

REFERENCE TITLE: regulatory rule making

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

# HB 2260

Introduced by  
Representative Tobin

AN ACT

AMENDING SECTIONS 41-1001, 41-1009 AND 41-1027, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1037; AMENDING SECTIONS 41-1051, 41-1052, 41-1055, 41-1056 AND 41-1056.01, ARIZONA REVISED STATUTES; AMENDING LAWS 2009, THIRD SPECIAL SESSION, CHAPTER 7, SECTION 28; RELATING TO ADMINISTRATIVE PROCEDURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1001, Arizona Revised Statutes, is amended to  
3 read:

4 41-1001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Agency" means any board, commission, department, officer or other  
7 administrative unit of this state, including the agency head and one or more  
8 members of the agency head or agency employees or other persons directly or  
9 indirectly purporting to act on behalf or under the authority of the agency  
10 head, whether created under the Constitution of Arizona or by enactment of  
11 the legislature. Agency does not include the legislature, the courts or the  
12 governor. Agency does not include a political subdivision of this state or  
13 any of the administrative units of a political subdivision, but does include  
14 any board, commission, department, officer or other administrative unit  
15 created or appointed by joint or concerted action of an agency and one or  
16 more political subdivisions of this state or any of their units. To the  
17 extent an administrative unit purports to exercise authority subject to this  
18 chapter, an administrative unit otherwise qualifying as an agency must be  
19 treated as a separate agency even if the administrative unit is located  
20 within or subordinate to another agency.

21 2. "Code" means the Arizona administrative code.

22 3. "Committee" means the administrative rules oversight committee.

23 4. "Contested case" means any proceeding, including rate making, price  
24 fixing and licensing, in which the legal rights, duties or privileges of a  
25 party are required or permitted by law, other than this chapter, to be  
26 determined by an agency after an opportunity for an administrative hearing.

27 5. "Council" means the governor's regulatory review council.

28 6. "Delegation agreement" means an agreement between an agency and a  
29 political subdivision that authorizes the political subdivision to exercise  
30 functions, powers or duties conferred on the delegating agency by a provision  
31 of law. Delegation agreement does not include intergovernmental agreements  
32 entered into pursuant to title 11, chapter 7, article 3.

33 7. "Emergency rule" means a rule that is made pursuant to section  
34 41-1026.

35 8. "Fee" means a charge prescribed by an agency for an inspection or  
36 for obtaining a license.

37 9. "Final rule" means any rule filed with the secretary of state and  
38 made pursuant to an exemption from this chapter in section 41-1005, made  
39 pursuant to section 41-1026, approved by the council pursuant to section  
40 41-1052 or 41-1053 or approved by the attorney general pursuant to section  
41 41-1044. For purposes of judicial review, final rule includes proposed  
42 summary rules having interim effect pursuant to section 41-1027.

43 10. "GENERAL PERMIT" MEANS A PERMIT OR AUTHORIZATION THAT IS ISSUED OR  
44 GRANTED BY AN AGENCY TO A QUALIFIED APPLICANT TO CONDUCT IDENTIFIED  
45 OPERATIONS OR ACTIVITIES IF THE APPLICANT MEETS THE APPLICABLE REQUIREMENTS

1 OF THE GENERAL PERMIT, THAT REQUIRES LESS INFORMATION THAN AN INDIVIDUAL OR  
2 TRADITIONAL PERMIT OR AUTHORIZATION AND THAT DOES NOT REQUIRE A PUBLIC  
3 HEARING.

4 ~~10.~~ 11. "License" includes the whole or part of any agency permit,  
5 certificate, approval, registration, charter or similar form of permission  
6 required by law, but it does not include a license required solely for  
7 revenue purposes.

8 ~~11.~~ 12. "Licensing" includes the agency process respecting the grant,  
9 denial, renewal, revocation, suspension, annulment, withdrawal or amendment  
10 of a license.

11 ~~12.~~ 13. "Party" means each person or agency named or admitted as a  
12 party or properly seeking and entitled as of right to be admitted as a party.

13 ~~13.~~ 14. "Person" means an individual, partnership, corporation,  
14 association, governmental subdivision or unit of a governmental subdivision,  
15 a public or private organization of any character or another agency.

16 ~~14.~~ 15. "Preamble" means:

17 (a) For any rule making subject to this chapter, a statement  
18 accompanying the rule that includes:

19 (i) Reference to the specific statutory authority for the rule.

20 (ii) The name and address of agency personnel with whom persons may  
21 communicate regarding the rule.

22 (iii) An explanation of the rule, including the agency's reasons for  
23 initiating the rule making.

24 (iv) A reference to any study relevant to the rule that the agency  
25 reviewed and either proposes to rely on in its evaluation of or justification  
26 for the rule or proposes not to rely on in its evaluation of or justification  
27 for the rule, where the public may obtain or review each study, all data  
28 underlying each study and any analysis of each study and other supporting  
29 material.

30 (v) The economic, small business and consumer impact summary, or in  
31 the case of a proposed rule, a preliminary summary and a solicitation of  
32 input on the accuracy of the summary.

33 (vi) A showing of good cause why the rule is necessary to promote a  
34 statewide interest if the rule will diminish a previous grant of authority of  
35 a political subdivision of this state.

36 (vii) Such other matters as are prescribed by statute and that are  
37 applicable to the specific agency or to any specific rule or class of rules.

38 (b) In addition to the information set forth in subdivision (a) of  
39 this paragraph, for a proposed rule, the preamble also shall include a list  
40 of all previous notices appearing in the register addressing the proposed  
41 rule, a statement of the time, place and nature of the proceedings for the  
42 making, amendment or repeal of the rule and where, when and how persons may  
43 request an oral proceeding on the proposed rule if the notice does not  
44 provide for one.

1 (c) In addition to the information set forth in subdivision (a) of  
2 this paragraph, for a proposed summary rule, the preamble also shall include  
3 a statement of the time, place and nature of the proceedings for the making,  
4 amendment or repeal of the rule and an explanation of why summary proceedings  
5 are justified.

6 (d) For a final rule, except an emergency rule, the preamble also  
7 shall include, in addition to the information set forth in subdivision (a),  
8 the following information:

9 (i) A list of all previous notices appearing in the register  
10 addressing the final rule.

11 (ii) A description of the changes between the proposed rules,  
12 including supplemental notices and final rules.

13 (iii) A summary of the comments made regarding the rule and the agency  
14 response to them.

15 (iv) A summary of the council's action on the rule.

16 (v) A statement of the rule's effective date.

17 (e) In addition to the information set forth in subdivision (a) of  
18 this paragraph, for an emergency rule, the preamble also shall include an  
19 explanation of the situation justifying the rule being made as an emergency  
20 rule, the date of the attorney general's approval of the rule and a statement  
21 of the emergency rule's effective date.

22 ~~15-~~ 16. "Provision of law" means the whole or a part of the federal or  
23 state constitution, or of any federal or state statute, rule of court,  
24 executive order or rule of an administrative agency.

25 ~~16-~~ 17. "Register" means the Arizona administrative register.

26 ~~17-~~ 18. "Rule" means an agency statement of general applicability that  
27 implements, interprets or prescribes law or policy, or describes the  
28 procedure or practice requirements of an agency. Rule includes prescribing  
29 fees or the amendment or repeal of a prior rule but does not include  
30 intraagency memoranda that are not delegation agreements.

31 ~~18-~~ 19. "Rule making" means the process for formulation and  
32 finalization of a rule.

33 ~~19-~~ 20. "Small business" means a concern, including its affiliates,  
34 which is independently owned and operated, which is not dominant in its field  
35 and which employs fewer than one hundred full-time employees or which had  
36 gross annual receipts of less than four million dollars in its last fiscal  
37 year. For purposes of a specific rule, an agency may define small business to  
38 include more persons if it finds that such a definition is necessary to adapt  
39 the rule to the needs and problems of small businesses and organizations.

40 ~~20-~~ 21. "Substantive policy statement" means a written expression  
41 which informs the general public of an agency's current approach to, or  
42 opinion of, the requirements of the federal or state constitution, federal or  
43 state statute, administrative rule or regulation, or final judgment of a  
44 court of competent jurisdiction, including, where appropriate, the agency's  
45 current practice, procedure or method of action based upon that approach or

1 opinion. A substantive policy statement is advisory only. A substantive  
2 policy statement does not include internal procedural documents which only  
3 affect the internal procedures of the agency and does not impose additional  
4 requirements or penalties on regulated parties, confidential information or  
5 rules made in accordance with this chapter.

6 ~~21.~~ 22. "Summary rule" means a rule that is made pursuant to section  
7 41-1027.

8 Sec. 2. Section 41-1009, Arizona Revised Statutes, is amended to read:  
9 41-1009. Inspections; applicability

10 A. An agency inspector or regulator who enters any premises of a  
11 regulated person for the purpose of conducting an inspection shall:

12 1. Present photo identification on entry of the premises.

13 2. On initiation of the inspection, state the purpose of the  
14 inspection and the legal authority for conducting the inspection.

15 3. Disclose any applicable inspection fees.

16 4. Afford an opportunity to have an authorized on-site representative  
17 of the regulated person accompany the agency inspector or regulator on the  
18 premises, except during confidential interviews.

19 5. Provide notice of the right to have:

20 (a) Copies of any original documents taken by the agency during the  
21 inspection if the agency is permitted by law to take original documents.

22 (b) A split of any samples taken during the inspection if the split of  
23 any samples would not prohibit an analysis from being conducted or render an  
24 analysis inconclusive.

25 (c) Copies of any analysis performed on samples taken during the  
26 inspection.

27 6. Inform each person whose conversation with the agency inspector or  
28 regulator during the inspection is tape recorded that the conversation is  
29 being tape recorded.

30 7. Inform each person interviewed during the inspection that  
31 statements made by the person may be included in the inspection report.

32 B. On initiation of an inspection of any premises of a regulated  
33 person, an agency inspector or regulator shall provide the following in  
34 writing:

35 1. The rights described in subsection A of this section.

36 2. The name and telephone number of a contact person available to  
37 answer questions regarding the inspection.

38 3. The due process rights relating to an appeal of a final decision of  
39 an agency based on the results of the inspection, including the name and  
40 telephone number of a person to contact within the agency and any appropriate  
41 state government ombudsman.

42 C. An agency inspector or regulator shall obtain the signature of the  
43 regulated person or on-site representative of the regulated person on the  
44 writing prescribed in subsection B of this section indicating that the  
45 regulated person or on-site representative of the regulated person has read

1 the writing prescribed in subsection B of this section and is notified of the  
2 regulated person's or on-site representative of the regulated person's  
3 inspection and due process rights. The agency shall maintain a copy of this  
4 signature with the inspection report and shall leave a copy with the  
5 regulated person or on-site representative of the regulated person. If a  
6 regulated person or on-site representative of the regulated person is not at  
7 the site or refuses to sign the writing prescribed in subsection B of this  
8 section, the agency inspector or regulator shall note that fact on the  
9 writing prescribed in subsection B of this section.

10 D. An agency that conducts an inspection shall give a copy of the  
11 inspection report to the regulated person or on-site representative of the  
12 regulated person either:

- 13 1. At the time of the inspection.
- 14 2. Notwithstanding any other state law, within thirty working days  
15 after the inspection.
- 16 3. As otherwise required by federal law.

17 E. The inspection report shall contain deficiencies identified during  
18 an inspection. Unless otherwise provided by law, the agency may provide the  
19 regulated person an opportunity to correct the deficiencies unless the agency  
20 determines that the deficiencies are:

- 21 1. Committed intentionally.
- 22 2. Not correctable within a reasonable period of time as determined by  
23 the agency.
- 24 3. Evidence of a pattern of noncompliance.
- 25 4. A risk to any person, the public health, safety or welfare or the  
26 environment.

27 F. If the agency allows the regulated person an opportunity to correct  
28 the deficiencies pursuant to subsection E of this section, the regulated  
29 person shall notify the agency when the deficiencies have been  
30 corrected. Within thirty days of receipt of notification from the regulated  
31 person that the deficiencies have been corrected, the agency shall determine  
32 if the regulated person is in substantial compliance and notify the regulated  
33 person whether or not the regulated person is in substantial compliance. If  
34 the regulated person fails to correct the deficiencies or the agency  
35 determines the deficiencies have not been corrected within a reasonable  
36 period of time, the agency may take any enforcement action authorized by law  
37 for the deficiencies.

38 G. An agency decision pursuant to subsection E or F of this section is  
39 not an appealable agency action.

40 H. At least once every month after the commencement of the inspection  
41 an agency shall provide a regulated person with an update on the status of  
42 any agency action resulting from an inspection of the regulated person. An  
43 agency is not required to provide an update after the regulated person is  
44 notified that no agency action will result from the agency inspection or  
45 after the completion of agency action resulting from the agency inspection.

1 I. This section does not authorize an inspection or any other act that  
2 is not otherwise authorized by law.

3 J. This section applies only to inspections necessary for the issuance  
4 of a license or to determine compliance with licensure requirements. This  
5 section does not apply:

6 1. To criminal investigations, investigations under tribal state  
7 gaming compacts and undercover investigations that are generally or  
8 specifically authorized by law.

9 2. If the inspector or regulator has reasonable suspicion to believe  
10 that the regulated person may be engaged in criminal activity.

11 3. To the Arizona peace officer standards and training board  
12 established by section 41-1821.

13 K. If an inspector or regulator gathers evidence in violation of this  
14 section, the violation shall not be a basis to exclude the evidence in a  
15 civil or administrative proceeding, if the penalty sought is the denial,  
16 suspension or revocation of the regulated person's license or a civil penalty  
17 of more than one thousand dollars.

18 L. Failure of an agency, board or commission employee to comply with  
19 this section:

20 1. Constitutes cause for disciplinary action or dismissal ~~in~~  
21 ~~accordance with~~ PURSUANT TO section 41-770.

22 2. Shall be considered by the judge and administrative law judge as  
23 grounds for reduction of any fine or CIVIL penalty.

24 M. An agency may make rules to implement subsection A, paragraph 5 of  
25 this section.

26 N. Nothing in this section shall be used to exclude evidence in a  
27 criminal proceeding.

28 Sec. 3. Section 41-1027, Arizona Revised Statutes, is amended to read:  
29 41-1027. Summary rule making

30 A. An agency may use the summary rule making procedure set forth in  
31 this section in place of the rule making procedure set forth in sections  
32 41-1021 through 41-1024 for the following actions:

33 1. Repeals of rules made obsolete by repeal or supersession of an  
34 agency's statutory authority.

35 2. Making, amendment and repeal of rules that repeat verbatim existing  
36 statutory authority granted to the agency.

37 3. REPEAL OF OTHER OBSOLETE RULES OR RULES DEEMED BY THE AGENCY TO BE  
38 INEFFECTIVE AS LONG AS THE REPEAL DOES NOT INCREASE THE COST OF COMPLIANCE OR  
39 REDUCE PROCEDURAL RIGHTS OF THE ENTITY REGULATED.

40 B. An agency shall initiate summary rule making by filing the proposed  
41 summary rule with the council and the secretary of state for publication in  
42 the next register. The notice filed with the secretary of state shall  
43 include the preamble.

44 C. The agency shall forward copies of the notice filed with the  
45 secretary of state pursuant to subsection B of this section to the council.

1 D. The proposed summary rule takes interim effect on the date of  
2 publication in the register.

3 E. Within ninety days after publication in the register, after  
4 consideration of any comments, the agency shall submit to the council a  
5 summary rule, preamble, concise explanatory statement and economic, small  
6 business and consumer impact statement.

7 F. The summary rule making procedures of this section are not  
8 available for rules exempted from council approval pursuant to section  
9 41-1057.

10 Sec. 4. Title 41, chapter 6, article 3, Arizona Revised Statutes, is  
11 amended by adding section 41-1037, to read:

12 41-1037. General permits; issuance of traditional permit

13 A. IF AN AGENCY PROPOSES A NEW RULE OR AN AMENDMENT TO AN EXISTING  
14 RULE THAT REQUIRES THE ISSUANCE OF A PERMIT OR AGENCY AUTHORIZATION, THE  
15 AGENCY SHALL USE A GENERAL PERMIT UNLESS ANY OF THE FOLLOWING APPLIES:

16 1. A GENERAL PERMIT IS PROHIBITED BY FEDERAL LAW.

17 2. THE ISSUANCE OF AN ALTERNATIVE TYPE OF PERMIT OR AUTHORIZATION IS  
18 SPECIFICALLY AUTHORIZED BY STATE STATUTE.

19 3. THE ISSUANCE OF A GENERAL PERMIT IS NOT TECHNICALLY FEASIBLE.

20 4. THE ISSUANCE OF A GENERAL PERMIT WOULD RESULT IN ADDITIONAL  
21 REGULATORY REQUIREMENTS OR COSTS BEING PLACED ON THE PERMIT APPLICANT.

22 B. THE AGENCY RETAINS THE AUTHORITY TO REVOKE AN APPLICANT'S ABILITY  
23 TO OPERATE UNDER A GENERAL PERMIT AND TO REQUIRE THE APPLICANT TO OBTAIN A  
24 TRADITIONAL PERMIT IF THE APPLICANT IS IN SUBSTANTIAL NONCOMPLIANCE WITH THE  
25 APPLICABLE REQUIREMENTS FOR THE GENERAL PERMIT.

26 Sec. 5. Section 41-1051, Arizona Revised Statutes, is amended to read:

27 41-1051. Governor's regulatory review council; membership;  
28 terms; compensation; powers

29 A. A governor's regulatory review council is established that consists  
30 of six members who are appointed by the governor and who serve at the  
31 pleasure of the governor, and the director of the department of  
32 administration or the assistant director of the department of administration  
33 who is responsible for administering the council. The director or assistant  
34 director is an ex officio member and chairperson of the council. The council  
35 shall elect a vice-chairperson to serve as chairperson in the chairperson's  
36 absence. The governor shall appoint at least one member who represents the  
37 public interest, at least one member who represents the business community,  
38 one member from a list of three persons who are not legislators submitted by  
39 the president of the senate and one member from a list of three persons who  
40 are not legislators submitted by the speaker of the house of representatives.  
41 At least one member of the council shall be an attorney licensed to practice  
42 law in this state. The governor shall appoint the members of the council for  
43 staggered terms of three years. A vacancy occurring during the term of  
44 office of any member shall be filled by appointment by the governor for the  
45 unexpired portion of the term in the same manner as provided in this section.

1 THE GOVERNOR SHALL APPOINT PURSUANT TO SECTION 38-211 THE MEMBERS WHO ARE NOT  
2 NOMINATED BY THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF  
3 REPRESENTATIVES.

4 B. The council shall meet at least once a month at a time and place  
5 set by the chairperson and at other times and places as the chairperson deems  
6 necessary.

7 C. Members of the council are eligible to receive compensation in an  
8 amount of two hundred dollars for each day on which the council meets and  
9 reimbursement of expenses pursuant to title 38, chapter 4, article 2.

10 D. The chairperson, subject to chapter 4, articles 5 and 6 of this  
11 title, shall employ, determine the conditions of employment OF and specify  
12 the duties of administrative, secretarial and clerical employees as the  
13 chairperson deems necessary.

14 E. The council may make rules pursuant to this chapter to carry out  
15 the purposes of this chapter.

16 F. The council shall make the following information available to the  
17 public on request and on the council's ~~web-site~~ WEBSITE:

18 1. A list of agency rules approved or returned pursuant to section  
19 41-1052.

20 2. A list of agencies not certifying compliance as provided in section  
21 41-1091.

22 3. A list of agencies that report a lack of progress pursuant to  
23 section 41-1056, subsection ~~H~~ I.

24 Sec. 6. Section 41-1052, Arizona Revised Statutes, is amended to read:  
25 41-1052. Council review and approval

26 A. Before filing a final rule with the secretary of state, an agency  
27 shall ~~prepare,~~ transmit to the council and the committee and obtain the  
28 council's approval of the rule and its preamble and economic, small business  
29 and consumer impact statement ~~which~~ THAT meets the requirements of section  
30 41-1055 AND THAT IS PREPARED BY THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING  
31 AND BUDGETING.

32 B. Within ninety days of receipt of the rule, preamble and economic,  
33 small business and consumer impact statement, the council shall review and  
34 approve or return, in whole or in part, the rule, preamble or economic, small  
35 business and consumer impact statement. An agency may resubmit a rule,  
36 preamble or economic, small business and consumer impact statement if the  
37 council returns the rule, economic, small business and consumer impact  
38 statement or preamble, in whole or in part, to the agency.

39 C. The council shall not approve the rule unless:

40 1. The economic, small business and consumer impact statement contains  
41 the information, data and analysis prescribed by this article AND IS PREPARED  
42 BY THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING.

43 2. The economic, small business and consumer impact statement is  
44 generally accurate.

- 1           3. **BY CLEAR AND CONVINCING EVIDENCE**, the probable benefits of the rule  
2 outweigh the probable costs of the rule.
- 3           4. The rule is clear, concise and understandable.
- 4           5. The rule is not illegal, inconsistent with legislative intent or  
5 beyond the agency's statutory authority.
- 6           6. The agency adequately addressed the comments on the proposed rule  
7 and any supplemental proposals.
- 8           7. The rule is not a substantial change, considered as a whole, from  
9 the proposed rule and any supplemental notices.
- 10          8. The preamble discloses a reference to any study relevant to the  
11 rule that the agency reviewed and either did or did not rely on in the  
12 agency's evaluation of or justification for the rule.
- 13          9. **THE RULE IS NOT MORE STRINGENT THAN A FEDERAL LAW UNLESS THERE IS**  
14 **STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF THAT FEDERAL LAW.**
- 15          10. **IF A RULE REQUIRES A PERMIT, THE PERMITTING REQUIREMENT COMPLIES**  
16 **WITH SECTION 41-1037.**
- 17          D. The council shall verify that a rule with new fees does not violate  
18 section 41-1008. The council shall not approve a rule that contains a fee  
19 increase unless two-thirds of the voting quorum present vote to approve the  
20 rule.
- 21          E. The council shall verify that a rule with an immediate effective  
22 date complies with section 41-1032. The council shall not approve a rule  
23 with an immediate effective date unless two-thirds of the voting quorum  
24 present vote to approve the rule.
- 25          F. The council may require a representative of an agency whose rule is  
26 under examination to attend a council meeting and answer questions. The  
27 council may also communicate to the agency its comments on any rule, preamble  
28 or economic, small business and consumer impact statement and require the  
29 agency to respond to its comments in writing.
- 30          G. A person may submit written comments to the council that are within  
31 the scope of subsection C, D or E of this section. The council may permit  
32 oral comments at a council meeting within the scope of subsection C, D or E  
33 of this section.
- 34          H. If the agency makes a good faith effort to comply with the  
35 requirements prescribed in this article and has explained in writing the  
36 methodology used to produce the economic, small business and consumer impact  
37 statement, the rule may not be invalidated after it is finalized on the  
38 ground that the contents of the economic, small business and consumer impact  
39 statement are insufficient or inaccurate or on the ground that the council  
40 erroneously approved the rule, except as provided for by section 41-1056.01.
- 41          I. The absence of comments pursuant to subsection C, D or E of this  
42 section or article 4.1 of this chapter does not prevent the council from  
43 acting pursuant to this section.

1           Sec. 7. Section 41-1055, Arizona Revised Statutes, is amended to read:  
2           41-1055. Economic, small business and consumer impact statement

3           A. The economic, small business and consumer impact summary shall  
4 include:

- 5           1. An identification of the proposed rule making.
- 6           2. A brief summary of the information included in the economic, small  
7 business and consumer impact statement.
- 8           3. If the economic, small business and consumer impact summary  
9 accompanies a proposed rule or a proposed summary rule, the name and address  
10 of agency employees who may be contacted to submit or request additional data  
11 on the information included in the economic, small business and consumer  
12 impact statement.

13           B. The economic, small business and consumer impact statement shall  
14 include:

- 15           1. An identification of the proposed rule making.
- 16           2. An identification of the persons who will be directly affected by,  
17 bear the costs of or directly benefit from the proposed rule making.
- 18           3. A cost benefit analysis of the following:

19           (a) The probable costs and benefits to the implementing agency and  
20 other agencies directly affected by the implementation and enforcement of the  
21 proposed rule making. **THE PROBABLE COSTS TO THE IMPLEMENTING AGENCY SHALL  
22 INCLUDE THE NUMBER OF NEW FULL-TIME EMPLOYEES NECESSARY TO IMPLEMENT AND  
23 ENFORCE THE PROPOSED RULE AS DETERMINED BY THE GOVERNOR'S OFFICE OF STRATEGIC  
24 PLANNING AND BUDGETING. THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND  
25 BUDGETING SHALL NOTIFY THE JOINT LEGISLATIVE BUDGET COMMITTEE OF THE NUMBER  
26 OF NEW FULL-TIME EMPLOYEES NECESSARY TO IMPLEMENT AND ENFORCE THE RULE BEFORE  
27 THE RULE IS APPROVED BY THE COUNCIL.**

28           (b) The probable costs and benefits to a political subdivision of this  
29 state directly affected by the implementation and enforcement of the proposed  
30 rule making.

31           (c) The probable costs and benefits to businesses directly affected by  
32 the proposed rule making, including any anticipated effect on the revenues or  
33 payroll expenditures of employers who are subject to the proposed rule  
34 making.

35           4. A general description of the probable impact on private and public  
36 employment in businesses, agencies and political subdivisions of this state  
37 directly affected by the proposed rule making.

38           5. A statement of the probable impact of the proposed rule making on  
39 small businesses. The statement shall include:

40           (a) An identification of the small businesses subject to the proposed  
41 rule making.

42           (b) The administrative and other costs required for compliance with  
43 the proposed rule making.

44           (c) A description of the methods that the agency may use to reduce the  
45 impact on small businesses. These methods may include:

1 (i) Establishing less costly compliance requirements in the proposed  
2 rule making for small businesses.

3 (ii) Establishing less costly schedules or less stringent deadlines  
4 for compliance in the proposed rule making.

5 (iii) Exempting small businesses from any or all requirements of the  
6 proposed rule making.

7 (d) The probable cost and benefit to private persons and consumers who  
8 are directly affected by the proposed rule making.

9 6. A statement of the probable effect on state revenues.

10 7. A description of any less intrusive or less costly alternative  
11 methods of achieving the purpose of the proposed rule making.

12 C. If for any reason adequate data are not reasonably available to  
13 comply with the requirements of subsection B of this section, the agency  
14 shall explain the limitations of the data and the methods that were employed  
15 in the attempt to obtain the data and shall characterize the probable impacts  
16 in qualitative terms. The absence of adequate data, if explained in  
17 accordance with this subsection, shall not be grounds for a legal challenge  
18 to the sufficiency of the economic, small business and consumer impact  
19 statement.

20 D. An agency is not required to prepare an economic, small business  
21 and consumer impact statement pursuant to this chapter for the following rule  
22 makings:

23 1. Initial making, but not renewal, of an emergency rule pursuant to  
24 section 41-1026.

25 2. Summary rule makings pursuant to section 41-1027 that only repeal  
26 existing rule language.

27 3. Any rule making that decreases monitoring, record keeping or  
28 reporting burdens on agencies, political subdivisions, businesses or persons,  
29 unless the agency determines that increased costs of implementation or  
30 enforcement may equal or exceed the reduction in burdens.

31 E. The economic, small business and consumer impact statement for a  
32 rule making that is exempt pursuant to subsection D of this section shall  
33 state that the proposed rule making is exempt.

34 F. THE COST-BENEFIT ANALYSIS REQUIRED BY SUBSECTION B OF THIS SECTION  
35 SHALL CALCULATE ONLY THE COSTS THAT OCCUR IN THIS STATE.

36 Sec. 8. Section 41-1056, Arizona Revised Statutes, is amended to read:  
37 41-1056. Review by agency

38 A. At least once every five years, each agency shall review all of its  
39 rules to determine whether any rule should be amended or repealed. The  
40 agency shall prepare and obtain council approval of a written report  
41 summarizing its findings, its supporting reasons and any proposed course of  
42 action. For each rule, the report shall include a concise analysis of all of  
43 the following:

44 1. The rule's effectiveness in achieving its objectives, including a  
45 summary of any available data supporting the conclusions reached.

- 1           2. Written criticisms of the rule received during the previous five  
2 years.
- 3           3. Authorization of the rule by existing statutes.
- 4           4. Whether the rule is consistent with other rules made by the agency,  
5 current agency enforcement policy and current agency views regarding the  
6 wisdom of the rule.
- 7           5. The clarity, conciseness and understandability of the rule.
- 8           6. The estimated economic, small business and consumer impact of the  
9 rules as compared to the economic, small business and consumer impact  
10 statement prepared on the last making of the rules.
- 11           B. THE REPORT PRESCRIBED IN SUBSECTION A SHALL INCLUDE A  
12 COMPETITIVENESS REVIEW OF THE RULES TO COMPARE THE RULES OF THIS STATE TO  
13 OTHER WESTERN STATES TO DETERMINE WHETHER THE PERSONS WHO ARE DIRECTLY  
14 AFFECTED BY THE RULES OF THIS STATE BEAR A GREATER COST THAN SIMILAR PERSONS  
15 IN OTHER WESTERN STATES. THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND  
16 BUDGETING SHALL PREPARE THE COMPETITIVENESS REVIEW OF THE RULES.
- 17           ~~B-~~ C. The council shall schedule the periodic review of each agency's  
18 rules and shall approve or return, in whole or in part, the agency's report  
19 on its review. THE COUNCIL MAY GRANT AN AGENCY AN EXTENSION FROM FILING AN  
20 AGENCY'S REPORT. If the council returns an agency's report, in whole or in  
21 part, the council shall inform the agency of the manner in which its report  
22 is inadequate and, in consultation with the agency, shall schedule submission  
23 of a revised report. The council shall not approve a report unless the  
24 report complies with ~~the provisions of~~ subsection A.
- 25           ~~C-~~ D. The council may reschedule a report or portion of a report for  
26 any rule that is scheduled for review and that was initially made or  
27 substantially revised within two years before the due date of the report as  
28 scheduled by the council.
- 29           ~~D-~~ E. If an agency finds that it cannot provide the written report to  
30 the council by the date it is due, the agency may file an extension with the  
31 council before the due date indicating the reason for the extension. The  
32 timely filing for an extension permits the agency to submit its report ~~not~~  
33 ~~more than one hundred twenty days after the due date~~ ON OR BEFORE THE DATE  
34 PRESCRIBED BY THE COUNCIL.
- 35           ~~E-~~ F. If an agency fails to submit its report, including a revised  
36 report pursuant to subsection ~~B- C~~, or file an extension before the due date  
37 of the report or if it files an extension and does not submit its report  
38 within the extension period, the rules scheduled for review expire and the  
39 council shall:
- 40           1. Cause a notice to be published in the next register that states the  
41 rules have expired and are no longer enforceable.
- 42           2. Notify the secretary of state that the rules have expired and that  
43 the rules are to be removed from the code.
- 44           3. Notify the agency that the rules have expired and are no longer  
45 enforceable.

1 ~~F.~~ G. If a rule expires as provided in subsection ~~E~~ F and the agency  
2 wishes to reestablish the rule, the agency shall comply with this chapter.

3 ~~G.~~ H. Not less than ninety days ~~prior to~~ BEFORE the due date of a  
4 report, the council shall send a written notice to the head of the agency  
5 whose report is due, the governor and the director of the department of  
6 administration. The notice shall list the rules to be reviewed and the date  
7 the report is due.

8 ~~H.~~ I. On or before June 30 of each year, each agency shall report to  
9 the council the agency's progress toward completion of the course of action  
10 established in all reports submitted to the council during the previous five  
11 years. The annual report prescribed by this subsection shall be on a form  
12 developed by the council.

13 J. A PERSON MAY PETITION THE COUNCIL TO REQUIRE AN AGENCY THAT HAS AN  
14 OBSOLETE RULE TO ENSURE THAT THE RULE IS INCLUDED IN THE FIVE YEAR REPORT  
15 WITH A RECOMMENDATION FOR REPEAL OF THE RULE.

16 Sec. 9. Section 41-1056.01, Arizona Revised Statutes, is amended to  
17 read:

18 41-1056.01. Impact statements; appeals

19 A. Within two years after a rule is finalized, a person who is or may  
20 be affected by the rule may file a written petition with an agency objecting  
21 to all or part of a rule on ~~the~~ ANY OF THE FOLLOWING grounds ~~that either~~:

22 1. The actual economic, small business or consumer impact  
23 significantly exceeded the impact estimated in the economic, small business  
24 and consumer impact statement submitted during the making of the rule.

25 2. The actual economic, small business or consumer impact was not  
26 estimated in the economic, small business and consumer impact statement  
27 submitted during the making of the rule and that actual impact imposes a  
28 significant burden on persons subject to the rule.

29 3. THE ACTUAL BENEFIT OF THE RULE DID NOT BY CLEAR AND CONVINCING  
30 EVIDENCE OUTWEIGH THE COST OF THE RULE.

31 B. The burden of proof is on the petitioner to show that either or  
32 both of the provisions set forth in subsection A of this section are met.

33 C. Within thirty days after receiving the copy of the petition, the  
34 agency shall reevaluate the rule and its economic impacts and publish notice  
35 of the petition in the register. For at least thirty days after publication  
36 of the notice the agency shall afford persons the opportunity to submit in  
37 writing statements, arguments, data and views on the rule and its impacts.  
38 Within thirty days after the close of comment, the agency shall publish a  
39 written summary of comments received, the agency's response to those  
40 comments, and the final decision of the agency on whether to initiate a rule  
41 making or to amend or repeal the rule. The agency shall initiate any such  
42 rule making within forty-five days after publication of its final decision.

1 D. Any person who is or may be affected by the agency's final decision  
2 on whether to initiate a rule making pursuant to subsection C of this section  
3 may appeal that decision to the council within thirty days after publication  
4 of the agency's final decision.

5 E. The council shall place on its agenda the appeal if at least three  
6 council members make such a request of the council chairman within two weeks  
7 after the filing of the appeal with the council.

8 F. If the appeal is placed on the council's agenda, the council  
9 chairman shall provide a copy of the appeal and written notice to the agency  
10 that the council will consider the appeal. The agency shall provide the  
11 council with a copy of the written summary described in subsection C of this  
12 section.

13 G. The council shall require an agency to promptly initiate a rule  
14 making or to amend or repeal the rule or the rule package, as prescribed by  
15 section 41-1024, subsection E, objected to in the petition if the council  
16 finds that either or both of the provisions set forth in subsection A of this  
17 section are met.

18 H. This section shall not apply to a rule for which there is a final  
19 judgment of a court of competent jurisdiction based on the grounds of whether  
20 the contents of the economic, small business and consumer impact statement  
21 were insufficient or inaccurate.

22 Sec. 10. Laws 2009, third special session, chapter 7, section 28, is  
23 amended to read:

24 Sec. 28. Moratorium on rule making relating to increased  
25 monetary or regulatory costs; exceptions;  
26 definitions

27 A. Notwithstanding any other law, for fiscal ~~year~~ YEARS 2009-2010, AND  
28 2010-2011 an agency shall not conduct any rule making, including an informal  
29 rule making process, that would impose increased monetary or regulatory costs  
30 on other state agencies, political subdivisions of this state, persons or  
31 individuals or would not reduce the regulatory burden on the persons or  
32 individuals so regulated.

33 B. Subsection A of this section does not apply to rule making for any  
34 of the following:

35 1. An authorization or requirement enacted by the legislature after  
36 January 1, 2009 or as authorized by the governor after January 22, 2009.

37 2. To avoid a violation of a court order or federal law that would  
38 result in sanctions by the court or federal government to an agency in fiscal  
39 ~~year~~ YEARS 2009-2010 AND 2010-2011 for failure to conduct the rule making  
40 action.

41 3. To prevent a threat to the public health, peace or safety.

- 1           4. To fulfill an obligation related to fees, rates, fines or
- 2 regulations that are expressly delineated in the constitution of this state.
- 3           5. To implement or comply with the fiscal ~~year~~ YEARS 2009-2010 AND
- 4 2010-2011 state budget or the American recovery and reinvestment act of 2009
- 5 (P.L. 111-5).
- 6           6. A rule or other item that is exempt from title 41, chapter 6,
- 7 Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised
- 8 Statutes.
- 9           7. To eliminate or replace archaic or illegal rules.
- 10          C. An agency shall not conduct any informal or formal rule making
- 11 pursuant to this section without the prior written approval of the office of
- 12 the governor. This subsection does not apply to any agency that is
- 13 independent of the office of the governor, including any agency that is
- 14 headed by a single elected official or the corporation commission.
- 15          D. For the purposes of this section, "agency", "person", "rule" and
- 16 "rule making" have the same meanings prescribed in section 41-1001, Arizona
- 17 Revised Statutes.