



A REPORT
TO THE
ARIZONA LEGISLATURE

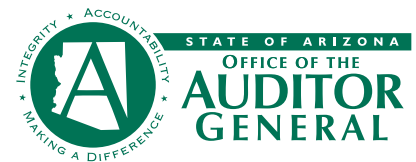
Financial Audit Division

Special Audit

Arizona Independent Redistricting Commission

Fiscal Years 2011 and 2012

September • 2012



Debra K. Davenport
Auditor General

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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

September 4, 2012

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor
State of Arizona

Colleen Coyle Mathis, Chair
Arizona Independent Redistricting Commission

Transmitted herewith is a report of the Auditor General, a special audit of the Arizona Independent Redistricting Commission for the fiscal years ended 2011 and 2012. This special audit was conducted pursuant to Laws 2012, Chapter 108.

This audit focused on all paid and accrued expenditures incurred by the Commission, including a description of and the purpose for professional and outside services, travel, other operating expenses, capital equipment, and noncapital equipment.

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

After the report is distributed to the members of the Arizona State Legislature, the Governor, and members of the Commission, it becomes a public record.

Sincerely,

Debbie Davenport
Auditor General

Attachment

Arizona Independent Redistricting Commission

REPORT HIGHLIGHTS SPECIAL AUDIT

Our Conclusion

The Arizona Independent Redistricting Commission (Commission) is established by the State Constitution to create congressional and legislative districts every 10 years. This special audit focused on all paid and accrued expenditures the Commission incurred during fiscal years 2011 and 2012, including a description of and the purpose for professional and outside services, travel, other operating expenses, capital equipment, and noncapital equipment. The Office of the Auditor General does not make any recommendations in this report.

Commission responsible for establishing congressional and legislative districts

The Arizona Independent Redistricting Commission (Commission) is responsible for establishing congressional and legislative districts in accordance with state and federal laws, including the U.S. Voting Rights Act. The State Constitution requires the Commission to create a map with districts of equal population in a grid-like pattern. Adjustments to the grid map shall be made, to the extent practicable, to create districts that are geographically compact and contiguous, respect communities of interest, use visible geographic features, and favor competitive districts.

The Commission contracted with two attorneys to aid in the redistricting process, procured the services of a mapping consultant, and purchased mapping software. The Commission also hired an executive director and other staff to manage the Commission's administrative tasks, including organizing the public hearings to gather input on the redistricting process. The Commission's total expenditures for this process were \$4,259,224 during fiscal years 2011 and 2012, combined as categorized in the table below.

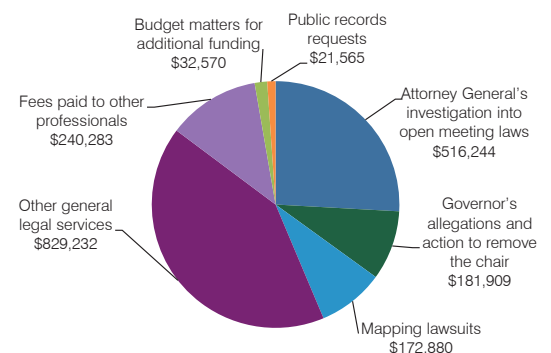
Summary of Commission's expenditures Fiscal years 2011 and 2012

Expenditures	Total	Percentage of Total
Legal fees	\$1,994,683	47%
Mapping consultant services and software	921,327	22
Public hearings and commission meetings	446,049	10
Other operating costs	897,165	21
Total expenditures	<u>\$4,259,224</u>	<u>100%</u>

Legal fees were the largest single component of Commission's expenditures

The Commission contracted with two law firms to provide general legal services that included meeting attendance, advisement on laws and the execution of contracts, and, as applicable, litigation of matters affecting the Commission. The Commission also contracted with additional law firms to (1) represent three of the commissioners in response to the Attorney General's investigation into potential open meeting law violations and (2) represent the commissioners in relation to the Governor's allegations against them and action to remove the chair.

Legal fees by category totaling \$1,994,683 Fiscal years 2011 and 2012



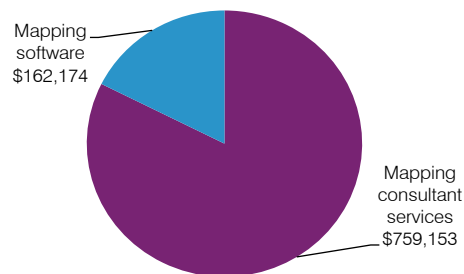
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Fiscal Years 2011 and 2012

Commission's use of mapping consultant and software helped create district maps

The Commission contracted with a mapping consultant and purchased specialized mapping software to assist with the creation of the congressional and legislative district maps. The consultant worked in collaboration with and at the direction of the Commission by assembling a redistricting database and training the Commission on its use, providing training with the mapping software, attending commission meetings and public hearings, and providing other services as required in the contract or as the Commission requested. The Commission also purchased Maptitude and Maptitude Online, specialized mapping software for use by the commissioners, mapping consultant, and the public.

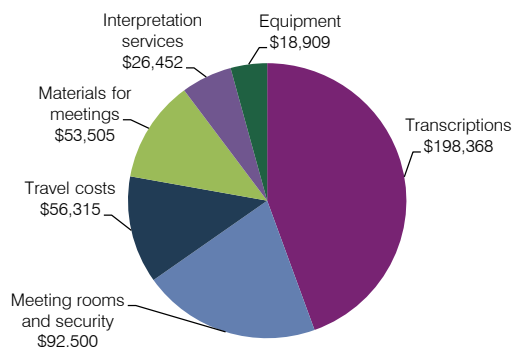
Mapping consultant services and software costs totaling \$921,327
Fiscal years 2011 and 2012



Public hearings and commission meetings allowed for public input on redistricting process

In July and August 2011, the Commission conducted an initial round of public hearings in 22 Arizona cities to gather input from members of the public about redistricting matters. In October and November 2011, a second round of public hearings was held in 27 Arizona cities to present the redistricting maps and obtain further public comment. The Commission also conducted commission meetings to address business matters such as hiring staff, discussing budget matters, contracting for services, calling for public comment, and considering all of the analyses and public input in order to adopt the congressional and legislative district maps.

Public hearings and commission meetings costs by category totaling \$446,049
Fiscal years 2011 and 2012



Other operating costs consisted primarily of payroll and employee-related expenditures

The Commission's payroll and employee-related expenditures accounted for the majority of the other operating costs. The Commission employed up to nine individuals and also used temporary service agencies to run the Commission's day-to-day business. Equipment was also purchased to support operations and included computers, monitors, printers, desks, chairs, and tables. Other miscellaneous costs were incurred for items such as office supplies, telephone and Internet services, building rent, and accounting services.

Other operating costs by category totaling \$897,165
Fiscal years 2011 and 2012

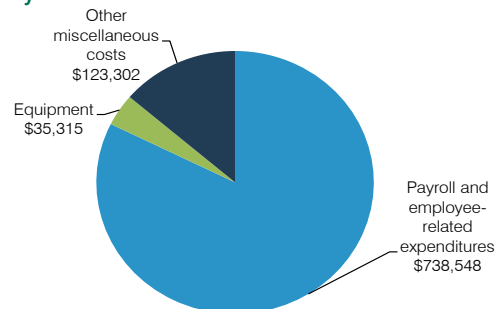


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♦ concluded

INTRODUCTION

Scope and Objectives

The Office of the Auditor General has conducted a special audit of the Arizona Independent Redistricting Commission (Commission) for fiscal years 2011 and 2012. This special audit is authorized under Arizona Revised Statutes (A.R.S.) §41-1279.03(A)(8) and was conducted pursuant to Laws 2012, Chapter 108.

This special audit focused on all paid and accrued expenditures the Commission incurred during fiscal years 2011 and 2012, including a description of and the purpose for professional and outside services, travel, other operating expenses, capital equipment, and noncapital equipment.

Arizona Independent Redistricting Commission

Commission responsible for establishing congressional and legislative districts

Under the Constitution of the State of Arizona (State Constitution), the Arizona Independent Redistricting Commission's (Commission) sole task is to establish congressional and legislative districts. In November 2000, Arizona voters passed Proposition 106, a citizen initiative that amended the State Constitution by moving the responsibility for drawing congressional and legislative districts from the Legislature to a newly created Arizona Independent Redistricting Commission. The Commission consists of five volunteer commissioners appointed in a manner designed to ensure diversity in political party affiliation and county of residence. As set forth in the State Constitution, the Commission on Appellate Court Appointments initially establishes 25 nominees.¹ Four of the five members are then chosen as follows: "the highest ranking officer elected by the Arizona house of representatives shall make one appointment to the independent redistricting commission from the pool of nominees, followed by one appointment from the pool made in turn by each of the following: the minority party leader of the Arizona house of representatives, the highest ranking officer elected by the Arizona senate, and the minority party leader of the Arizona senate."² Finally, "at a meeting called by the secretary of state, the four independent redistricting commission members shall select by majority vote from the nomination pool a fifth member who shall not be registered with any party already represented on the independent redistricting commission and who shall serve as chair."³ Each commissioner's duties expire upon the appointment of the first member of the next commission, which shall be established by February 28th of each year that ends in one.⁴

The current Commission is the second established since Proposition 106 passed and comprises the Chair—an Independent from Pima County; two Vice Chairs—a Republican and a Democrat from Maricopa County; and two commissioners—a Democrat and a Republican from Pima County. The commissioners do not receive compensation but are eligible for reimbursements of expenses related to their duties.⁵ These duties are detailed within the redistricting process described on page 2.

¹ A.R.S. Const. Art. 4, Pt.2, §1(5)

² A.R.S. Const. Art. 4, Pt.2, §1(6)

³ A.R.S. Const. Art. 4, Pt.2, §1(8)

⁴ A.R.S. Const. Art. 4, Pt.2, §1(3 and 23)

⁵ A.R.S. Const. Art. 4, Pt.2, §1(21)

Redistricting process set by State Constitution

The State Constitution requires the Commission to create a map that represents “districts of equal population in a grid-like pattern across the state.” Working from that map, the State Constitution also requires:

Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:

Arizona is subject to preclearance

Under Section 5 of the U.S. Voting Rights Act of 1965, certain counties, townships, or states as a whole with a prior history of voting rights violations shall obtain preclearance from the U.S. Department of Justice or the U.S. District Court for the District of Columbia prior to enforcing any changes affecting voting, including the establishment of new district maps. Preclearance is the process of determining that changes do not deny or abridge the right to vote on account of race, color, or membership in a language minority group. Once preclearance is obtained, the final district maps can be used for the elections until the next census.

Arizona is one of nine states as a whole subject to Section 5 of the Act. The Commission submitted the congressional and legislative district maps to the U.S. Department of Justice for preclearance, which were approved on April 9, 2012, and April 26, 2012, respectively.

Source: 42 USC 1973 et seq.; 28 CFR §55.2(d); Auditor General staff analysis of the jurisdictions covered under Section 5 of U.S. Voting Rights Act available from the U.S. Department of Justice Web site, www.justice.gov/crt/about/vot/sec_5/covered.php, and the U.S. Department of Justice letters of preclearance approval available from the Commission's Web site, <http://azredistricting.org/News-Releases/default.asp>.

- A. Districts shall comply with the United States Constitution and United States Voting Rights Act (*Auditor note: this includes Section 5, which requires preclearance approval; see textbox for Arizona preclearance*);
- B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
- C. Districts shall be geographically compact and contiguous to the extent practicable;
- D. District boundaries shall respect communities of interest to the extent practicable;
- E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
- F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.¹

The Commission is also required to advertise, for at least 30 days, the drafts of the congressional and legislative districts' maps for public comment. Either or both bodies of the Legislature may make recommendations for the Commission's consideration within this period. After receiving and considering all comments and recommendations, the Commission establishes the final district boundaries and submits them for preclearance approval.

The Commission's goal was to obtain U.S. Department of Justice approval of both maps upon their first submission. The Commission contracted with two attorneys to aid in the process, procured the services of a mapping consultant, and purchased mapping software. The Commission also hired an executive director and other staff to manage the Commission's administrative tasks, including organizing the public

¹ A.R.S. Const. Art. 4, Pt.2, §1(14)

hearings to gather public input on the redistricting process. The Commission accomplished its goal, as the U.S. Department of Justice approved the State's congressional and legislative district maps upon its first submission.

Commission's appropriations and expenditures addressed in State Constitution

Appropriations—The State Constitution directs the Legislature to make the necessary appropriations, by a majority vote, for adequate redistricting expenses.¹ The Legislature appropriated a combined total of \$4.2 million to the Commission for fiscal years 2011 and 2012.

Expenditures—The State Constitution grants the Commission procurement and contracting authority to fulfill its responsibilities.² Further, as the Commission is established under the legislative branch of state government it is exempt from the Arizona Procurement Code.³ As shown in Table 1, auditors determined that the Commission spent \$106,171 in fiscal year 2011 and \$4,153,053 in fiscal year 2012, for a total of \$4,259,224. Expenditures were made for professional and outside services, travel, capital equipment, noncapital equipment, and other operating expenses such as personnel costs. Auditors reviewed invoices and other documents that supported the expenditures, grouping the expenditures by the types of activities the Commission engaged in to draw the congressional and legislative district maps. As illustrated in Table 1, these expenditures were classified into one of the following activities: (1) legal fees, (2) mapping consultant services and software, (3) public hearings and commission meetings, and (4) other operating costs, such as payroll and employee-related expenditures. These activities and related expenditures are described in further detail in Chapters 1 through 4.

**Table 1: Summary of Commission's appropriations and expenditures
Fiscal years 2011 and 2012¹**

	Fiscal year 2011	Fiscal year 2012	Total
State appropriations	<u>\$500,000</u>	<u>\$3,700,000</u>	<u>\$4,200,000</u>
Expenditures			
Legal fees	10,087	1,984,596	1,994,683
Mapping consultant services and software		921,327	921,327
Public hearings and commission meetings	37,205	408,844	446,049
Other operating costs	<u>58,879</u>	<u>838,286</u>	<u>897,165</u>
Total expenditures	<u>\$106,171</u>	<u>\$4,153,053</u>	<u>\$4,259,224</u>

¹ Laws 2012, Ch. 294, §123 specifies that the fiscal year 2013 appropriations may be used for the payment of obligations incurred in fiscal year 2012. The Commission used \$59,224 of the \$1,445,300 fiscal year 2013 appropriations for expenditures incurred in fiscal year 2012.

Source: Auditor General staff analysis of the Joint Legislative Budget Committee's *Fiscal Year 2013 Appropriations Report* and the Commission's financial records for fiscal years 2011 and 2012.

¹ A.R.S. Const. Art. 4, Pt.2, §1(18)

² A.R.S. Const. Art. 4, Pt.2, §1(19)

³ A.R.S. §41-2501(D)

CHAPTER 1

The Commission, working with the State Procurement Office, contracted with two law firms (a Republican representative and a Democrat representative), to provide general legal services to the Commission. These services included attendance at meetings to assist with the redistricting process, advisement on laws and the execution of contracts, and, as applicable, litigation of matters affecting the Commission. The Commission also contracted with additional law firms to represent three of the commissioners in response to legal action taken against the individual commissioners as a result of the Attorney General's investigation into potential open meeting law violations and the Governor's allegations and action to remove the Commission's Chair. The Office of the Auditor General does not make any recommendations in this chapter.

Legal fees were the largest single component of Commission's expenditures

General legal counsel procured for commission operations

The State Constitution gives the Commission the authority to procure and contract for legal representation.¹ The Commission elected to work with Arizona's State Procurement Office (SPO), which issued a solicitation on April 14, 2011, for the Commission to obtain the services of qualified independent counsel to provide legal representation for redistricting purposes. The SPO received ten proposals, which the five commissioners evaluated. On May 13, 2011, the Commission, in a three-to-two vote, retained two firms to provide legal services. Ballard Spahr LLP was selected as a Republican representative and Osborn Maledon, PA as a Democratic representative.

Services provided by these firms included advising the commissioners about Arizona's laws regarding open meetings, public records, conflicts of interest, elections, the federal and state redistricting process, the U.S. Voting Rights Act of 1965, and in particular, the procedures for preclearance submission to the U.S. Department of Justice. The legal counsel also provided litigation services for any of these matters when necessary.

Additional legal counsel procured for litigation

During the redistricting process, the Commission identified a need for additional legal counsel when the State of Arizona, Office of the Attorney General (Attorney General) opened an investigation into the Commission's conduct relating to potential open meeting law violations. This investigation began on August 11, 2011, when the Attorney General issued written investigative demands to the five commissioners. While the Commission's general legal counsel tried to resolve this matter on behalf of the commissioners and the Commission as a whole, three of the commissioners requested individual legal representation to respond to the written investigative demands. This request was considered and voted on in commission meetings held on September 9 and 12, 2011. According to the Executive Director, the three commissioners requested contracts with three specific firms to represent them: Coppersmith Schermer & Brockelman PLC, Gallagher & Kennedy PA, and Tim Nelson PLLC.

¹ A.R.S. Const. Art. 4, Pt.2, §1(19)

Attorney General's contract for outside counsel services

The Attorney General advertises a request for proposal (RFP) once a year for outside counsel services in accordance with A.R.S. §41-2538. The purpose of the RFP is to establish additional contracts with legal counsel for state entities, with appropriate statutory authority to independently retain legal counsel on an "as needed, if needed" basis.

The contract identifies the firms approved to do work for authorized state entities, the types of services the firms can provide, and the acceptable hourly fees for those services.

Source: Auditor General staff analysis of the Attorney General's Web site and its RFP for outside counsel services.

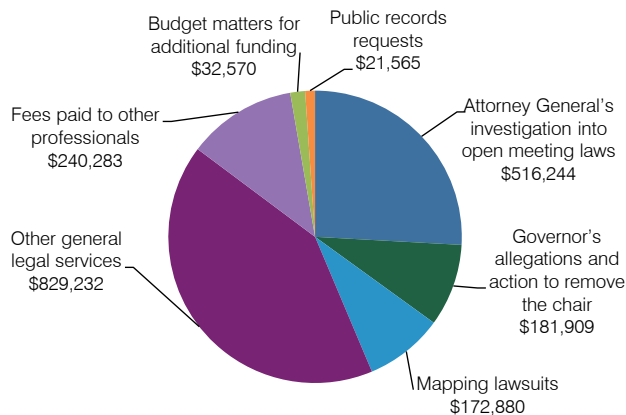
In addition to the Attorney General's investigation, the Governor sent written notice of allegations that the commissioners had "committed substantial neglect of duty and gross misconduct in office while serving on the Independent Redistricting Commission," which is cause to remove a member from the Commission. Due to the Governor's involvement, a fourth contract was executed when a lawyer from Gallagher & Kennedy recused himself because of a conflict of interest relating to the Governor's allegations. This prompted the Commission to procure legal services with Thomas Zlaket PLLC to represent one of the commissioners, while Coppersmith Schermer & Brockelman and Tim Nelson continued to represent their individual commissioner in matters relating to the Governor's allegations.

Under the Commission's procurement and contracting authority, the Executive Director negotiated contracts with these additional firms, using the Attorney General's contract for outside services (see textbox) and contracts previously entered into with general legal counsel for guidance in negotiating hourly rates for services. As a legislative agency, the Commission is exempt from the Arizona Procurement Code.

Legal fees paid for operations and litigation

Payments for legal fees totaled \$1,994,683 and accounted for approximately 47 percent of all commission monies spent in fiscal years 2011 and 2012. See Appendix A for procedures performed to evaluate these costs. Upon review of various invoices submitted by the legal firms, auditors classified these legal costs into seven categories, as shown in Figure 1 below. Each category is discussed in more detail on pages 7 through 9.

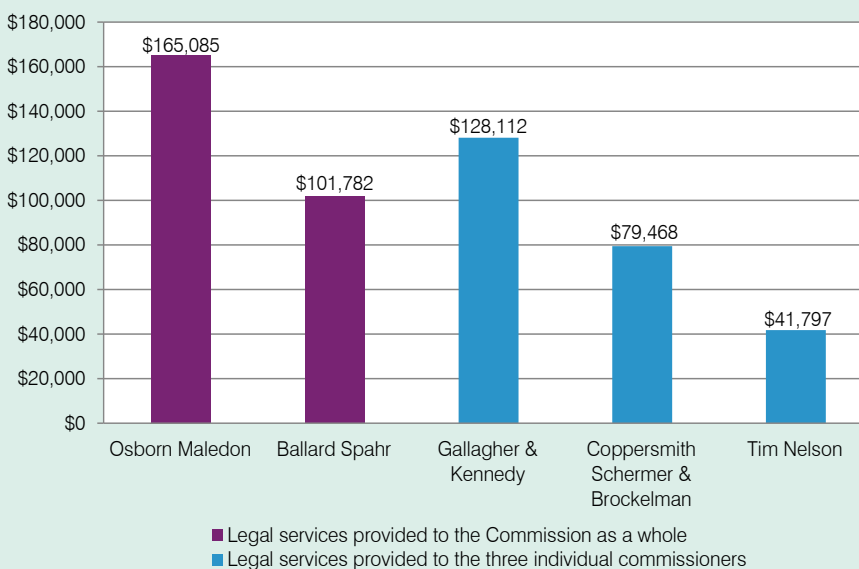
Figure 1: Legal fees by category totaling \$1,994,683 Fiscal years 2011 and 2012



Source: Auditor General staff analysis of the Commission's financial records for fiscal years 2011 and 2012.

- Attorney General’s investigation into open meeting laws totaled \$516,244—**
 The Attorney General’s investigation into the Commission’s conduct relating to potential open meeting law violations, as described on pages 5 and 6, was further pursued within the courts. In December 2011, the Superior Court ruled that the “Open Meeting Law, A.R.S. § 38-431 et seq., does not apply to the Commission, which is governed instead by the open meetings language of [the State Constitution] Article IV Pt. 2 § 1(12) (the Open Meetings Clause).”¹ An appeal of this matter has been filed, and litigation is ongoing as of the date of this report. As detailed in Figure 2 below, legal fees were paid to Osborn Maledon and Ballard Spahr, for services provided to the Commission as a whole and to Gallagher & Kennedy, Coppersmith Schermer & Brockelman, and Tim Nelson for representation of the three commissioners.

Figure 2: Legal fees by firm totaling \$516,244 to respond to the Attorney General’s investigation into open meeting laws Fiscal years 2011 and 2012



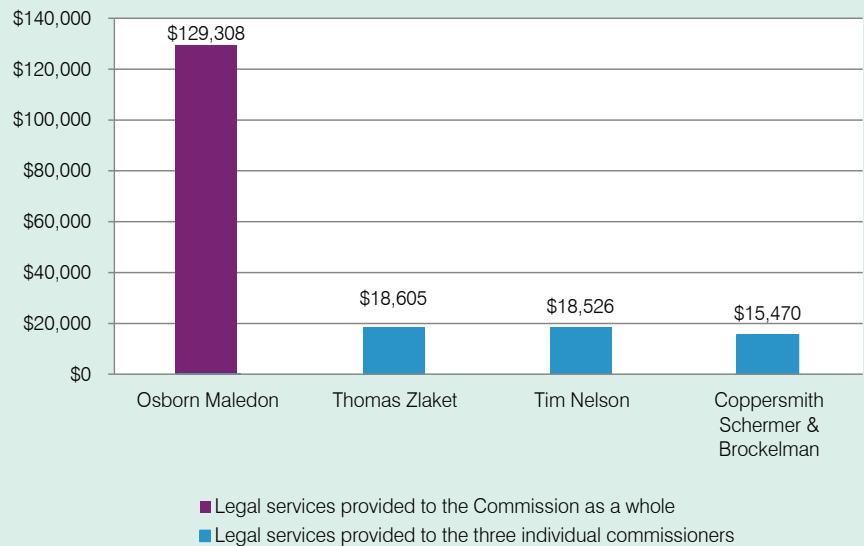
Source: Auditor General staff analysis of the Commission’s financial records for fiscal years 2011 and 2012.

- Governor’s allegations and action to remove the chair totaled \$181,909—**The Governor’s action to remove the chair commenced on October 26, 2011, when written notice of allegations was sent to all five commissioners as described on page 6. The notice requested “good-faith answers” to seven allegations, and responses were requested from each of the commissioners and due to the Governor no later than 8:00 a.m. on October 31, 2011. The Commission and each commissioner responded to the allegations. On November 1, 2011, Secretary of State Ken Bennett, Acting Governor on behalf of Governor Brewer, with the concurrence of two-thirds of the Arizona Senate, removed Colleen Mathis as the

¹ *State of Arizona, et al. v. Colleen Mathis, et al.*, No. CV-2011-016442 (Superior Court December 9, 2011).

fifth member of the Commission and as its chair. Ms. Mathis filed a lawsuit to overturn her removal in the Supreme Court of Arizona, and, on November 17, 2011, the Court issued an order that reinstated her as chair.¹ As detailed in Figure 3 below, legal fees were paid to Osborn Maledon for services provided to the Commission as a whole and to Thomas Zlaket, Tim Nelson, and Coppersmith Schermer & Brockelman for representation of the three commissioners.

Figure 3: Legal fees by firm totaling \$181,909 to respond to the Governor’s allegations and action to remove the chair Fiscal years 2011 and 2012



Source: Auditor General staff analysis of the Commission’s financial records for fiscal years 2011 and 2012.

- Mapping lawsuits totaled \$172,880**—The Commission has been named in three different lawsuits relating to the maps created during the redistricting process. The first two suits were filed by two different citizen groups. The first was filed on April 27, 2012, in the U.S. District Court challenging the legislative district map approved by the Commission. A second suit was filed the same day in the Superior Court of Arizona, and was amended on June 5, 2012, challenging the congressional district map approved by the Commission. The third suit was filed by the Arizona State Legislature on June 7, 2012, in the U.S. District Court. This matter requests the court to declare that Proposition 106 is unconstitutional in relation to the Commission’s authority to establish the congressional district boundaries. Auditors determined that these lawsuits are in the early stages of litigation, and legal costs of \$76,771 and \$96,109 were paid to Ballard Spahr and Osborn Maledon, respectively, to defend these

¹ *Arizona Independent Redistricting Commission v. Janice K. Brewer, Governor, et al.*, No. CV-11-0313-SA (Supreme Court November 17, 2011).

matters. Additional research and litigation costs are expected to be incurred by the Commission.

- **Other general legal services totaled \$829,232**—In addition to those services identified in the general legal counsel section above (see page 5), counsel was also responsible for responding to legislative inquiries, providing assistance when the Commission entered into contracts, and attending commission meetings and public hearings. Legal fees were paid to Ballard Spahr and Osborn Maledon of \$357,557 and \$471,675, respectively, for these services.
- **Fees paid to other professionals totaled \$240,283**—The Commission's general legal counsel contracted with other professionals who have experience with the redistricting process. A former Senior Attorney for the U.S. Department of Justice provided assistance in matters relating to the preclearance process required by Section 5 of the U.S. Voting Rights Act. A professor at Harvard University prepared and presented the Commission with a statistical analysis of the voting population. Fees for these services were paid through general legal counsel and totaled \$171,698 and \$68,585, respectively.
- **Budget matters for additional funding totaled \$32,570**—The Commission received appropriations of \$500,000 for fiscal year 2011 and \$3 million for fiscal year 2012. However, in January 2012, the Commission submitted a request for a supplemental appropriation in order to “complete its responsibilities,” including paying for costs relating to legal and mapping services. As an immediate appropriation was not made by the Arizona Legislature, this matter was further pursued with legal counsel to discuss possible action, including the filing of a Petition for Special Action, if necessary. However, no legal action was taken within the court as the Commission was able to meet with the Joint Legislative Budget Committee and ultimately received a supplemental appropriation of \$700,000 on March 27, 2012. Legal fees were paid to Ballard Spahr and Osborn Maledon of \$21,227 and \$11,343, respectively, for services relating to this matter.
- **Public records requests totaled \$21,565**—Arizona laws require all public bodies to maintain records “reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.”¹ Further, statute requires that those records be open to inspection by any person, except when they are deemed confidential and protected from public disclosure under state or federal laws. The Commission asked its general legal counsel to review all public records requests to ensure only appropriate information was shared. Based on commission records, the Commission received 29 requests during fiscal years 2011 and 2012, which were primarily handled by Ballard Spahr. Legal fees were paid to Ballard Spahr and Osborn Maledon of \$15,660 and \$5,905, respectively, for services relating to this matter.

¹ A.R.S. §39-121.01

CHAPTER 2

The Commission contracted with a mapping consultant (Strategic Telemetry) and purchased specialized mapping software to assist with the creation of the congressional and legislative district maps. Strategic Telemetry worked in collaboration with and at the direction of the Commission by assembling a redistricting database and training the Commission on its use, providing training with the mapping software, attending commission meetings and public hearings, and providing other services as required in the contract or as requested by the Commission. To assist with the mapping process, the Commission also purchased Maptitude and Maptitude Online, specialized mapping software for use by the commissioners, mapping consultant, and the public. The Office of the Auditor General does not make any recommendations in this chapter.

Commission's use of mapping consultant and software helped create district maps

Mapping consultant used for specialized mapping services

The Commission issued a request for proposal (RFP) on May 11, 2011, to obtain the services of a consultant for redrawing district maps. Seven proposals were submitted; however, the Commission determined that three offers failed to fully meet the requirements outlined in the statement of work. The RFPs from the remaining four firms were reviewed by the commissioners, and interviews were held on June 24, 2011.

Firms were evaluated based on the following criteria, listed in order of relative importance:

1. **Methodology for performance of work**—how the work will be performed;
2. **Capacity of offeror**—ability to provide services based on experience;
3. **Cost**—the overall cost to complete the work;
4. **Conformance with instructions, terms, and conditions**—meeting the instructions and requirements set forth within the RFP.

The five commissioners scored each proposal's methodology for performance of work and capacity of offeror sections, which together encompass the statement of work. The State Procurement Office (SPO) scored the cost and conformance with instructions, terms, and conditions sections.

As shown in Table 2 (see page 12), Strategic Telemetry received the highest overall score. In a commission meeting on June 29, 2011, the Commission voted (three ayes and two nays) to award the contract to Strategic Telemetry.

**Table 2: Evaluation scores of proposals submitted by mapping consultant firms
June 2011**

	Methodology for performance of work ¹	Capacity of offeror ¹	Cost ²	Conformance with instructions, terms, and conditions ²	Total
Points possible	400	300	200	100	1000
Consultant firms:					
Strategic Telemetry (awarded contract)	368	245	102	100	815
Research Advisory Services	202	164	200	100	666
National Demographics	214	147	162	50	573
TerraSystems Southwest	120	90	160	80	450

¹ Average of commissioners' scores.

² Scored by SPO.

Source: Auditor General staff analysis of evaluation scores available from the Commission's Web site, <http://azredistricting.org/Mapping-Information/default.asp>

Although the SPO helped the Commission obtain mapping services during the early procurement stages, in a letter dated June 29, 2011, the SPO informed the Commission that it was withdrawing further assistance as “the Commission has frequently pursued direction other than that offered by the SPO” and as “the Commission has taken the position that it has independent procurement and contracting authority under Article 4, Part 2, Section 1 (19) of the Arizona Constitution and is therefore exempt from the Arizona Procurement Code.” According to the Commission’s Executive Director, the Commission discussed matters related to the solicitation and conducted interviews for mapping consultant services during public session meetings, which was in conflict with the SPO’s policy. The Commission discussed these matters in public session because they preferred a more transparent procurement process for this service.

After selecting Strategic Telemetry, the Commission negotiated some terms of the contract, including, but not limited to, reducing professional fees and costs, and ensuring that the maps were drawn in Arizona rather than the firm’s headquarters in Washington, D.C. The contract further stated that fees for consultations relating to litigation of the maps or added deliverables would be considered additional services and fees for these services would be billed to the Commission at an agreed-upon rate.

Licensed software purchased for use by Commission and public

To ensure that the Commission purchased appropriate software for drawing the district maps (see textbox), the Commission engaged Strategic Telemetry to research available options, including software functionality and costs, and present them to the Commission. During the July 8, 2011, commission meeting, Strategic Telemetry presented the Commission with two options for consideration: Maptitude for Redistricting (Maptitude) and AutoBound. Strategic Telemetry recommended the Maptitude software because the Commission could receive a discount based on prior use, and the commissioners were more familiar with the software. Using its procurement authority under the State Constitution, the Commission unanimously approved the purchase of 12 licenses of the Maptitude desktop software from the vendor Caliper. The software was used by the commissioners (5 licenses), the Commission's general legal counsel (2 licenses), and Strategic Telemetry consultants (3 licenses). The remaining licenses were purchased for use by commission staff at the office and at public meetings.

In addition, on August 17, 2011, the Commission approved, in a four-to-one vote, the purchase of the Maptitude Online software package to allow the public to draw and submit maps using software similar to that used by the Commission. This software allowed the commissioners to review citizens' maps in a format that was familiar and could easily be imported onto commissioners' laptop computers as needed.

Specialized mapping software

Specialized mapping software can provide tools to aid in the redistricting process. Some software products include geographical data, incorporate census data, allow users to identify communities of interest, and produce reports of various mapping options for the Commission's use.

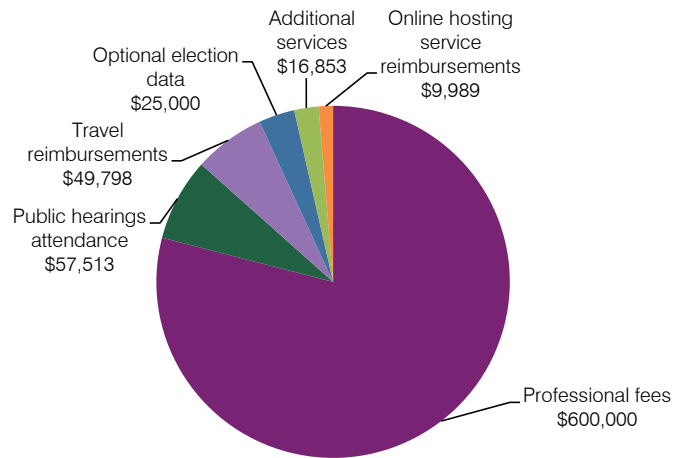
Source: Auditor General staff analysis of mapping software use.

Payments for mapping consulting services and software

Payments for mapping consulting services and software totaled \$921,327 and accounted for approximately 22 percent of total commission monies spent in fiscal years 2011 and 2012. See Appendix A for procedures performed to evaluate these costs.

Mapping consulting services—As shown in Figure 4 on page 14, auditors determined that payments made to Strategic Telemetry for consulting services totaled \$759,153 and could be classified into six categories. These costs are described in further detail on pages 14 and 15.

Figure 4: Payments to mapping consultant by category totaling \$759,153 Fiscal years 2011 and 2012



Source: Auditor General staff analysis of the Commission's financial records for fiscal years 2011 and 2012.

- **Professional fees totaled \$600,000**—The total professional fees paid to Strategic Telemetry included, but were not limited to, assembling a redistricting database, training the Commission to use the database and mapping software, and assisting the Commission in establishing the congressional and legislative districts. Strategic Telemetry also provided presentations detailing (1) the redistricting process, (2) summaries of the public meeting comments, and (3) voter analysis for use by the commissioners and staff. Strategic Telemetry further provided a process to enable the public to comment on the mapping process, and maintained an ongoing log for each map documenting the basis on which decisions were made and how the Commission complied with the applicable requirements of the State Constitution and the U.S. Voting Rights Act.
- **Public hearings attendance totaled \$57,513**—Strategic Telemetry worked in collaboration with and at the direction of the Commission during all public input hearings. In accordance with the final contract, the first 20 meetings were included within the cost of professional fees. For additional meetings, the Commission was billed at a minimum of \$750 for the first 4 hours and \$200 for every hour thereafter, but not to exceed \$1,500 per day. The Commission held 44 public hearings (see Chapter 3, page 17, for additional discussion of these hearings).
- **Travel reimbursements totaled \$49,798**—As outlined in the contract, Strategic Telemetry was eligible for reimbursement of travel expenses in accordance with the current rates specified in the *State of Arizona Accounting Manual* travel policy. Travel costs included airfare, lodging, meals, vehicle rental, and parking.

- **Optional election data totaled \$25,000**—In September 2011, the Commission approved the purchase of 2004 and 2006 election data that was integrated into the redistricting database for analysis to accomplish the Commission’s objectives.
- **Additional services totaled \$16,853**—According to the Commission’s Deputy Executive Director, the Commission and the Office of the Secretary of State received several requests from the public for copies of the new congressional and legislative district maps, including details such as boundaries, cross streets, and townships included within each district. Due to these requests, the Commission sought additional services from Strategic Telemetry, which were not included in the original contract, to produce these maps. Upon review of the vendor invoice, auditors determined the total cost for this service was \$8,000 and was split evenly with the Office of the Secretary of State. These detailed individual maps were made available through the Commission’s Web site and allowed the public to print the maps or request them from the Commission. Furthermore, Strategic Telemetry provided technical support to the Commission and its general legal counsel in response to the mapping lawsuits filed against the Commission, as described in Chapter 1 on page 8. The Commission paid \$12,853 as of June 30, 2012, and expects additional fees to be incurred for technical support services as the lawsuits are further litigated.
- **Online hosting service reimbursements totaled \$9,989**—The Commission reimbursed Strategic Telemetry for the costs to host the Maptitude Online software on the Commission’s Web site.

Mapping software—Payments made to Caliper for two separate software packages totaled \$162,174 and are described in further detail below.

- **Maptitude for Redistricting (Maptitude) software totaled \$80,724**—The Commission paid less than the market price for the software, which included a prior-use discount for the first 2 licenses and a quantity discount for licenses 6 through 12. This resulted in a cost savings of \$16,000 compared to market price.
- **Maptitude Online software totaled \$81,450**—This additional software package was purchased from Caliper at the market price plus tax. Based on commission records, 115 congressional and 169 legislative district maps were submitted by the public. Of those total maps, 49 were submitted using the Maptitude Online software, and the others were submitted through e-mail or hard-copy format.

CHAPTER 3

The Commission held public hearings throughout the State to gather input from members of the public about redistricting matters such as geography, communities of interest, minority voting rights, and competitiveness. The Commission considered this input as adjustments were made to the grid maps. After the draft maps were completed, a second round of public hearings was held to obtain comments on the proposed maps. The Commission also conducted commission meetings to address business matters such as hiring staff, discussing budget matters, contracting services, calling for public comment, and considering all of the analysis and public input in order to adopt the congressional and legislative district maps. These meetings were open to the public, and notices of the meetings were posted on the Commission's Web site and the Commission's building at least 48 hours prior to the meeting. The Commission's Web site also included an option to subscribe to receive e-mail notifications of scheduled meetings. The Office of the Auditor General does not make any recommendations in this chapter.

Public hearings and commission meetings allowed for public input on redistricting process

First-round hearings provided initial public input

The Commission held a series of public hearings, referred to as "first-round hearings," to gather input from the public about issues relevant to redistricting, such as geography, communities of interest, minority voting rights, and competitiveness. These hearings were conducted in 22 cities around the State, including satellite locations, during July and August 2011 (see Figure 5, page 18, for the locations of these hearings). Use of the Internet allowed the hearings to be broadcast live to satellite locations where the public was able to interact directly with the commissioners.

Thereafter, the Commission was charged with the responsibility of using information gathered from the hearings, along with an analysis of census and election-related data, to adjust the grid maps to comply with federal law and account for the other criteria required by the State Constitution, as outlined on page 2 of this report.

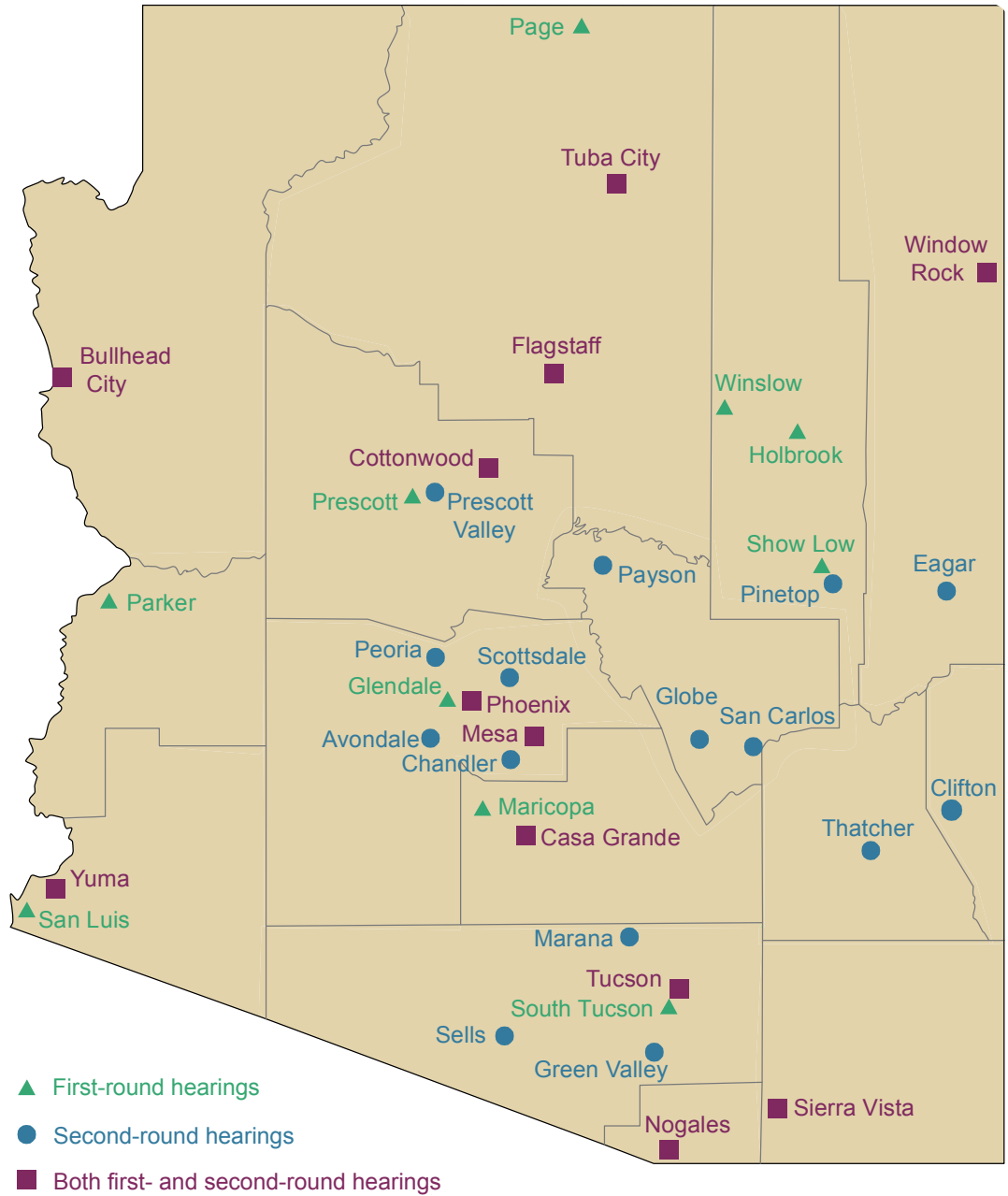
Second-round hearings provided public input about draft maps

After the draft maps were prepared, the Commission held "second-round hearings" to present the maps to the public and to obtain its input on the proposed maps. The Commission held these hearings in 27 cities around the State, including satellite locations, during October and November of 2011 (see Figure 5, page 18, for the locations of these hearings).

A laptop computer with access to the Maptitude software was included at the hearings for the public's use. Additionally, the public was informed of the availability of the Maptitude Online software to submit its maps for consideration.

After the second round of public hearings was completed, the Commission was responsible for considering all of the analysis and public input when adopting the congressional and legislative district maps for Arizona that it believed satisfied all constitutional criteria.

**Figure 5: Locations of public hearings by city
Calendar year 2011**



Source: Auditor General staff analysis of the Commission's public hearing records for calendar year 2011.

Commission meetings held to conduct business and open to public

In addition to public hearings held for input on redistricting, the Commission held meetings for the purpose of conducting commission business, including hiring staff, contracting with vendors, addressing budget matters, and discussion with and direction to the mapping consultant. All commission meetings were open to the public and allowed for public comment. Further, within these meetings, the Commission was responsible for considering all of the analysis and public input when adopting the congressional and legislative district maps for Arizona.

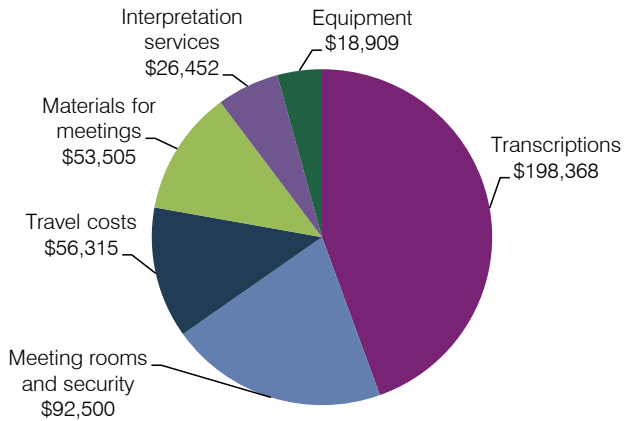
The State Constitution requires that “where a quorum is present, the independent redistricting commission shall conduct business in meetings open to the public, with 48 or more hours public notice provided.”¹ Upon review of various meeting minutes and transcripts, auditors determined that the Commission conducted 69 commission meetings in 22 locations during fiscal years 2011 and 2012. Auditors determined that notice of these meetings was posted to the Commission’s Web site at least 48 hours prior to the meetings. The Commission’s Web site also included an option to subscribe to receive e-mail notifications of scheduled meetings. According to the Commission’s Deputy Executive Director, notices of these meetings were also posted on the Commission’s building.

Costs of hearings and meetings

The public hearings and commission meetings costs totaled \$446,049 and accounted for approximately 10 percent of all commission monies spent in fiscal years 2011 and 2012. See Appendix A for procedures performed to evaluate these costs. Auditors noted that these costs could be classified into six categories, as shown in Figure 6 (see page 20). Each category is discussed in more detail on pages 20 and 21.

¹ A.R.S. Const. Art. 4, Pt.2, §1(12)

Figure 6: Public hearings and commission meetings costs by category totaling \$446,049 Fiscal years 2011 and 2012



Source: Auditor General staff analysis of the Commission's financial records for fiscal years 2011 and 2012.

State-wide contracts—Multi-agency, cooperative contracts that are typically mandatory for use by most state agencies. State-wide contracts are solicited and administered by the State Procurement Office (SPO).

Source: The SPO Web site at <http://www.spo.az.gov>.

- Transcriptions totaled \$198,368**—The Commission used certified court reporters to attend and produce transcripts of the public hearings and for 67 of the 69 commission meetings. The transcripts were posted to the Commission's Web site. These services were provided by vendors on a state-wide contract (see textbox), with the majority of work performed by one vendor. Based on information obtained from the Commission's Deputy Executive Director, this vendor was willing to travel throughout the State. The vendor adjusted the state-wide contract rates to reduce the overall costs to the Commission. Transcription costs made up the majority of the hearings and meetings costs.
- Meeting rooms and security totaled \$92,500**—As the Commission traveled throughout the State to conduct its public hearings and commission meetings, it needed to reserve locations that could accommodate the commissioners and interested members of the public. In addition, locations needed to be equipped with proper audio and video connections. Further, off-duty police officers were present at the public hearings and commission meetings to ensure the safety of the commissioners and the public. The Commission used its procurement authority granted under the State Constitution to procure the meeting rooms and security services. The procurement process used was not documented; however, as a legislative agency, the Commission is exempt from the Arizona Procurement Code.

- **Travel costs totaled \$56,315**—The State Constitution indicates that “members of the independent redistricting commission are eligible for reimbursement of expenses pursuant to law.”¹ Additionally, the *State of Arizona Accounting Manual* travel policy allows for use of state vehicles and reimbursement of travel costs incurred by employees. Both commissioners and commission employees utilized state or personal vehicles to travel to the meetings, and, when applicable, they were reimbursed for mileage, lodging, and meals.
- **Materials for meetings totaled \$53,505**—The Commission used printed materials to administer the meetings, inform the public, and comply with constitutional requirements for gathering and considering public input. At each meeting, members of the public were required to complete a public input form in order to address the Commission. In addition, attendees were provided informative materials on the redistricting process and progress, including draft maps. All public input received from these meetings or via e-mail, media, mail, and the online mapping tool were accumulated, reproduced, and provided to the commissioners for their reference and consideration throughout the process. Further, copies of these materials were included with the submission to the U.S. Department of Justice. The majority of these purchases were made using the Commission’s procurement authority granted under the State Constitution. The procurement process used was not documented; however, as a legislative agency, the Commission is exempt from the Arizona Procurement Code.
- **Interpretation services totaled \$26,452**—To ensure compliance with federal laws under the U.S. Voting Rights Act, the Commission ensured Spanish and, when applicable, Native American language interpreters were present at each public hearing to enable members of applicable language minority groups to participate effectively in the electoral process.² The majority of these services were provided by a vendor on state-wide contract.
- **Equipment totaled \$18,909**—The Commission purchased and rented various pieces of equipment to effectively conduct meetings, stream them live over the Internet, and post video recordings on its Web site. These items included video-streaming equipment, loudspeakers, stands, microphones, a tripod, and the necessary cords. The Commission purchased this equipment from a vendor on state-wide contract.

¹ A.R.S. Const. Art. 4, Pt.2, §1(21)

² 42 USC §1973b(f)(4) and 28 CFR §55.2(b)

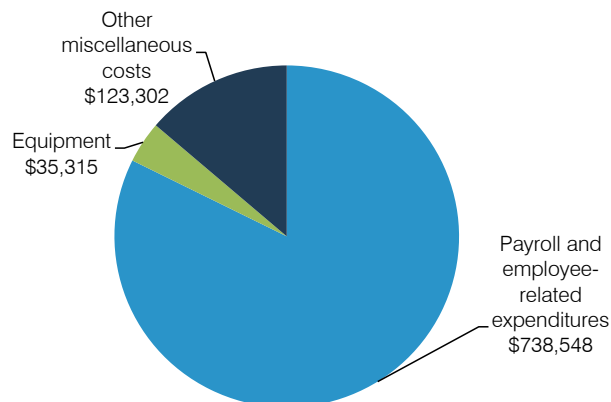
CHAPTER 4

The Commission's payroll and employee-related expenditures accounted for the majority of the other operating costs. The Commission employed up to nine individuals at any one time and also used temporary service agencies to run the Commission's day-to-day business. Equipment was also purchased to support operations and included computers, monitors, printers, desks, chairs, and tables. Other miscellaneous costs were incurred for items such as office supplies, a copier rental, telephone and Internet services, building rent, and fees paid to the Arizona Department of Administration's State Boards' Office for providing accounting services. The Office of the Auditor General does not make any recommendations in this chapter.

Other operating costs consisted primarily of payroll and employee-related expenditures

Other operating costs are those day-to-day expenditures the Commission incurs and include costs for payroll and employee-related expenditures (ERE), equipment, and other miscellaneous items, including office supplies, building rent, and other services and fees. During fiscal years 2011 and 2012, these costs totaled \$897,165 and accounted for approximately 21 percent of the total expenditures. See Appendix A for procedures performed to evaluate these costs. Upon review of documentation supporting these expenditures, auditors classified other operating costs into three categories, as shown in Figure 7. Each category is discussed in more detail below.

Figure 7: Other operating costs by category totaling \$897,165 Fiscal years 2011 and 2012



Source: Auditor General staff analysis of the Commission's financial records for fiscal years 2011 and 2012.

- **Payroll and employee-related expenditures totaled \$738,548**—The State Constitution grants the Commission the authority to hire staff to fulfill its responsibilities.¹ The Commission employed no more than nine staff members at any one time. These positions included an executive director, deputy executive director, chief technology officer, public information officer, executive administrative officer, and four community outreach representatives. In addition, the Commission used temporary service agencies to assist with administrative functions, which totaled \$8,877 and are included within the total payroll and ERE costs.

¹ A.R.S. Const. Art. 4, Pt.2, §1(19)

- **Equipment totaled \$35,315**—Purchases included electronics, such as computers and monitors, as well as furniture items, including desks, chairs, and tables. Auditors determined that 16 laptop computers and 1 desktop computer were purchased during fiscal years 2011 and 2012. The Commission distributed 1 laptop computer and the 1 desktop computer to its chief technology officer. The remaining 15 laptop computers were distributed to the other 8 commission staff members and the 5 commissioners, and 1 each to Ballard Spahr and Osborn Maledon, the Commission's general legal counsel. According to the Commission's Deputy Executive Director, the Commission's general legal counsel were provided with laptop computers equipped with the licensed Maptitude software. This equipment was used by the general legal counsel to assist them in advising the Commission on its compliance with the redistricting requirements. The remaining equipment purchases included monitors, docking stations, and cables, and a specialized plotter capable of printing large-scale maps. Some of these items were purchased from vendors on a state-wide contract, while others were purchased using the Commission's procurement authority granted under the State Constitution. As a legislative agency, the Commission is exempt from the Arizona Procurement Code.
- **Other miscellaneous costs totaled \$123,302**—These costs included office supplies, copier rental, telephone and Internet services, building rent, and fees paid to the Arizona Department of Administration's State Boards' Office for providing accounting services. These items and services were purchased from vendors on state-wide contract, provided by the Arizona Department of Administration, or purchased using the Commission's procurement authority granted under the State Constitution. As a legislative agency, the Commission is exempt from the Arizona Procurement Code.

APPENDIX A

Methodology

This appendix provides information on the methods auditors used to meet the objectives of Laws 2012, Chapter 108.

The Auditor General and staff express appreciation to the Arizona Independent Redistricting Commission's Executive Director and staff for their cooperation and assistance throughout the special audit.

In order to provide a description and purpose of expenditures classified as professional and outside services, travel, other operating expenses, capital equipment, and noncapital equipment, auditors met with commission staff to identify the type of activity for which costs were incurred and then grouped them into one of four categories: legal fees, mapping consultant services and software, public hearings and commission meetings, or other operating costs. Further, auditors reviewed the commission meeting agendas and examined those meeting minutes and transcripts that were determined to be related to the chapters included in the report, which allowed auditors to gain a better understanding of the Commission's operations. The Commission denied the Auditor General access to the executive session minutes and transcripts citing the Superior Court ruling of December 2011 that states "Open Meeting Law, A.R.S. §38-431 et seq., does not apply to the Commission, which is governed instead by the open meetings language of [the State Constitution] Article IV Pt. 2 §1(12) (the Open Meetings Clause)."¹ The Auditor General's access to executive session minutes is established in the open meeting law. Therefore, the Commission is not required to grant the Auditor General access to executive session minutes.

Auditors reviewed all commission expenditures recorded on the State's financial accounting system for fiscal years 2011 and 2012. Auditors agreed these expenditures to supporting documentation and determined they were approved by management and pertained to the Commission. All expenditures were determined to be properly classified and clerically accurate in all material respects. To evaluate the reasonableness of expenditures, auditors agreed fees charged and rates paid to those amounts included within the applicable contracts and also determined that the purposes of the expenditures were consistent with the Commission's objectives.

Auditors performed the tasks detailed below to further evaluate the commission expenditures.

- **Legal fees**—Auditors reviewed meeting transcripts and met with commission staff to gain an understanding of the types of legal services provided and the classification of the costs by legal matter. In order to describe the legal matters within the report, auditors reviewed transcripts of commission meetings, copies of legal pleadings filed with the courts, and various letters sent from and to the Commission.

¹ *State of Arizona, et al. v. Colleen Mathis, et al.*, No. CV-2011-016442 (Superior Court December 9, 2011).

To determine the reasonableness of the legal fees charged, auditors agreed the hourly rates billed on the invoices to the rates set forth in the contracts. Further, auditors determined the hourly rates, which ranged from \$280 to \$350 per hour, were comparable to similar services listed within the Attorney General's Contract for Outside Services. Auditors were able to determine total amounts billed by attorney for each type of legal matter, but were unable to review the specific service provided as the details on the invoices were redacted because of attorney-client privilege.

- **Mapping consultant services and software**—In order to determine if the procurement for mapping consultant services appeared proper, auditors reviewed the request for proposals submitted by the mapping firms and the commission meeting transcripts of the firm interviews held on June 24, 2011. Additionally, auditors examined the evaluations completed by the commissioners, recalculated the scores of the commissioners and the SPO, and noted that the evaluation comments appeared to correspond to the scores awarded.

In order to ensure the fees paid to the consultant were accurate, auditors compared the billed amounts to the contracted amounts or rates. Additionally, fees for public hearing attendance were agreed to the applicable public hearing dates, times, and contracted rates. Further, the travel reimbursement requests and supporting documentation were reviewed to ensure the reimbursements did not exceed the maximum amounts allowed within the *State of Arizona Accounting Manual* travel policy, as specified within the contract, and dates were agreed to the Commission's listing of hearings and meetings.

Auditors researched the Maptitude for Redistricting software and determined Caliper was the only vendor that sold the desktop and online software. Auditors obtained the order form from Caliper's Web site and determined that the market price for the desktop software was \$7,500 per license. Further, based on discussion with Caliper, auditors determined that the market price for the online software was \$75,000. The price paid by the Commission for both the desktop and online software did not exceed the market price plus applicable taxes.

- **Public hearing and commission meetings**
 - **Transcriptions**—In order to determine that the costs for transcriptions were proper, auditors agreed amounts billed on the vendor invoices to the agreed-upon rates or state-wide contracts, as applicable. Additionally, the billing dates and times for these services were agreed to the Commission's listing of hearings and meetings. Further, auditors selected a sample of 17 vendor invoices to determine if the number of transcript pages billed agreed to the number of pages produced. Auditors determined that 8 of the sample items agreed to the pages produced and for the remaining 9 items auditors were unable to determine if the number of pages billed were appropriate because the invoices contained pages billed for the executive session transcripts that the auditors did not have access to.

- **Meeting rooms and security**—Based on review of the various meeting room invoices, auditors determined that these costs varied by location due to accessibility, size, the option to include armed security services, and other accommodations. The costs for meeting rooms did not exceed \$1,315 per rental. Auditors selected a sample of six meeting room rental invoices and determined that the rental dates agreed to the Commission’s listing of hearings and meetings. For those rooms that did not include armed security, the Commission primarily used the services of a security company that employed off-duty police officers. This vendor was not on state-wide contract. Auditors determined that the hourly rates for the security services ranged from \$50 to \$75. Further, auditors agreed the dates the services were provided to the Commission’s listing of hearings and meetings.
- **Travel costs**—Auditors reviewed the travel reimbursement requests submitted by the commissioners and commission staff and determined that the dates agreed to the Commission’s listing of hearings and meetings. Further, the reimbursements did not exceed the maximum amount allowed within the *State of Arizona Accounting Manual* travel policy.
- **Materials for meetings**—Auditors determined that the Commission used a vendor for printing the meeting materials that was not on state-wide contract. According to the Commission’s Deputy Executive Director, this vendor was selected due to the specialized nature of the printing materials requested, the volume needed, and guaranteed turnaround of the materials.
- **Interpretation services**—Auditors agreed the billing dates for interpretation services to the Commission’s listing of hearings and meetings. However, further analysis of these costs was limited as the vendor invoices for the majority of these services were not sufficiently detailed to determine if the appropriate state-wide contracted rates for these services were properly billed. As such, auditors agreed the total amount billed on the invoice to the amount paid.
- **Equipment**—Auditors determined that the equipment was purchased from a state-wide contracted vendor at the quoted price.
- **Other operating costs**
 - **Payroll and employee-related expenditures**—Auditors determined that salaries paid to each employee agreed to the rates established within the personnel files.
 - **Equipment**—For the equipment purchases that exceeded \$5,000, auditors determined that the equipment was purchased from a state-wide contracted vendor at the quoted price or less.

- **Other miscellaneous costs**—Auditors further evaluated all costs that exceeded \$5,000 and determined they consisted of telecommunication services, building rent, and fees for accounting services provided by the State Boards' Office. Charges for these services are billed by the Department of Administration and amounts paid agreed to applicable invoices. Other miscellaneous costs that exceeded \$5,000 consisted of office supplies and copier rental fees. Auditors agreed the amounts paid for these supplies and services to the applicable invoices.

