

# **THE GOVERNOR'S REGULATORY REVIEW COUNCIL**

## **Annual Report**

**Fiscal Year 2011**

**Under A.R.S. § 41-1051(F)**

**Submitted By:**

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Chair**

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# THE GOVERNOR'S REGULATORY REVIEW COUNCIL

July 1, 2010 through June 30, 2011

The duties and responsibilities of the Governor's Regulatory Review Council (Council) are set forth in the Arizona Administrative Procedure Act (APA), A.R.S. § 41-1001 *et seq.*

## COUNCIL RESPONSIBILITIES

Under the Arizona APA, the Council is required to:

1. Review and approve or return, in whole or in part, a rule, preamble, and economic, small business, and consumer impact statement submitted by an agency (A.R.S. § 41-1052(B));
2. Schedule a periodic review of each agency's rules and approve or return, in whole or in part, the agency's report on its review (A.R.S. § 41-1056(B));
3. Receive reports of compliance with time-frame rules from agencies that issue licenses and report results to the governor, president of the senate, and speaker of the house of representatives (A.R.S. § 41-1078);
4. Receive and hear appeals regarding an agency's practice or substantive policy statement (A.R.S. § 41-1033(B));
5. Receive and hear appeals regarding the economic, small business, and consumer impact statement of an agency's rules (A.R.S. § 41-1056.01(D));
6. Receive and hear appeals regarding an agency delegation agreement (A.R.S. § 41-1081);
7. Receive certifications of compliance with A.R.S. § 41-1091 from agency heads (A.R.S. 41-1091(D));
8. Receive and hear early review petitions of a proposed rule (A.R.S. § 41-1052 (B));
9. Receive and hear petitions to require an agency that has an obsolete rule to include the rule in a five-year review report with a recommendation for repeal of the rule (A.R.S. § 41-1056 (I)); and
10. Receive reports from agencies regarding their progress toward completing the courses of action established in their five-year-review reports (A.R.S. § 41-1056(H)).

## **COUNCIL ACTIVITIES**

### **1. Review and Act upon Submitted Rules**

A.R.S. § 41-1052 requires an agency to submit and obtain Council’s approval of a Notice of Final Rulemaking (rule package), which consists of a rule, preamble, and economic, small business, and consumer impact statement, before the rule package is filed with the Secretary of State. In 2010-2011, agencies submitted 25 Notices of Final Rulemaking for review and action by the Council, all of which were approved by Council. This number represents an increase in rulemaking from last year (agencies submitted 19 Notices of Final Rulemaking in 2009-2010). In these 25 Notices of Final Rulemaking, the agencies repealed 28 rules, made 53 new rules, amended 127 existing rules, and renumbered 13 existing rules, for a total of 221 rulemaking actions<sup>1</sup>. This total compares with 106 rulemaking actions in 2009-2010.

In accordance with A.R.S. § 41-1051(F)(1), a list of agency rules approved by Council under A.R.S. § 41-1052 during year fiscal year 2010-2011 is attached to this report as Appendix A.

### **2. Schedule and Act upon Five-Year-Review Reports**

A.R.S. § 41-1056 requires each agency to review all of its rules at least once every five years to determine whether any rule should be amended or repealed and to summarize its findings in a report to Council. During this year, the Council received and approved 65 Five-Year-Review Reports. These reports included agencies’ reviews of 1,538 rules. In these reports, agencies determined that certain of their rules need to be repealed or amended and provided the Council with a schedule of when the planned rulemakings would be completed.

### **3. Receive Reports on Progress toward Completing the Courses of Action Established in Five-Year-Review Reports**

A.R.S. § 41-1056(H) requires that, by June 30 of each year, agencies report on their progress toward completing the courses of action established in the Five-Year-Review Reports preferred within the prior years. As required by A.R.S. § 41-1051 (F) (3), Appendix B lists the agencies reporting a lack of progress.<sup>2</sup>

Appendix B uses the terms, “Some Progress” or “No Progress” to describe an agency’s activity. Agency activity is described as “Some Progress” when, at minimum, a Notice of Docket Opening was filed and has not expired. Agency activity is described as “No Progress” when a Notice of Docket Opening has not been filed or has expired. There are varying reasons

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<sup>1</sup> Data include articles, sections, appendices, and tables.

<sup>2</sup> Five-Year-Review Reports Agencies that did not file a progress report are: the Board of Behavioral Health Examiners, the Board of Podiatry Examiners, the State Fire Safety Committee, the School Facilities Board, and the Board of Manufactured Housing.

or circumstances given by agencies as to why progress has not been made, including budgetary constraints and the rulemaking moratorium<sup>3</sup>. The actual reports are on file with the Council staff and are available for review.

**4. Receive Reports of Compliance with Time-frame Rules**

In accordance with A.R.S. § 41-1078(B), in November 2010 the Council submitted a report regarding agencies' compliance with their time-frame rules during the 2009-2010 fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

**5. Receive and Hear Appeals Regarding (a) an Agency's Practice or Substantive Policy Statement, (b) the Economic, Small Business, and Consumer Impact Statement for an Agency's Rules, (c) an Agency Delegation Agreement, and Receive and Hear (d) Early Review Petitions of Proposed Rules, and (e) Petitions for an Agency to Include an Obsolete Rule in a Five-Year Review Report with a Recommendation for Repeal of the Rule.**

Appeal of an Agency Delegation Agreement

No appeals were filed with the Council regarding an agency delegation agreement in fiscal year 2010-2011.

Appeal of an Agency Practice or Substantive Policy Statement

One appeal was filed with the Council regarding the Department of Transportation's rules in fiscal year 2010-2011. Three members did not request that the appeal be placed on an agenda and pursuant to A.R.S. § 41-1033(B), the appeal was not heard.

Petition for an Agency to Include an Obsolete Rule in a Five-Year-Review Report with a Recommendation for Repeal of the Rule

No such petitions were filed with the Council in fiscal year 2010-2011.

Early Review Petition of a Proposed Rule

No early review petitions were filed with the Council in fiscal year 2010-2011.

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<sup>3</sup> A rulemaking moratorium has been in effect either by the Governor's directive or session law since 2009. Under the moratorium, agencies must obtain the permission of the Governor's Office to commence rulemaking and the rulemaking must meet certain enumerated criteria.

## **6. Receive Certifications of Compliance with the Substantive Policy Statement Directory Requirement**

A.R.S. § 41-1091 requires all agencies to publish annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The directory, rules, substantive policy statements, and any materials incorporated by reference must be kept in one location and open to public inspection. Under A.R.S. § 41-1091(D), an agency head is required annually to certify to the Council that the agency is in compliance with this requirement. Most agencies required to submit A.R.S. § 41-1091 certifications did so in fiscal year 2010-2011<sup>4</sup>.

## **ADDITIONAL RESPONSIBILITIES OF COUNCIL STAFF**

GRRC staff assists the Council members in meeting their statutory duties and responsibilities as outlined in Items 1 – 6 above.

In addition to the monthly review and analysis GRRC staff provides to Council for Notices of Final Rulemaking and Five-Year-Review Reports, GRRC staff also provides a number of important professional services for the State of Arizona, including:


- (1) Providing “courtesy reviews” of draft rulemaking materials for over ninety Arizona State agencies;
- (2) Preparing and submitting Council’s Annual Reports;
- (3) Conducting monthly seminars for State agency personnel to instruct and assist them with their rulewriting and reporting requirements;
- (4) Assisting agencies with any necessary revisions for Notices of Final Rulemaking and Five-Year-Review Reports placed on Council’s agenda;
- (5) Providing occasional assistance to the office of the Arizona Ombudsman-Citizens’ Aide in resolving rulemaking issues;
- (6) Overseeing the scheduling of two monthly meetings pursuant to the requirements of Arizona’s Open Meeting Law, A.R.S. § 38-431 *et seq.*;<sup>5</sup>
- (7) Assisting the Arizona Department of Public Safety with writing administrative rules for Arizona’s school bus drivers and school buses, pursuant to the statutory directive set forth in A.R.S. § 28-900; and
- (8) Conducting review and analyses of agencies’ statutes and administrative rules, to assist the Arizona Auditor General with its periodic reviews of agencies.

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<sup>4</sup> The following agencies did not submit certification of compliance with A.R.S. § 41-1091: The Department of Commerce; State Compensation Fund; State Board of Investments; Prosecuting Attorney’s Advisory Council; Board of Nursing; Board of Podiatry Examiners; and Board of Respiratory Care Examiners.

<sup>5</sup> Council now holds a study session in addition to the regular monthly public meetings.

Respectfully submitted this 22nd day of August, 2011.

  
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Christy M. Smith  
Chair