



HOUSE OF REPRESENTATIVES

SB 1388

rulemaking exemption; one-year review

Prime Sponsor: Senator Burges, LD 22

X Committee on Government and Higher Education

Caucus and COW

House Engrossed

OVERVIEW

SB 1388 outlines procedures for reviewing rules adopted pursuant to a one-time rulemaking exemption by the Legislature.

PROVISIONS

1. Requires any agency granted a one-time rulemaking exemption by the Legislature to review the rules within one year after adoption to determine if the rule should be amended or repealed.
2. Specifies an agency must prepare and obtain the Governor's Regulatory Review Council (GRRC) approval of a written report summarizing findings, supporting reasons and proposed course of action.
3. States an agency's report must include a concise analysis of the following:
 - a. the rule's effectiveness in achieving its objectives;
 - b. written criticisms of the rule received since adoption;
 - c. authorization of the rule by existing statutes;
 - d. whether the rule is consistent with statute or other rules and policy;
 - e. the rule's clarity, conciseness and understandability;
 - f. the rule's estimated economic, small business and consumer impact;
 - g. any analysis submitted regarding the rule's impact on the state's business competitiveness as compared to other states;
 - h. completion of any additional process required by law, if applicable;
 - i. a determination that the benefits of the rule outweigh the probable costs and the rule imposes the least burden and costs to people regulated by the rule;
 - j. a determination that the rule is not more stringent than federal law unless there is statutory authority to exceed federal law; and
 - k. whether the rule complies with requirements relating to the issuance of permits and licenses, if applicable.
4. Allows an agency to include the text of proposed expedited rule in the report.
5. Permits GRRC to require an agency to propose an amendment or repeal rules within 6 months after review of the agency report if GRRC determines the rule to be materially flawed, including that the rule:
 - a. is not authorized by statute;
 - b. is inconsistent with other statutes, rules or agency enforcement policies resulting in a significant burden on the regulated public;
 - c. imposes probable costs that significantly exceed probable benefits;

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- d. is more stringent than federal law and there is no statutory authority to exceed the requirements of the federal law;
 - e. is not clear, concise and understandable;
 - f. does not use general permits, if applicable;
 - g. does not impose the least burden to people regulated to achieve the underlying objective of the rule; or
 - h. does not rely on valid scientific or reliable principles and methods.
6. Permits an agency to request an extension of up to six months by sending a written request identifying the reason and demonstrating good cause.
 7. Requires an agency to notify GRRC of an amendment or repeal of a rule for which GRRC has set an expiration date.
 8. Stipulates if an agency does not amend or repeal the rule by the specified date the rule automatically expires.
 9. Requires GRRC to file a notice of rule expiration with the Secretary of State (SOS) and notify the agency.
 10. Stipulates that the rule expires if an agency fails to submit its report, file for extension or does not submit its report within the extension period and GRRC must:
 - a. publish a notice in the next register stating the rule has expired and is no longer enforceable;
 - b. notify the SOS that the rule has expired and must be removed from the [Arizona Administrative Code](#); and
 - c. notify the agency the rule has expired and is no longer enforceable.
 11. Requires GRRC to send a written notice to the agency's director 90 days before an agency's report is due.
 12. Directs an agency to follow the Administrative Procedures Act (APA) to reestablish an expired rule.
 13. Defines *agency*, *council* and *rule*.

CURRENT LAW

An agency may make rules only if the Legislature has given it authority to do so. Unless exempt from the rulemaking procedures, a rule is valid only if it is made in substantial compliance with the APA or other statutory procedures applicable to the agency.

GRRC consists of six Governor-appointed members who serve staggered, three-year terms ([A.R.S. § 41-1051](#)). GRRC is responsible for reviewing each agency's rules to ensure that they are necessary and to avoid duplication and adverse impact on the public. Agencies are required to review their rules at least once every five years to determine whether their rules need to be amended or repealed. An agency must consider specific factors for each rule to evaluate its effectiveness include any written criticisms received by the agency among other considerations. Any person regulated or who may be required to obtain a license may petition GRRC to require consideration of additional recommendations in the five-year report.

GRRC may review rules outside of the five-year review process if requested by at least four GRRC members. If an agency fails to submit its report, the rules scheduled for review expire and are no longer enforceable. In order to reestablish the rules, the agency must go through the rulemaking process ([A.R.S. § 41-1056](#)).