

REFERENCE TITLE: regulatory review; rule making

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1348

Introduced by
Senator Burns

AN ACT

AMENDING SECTIONS 20-181 AND 20-182, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-183; AMENDING SECTIONS 41-1011, 41-1027, 41-1051, 41-1052, 41-1055, 41-1056 AND 41-1056.01, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 25, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2754; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.01; AMENDING LAWS 2009, THIRD SPECIAL SESSION, CHAPTER 7, SECTION 28; RELATING TO REGULATORY REVIEW.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-181, Arizona Revised Statutes, is amended to read:

20-181. Mandated health coverage; report

A. An organization or individual advocating a legislative proposal ~~which~~ THAT would mandate a health coverage or offering of a health coverage by an insurer, hospital, medical, dental or optometric service corporation, health care services organization or any other health care service contractor as a component of individual or group policies shall submit a report ~~to the standing committee of the legislature that has been assigned to consider the proposal and the joint legislative budget committee before the committee considers the proposal~~ PURSUANT TO SECTION 20-183. The report shall assess both the social and financial impacts of such coverage, including the effectiveness of the treatment or service proposed, according to the factors prescribed in section 20-182. ~~The legislature is not responsible for the cost of preparing the report.~~

B. THE LEGISLATIVE PROPOSAL SHALL NOT BE PLACED ON THE CALENDAR FOR THE COMMITTEE OF THE WHOLE UNTIL THE LEGISLATIVE COMMITTEE OF REFERENCE DELIVERS ITS REPORT AS PRESCRIBED BY SECTION 20-183.

Sec. 2. Section 20-182, Arizona Revised Statutes, is amended to read:

20-182. Factors for assessing impact; certification of report

A. To the extent that information is available, the report prescribed by section 20-181 shall include, but not be limited to, the following:

1. The social impact:

(a) The extent to which the treatment or service is generally utilized by a significant portion of the population.

(b) The extent to which the insurance coverage is already generally available.

(c) If coverage is not generally available, the extent to which the lack of coverage results in persons avoiding necessary health care treatments.

(d) If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship to a patient.

(e) The level of public demand for the treatment or service.

(f) The level of public demand for insurance coverage of the treatment or service.

(g) The level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts.

2. The financial impact:

(a) The extent to which the coverage will increase or decrease the cost of the treatment or service.

(b) The extent to which the coverage will increase the appropriate use of the treatment or service.

(c) The extent to which the mandated treatment or service will be a substitute for a more expensive treatment or service.

(d) The extent to which the coverage will increase or decrease the administrative expenses of insurers and the premium and administrative expenses of policyholders.

(e) The impact of this coverage on the total cost of health care.

B. An actuary who is a member of the American academy of actuaries OR THE AUDITOR GENERAL shall prepare the financial impact analysis required by subsection A, paragraph 2 of this section and certify that the analysis is consistent with accepted actuarial techniques.

C. The report required by section 20-181 shall address the specific language of the proposed mandate. A report on a similar proposal in a different jurisdiction is insufficient and does not meet the requirements of section 20-181.

D. An organization, ~~or~~ individual OR LEGISLATOR that does not submit a report required by section 20-181 is not subject to any civil sanction or criminal penalty.

Sec. 3. Title 20, chapter 1, article 3, Arizona Revised Statutes, is amended by adding section 20-183, to read:

20-183. Report procedures and deadlines

A PERSON OR A LEGISLATOR ADVOCATING A LEGISLATIVE PROPOSAL PURSUANT TO SECTION 20-181 SHALL SUBMIT A WRITTEN REPORT EXPLAINING THE FACTORS PRESCRIBED IN SECTION 20-182 TO THE JOINT LEGISLATIVE AUDIT COMMITTEE ESTABLISHED BY SECTION 41-1279. THE REPORT MUST BE SUBMITTED ON OR BEFORE SEPTEMBER 1 BEFORE THE START OF THE LEGISLATIVE SESSION FOR WHICH THE LEGISLATION IS PROPOSED. THE JOINT LEGISLATIVE AUDIT COMMITTEE SHALL ASSIGN THE WRITTEN REPORT TO THE APPROPRIATE LEGISLATIVE COMMITTEE OF REFERENCE. THE LEGISLATIVE COMMITTEE OF REFERENCE SHALL HOLD AT LEAST ONE HEARING AND TAKE PUBLIC TESTIMONY AFTER RECEIVING THE REPORT. THE LEGISLATIVE COMMITTEE OF REFERENCE SHALL STUDY THE WRITTEN REPORT AND DELIVER A REPORT OF ITS RECOMMENDATIONS TO THE JOINT LEGISLATIVE AUDIT COMMITTEE. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE, THE GOVERNOR AND THE DIRECTOR OF THE DEPARTMENT ON OR BEFORE DECEMBER 1 OF THE YEAR IN WHICH THE REPORT IS SUBMITTED.

Sec. 4. Section 41-1011, Arizona Revised Statutes, is amended to read:

41-1011. Publication and distribution of code and register; online databases

A. The secretary of state is responsible for the publication and distribution of the code and the register.

B. The secretary of state shall prescribe a uniform numbering system, form and style for all rules filed with and published by that office. The secretary of state shall reject rules if they are not in compliance with the prescribed numbering system, form and style.

C. The secretary of state shall prepare, arrange and correlate all rules and other text as necessary for the publication of the code and the register. The secretary of state may not alter the sense, meaning or effect of any rule but may renumber rules and parts of rules, rearrange rules, change reference numbers to agree with renumbered rules and parts of rules,

1 substitute the proper rule number for "the preceding rule" and similar terms,
2 delete figures if they are merely a repetition of written words, change
3 capitalization for the purpose of uniformity and correct manifest clerical or
4 typographical errors. With the consent of the attorney general the secretary
5 of state may remove from the code a provision of a rule that a court of final
6 appeal declares unconstitutional or otherwise invalid and a rule made by an
7 agency that is abolished if the rule is not transferred to a successor
8 agency.

9 D. ON OR BEFORE DECEMBER 31, 2013, THE SECRETARY OF STATE SHALL
10 ESTABLISH AN ONLINE DATABASE OF RULES THAT IS SEARCHABLE BY AGENCY, DATE,
11 TOPIC, RULE NUMBER, TYPE OF BUSINESS FOR COMPLIANCE AND TYPE OF ACTIVITY FOR
12 COMPLIANCE.

13 E. ON OR BEFORE DECEMBER 31, 2014, THE SECRETARY OF STATE SHALL
14 ESTABLISH AN ONLINE DATABASE OF RULES FOR EACH COUNTY THAT IS SEARCHABLE BY
15 AGENCY, DATE, TOPIC, RULE NUMBER, TYPE OF BUSINESS FOR COMPLIANCE AND TYPE OF
16 ACTIVITY FOR COMPLIANCE. THE SECRETARY OF STATE SHALL LINK THE COUNTY
17 INFORMATION TO THE SEARCHABLE DATABASE PRESCRIBED IN SUBSECTION D. EACH
18 COUNTY SHALL SUPPLY INFORMATION TO THE SECRETARY OF STATE IN A DIGITAL
19 FORMAT.

20 F. ON OR BEFORE DECEMBER 31, 2015, THE SECRETARY OF STATE SHALL
21 ESTABLISH AN ONLINE DATABASE OF RULES FOR EACH CITY AND TOWN THAT IS
22 SEARCHABLE BY AGENCY, DATE, TOPIC, RULE NUMBER, TYPE OF BUSINESS FOR
23 COMPLIANCE AND TYPE OF ACTIVITY FOR COMPLIANCE. THE SECRETARY OF STATE SHALL
24 LINK THE CITY OR TOWN INFORMATION TO THE SEARCHABLE DATABASE PRESCRIBED IN
25 SUBSECTION D. EACH CITY OR TOWN SHALL SUPPLY INFORMATION TO THE SECRETARY OF
26 STATE IN A DIGITAL FORMAT.

27 Sec. 5. Section 41-1027, Arizona Revised Statutes, is amended to read:
28 41-1027. Summary rule making

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

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

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

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

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

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

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

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

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

8 Sec. 6. Section 41-1051, Arizona Revised Statutes, is amended to read:

9 41-1051. Governor's regulatory review council; membership;
10 terms; compensation; powers

11 A. A governor's regulatory review council is established that consists
12 of six members who are appointed by the governor ~~and who serve at the~~
13 ~~pleasure of the governor~~ PURSUANT TO SECTION 38-211, and the director of the
14 department of administration or the assistant director of the department of
15 administration who is responsible for administering the council. The
16 director or assistant director is an ex officio member and chairperson of the
17 council. The council shall elect a vice-chairperson to serve as chairperson
18 in the chairperson's absence. The governor shall appoint at least one member
19 who represents the public interest, at least one member who represents the
20 business community, one member from a list of three persons who are not
21 legislators submitted by the president of the senate and one member from a
22 list of three persons who are not legislators submitted by the speaker of the
23 house of representatives. At least one member of the council shall be an
24 attorney licensed to practice law in this state. The governor shall appoint
25 the members of the council for staggered terms of three years. A vacancy
26 occurring during the term of office of any member shall be filled by
27 appointment by the governor for the unexpired portion of the term in the same
28 manner as provided in this section.

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

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

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

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

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

43 1. A list of agency rules approved or returned pursuant to section
44 41-1052.

45 2. A list of agencies not certifying compliance as provided in section
46 41-1091.

1 3. A list of agencies that report a lack of progress pursuant to
2 section 41-1056, subsection H.

3 Sec. 7. Section 41-1052, Arizona Revised Statutes, is amended to read:
4 41-1052. Council review and approval

5 A. Before filing a final rule with the secretary of state, an agency
6 shall prepare, transmit to the council and the committee and obtain the
7 council's approval of the rule and its preamble and economic, small business
8 and consumer impact statement ~~which~~ THAT meets the requirements of section
9 41-1055.

10 B. Within ninety days of receipt of the rule, preamble and economic,
11 small business and consumer impact statement, the council shall review and
12 approve or return, in whole or in part, the rule, preamble or economic, small
13 business and consumer impact statement. An agency may resubmit a rule,
14 preamble or economic, small business and consumer impact statement if the
15 council returns the rule, economic, small business and consumer impact
16 statement or preamble, in whole or in part, to the agency.

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

18 1. The economic, small business and consumer impact statement contains
19 ~~the~~ information FROM THIS STATE, data and analysis prescribed by this
20 article.

21 2. The economic, small business and consumer impact statement is
22 generally accurate.

23 3. BY CLEAR AND CONVINCING EVIDENCE, the probable benefits of the rule
24 outweigh the probable costs of the rule.

25 4. The rule is WRITTEN IN A MANNER THAT IS clear, concise and
26 understandable TO THE GENERAL PUBLIC.

27 5. The rule is not illegal, inconsistent with legislative intent or
28 beyond the agency's statutory authority.

29 6. The agency adequately addressed the comments on the proposed rule
30 and any supplemental proposals.

31 7. The rule is not a substantial change, considered as a whole, from
32 the proposed rule and any supplemental notices.

33 8. The preamble discloses a reference to any study relevant to the
34 rule that the agency reviewed and either did or did not rely on in the
35 agency's evaluation of or justification for the rule.

36 9. THE RULE IS NOT MORE STRINGENT THAN A FEDERAL LAW UNLESS THERE IS
37 STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF THAT FEDERAL LAW.

38 D. The council shall verify that a rule with new fees does not violate
39 section 41-1008. The council shall not approve a rule that contains a fee
40 increase unless two-thirds of the voting quorum present vote to approve the
41 rule.

42 E. The council shall verify that a rule with an immediate effective
43 date complies with section 41-1032. The council shall not approve a rule
44 with an immediate effective date unless two-thirds of the voting quorum
45 present vote to approve the rule.

F. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

G. A person may submit written comments to the council that are within the scope of subsection C, D or E of this section. The council may permit oral comments at a council meeting within the scope of subsection C, D or E of this section.

H. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided for by section 41-1056.01.

I. The absence of comments pursuant to subsection C, D or E of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

Sec. 8. Section 41-1055, Arizona Revised Statutes, is amended to read:

41-1055. Economic, small business and consumer impact statement

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

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

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

1. An identification of the proposed rule making.
2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.
3. A cost-benefit analysis of the following:
 - (a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making.
 - (b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.
 - (c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or

1 payroll expenditures of employers who are subject to the proposed rule
2 making.

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

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

8 (a) An identification of the small businesses subject to the proposed
9 rule making.

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

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

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

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

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

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

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

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

25 C. If for any reason adequate data are not reasonably available to
26 comply with the requirements of subsection B of this section, the agency
27 shall explain the limitations of the data and the methods that were employed
28 in the attempt to obtain the data and shall characterize the probable impacts
29 in qualitative terms. The absence of adequate data, if explained in
30 accordance with this subsection, shall not be grounds for a legal challenge
31 to the sufficiency of the economic, small business and consumer impact
32 statement.

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

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

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

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

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

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

3 Sec. 9. Section 41-1056, Arizona Revised Statutes, is amended to read:
4 41-1056. Review by agency

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

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

13 2. Written criticisms of the rule received during the previous five
14 years.

15 3. Authorization of the rule by existing statutes.

16 4. Whether the rule is consistent with other rules made by the agency,
17 current agency enforcement policy and current agency views regarding the
18 wisdom of the rule.

19 5. The clarity, conciseness and understandability of the rule TO THE
20 GENERAL PUBLIC.

21 6. The estimated economic, small business and consumer impact of the
22 rules as compared to the economic, small business and consumer impact
23 statement prepared on the last making of the rules.

24 7. IF APPLICABLE, THAT THE AGENCY COMPLETED THE PREVIOUS FIVE-YEAR
25 REVIEW PROCESS.

26 B. The council shall schedule the periodic review of each agency's
27 rules and shall approve or return, in whole or in part, the agency's report
28 on its review. If the council returns an agency's report, in whole or in
29 part, the council shall inform the agency of the manner in which its report
30 is inadequate and, in consultation with the agency, shall schedule submission
31 of a revised report. The council shall not approve a report unless the
32 report complies with ~~the provisions of~~ subsection A.

33 C. The council may reschedule a report or portion of a report for any
34 rule that is scheduled for review and that was initially made or
35 substantially revised within two years before the due date of the report as
36 scheduled by the council.

37 D. If an agency finds that it cannot provide the written report to the
38 council by the date it is due, the agency may file an extension with the
39 council before the due date indicating the reason for the extension. The
40 timely filing for an extension permits the agency to submit its report not
41 more than one hundred twenty days after the due date.

42 E. If an agency fails to submit its report, including a revised report
43 pursuant to subsection B, or file an extension before the due date of the
44 report or if it files an extension and does not submit its report within the
45 extension period, the rules scheduled for review expire and the council
46 shall:

1 1. Cause a notice to be published in the next register that states the
2 rules have expired and are no longer enforceable.

3 2. Notify the secretary of state that the rules have expired and that
4 the rules are to be removed from the code.

5 3. Notify the agency that the rules have expired and are no longer
6 enforceable.

7 F. If a rule expires as provided in subsection E and the agency wishes
8 to reestablish the rule, the agency shall comply with **ARTICLE 3 OF** this
9 chapter.

10 G. Not less than ninety days ~~prior to~~ **BEFORE** the due date of a report,
11 the council shall send a written notice to the head of the agency whose
12 report is due, the governor and the director of the department of
13 administration. The notice shall list the rules to be reviewed and the date
14 the report is due.

15 H. On or before June 30 of each year, each agency shall report to the
16 council the agency's progress toward completion of the course of action
17 established in all reports submitted to the council during the previous five
18 years. The annual report prescribed by this subsection shall be on a form
19 developed by the council.

20 Sec. 10. Section 41-1056.01, Arizona Revised Statutes, is amended to
21 read:

22 **41-1056.01. Impact statements; appeals**

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

26 1. The actual economic, small business or consumer impact
27 significantly exceeded the impact estimated in the economic, small business
28 and consumer impact statement submitted during the making of the rule.

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

33 **3. THE ACTUAL BENEFIT OF THE RULE DID NOT BY CLEAR AND CONVINCING**
34 **EVIDENCE OUTWEIGH THE COST OF THE RULE.**

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

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

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

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

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

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

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

Sec. 11. Title 41, chapter 25, article 1, Arizona Revised Statutes, is amended by adding section 41-2754, to read:

41-2754. Commission on privatization, efficiency and competition; members; terms; compensation; duties; staff; judicial review

A. THE COMMISSION ON PRIVATIZATION, EFFICIENCY AND COMPETITION IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

1. THE CHIEF EXECUTIVE OR ADMINISTRATIVE OFFICER OF ONE STATE AGENCY WHO IS APPOINTED BY THE GOVERNOR OR THE OFFICER'S DESIGNEE.

2. ONE MEMBER WHO IS APPOINTED BY THE GOVERNOR TO BE THE REPRESENTATIVE OF THE COMMUNITY COLLEGES.

3. ONE MEMBER WHO IS APPOINTED BY THE ARIZONA BOARD OF REGENTS.

4. ONE MEMBER WHO IS APPOINTED BY THE GOVERNOR TO BE THE REPRESENTATIVE OF STATE EMPLOYEES COVERED UNDER CHAPTER 4, ARTICLES 5 AND 6 OF THIS TITLE.

5. SIX MEMBERS WHO ARE ENGAGED IN PRIVATE ENTERPRISE, AT LEAST THREE OF WHOM REPRESENT THE SMALL BUSINESS COMMUNITY. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND THE GOVERNOR SHALL EACH APPOINT TWO MEMBERS, AND OF THE TWO APPOINTED BY EACH AT LEAST ONE SHALL BE REPRESENTATIVE OF THE SMALL BUSINESS COMMUNITY.

B. TERMS OF APPOINTMENT TO THE COMMISSION ARE FOR TWO YEARS UNLESS THE CHIEF EXECUTIVE OR ADMINISTRATIVE OFFICER OF A STATE AGENCY CEASES TO HOLD SUCH OFFICE. IN THAT CASE, THE GOVERNOR SHALL APPOINT A REPLACEMENT MEMBER FOR THE REMAINDER OF THE UNEXPIRED TERM.

1 C. MEMBERS OF THE COMMISSION APPOINTED PURSUANT TO SUBSECTION A,
2 PARAGRAPH 5 OF THIS SECTION ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE
3 ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4,
4 ARTICLE 2.

5 D. THE COMMISSION SHALL:

6 1. SELECT A CHAIRPERSON FROM AMONG ITS MEMBERS.

7 2. MEET AT LEAST FOUR TIMES EACH YEAR AT THE STATE CAPITOL AND HOLD
8 ADDITIONAL HEARINGS AS MAY BE NECESSARY ON THE CALL OF THE CHAIRPERSON.

9 3. RECEIVE WRITTEN COMPLAINTS OF VIOLATIONS OF THIS ARTICLE.

10 4. TRANSMIT COMPLAINTS RECEIVED UNDER PARAGRAPH 3 OF THIS SUBSECTION
11 TO THE STATE AGENCY, UNIVERSITY OR COMMUNITY COLLEGE DISTRICT ALLEGED TO BE
12 IN VIOLATION.

13 5. HOLD PUBLIC HEARINGS ON COMPLAINTS AND DETERMINE WHETHER THE
14 AGENCY, UNIVERSITY OR COMMUNITY COLLEGE DISTRICT IS IN VIOLATION OF THIS
15 ARTICLE.

16 6. WITHIN NINETY DAYS AFTER RECEIVING THE STATE AGENCY'S RESPONSE,
17 ISSUE A WRITTEN REPORT OF ITS FINDINGS TO THE COMPLAINANT.

18 7. TRANSMIT A COMPLETE REPORT OF EACH MEETING TO THE LEGISLATURE AND
19 THE GOVERNOR, INCLUDING RECOMMENDATIONS TO REMEDY VIOLATIONS OF PROHIBITIONS
20 ON COMPETITION WITH PRIVATE ENTERPRISE AND FINDINGS ON NECESSARY EXCEPTIONS
21 TO THE PROHIBITIONS.

22 E. THE COMMISSION MAY RECEIVE, BUT SHALL NOT CONSIDER, A COMPLAINT
23 RELATING TO A UNIVERSITY OR COMMUNITY COLLEGE DISTRICT UNTIL THE COMPLAINT
24 HAS BEEN FILED WITH THE STATE GOVERNING BOARD UNDER SECTION 41-2753,
25 SUBSECTION D AND THE STATE GOVERNING BOARD HAS RENDERED A DECISION.

26 F. THE STATE AGENCY, UNIVERSITY OR COMMUNITY COLLEGE DISTRICT SHALL
27 RESPOND TO THE COMMISSION IN WRITING WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF
28 A COMPLAINT TRANSMITTED UNDER SUBSECTION D, PARAGRAPH 4 OF THIS SECTION AND
29 SHALL EITHER DENY OR CONCUR WITH THE COMPLAINT AND INDICATE ANY NECESSARY AND
30 CONTEMPLATED REMEDIAL MEASURES. WHEN A SPECIFIC COMPLAINT CONCERNING SECTION
31 41-2753, SUBSECTION A, PARAGRAPH 1 IS RECEIVED BY THE COMMISSION REGARDING
32 THE PROVIDING OF GOODS, SERVICES OR FACILITIES AS A VALUABLE EDUCATIONAL OR
33 RESEARCH EXPERIENCE FOR ITS STUDENTS OR TO FULFILL ITS PUBLIC SERVICE
34 MISSION, A COMMUNITY COLLEGE DISTRICT OR UNIVERSITY SHALL FILE WITH THE
35 RESPONSE TO THE COMMISSION EITHER A WRITTEN DESCRIPTION OF WHAT IT BELIEVES
36 IS THE VALUABLE EDUCATIONAL OR RESEARCH EXPERIENCE FOR ITS STUDENTS OR A
37 WRITTEN DESCRIPTION OF THIS PUBLIC SERVICE MISSION, AS APPLICABLE.

38 G. THE COMMISSION MAY EVALUATE AND REVIEW OPPORTUNITIES TO CONTRACT
39 WITH PRIVATE ENTERPRISE THAT ARE DEEMED TO BE IN THE PUBLIC INTEREST. THE
40 PUBLIC AGENCIES OFFERING SERVICES SUBJECT TO REVIEW SHALL BE INVOLVED AS
41 PARTICIPANTS IN THE EVALUATION PROCESS. THE COMMISSION MAY HOLD PUBLIC
42 HEARINGS AS A PART OF ITS EVALUATION PROCESS AND SHALL REPORT ITS
43 RECOMMENDATIONS TO THE LEGISLATURE AND THE GOVERNOR.

44 H. THE COMMISSION SHALL SOLICIT PETITIONS OF INTEREST FROM PRIVATE
45 SECTOR SERVICE PROVIDERS AS THE COMMISSION DEEMS APPROPRIATE. THE COMMISSION
46 MAY EVALUATE AND REVIEW THE PETITIONS AND MAY HOLD PUBLIC HEARINGS AS PART OF

THE EVALUATION PROCESS. THE COMMISSION MAY RECOMMEND SOME OR ALL OF THE PETITIONS TO THE GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET FOR FURTHER REVIEW PURSUANT TO SECTION 41-2773. A PERSON DOES NOT HAVE A CAUSE OF ACTION BASED ON THE FAILURE OF THE COMMISSION TO CONSIDER A PETITION OF INTEREST OR TO MAKE A RECOMMENDATION. THIS SUBSECTION DOES NOT APPLY TO THE ARIZONA BOARD OF REGENTS, THE UNIVERSITIES UNDER ITS JURISDICTION OR COMMUNITY COLLEGE DISTRICTS.

I. THE COMMISSION MAY EVALUATE AND REVIEW ALL STATE AGENCY EXEMPTIONS AND EXCEPTIONS TO THE RESTRICTIONS ON COMPETITION WITH PRIVATE ENTERPRISE IN THIS ARTICLE AND MAY DETERMINE THAT ANY FUNCTION OR FUNCTIONS OF A STATE AGENCY, UNIVERSITY OR COMMUNITY COLLEGE DISTRICT ARE A VIOLATION OF THIS ARTICLE. THE COMMISSION SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE LEGISLATURE AND THE GOVERNOR.

J. AT THE REQUEST OF THE COMMISSION, THE OFFICE FOR EXCELLENCE IN GOVERNMENT, ESTABLISHED BY EXECUTIVE ORDER, OR ITS SUCCESSOR, SHALL PROVIDE SUCH STAFF SUPPORT AS IS FUNDED BY LEGISLATIVE APPROPRIATION TO THE OFFICE TO CARRY OUT THE COMMISSION'S DUTIES PURSUANT TO THIS SECTION. THE AUDITOR GENERAL SHALL PROVIDE PERFORMANCE AUDIT INFORMATION RELATING TO STATE AGENCY, UNIVERSITY AND COMMUNITY COLLEGE DISTRICT BUDGETS AND FUNCTIONS THAT THE AUDITOR GENERAL HAS AVAILABLE WITHOUT ADDITIONAL CONTACT WITH STATE AGENCIES THROUGH THE LEGISLATIVE REVIEW OF AGENCIES PURSUANT TO CHAPTER 27 OF THIS TITLE.

K. EXCEPT AS PROVIDED BY SECTION 41-2753, SUBSECTION D, ANY AGGRIEVED PERSON MAY ELECT TO DIRECTLY SEEK JUDICIAL RELIEF, INCLUDING RELIEF UNDER SECTION 12-2030.

Sec. 12. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3020.01, to read:

41-3020.01. Commission on privatization, efficiency and competition; termination July 1, 2020

A. THE COMMISSION ON PRIVATIZATION, EFFICIENCY AND COMPETITION TERMINATES ON JULY 1, 2020.

B. SECTION 41-2754 IS REPEALED ON JANUARY 1, 2021.

Sec. 13. Laws 2009, third special session, chapter 7, section 28 is amended to read:

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

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

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

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

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

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

8 4. To fulfill an obligation related to fees, rates, fines or
9 regulations that are expressly delineated in the constitution of this state.

10 5. To implement or comply with the fiscal ~~year~~ YEARS 2009-2010 AND
11 2010-2011 state budget or the American recovery and reinvestment act of 2009
12 (P.L. 111-5).

13 6. A rule or other item that is exempt from title 41, chapter 6,
14 Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised
15 Statutes.

16 7. To eliminate or replace archaic or illegal rules.

17 C. An agency shall not conduct any informal or formal rule making
18 pursuant to this section without the prior written approval of the office of
19 the governor. This subsection does not apply to any agency that is
20 independent of the office of the governor, including any agency that is
21 headed by a single elected official or the corporation commission.

22 D. For the purposes of this section, "agency", "person", "rule" and
23 "rule making" have the same meanings prescribed in section 41-1001, Arizona
24 Revised Statutes.

25 Sec. 14. Purpose

26 Pursuant to section 41-2955, subsection E, Arizona Revised Statutes,
27 the legislature establishes the commission on privatization, efficiency and
28 competition to limit government competition with private enterprise in the
29 offering of goods and services, to provide additional economic opportunities
30 to private industry and to address issues and complaints concerning
31 government competition with private industry.

32 Sec. 15. Retention of members

33 Notwithstanding section 41-1051, Arizona Revised Statutes, as amended
34 by this act, all persons serving as members of the governor's regulatory
35 review council on the effective date of this act may continue to serve until
36 the expiration of their normal terms. The governor shall make subsequent
37 appointments as prescribed by statute.