

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, November 2, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Sylvia Simpson	Chief Financial Officer
	Mark Norton	ADOSH Director
	Phil Murphy	Assistant ADOSH Director
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary
	Yvonne Borunda	Acting Commission Secretary

Chairman Kavanaugh convened the meeting at 1:02 p.m. In attendance, confirmed by roll call Anne Ryman (ABC15); Paige Millan and Stephanie Hefner (Snell and Wilmer); and Patricia Altamirano (Horse Chipout Pool, LLC).

Approval of Minutes of October 26, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the October 26, 2023 regular session meeting and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2024.

Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and set forth the maximum and current assessment rates. The Commission is authorized under § 23-961(G) to levy an assessment to fund the Administrative Fund. The maximum allowed is 3% and the current Administrative Fund rate for calendar year 2023 is 2.0%. In fiscal year 2023 the total assessment revenue for the Administrative Fund was \$19.3 million and total expenses were \$21.5 million resulting in a change to the operating cash balance of \$2.2 million. The Commission is authorized under § 23-1065(A) and 23-1065(F) to levy assessments to fund the obligations of the Special Fund. The maximum assessments allowed are 1% for 1065(A) for general Special Fund liabilities and 1/2% under 1065(F) for Apportionment for a combined maximum rate of 1.5%. For calendar year 2023 the assessment rate is 0% under both statutes.

Ms. Simpson reviewed the four premium options for calendar year 2024 of 2%, 1%, no change and decrease of 1% from the current 2.0% in premium projections along with the cash balance, operating budget and expenditures. Ms. Simpson noted the current headcount of full time employees, the additional responsibilities for several of the division in the Agency and the request for additional full time employees to fill vacant positions from the hiring freeze and the need for increased funding of \$2.2 million dollars and the need to increase revenue. If the Commission wishes to maintain at least \$5 million operating cash in the Administrative Fund Account from Tax revenues on a quarterly basis, which is a goal and not a rule, Ms. Simpson recommends increasing the CY24 assessment rate by .25% bringing the rate to 2.25%. This would provide sufficient funds and an operating cushion and cover the increased additional full time employees.

Chairman Kavanaugh noted they talked about efforts to bolster vocational rehabilitation training assistance through the Special Fund, he noted the Fund is sound enough and sufficient revenues to address any additional retraining needs for injured workers.

Ms. Simpson reviewed the options for 2024 for §§ 23-1065(A) and 1065(F), noting the fund is actuarially sound as of June 30, 2023 with a healthy unrestricted balance. Ms. Simpson recommended maintaining the 0% rate for both §§ 23-1065(A) and 1065(F) for CY 2024.

Chairman Kavanaugh asked if there were any comments.

Commissioner Everett noted on Exhibit “C” the insolvent employers, he asked if they will go away over time.

Ms. Simpson noted everything is the life of the claim, so as some of these are very old, the claim would remain open for the life of the claimant, she was not sure of the ages of some of the claims, and they will fall off over time, but during the life of the claimant they can reopen a claim.

Commissioner Valdez moved to increase the assessment rate under § 23-961(G) to 2.25%; under § 23-1065(A) at 0%; and under § 23-1065(F) 0% for CY 2024. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Kavanaugh discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Fabco Enterprises, Inc.	Complaint	
DBA Family Auto Body & Refinishing	Years in Business:	45
3340 E Mossman Rd	Empl. Covered by Inspection:	17
<u>Tucson, AZ 85706</u>		
Site Location:	3340 E Mossman Rd	
	Tucson, AZ 85706	
Inspection No:	CP-2023-MB431-0013	
Inspection Date:	August 18, 2023	

- a) Corner of Rocking Horse Ln and Needles St: Two employees had conducted solar panel installation on a steep roof of a residential home without the use of fall protection equipment.
29 CFR 1926.501(b)(13)
Div. Proposal - \$7,813.00 Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2 –

- a) Corner of Rocking Horse Ln and Needles St: An employee had conducted solar panel installations on a roof without receiving training by a competent person. 29 CFR 1926.503(a)(2)
Div. Proposal - \$7,813.00 Formula Amt. - \$7,813.00
- TOTAL PENALTY - \$15,626.00 TOTAL FORMULA AMT. - \$15,626.00

Mr. Norton discussed ADOSH’s inspection, summarized the citation and proposed penalties.

Commissioner Valdez moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action Revising Reasonable Rates for Attorney Fee Petitions Pursuant to Arizona Revised Statutes (A.R.S) § 23-1069.

Chairman Kavanaugh noted that with the resent Attorney Fee Petitions brought before the Commission and had asked the Legal Division Staff to update their recommendations from 2013 to the current time based on current market.

Ms. Peimani noted the Legal Division provides recommendations for Attorney Fee Petitions under A.R.S. § 23-1069. In 2013 the reasonable rate for a specialist in workers’ compensation was \$185 per hour and for a non-specialist \$165 per hour. She discussed the evaluation process to determine new proposed hourly rates. The Legal Divisions recommended the hourly rate for attorneys be increased given that the market rates have changed over 10 years and that the new hourly rate for a specialist in workers’ compensation should be \$290 per hour and non-specialist should be \$250 per hour.

Vice Chair Hennelly moved to approve revising the reasonable rate for Attorney Fee Petitions. Commissioner Valdez seconded the motion.

Chairman Kavanaugh commented that he appreciated the variety and detail of the work to update the figures to arrive at more of a fair market value.

Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Kavanaugh confirmed Commission meeting dates through December 2023 are posted.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:56 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____

Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary