

# ARIZONA STATE SENATE

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DATE: January 18, 2019

SUBJECT: Sunset Review of the Arizona Office of Administrative Hearings

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Attached is the final report of the sunset review of the Arizona Office of Administrative Hearings, which was conducted by the Senate Government Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona  
The Honorable Douglas A. Ducey

President of the Senate  
Senator Karen Fann

Speaker of the House of Representatives  
Representative Russell Bowers

Senate Government Committee Members  
Senator David Farnsworth, Chair  
Senator Sonny Borrelli, Vice-Chair  
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Arizona Office of Administrative Hearings  
Office of the Auditor General  
Arizona State Library, Archives & Public Records

**Senate Government  
Committee of Reference Report**

**Arizona Office of Administrative Hearings**

***Background***

Pursuant to [A.R.S. § 41-2953](#), the Joint Legislative Audit Committee assigned the sunset review of the Arizona Office of Administrative Hearings (OAH) to the Senate Government Committee of Reference. The Committee of Reference considered OAH's response to statutorily prescribed sunset factors.

OAH was established in 1995 to ensure that the public receives fair and independent administrative hearings (Laws 1995, Ch. 251 § 16). All state agencies supported by state General Fund sources, unless specifically exempted, and the Registrar of Contractors are required to use the services and personnel of OAH to conduct administrative hearings relating to appealable agency actions and contested cases. Additionally, OAH may provide administrative law judges on a contract basis to any governmental entity, including political subdivisions of the state.

The Director of OAH is appointed by the Governor and must have the experience necessary for appointment as an administrative law judge and possess supervisory, management and administrative skills. The Director is required to serve as the chief administrative law judge of the office, hire employees, make and execute contracts relating to OAH services and submit an annual report to the Governor and Legislature. Additionally, OAH is required to employ full time administrative law judges to conduct hearings ([A.R.S. § 41-1092.01](#)).

OAH is currently set to terminate on July 1, 2019 ([A.R.S. § 41-3019.05](#)).

***Committee of Reference Sunset Review Procedures***

The Committee of Reference held one public meeting on January 16, 2019 to consider the OAH's responses to the sunset factors and to receive public testimony.

***Committee Recommendations***

The Committee of Reference recommended that the Legislature continue OAH for eight years until July 1, 2027.

***Attachments***

1. OAH Sunset Report
2. Meeting Notice
3. Minutes of Committee of Reference Meeting

# **The Office of Administrative Hearings**

## **Sunset Review Report**

**Senate Government Committee  
and  
House of Representatives Judiciary and Public Safety  
Committee**

**Senator Sonny Borrelli, Chair  
Representative Eddie Farnsworth , Chair**



Greg Hanchett, Acting Director

August 28, 2018

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## **A. A.R.S. § 41-2954 FACTORS RESPONSES:**

### **1. The Objective and Purpose in Establishing the Agency and the Extent to Which the Objective and Purpose Are Met by Private Enterprise in Other States.**

a. The singular purpose of the establishment of the Arizona Office of Administrative Hearings (OAH) “is to ensure that the public receives fair and independent administrative hearings” (Laws 1995, Chapter 251, §16) arising out of state regulation. Prior to enactment of the 1995 legislation, each state agency, board, or commission conducted its own administrative hearings. These agency-by-agency hearings were inefficient in terms of cost and manpower resources and were frequently perceived by the citizenry to be biased in favor of the agency because the agency employed the Administrative Law Judge (ALJ). The OAH was created to take the hearings out of the individual agencies and enhance the independence and fairness of the hearing process. In doing so, the OAH substantially reduced the hourly cost of providing adjudicative services.<sup>1</sup>

The OAH hears all appealable agency actions and all contested cases from state agencies, unless the action or case arises within the exceptions contained in A.R.S. § 41-1092.02(A). An “appealable agency action” is “an action that determines the legal rights, duties, or privileges of a party and that is not a contested case.” A.R.S. § 41-1092. A “contested case” is “any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, [relating to Corporation Commission] price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.” A.R.S. § 41-1001.

State agencies that are supported by the State General Fund must use the OAH, and other agencies must contract with the OAH for services. A.R.S. § 41-1092.01(E). A few agencies are exempted by statute. A.R.S. § 41-1092.02(A). As of July 1, 2018, there were 32 statutorily exempted self-supporting regulatory boards listed in A.R.S. § 41-1092 that contract with the OAH via Interagency Service Agreement (ISA) for hearing services. Pursuant to A.R.S. § 41-1092.01(E), the OAH also provides hearing services to the Arizona Registrar of Contractors. The OAH also contracts with the Arizona Department of Education to adjudicate cases arising from the Individuals with Disabilities Education Act (IDEA).

During the 2016 legislative session, A.R.S. § 23-420(C) was amended to provide that the OAH would preside over cases emanating from citations issued by the Arizona Division of Occupational Safety and Health (ADOSH). During the most recent legislative session, the legislature preempted regulation of video service providers and cable operators (VSP) (2018 session laws, Chapter 331) and

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<sup>1</sup> Please see Paragraph B.1.b, following, or click here: [Following](#)



tasked the OAH with adjudicating VSP fee disputes between cities and providers. In this adjudicative setting, the OAH will render final agency decisions. The OAH also contracts with Arizona political subdivisions pursuant to A.R.S. § 41-1092.01(J) to conduct both contested case hearings and appealable agency actions for political subdivisions such as Arizona Fire Districts and the City of Phoenix.

b. As is true in Arizona, in other states administrative law adjudication services are provided by state agencies. Private enterprise does not carry out the function. The OAH is a member of the Central Panel Directors Conference that is comprised of 29 states whose administrative law functions are largely vested in an independent state agency (a central panel of ALJ's, hence the name) that carry out one function: adjudication of administrative disputes in a fair, independent, and impartial manner. In those states that have not adopted a central panel model, administrative law adjudication remains within individual agencies.

## **2. The Extent to Which the Agency has met its Statutory Objective and Purpose and the Efficiency With Which it has Operated.<sup>2</sup>**

The OAH has and continues to meet its singular statutory purpose efficiently and effectively. This is demonstrated by FY 2017 statistics regarding (1) litigant satisfaction surveys, (2) days between request for hearing and issuance of the recommended decision, (3) percentage of cases closed each year, (4) agency reversal rate of recommended decisions, and (5) the OAH's budget requests for general fund appropriations that have not increased in the last three fiscal years despite an increase in cases filed with the OAH. It is also reflected in the OAH's implementation in 2016 of \*mediation services that has resulted not only in a significant number of early and expeditious resolution of cases but also in a high percentage of successful mediations (in excess of 98% of cases that have gone to mediation).

Litigant satisfaction surveys reveal that satisfaction with hearing processes at the OAH is quite high. The surveys ask litigants nine questions including questions about the judge's impartiality, attentiveness to the hearing, and effectiveness in explaining the hearing process, and whether the litigant was treated courteously. Satisfaction with the process is quite high, with 88% to 95% of litigants rating these areas as either good or excellent.<sup>3</sup>

The efficiency with which cases are concluded (defined as the number of cases concluded divided by the number of cases filed) is also quite high, in excess of

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<sup>2</sup> At the time of the filing of this Sunset Review Report (August 31, 2018), statistics for 2018 had not yet been compiled and hence the FY 2017 annual report to the Governor has been used as the source of the statistics contained in this report. The OAH's FY 2018 report to the Governor will not be compiled and available until November 1, 2018. All of the OAH's annual reports going back to its first report issued in FY 1996 are available on line at <http://www.azoah.com/stats.html>.

<sup>3</sup> Please see Section B.2.b.i, following, for supporting data, or click here: [Responses](#)

98%.<sup>4</sup> By statute, the OAH is required to set hearings within 60 days after the OAH receives a request for hearing from the agency and to file recommended decisions within 20 days after the presentation of evidence in the matter has concluded. In practice, the OAH adjudicates matters much more quickly than required by statute. For example, for FY 2017, the number of days between agency requests for hearing to the issuance of the ALJ's decision in appealable agency actions is short, less than 65 days. The number of days between agency requests for hearing to the issuance of the ALJ's decision in contested case hearings is similarly expeditious, less than 66 days.<sup>5</sup> The frequency of agency rejection of ALJ recommended decisions is quite low, less than 2.5%.<sup>6</sup> Equally telling of the OAH meeting its statutory purpose is the fact that the OAH's recommended decisions that are contrary to the initial agency action are nonetheless affirmed by the final agency action 86% of the time.<sup>7</sup> Thus, the OAH is, in fact, providing the efficient independent forum envisioned by the legislature when the OAH was created in 1996.

The OAH's general fund appropriation requests have not increased significantly during the last five fiscal years, FY 2015 through FY 2019). Finally, all of these accomplishments have been achieved despite the fact that the OAH has reduced its FTE personnel by 27% (15 FTE down to 11 FTE, 1 ALJ vacancy, and two temporary ALJ's) from FY 2015 through FY 2018. Equally telling of the OAH's efficiency is the fact that during this same time period, case filings rose from 4,469 in FY 2015 to 5,784 cases filed in FY 2018, a 29% increase.

### **3. The Extent to Which the Agency Serves the Entire State Rather Than Specific Interests.**

By the very nature of its singular purpose—adjudication of administrative disputes in a fair, independent, and impartial manner—the OAH serves all citizens in the state of Arizona and is beholden to no specific interest or agency.

### **4. The Extent to Which Rules Adopted by the Agency Are Consistent With the Legislative Mandate.**

Because of its singular purpose, the OAH has a very limited number of administrative regulations (22 in all, A.A.C. R2-19-101 through R2-19-122) that regulate procedure in administrative hearings and provision of records for appellate review. The rules touch on such things as motion practice, conduct of the hearing, burden of proof, prohibition of ex parte communication, and requirements for preparation of the record for appeal to superior court. These rules do no more than implement the hearing procedures required by the Uniform Administrative Procedures Act (UAHP) (A.R.S. § 41-1092 through A.R.S. § 41-1092.12) and are wholly consistent with the UAHP. They exist only to the extent necessary to ensure that all parties receive a fair, impartial, and independent hearing.

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<sup>4</sup> Please see Section B.2.b.ii.1, following, for supporting data, or click here: [Number](#)

<sup>5</sup> Please see Section B.2.b.ii.2, following, for supporting data, or click here: [Timeliness](#)

<sup>6</sup> Please see Section B.2.b.iii.2, following, for supporting data, or click here: [Rejections](#)

<sup>7</sup> Please see Section B.2.b.iii.2, following, for supporting data, or click here: [Agency](#)

## **5. The Extent to Which The Agency Has Encouraged Input From the Public Before Adopting Its Rules And the Extent to Which it Has Informed the Public As to Its Action And their Expected Impact On the Public.**

Public comment was invited during initial rulemaking in 1998, including the State Bar, private practitioners, and the agencies, boards, and commissions. No comment has been received since initial rulemaking culminating in adoption of the OAH's rules on February 3, 1999. In 2014, a small change in language regarding statutorily prescribed procedure relating to superior court appeals necessitated a rule change to Ariz. Admin. Code R2-19-122(A) and 122(B). During this rule change, the OAH again actively sought public input (including the State Bar, individuals, and agencies, boards, and commissions) on the rule change.

The OAH has completed its second five-year rule's review and will this fall complete its third five-year rule's review.

At the suggestion of the Auditor General's office in the OAH's 2014 Sunset Review, the OAH has since 2015 posted the quarterly case filing fee and quarterly hourly fee charged to agencies for adjudication services. This quarterly posting is designed to assist agencies in forecasting costs for hearing services provided by the OAH. Please see <http://www.azoah.com/Rates.html>.

## **6. The Extent to Which the Agency has been Able to Investigate and Resolve Complaints that are Within its Jurisdiction.**

In creating the OAH, the legislature envisioned the use of highly trained judges who can provide full, fair, independent, and prompt hearings and decisions. To ensure that goal, the legislature gave the director the power in A.R.S. § 41-1092.01 to appoint judges to preside over cases, to provide for training on technical expertise, to solicit comments from litigants, and to set up and maintain a system to evaluate judges. The legislature also enabled the OAH to provide training to agencies on such things as administrative due process in order to ensure continuity and efficiency in the dispute resolution process. A.R.S. § 41-1092.01. The OAH has undertaken to advance each of these requirements by:

- a. Soliciting feedback from litigants in each case,
- b. Providing for annual performance reviews of ALJ's,
- c. Ensuring that ALJ's meet annual OAH mandated requirements for continuing legal education in areas of substantive law and due process,
- d. Annually reviewing ALJ decisions and hearings, legal education instruction, and complaints filed against ALJ's to evaluate whether individual ALJ's might need further training,
- e. Annually surveying agencies regarding the need for training in areas relating to due process for litigants in order to enhance protection of litigants' rights at all stages of the administrative process and to increase the efficiency of the administrative process, and

- f. Providing such training to agencies at no charge.

The OAH, recognizing the resource and time saving importance of alternative dispute resolution to litigants, implemented a mediation program in 2016. Mediation is a methodology whereby litigants are brought together with a trained mediator in an effort to allow the litigants to resolve their own disputes. Mediation saves time, money, and resources for both litigants and agencies. Please see <http://www.azoah.com/Mediation.html>

The OAH has had a high rate of success in mediation with over 93% of cases that have been mediated at the OAH settling without litigation resulting in substantial cost savings to the litigants and agencies involved.<sup>8</sup> All ALJ's employed as full time employees are required to complete the necessary 40 hours of training to become a trained mediator. The OAH intends to continue to implement and expand its mediation program which will result in additional cost savings to litigants and state agencies.

#### **7. The Extent to Which the Attorney General or any Applicable Agency of State Government has the Authority to Prosecute Actions Under the Enabling Legislation.**

As the OAH is an adjudicative agency and not an enforcement agency, there are no provisions that provide for prosecution and hence no prosecution function to be carried out by the Attorney General or other state government agency.

#### **8. The Extent to Which the Agency has Addressed Deficiencies in its Enabling Statutes that Prevent it from Fulfilling its Statutory Mandate.**

The original enabling statutes of Laws 1995, Chapter 251 were amended by Laws 1996, Chapter 102; Laws 1997, Chapter 221; Laws 1998, Chapter 57; Laws 2000, Chapter 112; Laws 2002, Chapters 254 and 277; Laws 2003, Chapter 202, Laws 2004, Chapter 288, §4; and Laws 2012, Chapter 322, 16.

Laws 1995, Chapter 251 established the OAH and the duties of the Director and mandated use of its personnel and services. Laws 1996, Chapter 102 elaborated on the distinction between “contested case” and “appealable agency action” and outlined the essential structure of the administrative process, including the setting of time limits for scheduling hearings and transmitting decisions. Laws 1997, Chapter 221 and Laws 1998, Chapter 57 incorporated the provisions of the Administrative Appeals Act of Title 41, Chapter 6, Article 6, including rules regarding discovery. In addition, the legislature enacted the provision giving OAH the authority to certify decisions not timely acted upon by agencies (A.R.S. § 41-1092.08(D)). In 2004, the legislature elaborated on the burden of persuasion under various situations with the exception of license renewals. A.R.S. § 41-1092.07(G) (Laws 2004, Chapter 288, §4). In 2012, the legislature extended settlement conferences to contested cases as well as appealable agency actions. A.R.S. § 41-1092.03(A)(4) (Laws 2012, Chapter

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<sup>8</sup> Please see Section A.2, *supra*, for supporting data or click here: [Mediation](#)

322, 16). Amendments subsequent to 2012 have added to OAH's jurisdiction but are not a result of any deficiencies in OAH's enabling statutes.

At present, there are no deficiencies in the OAH's enabling statutes (A.R.S. § 41-1092 *et seq.*) that prevent it from fulfilling its statutory mandate.

#### **9. The Extent to Which Changes are Necessary in the Laws of the Agency to Adequately Comply with the Factors Listed in the Sunset Law.**

Given the limited mission of the OAH, the OAH does not perceive that any changes to the enabling laws that created the OAH are needed in order to ensure that the OAH can comply with the factors discussed in this report.

#### **10. The Extent to Which the Termination of the Agency Would Significantly Harm the Public Health, Safety, or Welfare.**

As noted above, the OAH serves a plethora of agencies by providing adjudicative services in an independent forum for litigation arising out of state regulation including regulation of professional and occupational licensing and regulatory functions such as permitting for air and water quality issues. This adjudicative function provides important safeguards for Arizona citizens not only in adjudicating cases that impact the public health, safety, and welfare but equally importantly in providing a fair and impartial forum, unaffected by actual or perceived agency bias, in which disputes between citizens and state agencies can be adjudicated. This latter factor is the major reason for which the legislature created the OAH in 1996. If the OAH were sunsetted and the adjudicative function fell back to the individual agencies, the public's trust in the adjudication process would be seriously undermined. In addition, if the OAH were terminated, the hourly cost of adjudication would be expected to increase substantially. Finally, sunseting the OAH would result in a loss of quality control over provision of due process to litigants.

#### **11. The Extent to Which the Level of Regulation Exercised by the Agency Compares to Other States and is Appropriate and Whether Less or More Stringent Levels or Regulation Would be Appropriate.**

The OAH is not a regulatory agency, providing only adjudicative services for other state agencies. The legislative authority of the OAH is highly circumscribed and exists only to the extent necessary to ensure that the OAH can carry out its singular function of providing fair, impartial, and expeditious adjudication for matters arising out of state regulation.

#### **12. The Extent to Which the Agency has Used Private Contractors in the Performance of Its Duties as Compared to Other States and How Effective Use of Private Contractors Could be Accomplished.**

The OAH has used private contractors (temporary ALJ's) in order to fulfill the directives of A.R.S. § 41-1092.01(I). That statute favors the use of full time ALJ's employed by the OAH but permits the use of properly qualified independent contractors "[i]f the office cannot furnish an office administrative law judge promptly"

in response to an agency request for hearing. In light of a declining budget, the OAH first began using utilizing independent contractors as temporary ALJ's (via an Arizona Department of Administration Request for Procurement) in the spring of 2016 to meet the demands of a burgeoning case load and maintain efficient, cost effective adjudication.

In light of the statutory preference contained in A.R.S. § 41-1092.01(i) for utilizing ALJ's employed by the OAH and the present annual case load (5,784 for FY 2018), the OAH's present methodology of utilizing independent contractors appears to be the right balance of reducing expenses while still comporting with statutory intent. The OAH will continue to closely monitor caseloads and continue to utilize independent contractors to serve as temporary ALJ's as needed in order to ensure that Arizona citizens receive the highest quality adjudicative services at the lowest possible cost to the taxpayers.

**13. The Extent to Which the Agency Potentially Creates Unexpected Negative Consequences That Might Require Additional Review by the Committee of Reference, Including Increasing the Price of Goods, Affecting Availability of Services, and Limiting the Abilities of Individuals and Businesses to Operate Efficiently and Increasing the Cost of Government.**

As the OAH is not a regulatory agency, but rather exists solely to provide fair and impartial adjudication of agency cases, it creates no unexpected negative consequences that should require additional review by the committee of reference. The OAH's authority to adjudicate appealable agency actions and contested case hearings has no effect on the costs of goods nor does that power limit the ability of individuals and businesses to operate efficiently. To the contrary, the OAH's authority to adjudicate cases stands as a check to unfettered agency power by providing a fair, independent, and impartial forum for litigants that is untainted by any agency machinations. In this regard, the OAH in fact reduces the cost of agency regulation upon the citizenry. And as noted above, the centralization of adjudicative functions in the OAH has substantially decreased the cost of adjudicating disputes arising out of agency regulation.

**B. FOUR ADDITIONAL QUESTIONS**

**1. Problems or Needs the Agency is Intended to Address.**

**a. Perception of Unfairness and Bias**

Prior to the creation of the OAH, administrative hearings were conducted by hearing officers who were either employees or contractors of the agencies whose actions were at issue in the hearing. The employee/employer relationship between the agency and the hearing officer made it understandably difficult for the public to be sure that the hearing officer remained impartial. Hearings were conducted at the agencies themselves, creating a sense of a "home-court advantage" for the agency. The OAH was created to address the problem of

perception involved in such in-house proceedings and to ensure unbiased adjudication of administrative disputes. Transferring hearings to an independent agency for adjudication by ALJ's with no relationship with and not beholden to any agency has enhanced public confidence in the process.

### **b. Inefficiency Resulting from Duplicated Processes among Agencies.**

The centralization of hearings in the OAH has resulted in substantially increased efficiencies and concomitant decreases in cost due to the economies of scale inherent in a central panel adjudicative body. As a result, the total cost of conducting hearings for the general fund agencies has decreased since the function was transferred to the OAH. Prior to the centralization of adjudicative functions in the OAH, the average cost per case for hearings conducted within agencies was \$918.77. **\*Following** the creation of the OAH, this average cost per hearing fell to \$343.87, a cost decline of almost 63%. The average cost per case continues to decline as exemplified by the recent fiscal year which had an average cost per case of just under \$277.00.<sup>9</sup>

### **c. Lack of Training**

Prior to the creation of the OAH, another problem was the lack of uniform training for ALJ's. This included several criticisms of levels of competence of hearing officers within certain agencies.

After the advent of the OAH, this problem has been addressed both statutorily and through internal policies at the OAH. A.R.S. § 41-1092.01(C)(7) requires the OAH to provide technical training to ALJ's. A.R.S. § 41-1092.07(A) created a statutory right to file a non-peremptory motion with the OAH director to disqualify an ALJ for bias, prejudice, personal interest or lack of technical expertise necessary for a particular hearing.

Internal policies require ALJ's to attend state bar sponsored continuing legal education and the OAH provides several hours per year of additional continuing education opportunities to ensure professional development. Whenever a recommended decision is either modified or rejected, the ALJ is required to review the final agency decision to determine whether the modification or reversal was due to error on the part of the judge. Since 2015, the acting director and assistant presiding judge annually review multiple sources of input including litigant feedback, listening to random hearing recordings, reviewing any complaints or motions for change of judge, and reviewing random written decisions to determine whether an individual judge is in need of additional training. Finally, each ALJ is required to successfully complete a 40 hour training course in mediation.

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<sup>9</sup> (Average cost per case is determined by dividing the total annual budget by the number of cases filed).



## **2. Statement in Qualitative and Quantitative Terms of the Objectives of the Agency and Its Anticipated Accomplishments.**

### **a. Qualitative Statement of the Objectives of the OAH.**

The OAH has a singular objective which is well summed up in our mission statement: We will contribute to the quality of life in the state of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of state regulation. By explicitly recognizing that we are a government of fellow citizens, the takes very seriously its legislative mandate to provide fair, impartial, and independent hearings.

### **b. Quantitative Statement of the Objectives of the OAH.**

#### **i. Fairness and Impartiality: Public Evaluation**

Since its inception, the OAH has, in conformity with A.R.S. § 41-1092 (), provided litigants with the opportunity to provide direct feedback on their experience at the OAH via written evaluations. These evaluations can be submitted either at the OAH's offices or online and either before or after the issuance of the final agency decision. Responses to evaluations are categorized by four types of litigants: unrepresented private party, represented private party, counsel for private party, and agency counsel. The results are not disclosed to the ALJ but are annually compiled and reported to the governor and the legislature. These statistics demonstrate a true process of independent adjudication, the competence of the ALJ's, and the acceptance of the independent process by agencies, boards, and commissions. The essential function of the evaluations is to continuously monitor whether the OAH is providing a respectful forum to all litigants which is conducive to the ascertainment of the truth in litigated proceedings.

Persons responding to the evaluations are asked to rate the following categories, on a scale of excellent, good, satisfactory or poor:

1. Attentiveness of the ALJ
2. Effectiveness in explaining the hearing process
3. ALJ's use of clear and neutral language
4. Impartiality
5. The effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions

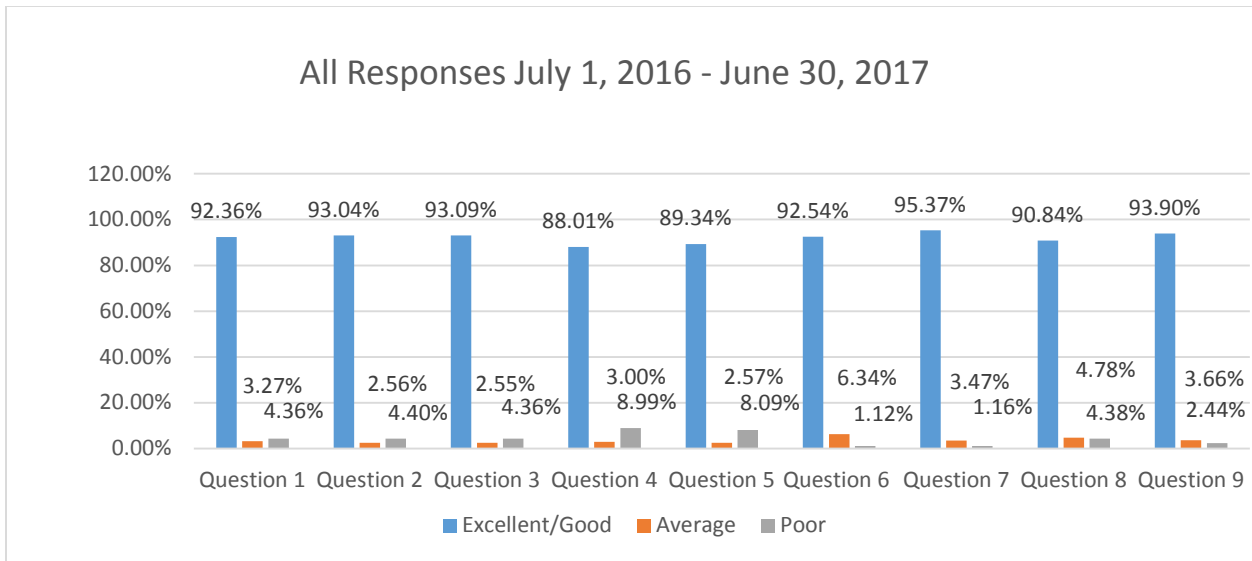


8. Questions responded to promptly and completely

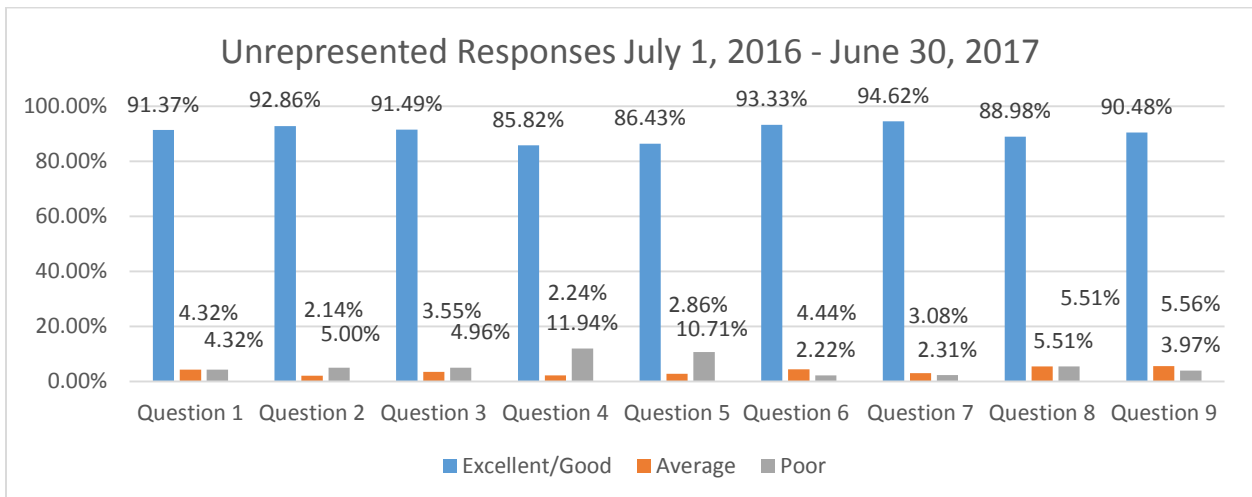
9. Treated courteously

The results indicate that satisfaction is high among all groups, with those responding to the evaluation rating the OAH as excellent to good in all categories.

**\*Responses Graph:**



Perhaps even more telling of the quantitative effectiveness of the OAH are those responses provided by unrepresented litigants. Even among this most vulnerable group, the OAH is seen to be functioning very well in all categories, as the below graph shows:



ii. Timeliness

1. **\*Number** of cases filed versus cases concluded:

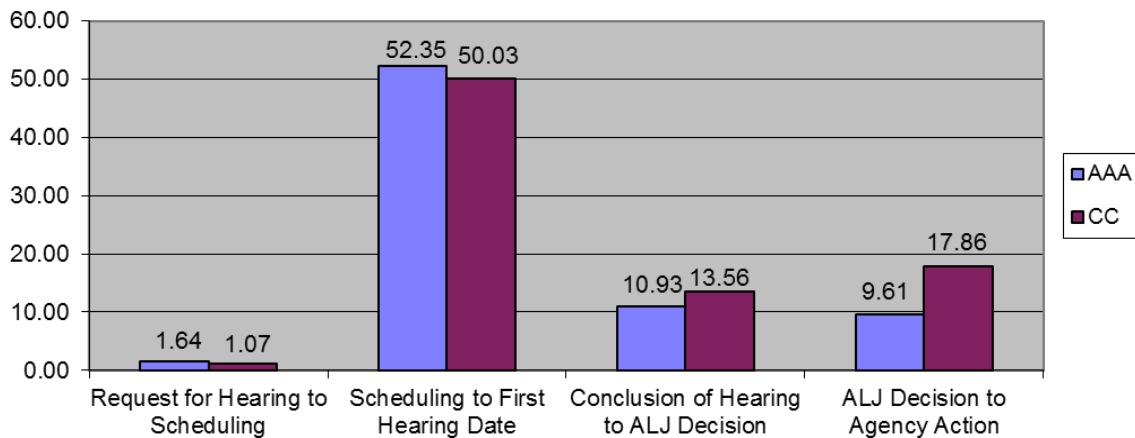
There is no case back log at the OAH and cases are adjudicated quickly. In FY 2017, 5,426 cases were filed and 5,354 cases were concluded. The conclusion rate of cases (defined as cases concluded divided by new cases filed) was in excess of 98% (98.67%). Since its inception, the OAH has never fallen below a 93% conclusion rate.

2. Timeline of case management

By statute, the OAH is required to set hearings within 60 days after the OAH receives a request for hearing from the agency and to file recommended decisions within 20 days after the presentation of evidence in the matter has concluded. In practice, the OAH adjudicates matters much more quickly than required by statute. For example, for FY 2017, the number of days between agency requests for hearing to the issuance of the ALJ's decision in appealable agency actions was short, less than 65 days. The number of days between agency requests for hearing to the issuance of the ALJ's decision in contested case hearings is similarly expeditious, less than 66 days.

**\*Timelines** graph:

**Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases**



iii. Quality

1. Incidence of Rehearing and Appeal

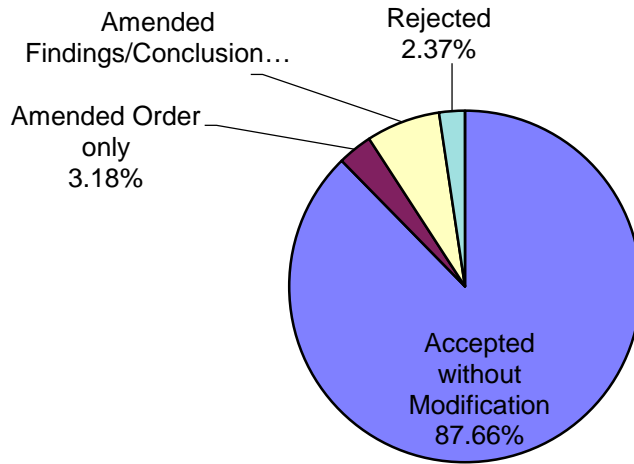
Agencies may, after issuing a final decision, grant a rehearing to a party under A.R.S. § 41-1092.09. In FY 2017, the rehearing rate (defined as rehearings divided by cases heard) was 0.7%. Appeals to superior court of final agency actions are provided for in A.R.S. § 41-1092.08(H). The judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) is also very low, 2.53%.

	Rehearings	Appeals
Arizona Health Care Cost Containment System	3	2
Department of Real Estate	1	2
Department of Real Estate - H/C	2	2
Registrar of Contractors	4	10
Arizona State Retirement	-	1
Department of Child Safety	-	2
Department of Economic Security - APS	-	1
Department of Environmental Quality	-	1
Department of Health Services	-	8
Department of Water Resources	-	1
Funeral Board	-	1
Special Education	-	2
State Board of Nursing	-	3
<b>Totals</b>	<b>10</b>	<b>36</b>

2. Agency Acceptance of ALJ decisions

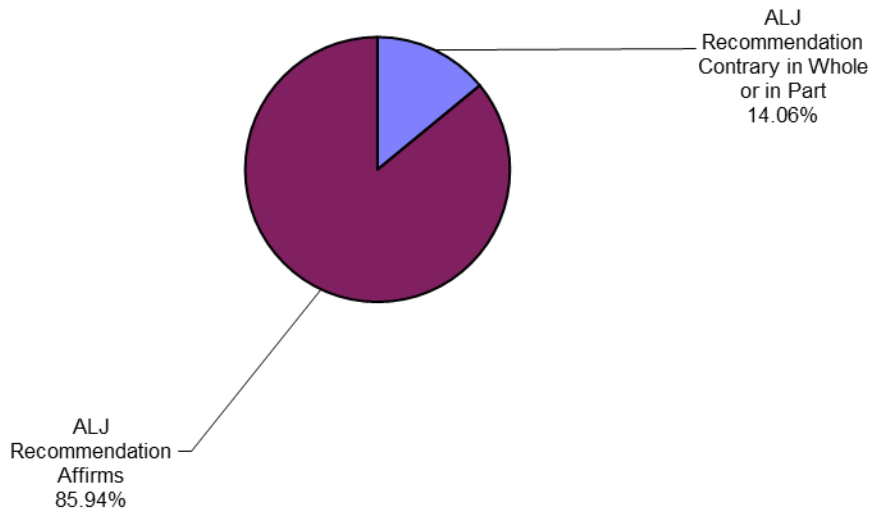
Agency acceptance of the ALJ's Decisions are high with 87.66% of all decisions acted upon by the agencies being accepted without modification. Agency acceptance was 90.84% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the ALJ. Of the modifications made by the agencies, 31.85% were in the Recommended Order (penalty portion).

**\*Rejections** and Amendments of Recommended Decisions graph:



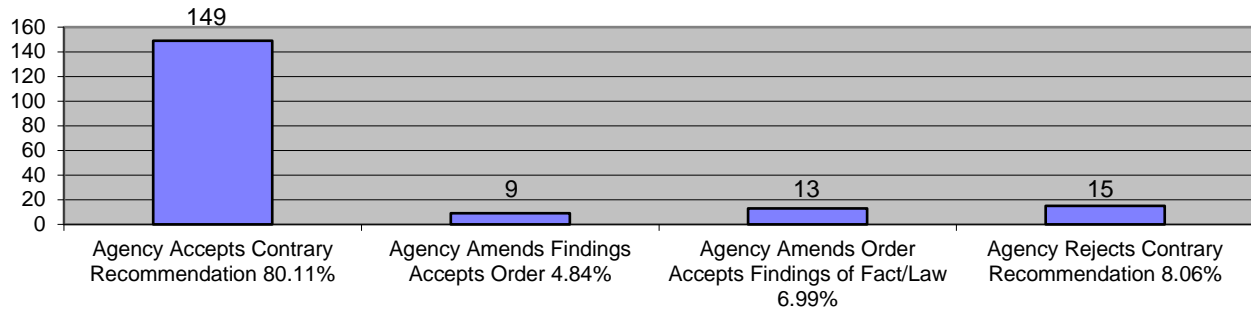
In FY 2017, ALJ's rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 14.06% of cases.

**Recommendations Contrary to Original Agency Action FY 2017**



Equally telling of the OAH meeting its statutory purpose is the fact that the OAH's recommended decisions that are contrary to the initial agency action are nonetheless **affirmed** by the final agency action in excess of 91% of the time (91.94%).

**\*Agency Response to Contrary Recommendation FY 2017**



**c. Implications of the Qualitative Statistics**

The statistics noted above demonstrate a true process of independent adjudication, the competence of the ALJ's, and the acceptance of the independent process by agencies, boards, and commissions.

**d. Additional Accomplishments**

- i. Electronic Filing, Web-based Cases, and Electronic Transmission of Appeals to Superior Court.

The OAH receives and responds to requests from agencies for hearings electronically, transmits its recommended ALJ decisions to the agencies, and receives the agencies' final agency actions through secured web pages.

The OAH has created a program to build web-based dockets that allow parties and the ALJ exchange pleadings and orders in real time in paperless form. A second program extracts the electronic data to create paperless appeals records for eventual transmission to superior court in the event of an administrative appeal.

Finally, case records from the OAH hearings that are appealed to superior court in Maricopa County are all transmitted electronically. The OAH is continuing to work to expand electronic filing of records with other counties in Arizona.

- ii. Implementation of Mediation Program to Reduce Costs and Stress to Litigants and Agencies.

The OAH, recognizing the resource and time saving importance of alternative dispute resolution to litigants, implemented a mediation program in 2016. Mediation is a methodology whereby litigants are brought together with a

trained mediator in an effort to allow the litigants to resolve their own disputes. Mediation saves time, money, and resources for both litigants and agencies. Please see <http://www.azoah.com/Mediation.html>.

The OAH has had a high rate of success with over 93% of the 54 cases that have been mediated at the OAH settling without litigation, resulting in substantial cost savings to the litigants and agencies involved. All ALJ's employed by the OAH are required to complete the necessary 40 hours of training needed to become a trained mediator. The OAH has been able to utilize mediation for a wide variety of cases including Registrar of Contractors cases (e.g., homeowner complaints and contractor no pay cases), some AHCCCS eligibility cases, licensing cases, and even one adult protective services case. The OAH intends to continue to implement and expand its mediation program which will reduce strains on resources with a concomitant reduction in costs to litigants and state agencies.

iii. The OAH Hearing Occupational Health and Safety Cases:

During the 2016 legislative session, A.R.S. § 23-420(C) was amended to provide that the OAH would preside over cases emanating from citations issued by the Arizona Division of Occupational Safety and Health (ADOSH). In two fiscal years, over 100 case relating to occupational safety and health have been filed at the OAH. The OAH has provided efficient and effective resolution of these matters, which has included mediation of these cases.

iv. The OAH Hearing Video Service Provider Rate Disputes:

The OAH's reputation for providing fair, independent, and efficient adjudication has also resulted in the OAH being given additional hearing jurisdiction in the most recent legislative session. The 2018 legislature preempted regulation of video service providers and cable operators (VSP) (2018 session laws, Chapter 331) and tasked the OAH with adjudicating VSP fee disputes between cities and providers. In this adjudicative setting, the OAH will render final agency decisions.

v. Providing Hearing Services for Arizona Political Subdivisions:

The OAH also contracts with Arizona political subdivisions pursuant to A.R.S. § 41-1092.01(J) to conduct both contested case hearings and appealable agency actions for political subdivisions such as Arizona Fire Districts and the City of Phoenix.

### **3. Identification of Other Agencies Having Similar, Conflicting, or Duplicate Objectives and an Explanation of the Manner in which the OAH Avoids Duplication or Conflict with Such Other Agencies.**

#### **a. Other Agencies Having Adjudication Authority:**

All state of Arizona regulatory agencies, boards, and commissions, unless specifically exempted, are required to transfer formal hearings to the OAH. The following agencies are exempt under A.R.S. § 41-1092.01.02:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, except as provided in Title 28, Chapter 30, Article 2.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:
  - (a) Income tax or withholding tax.
  - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to applications for issuance or renewal of a certificate and discipline of certificate holders pursuant to sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

## **b. Agencies Having Duplicative or Conflicting Functions**

These exempted agencies do not represent a duplication of effort nor do they conflict with the mission of the OAH.

## **4. Consequences of Eliminating the Agency or of Consolidating it with Another Agency.**

### **a. Need for Alternative Hearing Forum**

Elimination of the OAH would require that contested cases and appealable agency actions be adjudicated elsewhere and with other personnel. Hearings would have to be conducted either by contract hearing officers or by employees of the agencies. The cost of contract hearing officers is approximately double the adjusted hourly rate of the OAH's ALJ's. When cases were previously adjudicated by the agency in-house, hearing officers historically were underutilized because the ebb and flow of cases required fulltime hearing officers despite substantial inactivity in some agencies. Returning cases to the agencies would require the employment of more hearing officers because all economies of scale would be lost. Perhaps most concerning is that the problem of the perception that hearings are influenced by the relationship of the hearing officer and the agency would rear its head once more, creating insurmountable doubt among the public about the fairness of the hearing process.

### **b. Increased Cost**

The cost of hearings would increase due to the loss of the economies of scale.

### **c. A loss of training**

There would be no central repository of training and no uniform monitoring of the evaluation of the competency of judges. In addition, the valuable contribution of collegiality and cross-training among varied disciplines would be lost.

### **d. No central agency to monitor timely agency decisions**

No entity would certify decisions that are not timely acted upon by the agencies, creating uncertainty for regulated parties.

### **e. Loss of Uniform Rules**

Agencies' ability to rely on the current uniform rules would be lost, and the concomitant uniformity in practice procedures would be lost. In turn, this would again create a virtually insurmountable quagmire of various rules for various agencies, making practice infinitely more difficult for both unrepresented individuals and counsel.



**f. Loss of Resource of Public and Agency Education**

There would be no entity to provide uniform education to the public and agencies about due process requirements and the hearing process. This would result in ascertainable denigration of the entire administrative adjudication process.

**g. Loss of Legislative Evaluation Tool**

The legislature would lose centralized, comprehensive reporting of performance measures reflecting the quality of administrative justice in Arizona.

**C. FINANCIAL DATA**

**1. Number of Full-Time Employees**

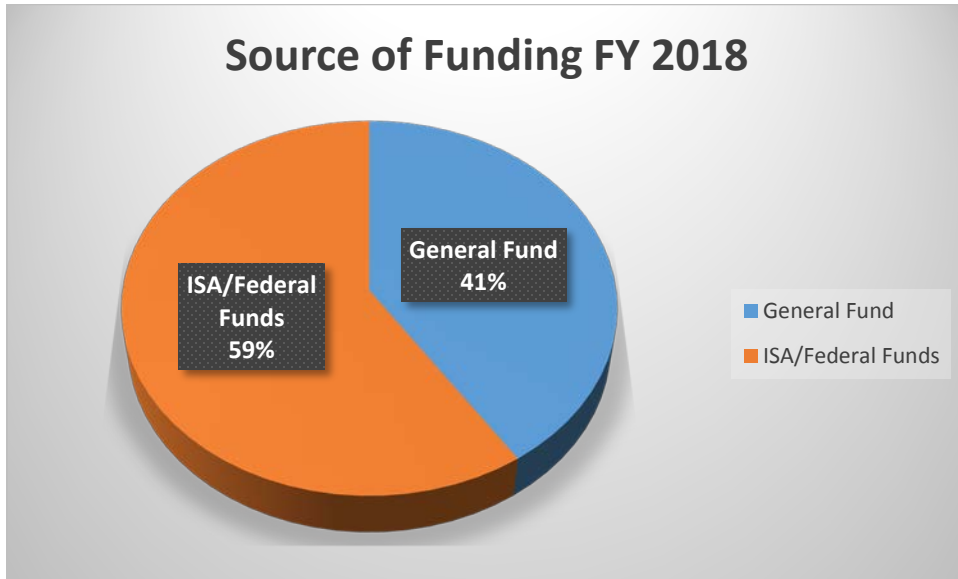
The OAH has 12 full-time positions, including the Director, the Office Manager, seven Administrative Law Judges, and three support staff. In addition to the full-time employees and when it makes business sense to do so, the OAH utilizes the services of Temporary Administrative Law Judges for specific cases.

**2. Expenditures (in thousands)**

	Estimated FY 2019
Personal Services	935.5
Employer Related Expenditures	331.7
Other Professional and Outside Services	110.0
Travel	1.3
Risk Management	3.5
COP Building Rent Charge	191.0
Other Operating (IT, etc...)	53.7
Office Supplies	4.0
Misc. Operating (other)	22.9
Other Equipment Non-Capitalized & Licenses	9.2
<b>Total</b>	<b>1,662.8</b>

### 3. SOURCE OF FUNDS

The OAH is primarily funded through intragovernmental service agreements (ISA's) with agencies, boards and commissions that are not supported by the general fund pursuant to A.R.S. § 41-1092.01(E), and federal funds for Title XIX and XXI hearings.



## ARIZONA STATE SENATE

### INTERIM MEETING NOTICE OPEN TO THE PUBLIC

#### SENATE GOVERNMENT COMMITTEE OF REFERENCE FOR THE SUNSET REVIEW OF THE OFFICE OF ADMINISTRATIVE HEARINGS

**Date:** Wednesday, January 16, 2019  
**Time:** 2:15 P.M. or Upon Adj. of the Senate FIN Committee  
**Place:** SHR 3

#### AGENDA

1. Call to Order
2. Roll Call
3. Sunset Review of the Office of Administrative Hearings (OAH)
  - a. Presentation by OAH
  - b. Public Testimony
  - c. Discussion and Recommendations by the COR
4. Adjourn

#### Members:

Senator David C. Farnsworth, Chair  
Senator Lela Alston  
Senator Sonny Borrelli  
Senator Vince Leach  
Senator Juan Mendez  
Senator Frank Pratt  
Senator Victoria Steele

1/10/19  
HF

For questions regarding this agenda, please contact Senate Research Department.  
Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602) 926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

# ARIZONA STATE SENATE

## SENATE GOVERNMENT COMMITTEE OF REFERENCE FOR THE SUNSET REVIEW OF THE OFFICE OF ADMINISTRATIVE HEARINGS

Minutes of the Meeting  
January 16, 2019  
2:15 p.m., Senate Hearing Room 3

### **Members Present:**

Senator David C. Farnsworth, Chair  
Senator Lela Alston  
Senator Sonny Borrelli  
Senator Vince Leach  
Senator Juan Mendez  
Senator Frank Pratt  
Senator Victoria Steele

### **Staff:**

Michael Hans, Senate Research Staff

Chairman Farnsworth called the meeting to order at 4:50 p.m. and attendance was taken.

Senator Farnsworth gave opening remarks and answered questions posed by the Committee.

## **SUNSET REVIEW OF THE OFFICE OF ADMINISTRATIVE HEARINGS (OAH)**

### **Presentation by OAH**

**Greg Hanchett, Acting Director, Office of Administrative Hearings**, distributed and explained a handout entitled "The Office of Administrative Hearings" (Attachment A).

Senator Farnsworth offered comment.

Mr. Hanchett answered questions posed by the Committee.

### **Public Testimony**

**John Sellers, representing himself**, testified in support of the continuation of The Office of Administrative Hearings and answered questions posed by the Committee.

Senator Borrelli announced the individuals who registered on the RTS system (Attachment B).

Senator Farnsworth called for discussion, no discussion was offered.

**Discussion and Recommendations by the COR**

**Senator Borrelli moved that the Committee of Reference recommend that the Office of Administrative Hearings be continued for eight years of service. The motion CARRIED by voice vote.**

There being no further business, the meeting was adjourned at 5:24 p.m.

Respectfully submitted,

Toy Brown  
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)