

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.