

House Engrossed

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2393

AN ACT

AMENDING SECTION 41-1056, ARIZONA REVISED STATUTES; RELATING TO THE
GOVERNOR'S REGULATORY REVIEW COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1056, Arizona Revised Statutes, is amended to
3 read:

4 41-1056. Review by agency

5 A. At least once every five years, each agency shall review all of its
6 rules, including rules made pursuant to an exemption from this chapter or any
7 part of this chapter, to determine whether any rule should be amended or
8 repealed. The agency shall prepare and obtain council approval of a written
9 report summarizing its findings, its supporting reasons and any proposed
10 course of action. The report shall contain a certification that the agency
11 is in compliance with section 41-1091. For each rule, the report shall
12 include a concise analysis of all of the following:

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

15 2. Written criticisms of the rule received during the previous five
16 years, including any written analyses submitted to the agency questioning
17 whether the rule is based on valid scientific or reliable principles or
18 methods.

19 3. Authorization of the rule by existing statutes.

20 4. Whether the rule is consistent with statutes or other rules made by
21 the agency and current agency enforcement policy.

22 5. The clarity, conciseness and understandability of the rule.

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

26 7. Any analysis submitted to the agency by another person regarding
27 the rule's impact on this state's business competitiveness as compared to the
28 competitiveness of businesses in other states.

29 8. If applicable, that the agency completed the previous five-year
30 review process.

31 9. A determination that the probable benefits of the rule outweigh
32 within this state the probable costs of the rule, and the rule imposes the
33 least burden and costs to persons regulated by the rule, including paperwork
34 and other compliance costs, necessary to achieve the underlying regulatory
35 objective.

36 10. A determination that the rule is not more stringent than a
37 corresponding federal law unless there is statutory authority to exceed the
38 requirements of that federal law.

39 11. For rules adopted after July 29, 2010 that require the issuance of
40 a regulatory permit, license or agency authorization, whether the rule
41 complies with section 41-1037.

42 B. An agency may also include as part of the report the text of a
43 proposed expedited rule pursuant to section 41-1027.

1 C. The council shall schedule the periodic review of each agency's
2 rules and shall approve or return, in whole or in part, the agency's report
3 on its review. The council may grant an agency an extension from filing an
4 agency's report. If the council returns an agency's report, in whole or in
5 part, the council shall inform the agency of the manner in which its report
6 is inadequate and, in consultation with the agency, shall schedule submission
7 of a revised report. The council shall not approve a report unless the
8 report complies with subsection A of this section.

9 D. The council may review rules outside of the five-year review
10 process if requested by at least four council members.

11 E. The council may require the agency to propose an amendment or
12 repeal of the rule by a date no earlier than six months after the date of the
13 meeting at which the council considers the agency's report on its rule if the
14 council determines the agency's analysis under subsection A of this section
15 demonstrates that the rule is materially flawed, including that the rule:

- 16 1. Is not authorized by statute.
- 17 2. Is inconsistent with other statutes, rules or agency enforcement
18 policies and the inconsistency results in a significant burden on the
19 regulated public.
- 20 3. Imposes probable costs, including costs to the regulated person,
21 that significantly exceed the probable benefits of the rule within this
22 state.
- 23 4. Is more stringent than a corresponding federal law and there is no
24 statutory authority to exceed the requirements of federal law.
- 25 5. Is not clear, concise and understandable.
- 26 6. Does not use general permits if required under section 41-1037.
- 27 7. Does not impose the least burden to persons regulated by the rule
28 as necessary to achieve the underlying regulatory objective of the rule.
- 29 8. Does not rely on valid scientific or reliable principles and
30 methods, including a study, if the rule relies on scientific principles or
31 methods, and a person has submitted an analysis under subsection A of this
32 section questioning whether the rule is based on valid scientific or reliable
33 principles or methods. In making a determination of validity or reliability,
34 the council shall consider the factors listed in section 41-1052,
35 subsection G.

36 F. An agency may request an extension of no longer than one year from
37 the date specified by the council pursuant to subsection E of this section by
38 sending a written request to the council that:

- 39 1. Identifies the reason for the extension request.
- 40 2. Demonstrates good cause for the extension.

41 G. The agency shall notify the council of an amendment or repeal of a
42 rule for which the council has set an expiration date under subsection E of
43 this section. If the agency does not amend or repeal the rule by the date
44 specified by the council under subsection E of this section or the extended
45 date under subsection F of this section, the rule automatically expires. The

1 council shall file a notice of rule expiration with the secretary of state
2 and notify the agency of the expiration of the rule.

3 H. The council may reschedule a report or portion of a report for any
4 rule that is scheduled for review and that was initially made or
5 substantially revised within two years before the due date of the report as
6 scheduled by the council.

7 I. If an agency finds that it cannot provide the written report to the
8 council by the date it is due, the agency may file an extension with the
9 council before the due date indicating the reason for the extension. The
10 timely filing for an extension permits the agency to submit its report on or
11 before the date prescribed by the council.

12 J. If an agency fails to submit its report, including a revised
13 report, pursuant to ~~subsections~~ SUBSECTION A ~~and~~ OR C of this section, or
14 file an extension before the due date of the report or if it files an
15 extension and does not submit its report within the extension period, the
16 rules scheduled for review expire and the council shall:

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

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

21 3. Notify the agency that the rules have expired and are no longer
22 enforceable.

23 K. If a rule expires as provided in subsection J of this section and
24 the agency wishes to reestablish the rule, the agency shall comply with the
25 requirements of this chapter.

26 L. Not less than ninety days before the due date of a report, the
27 council shall send a written notice to the head of the agency whose report is
28 due. The notice shall list the rules to be reviewed and the date the report
29 is due.

30 M. A person who is regulated or could be regulated by an obsolete rule
31 may petition the council to require an agency that has the obsolete rule to
32 consider including the rule in the five-year report with a recommendation for
33 repeal of the rule.

34 N. A PERSON WHO IS REQUIRED TO OBTAIN OR COULD BE REQUIRED TO OBTAIN A
35 LICENSE MAY PETITION THE COUNCIL TO REQUIRE AN AGENCY TO CONSIDER INCLUDING A
36 RECOMMENDATION FOR REDUCING A LICENSING TIME FRAME IN THE FIVE-YEAR REPORT.