



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR H.B. 2209

industrial commission of Arizona; continuation

Purpose

Continues the Industrial Commission of Arizona (ICA) for four years and prescribes additional responsibilities for the ICA and its divisions related to workplace inspections, violations and State Plan proposals. Continues the Arizona Division of Occupational Safety and Health (ADOSH) Advisory Committee, the Occupational Safety and Health Review Board (OSHA Review Board) and the Boiler Advisory Board for eight years.

Background

The ICA oversees various functions related to labor and employment in Arizona, including occupational safety and health, youth employment laws, wage dispute resolutions, minimum wage, vocational rehabilitation and whistleblower discrimination complaints. Additionally, the ICA implements the constitutional requirement to establish a workers' compensation program. The policy-setting body for the ICA is a five-member commission. Commissioners are appointed by the Governor and confirmed by the Senate to staggered five-year terms. The ICA is a self-supporting agency whose operations and other statutorily mandated functions are funded through an annual assessment on workers' compensation premiums ([Ariz. Const. art. 18 § 8](#); [A.R.S. Title 23](#)).

A State Plan is a U.S. Occupational Safety and Health Administration (OSHA)-approved workplace safety and health program operated by an individual state or U.S. territory. State Plans are monitored by OSHA and must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses and deaths. Arizona's State Plan, approved in 1985, is operated by ADOSH, a division of the ICA, and covers most private sector workers and all state and local government workers ([OSHA](#)).

The ADOSH Advisory Committee provides recommendations and assistance to the ICA in drafting occupational safety standards and regulations. The ADOSH Advisory Committee is appointed by the ICA and is composed of a reasonably balanced representation of members of regulated industries, including agriculture, labor and others knowledgeable in safety and health ([A.R.S. § 23-409](#)).

The OSHA Review Board hears and rules on appeals of administrative law judge decisions generated under ADOSH. The five members are appointed by the Governor and who by reason of training, education or experience are qualified to carry out the OSHA Review Board powers and duties ([A.R.S. § 23-422](#)).

The Boiler Advisory Board assists the ICA in drafting standards and regulations for boilers, pressure vessels and lined hot water heaters. The five ICA-appointed members are composed of one licensed contractor, an owner or operator of a boiler, pressure vessel or lined hot water heater and one representative each from the boiler industry, a public utility and the insurance industry ([A.R.S. § 23-486](#)).

The Senate Government Committee of Reference (COR) held a public meeting on January 17, 2024, to conduct the sunset reviews of the ICA, the ADOSH Advisory Committee, the OSHA Review Board and the Boiler Advisory Board. The COR recommended that the ICA, the ADOSH Advisory Committee, the OSHA Review Board and the Boiler Advisory Board each be continued for two years until July 1, 2026 ([COR Report](#)). The ICA, ADOSH Advisory Committee, OSHA Review Board and Boiler Advisory Board terminate on July 1, 2024, unless continued by the Legislature ([A.R.S. Title 41, Chapter 27, Article 2](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Continues, retroactive to July 1, 2024, the ADOSH Advisory Committee, the OSHA Review Board and the Boiler Advisory Board until July 1, 2032.
2. Continues, retroactive to July 1, 2024, the ICA until July 1, 2028.
3. Requires the ICA, before submitting the ADOSH State Plan proposal or proposed adoption to OSHA, to submit the proposal or proposed adoption to the Joint Legislative Audit Committee (JLAC), which may review and recommend that the ICA amend the proposal or proposed adoption.
4. Requires ICA Labor Department determinations, penalties and fines for labor violations to be considered, authorized and determined by a vote of ICA Commissioners present and voting.
5. Requires ICA Commissioners to consider whether a labor violation continues after the employer's course of conduct has ceased.
6. Prohibits the Director of ADOSH from allowing an individual to accompany a compliance safety and health officer when conducting a workplace inspection for the ICA unless the individual is:
 - a) an employee of the employer being inspected;
 - b) a safety consultant, attorney or other agent of the employer or a person present with the consent of the employer;
 - c) the authorized employee representative;
 - d) a third party who is required by law to accompany the compliance safety and health officer to ensure that the State Plan is at least as effective as the federal OSHA Act of 1970; or
 - e) otherwise required by law to be present.
7. Allows an employer to require the following conditions for a third party who accompanies a compliance safety and health officer during a workplace inspection:
 - a) that not more than one individual be present unless otherwise required by law;

- b) that the individual follow all workplace safety rules regarding personal protective equipment applicable to all visitors for the workplace;
 - c) that the individual is required to complete any safety trainings applicable to all visitors of the workplace;
 - d) that the individual sign a confidentiality agreement with respect to the use of confidential information learned during the inspection that has the same terms as required for other visitors; and
 - e) that nonemployees, other than the compliance safety and health officer, may not enter areas that contain trade secrets.
8. Allows the compliance safety and health officer to consult with a reasonable number of employees who work in the identified trade secret area on matters of safety and health, even if those employees are not joining the inspection.
 9. Determines that information obtained by the ICA or its representatives during a workplace inspection that contains or that may reveal a trade secret is confidential.
 10. Defines *authorized employee representative* as an agent of a labor organization that has a collective bargaining relationship with the employer who represents employees who are members of the collective bargaining unit.
 11. Repeals the ADOSH Advisory Committee, the OSHA Review Board and the Boiler Advisory Board on January 1, 2033.
 12. Repeals the ICA on January 1, 2029.
 13. Declares the Legislature's intent to request JLAC to assign the sunset review of the ICA to the Office of the Auditor General to conduct a performance audit.
 14. Contains purpose statements.
 15. Makes technical and conforming changes.
 16. Becomes effective on the general effective date, with retroactive provisions as noted.

Amendments Adopted by Committee of the Whole

1. Adds the eight-year continuations of the ADOSH Advisory Committee, the OSHA Review Board and the Boiler Advisory Board.
2. Extends the continuation of the ICA by one year, until January 1, 2028.
3. Requires ICA Labor Department determinations, penalties and fines for labor violations to be considered, authorized and determined by a vote of ICA Commissioners, rather than a *supermajority* vote.
4. Replaces the term *inspector* with the term *compliance safety and health officer* for the purposes of provisions relating to workplace inspections.

5. Adds an exception to the prohibition relating to workplace inspections for the purposes of allowing third parties who meet certain requirements to accompany a compliance safety and health officer when conducting workplace inspections.
 6. Outlines conditions that an employer may require for a third party who accompanies a compliance safety and health officer during a workplace inspection.
 17. Removes the requirement for JLAC to review any ADOSH State Plan proposal or proposed adoption prior to submittal to OSHA and instead requires the ICA to submit the ADOSH State Plan proposal or proposed adoption to JLAC, which may review and recommend that the ICA amend the proposal or proposed adoption.
7. Makes technical and conforming changes.

House Action

Senate Action

WM	2/13/24	DP	10-0-0-0	FICO	3/18/24	DP	4-3-0
3 rd Read	2/29/24		28-30-1-0-1				
3 rd Read*	2/29/24		31-28-0-0-1				

* *On reconsideration*

Prepared by Senate Research

June 14, 2024

MG/cs