment agencies. The revised laws should:
    a. Retain current statutes relating to fee splitting and surety bonds (A.R.S. §23-535 and A.R.S. §23-527);
    b. Incorporate into statute existing rules relating to contracts and forms, copies of contracts and receipts, rights of referral and placement, agency records, protection against placement in nonexistent job openings, talent and modeling agencies, and advertising;
    c. Require employment agency contracts to provide consumers with detailed information about the terms of the placement transactions;

d. Require contracts to spell out the circumstances entitling consumers to a refund and define the conditions obligating them to pay the fee;

e. Establish a specific time requirement for refunds to consumers;

f. Prohibit the charging of advance fees or registration fees as a condition of placement and include this prohibition in contracts;

g. Authorize city and county attorneys and the Attorney General to enforce these laws;

h. Provide for the recovery of attorney fees and incidental expenses arising out of trials for contractual disputes; and

i. Expand the scope of the current definition of an employment agent to include all firms that charge applicants a fee for their placement services, and all people who render vocational guidance or provide counseling services and who directly or indirectly procure or attempt to procure employment or engagements for people seeking employment, and people representing themselves as having access to jobs not available to those not purchasing their services.

3. The Legislature should consider establishing penalties for violations of the private employment agency law to provide the proper incentives for agencies to comply with the provisions of the act.

FINDING IV

ARIZONA DIVISION OF OCCUPATIONAL SAFETY AND HEALTH BOILER INSPECTION PROGRAM IS INADEQUATE

The Arizona Division of Occupational Safety and Health (ADOSH) Boiler Section does not have an adequate inspection program. Due to a substantial backlog, the Boiler Section does not perform needed inspections. The backlog results from poor records and inefficient scheduling procedures.

In 1977 the Legislature passed the Boiler Act, establishing a Boiler Section under ADOSH. The Boiler Section has the authority to require the safe construction, installation, and operation of boilers and lined hot water storage heaters. To prevent accidents and casualties, the Boiler Section inspects boilers and lined hot water heaters throughout the State, excluding Tucson and Phoenix.* The Section issues certificates for those boilers meeting all requirements outlined in the rules and regulations.

Inspections Are Backlogged

The Boiler Section is seriously backlogged in performing required inspections. Our analysis shows that many certificate inspections and 95 percent of pending follow-up inspections are overdue. Failure to perform needed inspections can result in accidents.

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* Phoenix and Tucson had boiler inspection departments before the State established the Boiler Section. The two cities continue to regulate boilers within their jurisdictions. The State Boiler Section statutes require that the city rules and regulations be equivalent to State rules and regulations.

Certificate Inspections - The Boiler Section is behind schedule in its boiler certificate inspections. Certificate inspections, performed by Section or special inspectors,* are periodic inspections required by regulation. Rule 4-13-402.B requires that power boilers be inspected annually and process boilers and jacketed steam kettles be inspected every 2 years. The Section performs initial inspections of hot water heating and hot water supply boilers. The Section maintains a file card for each boiler within its jurisdiction and records inspections and requirements or violations found during inspections. Our analysis of a sample** of 50 cards with a total of 69 inspections*** shows that as of June 1984, 68 percent of the boilers were overdue for inspection. At least 29 percent were more than 1 year overdue (Table 3).

* A.R.S. §23-485 allows ADOSH to issue certificates for "special inspectors" to companies operating boilers and to insurance company boiler inspectors. The certificate allows a company inspector to inspect any boiler or lined hot water storage heater insured by that company. The company must submit a copy of its inspection report to the Boiler Section. If a boiler is not insured or the insurance company does not perform the inspection and submit a report, the Section is responsible for inspecting the boiler.

** Due to the Boiler Section's poor record keeping, a statistically random sample could not be performed. Instead, a nonstatistical, judgmental sample was taken. Although the sample results cannot be projected for the population, they do indicate significant problems with timely inspections.

*** Boiler inspections may be both internal and external. When inspection cards showed both types of inspections, the analysis listed two inspections; thus the sample of 50 provides information on 69 inspections.

TABLE 3

CERTIFICATE INSPECTION SAMPLE RESULTS
AS OF JUNE 1984

Inspection Status[1]	Number of Cases	Percentage
In Compliance		
Inspection not yet overdue	5	7%
Inspection within period	17	25
Subtotal	22	32
Not in Compliance		
Inspection overdue by		
0-6 months	15	22
7-12 months	12	17
13-24 months	14	20
Over 24 months	6	9
Subtotal	47	68
Totals	69	100%

Source: Compiled by Auditor General staff from Boiler Section inspection records

(1) An inspection is in compliance if performed within 30 days of the due date when performed by Section inspectors, or within 90 days of the due date when performed by special inspectors. Statutes and rules and regulations allow the additional days. Results in Table 3 include the 30 and 90 day periods.

Follow-up Inspections - In addition to the certificate inspection backlog, follow-up inspections are overdue. When an inspector notes a code violation during a certificate inspection, an abatement date is established, usually 30 days after the original inspection, by which time the boiler must be in compliance. To ensure the problem is corrected, the inspector should perform a follow-up inspection at the end of the abatement period. The Section does not issue the certificate until the follow-up inspection is performed and the boiler is found to be in compliance. A copy of the original inspection report is kept in a pending file until a follow-up report is received. Our analysis of the follow-up inspections not yet performed shows that the abatement deadline had elapsed in 95 percent of the cases (Table 4).

TABLE 4

FOLLOW-UP PENDING FILE AS OF JUNE 14, 1984

Status	Cases	Percentage
Follow-up inspection not yet due	6	5%
Overdue(1)		
0-3 months	63	57
4-6 months	15	14
7-9 months	15	14
10-12 months	5	5
Over 1 year	6	5
Totals	110	100%

(1) Thirty-three reports in the file listed no abatement date. According to the chief boiler inspector, if no date is listed the follow-up inspection should be performed within 30 days of the original inspection. Therefore, we included the 33 reports with no abatement date in our analysis, calculating the abatement date as 30 days after the inspection date.

Source: Compiled by Auditor General staff from Boiler Section follow-up pending file as of June 14, 1984

Accident Potential - Failure to perform periodic inspections can increase the risk of accidents and injuries. Although the chief boiler inspector said no boiler accidents were reported to the Section in 1983, National Board of Boiler and Pressure Vessel Inspectors (NBBPVI) statistics show that boiler incidents are common nationwide, and may result in injury or death (Table 5). An NBBPVI study found that poor maintenance and testing of controls are the major causes of accidents. The NBBPVI states that inspections and proper maintenance are important for boiler safety.

TABLE 5

NATIONAL INCIDENT REPORT 1982 AND 1983

Type of Boiler	Accidents		Injuries		Deaths	
	1982	1983	1982	1983	1982	1983
Power Boilers	1,062	1,137	29	39	5	6
Steam & Hot Water Heating Boilers & Fired Hot Water Storage Tanks	835	1,051	74	35	9	13
Cast Iron Boilers	1,784	1,378	10	13	0	3
Totals	3,681	3,566	113	87	14	22

Source: National Board Bulletin, April 1983 and April 1984, NBBPVI

Scheduling Is Insufficient

The inspection backlog is a result of inefficient scheduling. Scheduling is inadequate because inspection needs cannot be determined due to poor record keeping. Inspection schedules are not grouped by boiler location thus causing excessive travel. In addition, follow-up inspections are not limited to boilers with serious violations.

Needs Not Determined - The Section cannot determine its inspection needs because its records do not accurately indicate the number of boilers requiring regular inspections. Although the chief boiler inspector stated that the Section regulates more than 13,000 boilers, the actual number may be significantly less. From the 13,000 boiler tag numbers that should correspond to boilers regulated by the Section, our audit team generated a list of 297 random numbers and selected corresponding Section file cards. The cards are numerically filed with numbers corresponding to metal tag numbers placed on the boilers during the first inspection. Of the 297 numbers selected only 97, or 33 percent, were for boilers requiring periodic or initial inspections. Most of the sample,

approximately 67 percent, consisted of missing cards,* units not under the Section's jurisdiction, or those with undetermined inspection requirements (Table 6).

TABLE 6

INSPECTION CARD FILE SAMPLE
AS OF JUNE 1984

	Number in Category	Percentage
Require Inspection		
Periodic Inspection (1-2 years)	33	11%
Initial Inspection Only	64	22
Subtotal	97	33
Do Not Require Inspection		
Card Missing	132	44
No Jurisdiction	56	19
Unknown	12	4
Subtotal	200	67
Total	297	100%

Source: Compiled by Auditor General Staff from Boiler Section Inspection Card File

No Grouping by Location - The Boiler Section does not organize certificate inspections efficiently. Presently, certificate inspections are scheduled according to follow-up priorities and certificate expiration dates. For example, when a follow-up inspection is conducted in the Flagstaff area the inspector selects boilers in the vicinity with expiring certificates. However, all boilers in the Flagstaff area do not expire in the same month. Consequently, the inspector must return to the same area several times a year to perform certificate and follow-up inspections.

* If a boiler serial number does not have a corresponding card in the Section files, the Section assumes the number has not been assigned. Occasionally the Section gives blocks of metal tags to insurance companies. When a company inspects a new boiler, it should send the inspection report with the serial number to the Section. As a result, the card files do not account for large blocks of serial numbers.

In contrast, the ADOSH Elevator Section groups elevators by location. It performs annual certification inspections on all elevators in an area at one time. If a new certificate is issued during the year, the elevator is inspected again with the annual area inspection, thereby maintaining consistent expiration dates.

Follow-Up Inspections - The Section could further improve efficiency by limiting on-site follow-up inspections to boilers with serious violations. As discussed earlier, when a code violation is noted during an inspection, the inspector sets an abatement date and returns to the site to ensure that the violation has been corrected. Follow-up inspections take priority in scheduling and thus preclude inspectors from concentrating on certificate inspections.

In contrast, the ADOSH Elevator Section does not perform on-site follow-up inspections for all violations. Nonserious cases require that the elevator owner send evidence of compliance stating that the violation has been corrected. Eliminating on-site follow-up inspections, except for serious violations would allow the Boiler Section to focus on certificate inspections.

CONCLUSION

The boiler inspection program is inadequate. The ADOSH Boiler Section is behind on certification inspections. Most inspections do not occur within the required time. Poor records and inadequate scheduling procedures cause a backlog of certificate inspections.

RECOMMENDATIONS

The ADOSH Boiler Section should take the following steps to improve its inspection program.

1. Update its record keeping system to provide accurate information on inspection needs.

2. Group certificate expiration dates according to location.

3. Limit on-site follow-up inspections to boilers with serious violations.

OTHER PERTINENT INFORMATION

Although Arizona administers an occupational safety and health program, no valid evidence suggests that the State program is more or less effective than a Federally administered program. Arizona is among the states that administer their own occupational safety and health program, while other states leave this responsibility to the Federal government. Arizona's program meets Federal requirements. However, our research did not reveal any valid indicators of the program's effectiveness. Available data suggests that injury and illness incident rates in Arizona have declined, but the decline cannot be fully attributed to Arizona's occupational safety and health program. As a result, the impact of a State program versus a Federal program is not clear.

Federal Law Allows States To Have Own Programs

The Federal Occupational Safety and Health Act, enacted by Congress in 1970, gives states the option to administer their own programs or rely solely on the Federal government to administer the program. Arizona administers its own occupational safety and health program.

State vs. Federal Program - Twenty-four states or jurisdictions, including Arizona, administer their own occupational safety and health programs, while the remainder rely on the Federal government to operate the programs in their states.* For states relying entirely on a Federal program, the Federal government funds 100 percent of the program costs; for those with state control, the Federal government funds up to 50 percent of the operating costs. If a state chooses to develop its own program, the program must be deemed as effective as the Federal program to receive final approval.

* Of 57 states and jurisdictions, 24 have approved state occupational safety and health plans (one of these plans covers public employees only). As of August 1, 1984, 21 of the 24 states and jurisdictions with state plans had received plan certification, and two received final approval in April 1984. Final approval for state programs was delayed due to a 1978 U.S. District Court decision requiring states to meet benchmark staffing levels.

State program administration has both advantages and disadvantages compared with Federal administration. Some of the reasons given for states choosing to have their own occupational safety and health programs are: 1) independent programs allow states to continue activities already in progress at the time the Occupational Safety and Health Act was enacted in 1970, 2) states with their own programs devote more resources to promote safety and health, and 3) state programs allow greater flexibility and control to meet individual state needs. Some of the reasons given for not having state programs are: 1) the state must fund at least 50 percent of the program costs while Federally controlled programs are funded 100 percent by Federal monies, and 2) variability of state plans limits nationwide uniformity in program implementation and administration.

Arizona's State Plan - Arizona is among the states that administer their own plan. The Occupational Safety and Health Act of Arizona was enacted in 1971 and placed under the jurisdiction of the Industrial Commission of Arizona (ICA). The Arizona Division of Occupational Safety and Health (ADOSH) has sections to enforce safety and health standards and regulations. The costs of Arizona's occupational safety and health program, approximately $1.7 million for fiscal year 1982-83, are funded by both Federal and State monies.

Major revisions were made to Arizona's Occupational Safety and Health Act in 1972 to protect workers from unsafe working conditions. The intent of the Arizona legislature in establishing the Act is stated as follows:

> "The legislature declares it to be its purpose and policy to assure so far as possible every working man, woman and child in the state safe and healthful working conditions and to preserve our human resources."

Authority for enforcement of the Act was placed within the Arizona Division of Occupational Safety and Health of ICA. Prior to its enactment, the Industrial Commission of Arizona had a Division of Safety. According to the director of ADOSH, the Federal Government preempted the state program in October 1972 due to several statutory

deficiencies, including Arizona's failure to statutorily provide sanctions for violations found in initial inspections. Once the statutes were amended to correct the deficiencies, the preemption was lifted. Arizona's state plan received initial Federal approval in 1974. The program is currently being evaluated for final approval. If the evaluation finds the State program to be as effective as the Federal program, Arizona will be eligible for final approval. According to a Federal official, Arizona is expected to receive final approval in the fall of 1984. As of August 1984 the only requirement Arizona's program needed for final approval was for ICA to adopt a standard regarding employee access to medical records.

ADOSH has sections to enforce occupational safety and health standards and regulations - Safety Compliance, Health Compliance, and Consultation and Training. The two Compliance Sections inspect work places for safety and health violations, and may cite employers for violations. The Consultation and Training Section provides nonpunitive safety and health consultation and training upon request.

ADOSH receives State funds from premium taxes on workers' compensation insurance carriers and self-insured employers, and is financed up to 50 percent by federal funds.* Federal and State expenditures for fiscal years 1981-82 through 1983-84 are presented in Table 7.

* Although the State program is financed up to 50 percent by Federal funds, the Federal and State figures in Table 7 are not equal because ADOSH expenditures include Boiler and Elevator Section expenditures not covered by Federal funds. In addition, according to ICA's chief accountant, the Federal and State fiscal years are on different cycles.

TABLE 7

SUMMARY OF FEDERAL AND
STATE EXPENDITURES FOR ADOSH
FOR FISCAL YEARS 1981-82 THROUGH 1983-84

	1981-82 Actual	1982-83 Actual	1983-84 Estimated
Full Time Equivalent Positions	Not Available	53	52
Expenditures:			
Federal	$ 686,700	$ 893,700	$ 763,800
State	930,200	827,900	847,600
Total	$1,616,900	$1,721,600	$1,611,400

Source: Industrial Commission of Arizona budget requests for 1983-84 and 1984-85

Impact Of Arizona's Occupational Safety And Health Program Is Unclear

Although ADOSH has a comprehensive occupational safety and health program, which is expected to be determined by Federal authorities to be as effective as the Federal program, our research did not reveal any indicators to judge the program's effectiveness. Arizona's injury and illness incident rates are above the national level but have steadily declined in recent years. The director of ADOSH indicated it is more advantageous for Arizona to retain its own state program than rely on a Federally administered program.

Lack of Indicators - Although Federal authorities are expected to deem Arizona's safety and health program to be as effective as the Federal program, our research did not uncover any valid indicators for measuring the effectiveness of either the Federal or State program. Since the purpose of the Occupational Safety and Health Administration (OSHA) is to reduce occupational injuries and illnesses, the Bureau of Labor Statistics (BLS) injury and illness incident rates are indicators to

determine the effectiveness of programs.* However, the BLS incident rates are not valid for comparing a state's performance against the national average or against another state. Such a comparison could be invalid due to the influence of factors unrelated to OSHA on the injury rates, such as differences among state employment rates, types of industries, and seasonal activity. Therefore, reductions in BLS injury and illness rates cannot be directly traced to efforts of OSHA. A 1983 study by the Congressional Research Service attempted to evaluate the effectiveness of state plan states as compared to Federal program states in reducing BLS incident rates. Study results suggest that perhaps "the most important way of measuring a state's performance is against its own improvement rather than in relation to other states."

Arizona Incident Rates - Arizona incident rates are above the national average but have steadily declined since 1979. According to statistics gathered through BLS surveys, Arizona's total injuries and illnesses have declined by approximately 29 percent, from 12.4 per 100 workers in 1979 to 8.8 per 100 workers in 1982. At the same time, total national injuries and illnesses have also declined by 19 percent, from 9.5 per 100 workers in 1979 to 7.7 per 100 workers in 1982.**

For areas in which ADOSH has directed its efforts, improvement in the injury and illness ratings has been even greater. Arizona's efforts regarding inspections and consultations are generally focused on construction and manufacturing, the high hazard industries. In construction, Arizona injury and illness incidents per 100 workers declined from 22.6 in 1979 to 15.8 in 1982. At the same time, the

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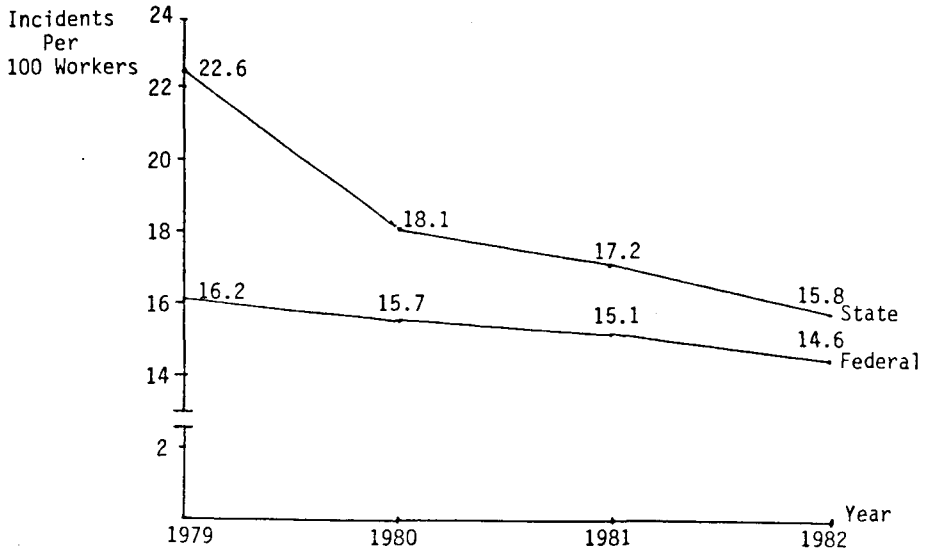
* Incident rates are determined for total cases, lost workday cases, and lost workdays. Statistics are gathered annually, are available by state or national average, and are categorized by industry. The total cases show all injuries and illnesses per 100 full-time workers. The lost workday cases count all injuries and illnesses that result in absence from work beyond the day of injury. The lost workdays are the average number of days lost from work per 100 full-time workers as a result of occupational injury or illness. This measure shows the severity of accidents and illnesses.

** BLS incident rates for 1983 were not available at the time of our review. BLS surveys are conducted subsequent to the year's completion (i.e., 1983 information is gathered in 1984).

national levels dropped from 16.2 in 1979 to 14.6 in 1982 (Figure 4). In manufacturing, Arizona injury and illness rates declined from 16.7 in 1979 to 10.6 in 1982, while the national levels fell from 13.3 to 10.2 (Figure 5).

FIGURE 4

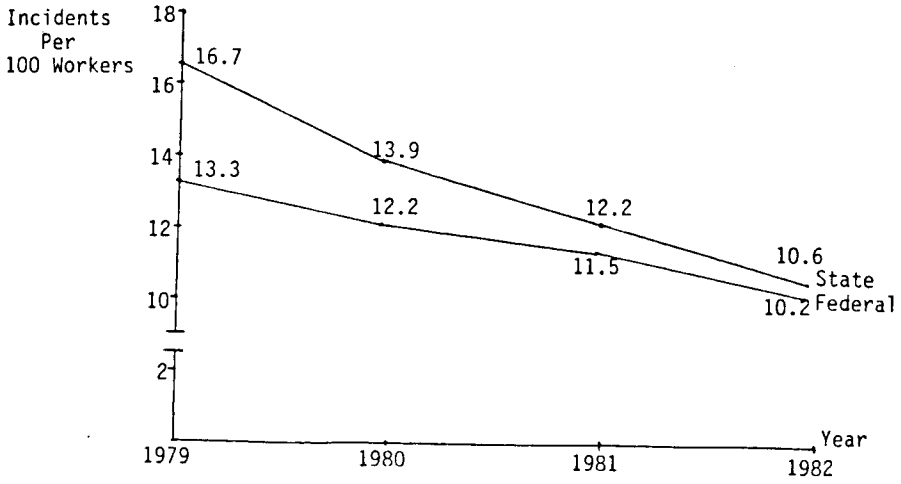
CONSTRUCTION INJURY AND ILLNESS RATES
1979 THROUGH 1982



Source: Graph prepared by Auditor General staff using figures obtained from the 1979 through 1982 Arizona Occupational Injury and Illness Survey, Management Information Section, Industrial Commission; and the Federal Occupational Injuries and Illnesses Survey, U.S. Department of Labor, Bureau of Labor Statistics.

FIGURE 5

MANUFACTURING INJURY AND ILLNESS RATES
1979 THROUGH 1982



Source: Graph prepared by Auditor General staff using figures obtained from the 1979 through 1982 Arizona Occupational Injury and Illness Survey, Management Information Section, Industrial Commission; and the Federal Occupational Injuries and Illnesses Survey, U.S. Department of Labor, Bureau of Labor Statistics.

Advantages of ADOSH - According to the director of ADOSH, it is more advantageous for Arizona to retain its own State program than to convert to Federal control. The director indicated that most benefits of keeping a state plan are intangible. The State plan allows Arizona to establish day-to-day relations with industry, have legislative oversight, have greater personal accessibility than a Federal program with regional staff, and to conduct continuous consultations.* He added that although the State program has the same parameters as the Federal program, the State plan allows flexibility in addressing local issues.

* Continuous monthly consultations are conducted with participating construction employers. They are free, nonpunitive inspections of employer job sites for compliance with occupational safety and health standards. Arizona is a pioneer state in offering continuing consultations.

Effect Of State vs. Federal Program Cannot Be Determined

The decision as to whether Arizona should retain a state plan or convert to a Federal program depends largely on the extent to which it is desirable for Arizona to directly control occupational safety and health activities. No concrete evidence exists to determine the effectiveness of either the state or Federal programs. In addition to a lack of effectiveness measures, several studies indicate that compliance with safety standards may have limited impact on occupational injuries.

The lack of valid effectiveness measures does not allow us to determine whether the State program is most effective in reducing occupational injuries and illnesses or whether Arizona would have fewer occupational injuries and illnesses under Federal control.

In addition to the lack of effectiveness indicators, the potential for reducing injuries through any occupational program may be limited. According to several studies of manufacturing plants published between 1966 and 1976, most occupational injuries are caused by uncontrollable hazards unrelated to safety standards. The relationship between safety standards and injuries suggests that the maximum potential impact of OSHA on injury rates is probably in the range of a 15 to 25 percent reduction. In addition, the greatest injury reduction is in work places that are inspected. If OSHA inspects only a small percentage of all establishments, the overall impact on aggregate injury rates will be minimal.

AREAS FOR FURTHER AUDIT WORK

During the audit, we identified several potential issues that we were unable to complete due to time constraints. We have listed these issues as areas for further audit work.

- Can the assessments on workers' compensation premiums be collected more efficiently?

  The two premium taxes that support the Industrial Commission of Arizona (ICA) functions are collected separately although they are derived from the same source. A 3 percent assessment against employers' insurance premiums is collected first by the State Insurance Department and then passed on to ICA for administrative expenditures. However, ICA collects the 1.5 percent levy for the Special Fund directly from the insurance carriers. Both amounts are computed from the same workers' compensation insurance premiums, yet the carriers must submit separate tax statements. Further audit work is necessary to determine whether a uniform collection process would be more efficient.

- Should ICA or the State Treasurer be responsible for the Special Fund investments?

  ICA manages Special Fund investments separately from the State Treasurer's cash management program. Further audit work is needed to determine whether ICA should continue its own investments, or use the State Treasurer's cash management program.

- Should death benefit payments required when no dependent exists be adjusted for inflation or abolished?

A.R.S. §23-1065.A requires an employer or insurance carrier to pay $1,150 to the ICA Special Fund upon the work related death of an employee without dependents. This amount has not changed since 1945. Similar fees in other states exceed $17,000 per death. According to the ICA director, the fee is not necessary since it only provides about $20,000 annually in ICA revenues. Further audit work is needed to determine whether the fee should be adjusted to current monetary values or abolished.

- Are cost projections for the new ICA building's operating and maintenance costs realistic?

The ICA Special Fund investment committee estimates that it will cost $5 per square foot per year to operate and maintain its new building. Operation and maintenance costs are approximately $8.90 for the average Arizona State building and exceed $8.50 for a building comparable to the new ICA building in size and construction. ICA does not plan to charge for depreciation or administration, which account for $4.90 of the square foot operating cost in the average State building. Further audit work is needed to determine whether the ICA cost projections are realistic and what effect, if any, differences between the projections and average costs will have on the Special Fund.

- Should the scope of boiler inspections be expanded to include other potentially dangerous heating units?

Arizona boiler regulations do not require the Boiler Section to periodically inspect lined hot water heaters, unfired pressure vessels, or hot water heating and hot water supply heaters, all of which are potentially dangerous. Phoenix regulates and periodically inspects these units for commercial and industrial establishments. Some other states also have a more expanded scope of inspections. Further audit work is needed to fully document the need for and the cost of an expanded scope of inspection.

- Can Arizona workers obtain relief for right-to-work law violations from ICA?

  Attorney General Opinion #78-70 states that ICA has been charged with the duty of enforcing the right-to-work law. However, ICA claims it lacks the ability to handle right-to-work problems because it has no specific statutory authority to do so. Rather, A.R.S. §23-107.A states generally that ICA must administer and enforce all laws to protect Arizona citizens when such duty is not delegated to any other agencies. Further audit work is needed to determine whether ICA involvement in this area is necessary and whether statutes should define this involvement more clearly.

- Is ICA's function to protect Arizona's employed youth necessary and sufficient?

  The Industrial Commission, although legally charged with making rules to define and amplify hazardous occupation prohibitions, has not promulgated rules or taken any other significant action on child labor matters. However, the State has little authority to enforce child labor laws, and the limited laws duplicate Federal effort to some extent. Even with some Federal protection there may be deficiencies in both laws. According to the Labor Department director, ICA requested legislation to address inconsistencies in the child labor laws; however the legislation was not passed. Further audit work is needed to determine the need for statutory changes and appropriate levels of enforcement.

- Is ICA's current organization and staffing arrangement providing effective, efficient statewide coverage?

  Most Industrial Commission operations are based in Phoenix, Arizona. The Commission also maintains an office in Tucson that serves southern counties. At one time ICA conducted a feasibility study to determine if an office serving northern

counties was necessary. Presently, ICA work in the northern counties averages about 7 percent of ICA's total effort. In addition, the Labor Department does not maintain any permanent staff in the ICA Tucson office. Labor Department investigators visit Tucson on a limited basis each month. ICA secretaries answering the Tucson office telephone do not answer consumers' labor questions. People are told that their calls will be returned by the Phoenix office later in the day. Further audit work is needed to determine if Arizona residents outside Maricopa County receive timely assistance from ICA, or whether a different staffing arrangement would be better.

THE INDUSTRIAL COMMISSION OF ARIZONA

1601 W. JEFFERSON

PHOENIX, ARIZONA 85007

HARRY G. KELLEY, DIRECTOR
(602) 255-4411

November 28, 1984

Mr. Douglas R. Norton
Attorney General of Arizona
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

The general response of the Industrial Commission to the Performance Audit provided by you is mixed. Overall, we are very pleased with the substantial satisfaction expressed as to the performance of the agency. We are, however, disappointed that criticism could be leveled in any area.

Audit Report Finding I. THE WORKERS' COMPENSATION PROCESS IS EFFICIENT BUT A FEW IMPROVEMENTS ARE NEEDED.

While an expanded use of informal means for resolution of claims disputes could potentially result in dollar savings, our capacity to apply this process would be dependent on the availability of appropriate personnel. Nonetheless, we intend to take steps to encourage more informal resolution as appropriate and consistent with our ability to do so.

Audit Report Finding II. ICA HAS NOT ENSURED THAT EMPLOYERS OBTAIN WORKERS' COMPENSATION INSURANCE.

The Industrial Commission has long recognized the problems associated with the employers who have not provided for workmen's compensation coverage through insurance or self-insurance. It is apparent that ICA disbursements have exceeded the amounts the Commission has been able to recover from uninsured employers.

In complying with the statute, the ICA expended $2.6 million over the past five years in compensation to injured workers whose employers were uninsured. We obviously consider this situation undesirable. Consequently, we have made a practice of going far beyond statutory requirements in seeking to recover such expenditures. On the other hand, we know the legislators who created the Special Fund were perfectly aware there would be uninsured employers, leaving injured workers without medical benefits and compensation unless such were to be paid by the Special Fund.

It should also be realized the uninsured employer is seldom a prosperous one; he is normally without insurance as a cost-saving measure and if an accident with serious financial implications occurs, he simply closes up shop. Many uninsured employers are without assets and collection in these cases is negligible.

We recognize the preferred approach to uninsured employers would be to identify them prior to submission of any industrial claim. In this regard, we have been working on a computer identification program for three years and, contrary to the report, did not abandon the project but were forced to delay its implementation until the Data Management Division completes the Claims Monitoring System which has been under development. It should also be noted that we have placed on our employer file many thousands of Unemployment Insurance numbers in pursuit of the solution. Also, we have continued to send hundreds of letters which are followed up as necessary by superior court litigation to enjoin identified uninsured businesses. Recently, we have begun to identify problem industries for contact and follow-up as to coverage.

Audit Report Finding III. LICENSING EMPLOYMENT AGENCIES IS NOT NECESSARY TO PROTECT CONSUMERS.

This area seems to have been the subject of some prejudgement for, contrary to the audit report, regulation of employment agencies has provided a considerable amount of needed consumer protection. The fact that there were a relatively small number of complaints against licensed agencies during fiscal years 1982-83 and 1983-84 did not mean consumers did not have problems with industry abuses by employment agencies. Instead, it may well demonstrate that the current licensing practice was effective. Consider, for example, a trend showing decreasing complaints against medical doctors and the absurdity of calling for the abolition of the Board of Medical Examiners.

The licensing process in Arizona provides for examining applicants to determine if an applicant has sufficient knowledge of applicable employment agency laws and regulations. This testing process is entirely consistent with the statutory mandate for such testing. By licensing employment agencies the Commission operates to provide consumers with a single statewide entity to which complaints can be brought and impartially investigated and resolved.

The alternative suggested in the audit report would confuse consumers regarding jurisdiction over their complaint. Additionally, deregulation would force consumers to use the judicial system to resolve their complaints. Even though it is well known, the Attorney General or a county attorney can not effectively pursue all complaints brought to their attention. This alternative would immediately put consumers in an adversarial relationship with the employment agency whereas a less formal administrative resolution of the issue would be more prompt and certainly more cost-efficient. If the Auditor General's recommendations are implemented, the consumer could be faced with court costs, attorney fees and significant delays in resolving the problem. Further, if the consumer is not sufficiently affluent, he may never receive due process.

Audit Report Finding IV. ARIZONA DIVISION OF OCCUPATIONAL SAFETY AND HEALTH BOILER INSPECTION PROGRAM IS INADEQUATE.

The ICA agrees the Boiler Section has a problem with administration but we feel the report exaggerates the extent of the problem. Nevertheless, we recognize the need for immediate attention to record keeping and, in that regard, have begun corrective measures. There are currently only 29 files pending follow-up inspections, not 110 as stated in the report. Further, all 29 have been held to consolidate travel since they are outside the Phoenix metro area.

A new Chief Boiler Inspector has been appointed. He was appraised of the report, and together with a systems analyst will develop and implement an automated record keeping and scheduling system early in 1985.

OTHER PERTINENT INFORMATION

Arizona's program has been evaluated regularly by the federal government since 1972, in accordance with statutory provisions contained in Section 18 of Public Law 91-596. There are a number of available bases used in determining ADOSH effectiveness. The indicators, for which the data were collected, evaluate such matters as staffing, competency, productivity, quality and costs. The result is the federal government has consistently determined our program to be as effective as the federal program. Also, because of the availability of our personnel for consultation our program is to that extent superior to that of the federal government. Obviously, from this statement, we cannot be concluded the audit report is correct.

On Page 60, the auditors reference several studies conducted in manufacturing plants between 1966 and 1976. Although we do not know which studies they are referencing, we can say a number of things about that period. First, prior to passage of Federal Occupational Safety and Health Act in December 1970, there was no comprehensive occupational safety and health program. Second, federal programs were voluntary in nature and safety standards that existed varied among states. Third, little was available regarding health standards. Fourth, even after the passage of the Federal Occupational Safety and Health Act, it wasn't until 1972 that the first set of comprehensive standards were promulgated. And fifth, it wasn't until 1974 that those standards were effectively implemented in industry. Consequently, studies prior to 1974 do not carry the weight of subsequent works. Moreover there was no source of injury or illness data prior to 1972, that gave a realistic picture of injuries and illnesses by industry, nationwide. Again, it wasn't until 1974 that one could see the results of the data analysis.

Again on Page 60, a statement is made to the effect that the auditors could not determine if the State program is more effective in reducing occupational injuries and illnesses or whether fewer occupational injuries and illnesses would occur under federal control. The report does not support this conclusion.

We have already stated, based on federal indicators, Arizona's program has been determined to be equally effective as the federal program. Given this consistent level of performance and the fact that Arizona provides on-site consultation services, which federal personnel do not, we are secure in stating that any potential reduction in injuries and illnesses would, at the very least, be equal under state or federal control. Additionally, the auditors' acknowledgement that the greatest injury reduction is in work places that are inspected, and given the fact that Arizona's program covers political subdivisions (the federal government does not), and further, that ADOSH staff productivity greatly exceeds that of the OSHA staff within the federal government, we conclude Arizona employees suffer fewer occupational injuries under the State program.

Sincerely,

Harry G. Kelley
Director

HGK:cms

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Occupational Safety and Health Advisory Committee in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§ 41-2351 through 41-2379.

The Occupational Safety and Health Advisory Committee was established in 1972 to assist the Industrial Commission in drafting standards and regulations, recommend names to be considered by the Governor as members of the Occupational Safety and Health Review Board, and perform other functions as necessary.

The Committee consists of 11 members appointed by the Industrial Commission. Members represent government, management, union, building, small business, insurance, construction, and electrical fields. Committee meetings generally consist of a discussion of new Federal Occupational Safety and Health Administration standards, and a recommendation for the Industrial Commission as to the adoption of the new standards. Federal standards are automatically adopted by the State to maintain compliance with the Federal program. The Committee meets as needed. According to the director of the Arizona Division of Occupational Safety and Health, the last meeting was in April 1983.

The Committee has no budget. Members meet on a voluntary basis and may only be reimbursed for travel expenses.

Scope of Audit

The scope of our audit included a review of Committee operations and functions. Our major audit objective was to respond to the Sunset Factors required by A.R.S. §41-2354.

The Auditor General and staff express appreciation to the Occupational Safety and Health Advisory Committee members for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Occupational Safety and Health Advisory Committee should be continued or terminated.

1. Objective and purpose in establishing the Committee

The Occupational Safety and Health Advisory Committee was established to assist the Industrial Commission of Arizona (ICA) in drafting standards and regulations, to recommend names to be considered by the governor for members of the Occupational Safety and Health Review Board, and to perform other functions as necessary.

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

The Committee does not currently meet its established objective and purpose. Although the Committee was established to assist ICA in drafting rules and regulations, they are no longer involved in this function. The Committee did assist ICA in developing the original standards, rules and regulations. Currently, the State adopts Federal standards in their entirety to remain in compliance with the Federal program, and the Committee is no longer needed to assist in developing standards. In addition, because rules and regulations are promulgated by the ICA, the Committee may only act in an advisory capacity. Currently, the Committee's role is to act as a liason with the industry and the Legislature concerning new standards. The Committee members meet as needed to learn about new Occupational Health and Safety Administration (OSHA) standards, then inform their respective industries about the new standards. According to the director of the Arizona Division of Occupational Safety and Health (ADOSH), the Committee also acts as a sounding board for ADOSH in identifying possible problems with controversial standards. He added that they also provide input on ADOSH's procedures.

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

During its first years, the Committee assisted in developing original standards, rules and regulations concerning occupational safety and health. This effort was in the public interest since it relates to public welfare and safety. However, the Committee no longer is involved in this process. The Committee acts in the public interest by communicating standard changes to the industry.

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

ICA, not the Committee, is responsible for promulgating rules and regulations. The Committee's statutory role is to assist in drafting rules and regulations.

5. The extent to which the Committee 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 Committee has not complied with the open meeting law. According to the director of ADOSH, the Committee does not maintain minutes as required by Arizona's open meeting law. An informal opinion by Legislative Council and the legal counsel for the Industrial Commission both indicate that the Committee is required to maintain minutes.

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

This factor does not apply because the Committee is not a regulatory agency.

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

ICA, not the Committee, is responsible for enforcing OSHA regulations. Therefore, this factor does not apply.

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

The Committee has never proposed legislation to amend its statutes, and no changes are planned.

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

Our review determined that no changes are needed in the statutes.

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

Elimination of the Committee would not harm the public health, safety or welfare. Because Arizona usually adopts Federal regulations in their entirety, the need for the Committee in drafting standards and regulations is questionable. The Committee is not required by Federal statute; therefore, eliminating the Committee would not cause noncompliance with the Federal occupational safety and health program. Since the Committee operates without a budget, its elimination would not result in significant savings. The primary benefit of the Committee is that it enables industry representatives to keep current on changes in the OSHA program and communicate these changes to their industries and the Legislature. It also provides input to ADOSH on standards and procedures. However, if the Industrial Commission of Arizona has a need for the Committee,

it could establish the Committee administratively under A.R.S. §23-409.A, which allows ICA to establish committees as it deems necessary.

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

This factor does not apply because the Committee is not a regulatory agency.

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

The Committee does not use private contractors in connection with its duties. Because the Committee is strictly advisory, private contractors are not necessary.

Kitchell Contractors

November 8, 1984

Mr. Douglas R. Norton, Auditor General
Office of the Auditor General
State of Arizona
111 West Monroe, Suite 600
Phoenix, AZ 85003

Dear Mr. Norton:

Re: Draft of the Sunset Review Report of the Occupational Safety & Health Advisory Committee

Thank you for allowing me to review your preliminary report draft of the purpose and activities of the Occupational Safety and Health Advisory Committee.

I feel the Advisory Committee has a continuing and meaningful role consistent with the original objectives and purposes for establishing the Committee. Since its inception, we have been a reliable and competent sounding board to the Industrial Commission on matters concerning Occupational Safety and Health. Since the development of the standards and promulgated regulations have matured, the need for a lot of meetings has been significantly reduced.

Today, the Committee's most important role is to make certain any proposed new standards or changes in standards are reviewed by the private sector industry groups which will be affected by their implementation. Throughout the life of OSHA, it has been proven that industry's input has been invaluable in making certain the new regulations are practical, workable, cost effective and do indeed improve the safety and health of our employees. There is a continuing need for this input.

Since our Committee serves without any compensation and represents both labor and management on a varied industry-wide basis, I feel it should be retained to provide the advice as originally outlined.

1006 South 24th Street, Phoenix, Arizona 85034. (602) 275-7541

With specific reference to item 5 on page 70, we have had no meetings since the implementation of the "Open Meeting Law"; therefore, I take exception to your statement that we have not complied. I can assure you that all future meetings will be in strict compliance with that law.

If there is a need for discussion about any remarks, please feel free to contact me.

Sincerely,

Vernie G. Lindstrom, Jr.

Vernie G. Lindstrom, Jr., Chairman
Occupational Safety and Health Advisory Committee

jk

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Occupational Safety and Health Review Board in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

In 1970, the Occupational Safety and Health Act was enacted by the U.S. Congress. The purpose of the Act is:

> "To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes."

Under Section 18 of the Act, states can have their own plans and supersede the Federal program. The United States Secretary of Labor must approve the individual state plans. In order to receive such approval, a plan must contain a means for review of appealed occupational safety and health cases, which in Arizona is satisfied by the Occupational Safety and Health Review Board.

In 1971, the Division of Safety under the Industrial Commission of Arizona became the Occupational Safety and Health Division. The Division implemented the Occupational Safety and Health Act on the State level. To comply with Federal statutes, the Arizona Occupational Safety and Health Review Board was created in 1972. The Board has five members, with one representing management, one representing labor, and three from the general public.

The purpose of the Board is to hear and rule on appeals of the Industrial Commission's administrative law judge decisions involving occupational

safety and health violations. The process for appeal is as follows. An employer found to be in violation of an occupational safety and health standard or regulation is issued a citation by the director of the Division. The employer is allowed to contest the citation. If contested, a hearing is scheduled with an administrative law judge in the Industrial Commission. The judge's decision may be appealed by either party to the Board. The Board may affirm, reverse, modify or supplement the judge's decision. If either party is dissatisfied with the Board's decision, within 10 days the decision can be appealed to the Arizona Court of Appeals for review of its lawfulness.

The Board receives both State and Federal funds. The Board's expenditures and activity for fiscal years 1980-81 through 1984-85 are shown in Table 1.

TABLE 1

OSHA REVIEW BOARD EXPENDITURES AND ACTIVITY
FOR FISCAL YEARS 1980-81 THROUGH 1984-85

	Actual 1980-81	Actual 1981-82	Actual 1982-83	Estimated 1983-84	Requested 1984-85
Expenditures:					
Personal services	500	700	100	400	400
Professional and outside services	6,200	3,800	4,300	3,800	1,000
In-State travel	100	100	100	200	200
Other operating		200	200	100	100
Subtotal	6,800	4,800	4,700	4,500	1,700
Federal funds	1,900		4,300	5,000	4,900
Total	$8,700	$4,800	$9,000	$9,500	$6,600
OSHA cases settled*	5	6	1	5	5

* Cases for 1983-84 and 1984-85 are estimates.

Source: Occupational Safety and Health Review Board Budget Requests for fiscal years 1981-82 through 1984-85

The Board has no staff. Funds are primarily used to pay a private attorney under contract with the Board. The attorney's staff provides secretarial assistance to the Board.

Scope of Audit

The scope of our audit included a review of Board operations and functions. Our major audit objective was to respond to the Sunset Factors required by A.R.S. §41-2354.

The Auditor General and staff express appreciation to the Occupational Safety and Health Review Board members for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Occupational Safety and Health Review Board should be continued or terminated.

1. Objective and purpose in establishing the Board

The Arizona Occupational Safety and Health Review Board was established in 1972 to comply with requirements of the Federal occupational safety and health program. The Board's purpose is to hear and rule on appeals of Industrial Commission administrative law judge decisions concerning occupational safety and health violations.

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

The Board generally meets its objective and purpose by providing the appeals process required by Federal law. However, the Board can improve its timeliness in issuing decisions on appealed cases. Budget Requests for the Board indicate that the Board settled 12 cases between fiscal years 1980-81 and 1982-83. Although the Board has 30 days to issue a decision, we reviewed seven cases and found delays longer than 30 days in all seven cases.

The Board often delays making final decisions by waiting until a subsequent hearing to sign a formal decision. However, according to the Board's legal counsel, the Board does not need to meet to finalize a decision; signatures may be obtained by correspondence.

Per A.R.S. §23-423.G, the Board has 30 days to issue a decision once review has been submitted. According to a Legislative Council opinion, a review is submitted when all steps applicable to the particular case are completed. Specifically the opinion states:

"1. Review is submitted for the purposes of determining compliance with the thirty day decision requirement of A.R.S. section 23-423, subsection G when the board receives the record of the hearing before the administrative law judge, oral argument is heard if requested, the board receives the record of any further action required of the administrative law judge and the board receives any legal memoranda related to the proceeding."

The Legislative Council opinion also adds that the intent of the statute is to ". . . ensure that the board addressed the matters before it in a timely manner. If the board can freely determine when a review is submitted the purpose of the thirty day limit would be defeated and the language in the statute would have no effect."

An example of the delay is as follows. In May 1982, a case was appealed to the Board for review. The case was heard in September 1982. In May 1983, the Board's legal counsel sent the decision document to the Board for signatures. The decision was not signed, thus not effective, until December 1983, 8 months after Board receipt of the document. The signatures were obtained through correspondence.

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

The Board operates in the public interest by providing an appeals process in occupational safety and health cases. The Board is an independent body that hears and rules on administrative law judge decisions. It has maintained independence by obtaining legal counsel apart from the Industrial Commission. Decisions of the Board can be appealed to the State Court of Appeals.

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

The Board has no rules and regulations. The Board prepared rules and regulations and held public hearings. However, the rules were not subsequently adopted because the Attorney General's Office stated that the rules were unnecessary.

5. The extent to which the Board 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 Board has not adequately informed the public about its actions because it has not complied with the open meeting law requirements regarding decisions and minutes. Through our review of 12 case files we identified nine appeals that had Decisions Upon Review* issued by the Board and did not have the decision recorded in the minutes. Therefore, in these cases we could not determine whether a formal meeting was held. In at least six instances the Board made legal decisions on the date of a formal meeting, although the decisions were not reflected in existing minutes of the meetings.

A.R.S. §38-431.01.A requires the Board to have all meetings open to the public. In addition, A.R.S. §38-431.01.B requires minutes to be taken. The minutes must contain a description of all legal actions proposed, discussed, or taken. A.R.S. §38-431.01 states:

> "A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.
>
> B. All public bodies, except for subcommittees and advisory committees, shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive session, such minutes or recording shall include, but not be limited to:
>
> 1. The date, time and place of meeting.
> 2. The members of the public body recorded as either present or absent.
> 3. A general description of the matters considered.

* A Decision Upon Review is a legal document containing the Board's findings, conclusions and order. The document must be signed by Board members to be effective.

4. An accurate description of all legal actions proposed, discussed, or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material."

All decisions of the Board are not reflected in Board minutes. The Board's attorney indicated that the Board does not maintain minutes when oral argument is heard but no official Board meeting is held. However, the Board has issued Decisions Upon Review indicating that at some point the Board reached decisions in these cases.

According to a Legislative Council opinion, the Board is subject to the open meeting law. It is required to make all decisions in open meetings, and to maintain minutes of all meetings. The Legislative Council opinion further states that failure to comply with the open meeting law may cause legal actions of the Board to become null and void. Specifically, the opinion states in part:

"As an arbiter of disputed matters between a private person and a public agency, the board is within the definition of a quasi-judicial body and is subject to the open meeting law."

"Since a review of an administrative law judge's decision requires legal action at a gathering of a quorum of the members of the board, a review by the board is a meeting under the open meeting law. As a meeting of a public body, the review of an appeal and the deliberations with respect to the review must be open to the public and must be recorded in written minutes or electronically."

"The legislature has stated that is it the policy of this state that meetings of public bodies be conducted openly. A.R.S. section 38-431.09. Decisions of the board which are not made at public meetings or reported in the board's minutes contravene this policy and may be found to be void by the Arizona supreme court."

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

This factor does not apply because the Board is not a regulatory agency.

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 Board is not responsible for enforcing occupational safety and health regulations; enforcement is the responsibility of the Occupational Safety and Health Division of the Industrial Commission. Therefore, this factor does not apply.

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

The Board has never proposed legislation to amend its statutes and no changes to legislation are planned.

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

Our review identified no needed statutory changes.

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

Termination of the Occupational Safety and Health Review Board may cause Arizona to be in noncompliance with the Federal occupational safety and health program. The Federal program requires state plans to be as effective as the Federal program. According to a letter from the Regional Office of the Solicitor, U.S. Department of Labor, elimination of the Board may cause violation of the Federal program.

"The State plan agreement entered into with the U.S. Department of Labor, under Section 18 b of the William-Steiger, Occupational Safety and Health Act of 1970 (29 U. S. C. 651 et seq.) may be violated since the State plan would not be as effective as operations under the Federal Program. The Secretary of Labor may reevaluate the State's performance under said plan and take such action as he deems appropriate under Section 18 (f) of the OSHA Act. However no definite answer can be given on the facts presented. What substitute procedure would be used for contested cases?"

To obtain Federal approval, a state plan should include an administrative appeal system. Most states with state plans use review boards or commissioners to handle administrative appeals. If the Review Board were terminated, the plan could be reevaluated by the U.S. Secretary of Labor. If the Secretary disapproved the plan, Federal funds would be discontinued.

Until September 1983 the Regional Solicitor's Office of the U.S. Department of Labor performed local reviews of the Occupational Safety and Health Review Board.* The Regional Solicitor reports on the Board for the period April 1978 through September 1982 indicated that review procedures conformed with approved guidelines.

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

This factor does not apply to the Board because the Board is not a regulatory agency.

* In September 1983, the Arizona Department of Occupational Safety and Health began using with the Federal management information system (MIS). The MIS is used in place of on-site Federal reviews of State programs, however if discrepancies are found between State and Federal records, Federal employees may still make on-site record reviews to correct the discrepancies.

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

The Board has contracted with a private attorney to provide all legal, secretarial, reproductive, and administrative services of the Board in connection with review of appealed administrative law judge decisions. The services are billed as needed at $60 per hour for legal services and $15 per hour for services provided by a legal assistant. Per contract provisions, costs of services may not exceed $15,000 a year.

ARIZONA FUND MANAGEMENT

November 7, 1984

Mr. Douglas Norton
Auditor General
111 West Monroe
Suite 600
Phoenix AZ 85003

Subject: Sunset Review
Occupational Safety and
Health Review Board

Dear Sir:

As Chairman of the O.S.H.A. Review Board, I take exception to the following items and conclusions contained in your preliminary draft. Item #5, Page #81.

We have no argument with the conclusion that our board is indeed required to comply with the open meeting laws of Arizona. And infact, we intended to be in total compliance with the open meeting requirements.

All board meetings for the last eight years were properly noticed. My secretary at the Arizona Corporation Commission typed the notices and I personally posted them.

The attorney for the board (Richard Taylor) had either a secretary recording our minutes or a court reporter recording our minutes. All decisions were made at formal open (to all parties and the public) meetings. Executive sessions were held on rare occassions for legal advice only.

The lack of meeting minutes for your staff's pursuance is probably due to two factors. 1) No one has ever requested to see a set of minutes before. 2) The secretary and/or court reporter which were present at all our meetings probably have not transcribed them, but they were present and our board firmly believed they were writing minutes, including motions, etc., as they occurred.

Our attorney at that time (Richard Taylor) was chosen in preference to other applicants because of his experience with the Industrial Commission and his knowledge of Arizona law - such as statutes governing open meetings. Our Committee will not stand still and be accussed of violating the law when we infact have not done so. If we are guilty of anything, it is that we relied on our attorney to fulfill his contract and provide us with proper guidance in his area.

950 East Elwood St. Phoenix, Arizona 85040 Phone: (602) 276-5730

ARIZONA
FUND
MANAGEMENT

If your staff reviewed our contracts with Mr. Taylor and his subsequent billings, I believe they would come to the same conclusion our board did - minutes of all meetings were taken by Mr. Taylor's staff and our board was billed for same.

Your own comments on page 85 state "The Board has contracted with a private attorney to provide all legal, secretarial, reproductive, and administrative services of the board.

If in fact minutes are not available as you have concluded, it is not the boards fault.

Jim Weeks

950 East Elwood St. Phoenix, Arizona 85040 Phone: (602) 276-5730

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Arizona Employment Advisory Council. This audit was conducted in response to an April 27, 1983 resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The Arizona Employment Advisory Council was established in 1970 to inform the Industrial Commission about private employment agency industry needs. A.R.S. §23-522.02 directs the Council to inquire into the needs of the employment agency industry and to consider and make recommendations to the Industrial Commission of Arizona (ICA) and the Labor Department director on all matters relating to employment agencies in the State. The private employment agency program is administered jointly by the Council and ICA. The Council serves in an advisory capacity, whereas ICA is responsible for the direct administration and enforcement of employment agency statutes and regulations, and supervision of the industry (A.R.S. §23-107).

ICA and the Council view the employment agency law as a consumer protection measure. To fulfill the law's intent, the Council assists ICA by reviewing license applications from employment agencies, making recommendations on license renewal applications, reviewing pending complaints, conducting research, and making legislative recommendations.

The Advisory Council is composed of seven members appointed by ICA for 3-year terms (A.R.S. §§23-522.01.B and 23-522.01.C). Three members must have at least 3 years' executive or managerial experience in the private employment agency industry in Arizona. The other four members must have held positions in commerce or industry in Arizona for at least 3 years. Council members serve voluntarily and receive no compensation except for travel. The Labor Department serves as the Council's support staff.

Scope of Audit

The scope of the audit included a review of Council operations and functions. Our major audit objective was to respond to the Sunset Factors required by A.R.S. §41-2354. The Auditor General and staff express appreciation to the Council and the staff of the ICA Labor Department for their cooperation and assistance.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Arizona Employment Advisory Council should be continued or terminated.

1. Objective and purpose in establishing the Council

The Arizona Employment Advisory Council's primary duty is to advise the Industrial Commission of Arizona (ICA) and the ICA Labor Department director about all aspects of employment agencies. Its duties include reviewing license applications and complaints, conducting research, and making legislative recommendations. The Council functions are specifically outlined in A.R.S. §23-522.02.

"1. Inquire into the needs of the employment agency industry, and make such recommendations as may be deemed important and necessary for the welfare of the state, public health, and welfare and progress of the employment agency industry.

2. Confer and advise with the industrial commission and the director in regard to how employment agents may best serve the state, the public and the employment agency industry.

3. Approve any rules and regulations which may be adopted, amended or repealed by the industrial commission.

4. Collect such necessary information and data as the director may deem necessary to the proper administration of this article.

5. Consider and make recommendations to the industrial commission and Director with respect to all matters relating to employment agencies in the state, including, but not limited to applicants for licenses and complaints against agencies.

6. Conduct research, as the council deems necessary, on matters pertaining to the operation and conduct of employment agencies and related matters of the state.

7. Publish findings and make such recommendations as the council may deem necessary to the governor, the industrial commission and the Director."

2. The effectiveness with which the Council has met its objectives and purpose, and the efficiency with which it has operated

The Council has generally met its objective and purpose effectively and efficiently, though it has only fulfilled portions of its statutory mandate. The Council recently began to take a more active role in reviewing license applications. However, the failure to clearly define the grounds for denying licenses coupled with inconsistencies in Commission denial policy has minimized the Council's effectiveness.

The Council has partially completed portions of its mandate. The Council has made recommendations to the Commission for changes in the private employment agency law, conferred with and advised ICA on how employment agencies can best serve the State, reviewed license and renewal applications, assisted with license exam revisions and made recommendations to the Commission concerning employment agency legal hearings. The Council has not conducted any extensive research on matters pertaining to the operations and conduct of employment agencies, nor has it published or transmitted any concerns to the Governor regarding the employment agency industry. In the absence of any Council activity the ICA Labor Department undertook a project to survey employment agencies to obtain labor market information and make known the opportunities for employment.

The Council appears to have taken a more aggressive role since 1980. As of April 1984, only 12 license applications out of 174 had been denied since 1970; however, 11 of the denials were made since 1980.

The Council guidelines for the denial of license applications are incomplete. The licensing guidelines do not define the moral character, character of active management or the financial integrity requirements. Due to the vagueness of its requirements, the Council

cannot consistently interpret these requirements. A review of license applications recommended for denial by the Council reveals several inconsistencies in translating these guidelines.

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

The Council has attempted to serve the public interest by assisting in the development of private employment agency statutes, rules and regulations. The Council considers its review of license and renewal applications effective in protecting consumers from abuses. In addition, the Council attempts to minimize instances of criminal activity to protect the public. However, the public interest can be served equally well by a stronger employment agency law without any Council or Industrial Commission involvement (see Sunset Factor 10, page 96 and ICA Finding III, page 33).

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

The Council does not promulgate rules and regulations, however it does recommend changes to the Industrial Commission. Employment agency statutes regarding the Council's role in this area are confusing and should be clarified if the Arizona Employment Advisory Council is continued. A.R.S. §23-523 states, "The Commission shall fix and order reasonable rules promulgated by the Advisory Council and approved by the Commission. . ." (emphasis added) A.R.S. §23-522.02 states, "The Council shall approve any rules and regulations which may be adopted, amended or repealed by the Industrial Commission." (emphasis added) These statutes do not clearly indicate who has the ultimate authority to approve rules and regulations.

5. The extent to which the Council 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 Advisory Council encouraged input from the public before the 1981 revision of employment agency rules and regulations. The Commission held a public hearing on the proposed rules and regulation changes, and advertised the hearing in Phoenix and Tucson newspapers. Council meetings have been open to the public, and proper minutes have been maintained. Although Council meeting notices have conformed to open meeting law requirements in general, the January 1984 and April 1984 meeting notices failed to indicate the time and place of the meeting as required by the open meeting law. The Council and the Commission have been made aware of this omission by audit team members.

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

ICA has primary responsibility for investigating and resolving complaints. The extent to which the Council should be involved in complaint resolution is unclear. A.R.S. §23-522.02(5) requires the Council to make recommendations to the Commission with respect to "all matters relating to employment agencies . . . but not limited to applicants for licenses and complaints against agencies." This statute is vague and does not specifically state what the Council's involvement should be in the complaint process. To fulfill this mandate the Council does the following:

- Informs the Labor Department and the ICA labor law investigator of illegal employment agency practices.

- Reviews and makes recommendations on license renewal applications. Pending complaints on agencies applying for renewal are reviewed to assist in deciding whether the license should be renewed.

- Reviews case materials submitted to the Commission for revocation and suspension hearings, and reviews materials sent to local prosecutors regarding unlicensed agencies.

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 Council is not responsible for the enforcement of the private employment agency law, which is a Commission responsibility. Therefore this factor is not applicable.

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

In 1979, the Advisory Council addressed deficiencies in the employment agency law and recommended changes in the law, which were adopted. These included: increasing surety bond requirements, adopting a staggered license renewal system, and clarifying which license applicants were required to take the licensing examination. The ICA Labor Department and the Advisory Council perform an ongoing review of employment statutes to address deficiencies. If new legislation is needed, the Council will make the necessary recommendations for changes to the Industrial Commission.

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

The Legislature should consider amending A.R.S. §23-522.02(5) to clarify the Council's involvement in employment agency complaint resolution (see Sunset Factor 6, page 94).

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

Termination of the Council would not harm the public health, safety or welfare, as the Council's role, assisting ICA to regulate employment agencies is not necessary (see Finding III, page 33). In addition, many of the Council's functions are undertaken by other State agencies, industry trade associations and organized labor groups. Employment research, consumer awareness campaigns, and consumer complaint resolution are activities currently performed by private entities and trade associations. The Council is not needed to propose new legislation and address industry problems, since private professional associations have done this on their own. Even if ICA continues to regulate employment agencies, the Labor Department could rule administratively on license applications without a Council.

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

This factor does not apply to the Council because the Council is not a regulatory agency.

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

The Council does not use private contractors in connection with its duties regarding employment agencies. There are no areas of the Council's functions in which effective use of private contractors could be accomplished.

AGENCY RESPONSE

EMPLOYMENT ADVISORY COUNCIL

The Employment Advisory Council did not provide a written response to their draft. According to the chairman of the Employment Advisory Council, the Council's concerns were expressed to the director of the Industrial Commission and are included in the Industrial Commission's response.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Boiler Advisory Board in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The Board was established in 1977 by A.R.S. §23-474 to assist the Industrial Commission in drafting standards and regulations. Statutes regarding safety conditions for boilers and lined hot water storage heaters are enforced and administered by the Boiler Section of the Arizona Division of Occupational Safety and Health (ADOSH). Before 1977, boiler regulations were developed by the Boiler Section of ADOSH with the assistance of a Boiler and Pressure Vessel Advisory Committee and Subcommittee, both of which were established administratively by the Industrial Commission of Arizona.

The Board consists of 15 members appointed by the Industrial Commission, and 15 alternates. The members represent various areas of the industry including insurance, construction, labor unions, boiler manufacturers, boiler users or operators, engineering consultants, and the public. The members receive no compensation for their service; however, Board members are entitled to travel expenses. The Board is required to meet at least annually, but usually meets three or four times a year. The Board does not have a budget and operates without staff, however, the Boiler Section of ADOSH provides administrative assistance.

Scope of Audit

The scope of our audit included a review of Board operations and functions. Our major audit objective was to respond to the Sunset Factors required by A.R.S. §41-2354.

The Auditor General and staff express appreciation to the Boiler Advisory Board members for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Boiler Advisory Board should be continued or terminated.

1. Objective and purpose in establishing the Board

   The Board was statutorily established in 1977 to assist the Industrial Commission of Arizona (ICA) in drafting boiler standards and regulations. The Board currently provides an ongoing review and revision of existing boiler standards and regulations.

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

   The Board has met regularly to draft and modify regulations. Regulations were first developed for boilers and lined hot water storage heaters by the Boiler Section and the Arizona Division of Occupational Safety and Health (ADOSH) with the assistance of the Boiler and Pressure Vessel Advisory Committee and Subcommittee. Although regulations only require the Board to meet annually, since 1977 when the Boiler Advisory Board was established it has met at least twice a year. Boiler regulations have been certified by the Attorney General's Office. According to the Board chairman, the Board's efforts contributed to the Legislature's passage of the Arizona Boiler Act.

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

   Promulgation of boiler regulations protects the public from injury and accidents caused by faulty or defective boilers and lined hot water storage heaters. The Board assists ICA by providing expertise in drafting regulations that affect various areas of the boiler industry. In addition, the Board has one member representing the public.

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

The Board has developed rules and regulations, which were subsequently certified by the Attorney General's Office and promulgated by the Industrial Commission. Rules and regulations developed by the Board are sent to the legal counsel of the Industrial Commission before public hearings.

5. The extent to which the Board 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 Industrial Commission is responsible for conducting public hearings before promulgating rules and regulations. Board minutes indicate interested individuals from the industry often attend meetings. Minutes are prepared and maintained by the Boiler Section of the Occupational Safety and Health Division.

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

This factor does not apply to the Board since it is not a regulatory agency.

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 Board is not responsible for enforcing Boiler statutes, rules or regulations. Enforcement is the responsibility of the Boiler Section within ADOSH. Therefore, this sunset factor is not applicable.

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

The statutes establishing the Board and its functions have not been changed since the Board was created in 1977.

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

Our review did not identify needed statutory changes.

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

Elimination of the Board would not harm the public health, safety or welfare because ICA has authority to promulgate boiler rules and regulations. In addition, the Board does not need to be established statutorily. It could be retained by the Boiler Section of ADOSH on an administrative basis under A.R.S. §23-409.A., which allows the Industrial Commission to establish committees as it deems necessary. According to the chairman of the Board, "Termination of the Board would result in no representative body of experienced individuals to review new problems in boiler safety as they arise." Elimination would not result in significant cost savings since Board members serve voluntarily.

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

This Sunset Factor does not apply to the Board because it is not a regulatory agency.

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

The Board does not use the services of private contractors in connection with its duties. As the Board is in an advisory role, the use of private contractors is unnecessary.

THE INDUSTRIAL COMMISSION OF ARIZONA

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LARRY ETCHECHURY, DIRECTOR
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October 30, 1984

Mr. Douglas R. Norton
Office of the Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

I have read the preliminary report draft enclosed with your letter of October 25, 1984, which resulted from your limited review of the Boiler Advisory Board as set forth in ARS 41-2351 through 41-2379.

This report draft is in general agreement with my views and I agree with the thoughts contained therein.

My views were discussed with Peter N. Francis via telephone on October 29, 1984.

Sincerely,

Edwin J. Hauck

Edwin J. Hauck, Chairman
Boiler Advisory Board