

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 287

HOUSE BILL 2260

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 41-1001, 41-1009, 41-1011 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 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 SECTION 49-401.01, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-403; 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 20-181, Arizona Revised Statutes, is amended to
3 read:

4 20-181. Mandated health coverage; report

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

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

18 20-182. Factors for assessing impact; certification of report

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

21 1. The social impact:

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

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

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

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

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

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

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

36 2. The financial impact:

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

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

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

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

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

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

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

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

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

15 20-183. Report procedures and deadlines

16 A PERSON OR A LEGISLATOR ADVOCATING A LEGISLATIVE PROPOSAL PURSUANT TO
17 SECTION 20-181 SHALL SUBMIT A WRITTEN REPORT EXPLAINING THE FACTORS
18 PRESCRIBED IN SECTION 20-182 TO THE JOINT LEGISLATIVE AUDIT COMMITTEE
19 ESTABLISHED BY SECTION 41-1279. THE REPORT MUST BE SUBMITTED ON OR BEFORE
20 SEPTEMBER 1 BEFORE THE START OF THE LEGISLATIVE SESSION FOR WHICH THE
21 LEGISLATION IS PROPOSED. THE JOINT LEGISLATIVE AUDIT COMMITTEE SHALL ASSIGN
22 THE WRITTEN REPORT TO THE APPROPRIATE LEGISLATIVE COMMITTEE OF REFERENCE
23 ESTABLISHED PURSUANT TO SECTION 41-2954. THE LEGISLATIVE COMMITTEE OF
24 REFERENCE SHALL HOLD AT LEAST ONE HEARING AND TAKE PUBLIC TESTIMONY AFTER
25 RECEIVING THE REPORT. THE LEGISLATIVE COMMITTEE OF REFERENCE SHALL STUDY THE
26 WRITTEN REPORT AND DELIVER A REPORT OF ITS RECOMMENDATIONS TO THE JOINT
27 LEGISLATIVE AUDIT COMMITTEE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE
28 PRESIDENT OF THE SENATE, THE GOVERNOR AND THE DIRECTOR OF THE DEPARTMENT OF
29 INSURANCE ON OR BEFORE DECEMBER 1 OF THE YEAR IN WHICH THE REPORT IS
30 SUBMITTED.

31 Sec. 4. Section 41-1001, Arizona Revised Statutes, is amended to read:
32 41-1001. Definitions

33 In this chapter, unless the context otherwise requires:

34 1. "Agency" means any board, commission, department, officer or other
35 administrative unit of this state, including the agency head and one or more
36 members of the agency head or agency employees or other persons directly or
37 indirectly purporting to act on behalf or under the authority of the agency
38 head, whether created under the Constitution of Arizona or by enactment of
39 the legislature. Agency does not include the legislature, the courts or the
40 governor. Agency does not include a political subdivision of this state or
41 any of the administrative units of a political subdivision, but does include
42 any board, commission, department, officer or other administrative unit
43 created or appointed by joint or concerted action of an agency and one or
44 more political subdivisions of this state or any of their units. To the
45 extent an administrative unit purports to exercise authority subject to this

1 chapter, an administrative unit otherwise qualifying as an agency must be
2 treated as a separate agency even if the administrative unit is located
3 within or subordinate to another agency.

4 2. "Code" means the Arizona administrative code.

5 3. "Committee" means the administrative rules oversight committee.

6 4. "Contested case" means any proceeding, including rate making, price
7 fixing and licensing, in which the legal rights, duties or privileges of a
8 party are required or permitted by law, other than this chapter, to be
9 determined by an agency after an opportunity for an administrative hearing.

10 5. "Council" means the governor's regulatory review council.

11 6. "Delegation agreement" means an agreement between an agency and a
12 political subdivision that authorizes the political subdivision to exercise
13 functions, powers or duties conferred on the delegating agency by a provision
14 of law. Delegation agreement does not include intergovernmental agreements
15 entered into pursuant to title 11, chapter 7, article 3.

16 7. "Emergency rule" means a rule that is made pursuant to section
17 41-1026.

18 8. "Fee" means a charge prescribed by an agency for an inspection or
19 for obtaining a license.

20 9. "Final rule" means any rule filed with the secretary of state and
21 made pursuant to an exemption from this chapter in section 41-1005, made
22 pursuant to section 41-1026, approved by the council pursuant to section
23 41-1052 or 41-1053 or approved by the attorney general pursuant to section
24 41-1044. For purposes of judicial review, final rule includes proposed
25 summary rules having interim effect pursuant to section 41-1027.

26 10. "GENERAL PERMIT" MEANS A REGULATORY PERMIT, LICENSE OR AGENCY
27 AUTHORIZATION THAT IS FOR FACILITIES, ACTIVITIES OR PRACTICES IN A CLASS THAT
28 ARE SUBSTANTIALLY SIMILAR IN NATURE AND THAT IS ISSUED OR GRANTED BY AN
29 AGENCY TO A QUALIFIED APPLICANT TO CONDUCT IDENTIFIED OPERATIONS OR
30 ACTIVITIES IF THE APPLICANT MEETS THE APPLICABLE REQUIREMENTS OF THE GENERAL
31 PERMIT, THAT REQUIRES LESS INFORMATION THAN AN INDIVIDUAL OR TRADITIONAL
32 PERMIT, LICENSE OR AUTHORIZATION AND THAT DOES NOT REQUIRE A PUBLIC HEARING.

33 ~~10-~~ 11. "License" includes the whole or part of any agency permit,
34 certificate, approval, registration, charter or similar form of permission
35 required by law, but it does not include a license required solely for
36 revenue purposes.

37 ~~11-~~ 12. "Licensing" includes the agency process respecting the grant,
38 denial, renewal, revocation, suspension, annulment, withdrawal or amendment
39 of a license.

40 ~~12-~~ 13. "Party" means each person or agency named or admitted as a
41 party or properly seeking and entitled as of right to be admitted as a party.

42 ~~13-~~ 14. "Person" means an individual, partnership, corporation,
43 association, governmental subdivision or unit of a governmental subdivision,
44 a public or private organization of any character or another agency.

- 1 ~~14.~~ 15. "Preamble" means:
- 2 (a) For any rule making subject to this chapter, a statement
- 3 accompanying the rule that includes:
- 4 (i) Reference to the specific statutory authority for the rule.
- 5 (ii) The name and address of agency personnel with whom persons may
- 6 communicate regarding the rule.
- 7 (iii) An explanation of the rule, including the agency's reasons for
- 8 initiating the rule making.
- 9 (iv) A reference to any study relevant to the rule that the agency
- 10 reviewed and either proposes to rely on in its evaluation of or justification
- 11 for the rule or proposes not to rely on in its evaluation of or justification
- 12 for the rule, where the public may obtain or review each study, all data
- 13 underlying each study and any analysis of each study and other supporting
- 14 material.
- 15 (v) The economic, small business and consumer impact summary, or in
- 16 the case of a proposed rule, a preliminary summary and a solicitation of
- 17 input on the accuracy of the summary.
- 18 (vi) A showing of good cause why the rule is necessary to promote a
- 19 statewide interest if the rule will diminish a previous grant of authority of
- 20 a political subdivision of this state.
- 21 (vii) Such other matters as are prescribed by statute and that are
- 22 applicable to the specific agency or to any specific rule or class of rules.
- 23 (b) In addition to the information set forth in subdivision (a) of
- 24 this paragraph, for a proposed rule, the preamble also shall include a list
- 25 of all previous notices appearing in the register addressing the proposed
- 26 rule, a statement of the time, place and nature of the proceedings for the
- 27 making, amendment or repeal of the rule and where, when and how persons may
- 28 request an oral proceeding on the proposed rule if the notice does not
- 29 provide for one.
- 30 (c) In addition to the information set forth in subdivision (a) of
- 31 this paragraph, for a proposed summary rule, the preamble also shall include
- 32 a statement of the time, place and nature of the proceedings for the making,
- 33 amendment or repeal of the rule and an explanation of why summary proceedings
- 34 are justified.
- 35 (d) For a final rule, except an emergency rule, the preamble also
- 36 shall include, in addition to the information set forth in subdivision (a),
- 37 the following information:
- 38 (i) A list of all previous notices appearing in the register
- 39 addressing the final rule.
- 40 (ii) A description of the changes between the proposed rules,
- 41 including supplemental notices and final rules.
- 42 (iii) A summary of the comments made regarding the rule and the agency
- 43 response to them.
- 44 (iv) A summary of the council's action on the rule.
- 45 (v) A statement of the rule's effective date.

1 (e) In addition to the information set forth in subdivision (a) of
2 this paragraph, for an emergency rule, the preamble also shall include an
3 explanation of the situation justifying the rule being made as an emergency
4 rule, the date of the attorney general's approval of the rule and a statement
5 of the emergency rule's effective date.

6 ~~15-~~ 16. "Provision of law" means the whole or a part of the federal or
7 state constitution, or of any federal or state statute, rule of court,
8 executive order or rule of an administrative agency.

9 ~~16-~~ 17. "Register" means the Arizona administrative register.

10 ~~17-~~ 18. "Rule" means an agency statement of general applicability that
11 implements, interprets or prescribes law or policy, or describes the
12 procedure or practice requirements of an agency. Rule includes prescribing
13 fees or the amendment or repeal of a prior rule but does not include
14 intraagency memoranda that are not delegation agreements.

15 ~~18-~~ 19. "Rule making" means the process for formulation and
16 finalization of a rule.

17 ~~19-~~ 20. "Small business" means a concern, including its affiliates,
18 which is independently owned and operated, which is not dominant in its field
19 and which employs fewer than one hundred full-time employees or which had
20 gross annual receipts of less than four million dollars in its last fiscal
21 year. For purposes of a specific rule, an agency may define small business to
22 include more persons if it finds that such a definition is necessary to adapt
23 the rule to the needs and problems of small businesses and organizations.

24 ~~20-~~ 21. "Substantive policy statement" means a written expression
25 which informs the general public of an agency's current approach to, or
26 opinion of, the requirements of the federal or state constitution, federal or
27 state statute, administrative rule or regulation, or final judgment of a
28 court of competent jurisdiction, including, where appropriate, the agency's
29 current practice, procedure or method of action based upon that approach or
30 opinion. A substantive policy statement is advisory only. A substantive
31 policy statement does not include internal procedural documents which only
32 affect the internal procedures of the agency and does not impose additional
33 requirements or penalties on regulated parties, confidential information or
34 rules made in accordance with this chapter.

35 ~~21-~~ 22. "Summary rule" means a rule that is made pursuant to section
36 41-1027.

37 Sec. 5. Section 41-1009, Arizona Revised Statutes, is amended to read:
38 41-1009. Inspections; applicability

39 A. An agency inspector or regulator who enters any premises of a
40 regulated person for the purpose of conducting an inspection shall:

41 1. Present photo identification on entry of the premises.

42 2. On initiation of the inspection, state the purpose of the
43 inspection and the legal authority for conducting the inspection.

44 3. Disclose any applicable inspection fees.

1 4. Afford an opportunity to have an authorized on-site representative
2 of the regulated person accompany the agency inspector or regulator on the
3 premises, except during confidential interviews.

4 5. Provide notice of the right to have:

5 (a) Copies of any original documents taken by the agency during the
6 inspection if the agency is permitted by law to take original documents.

7 (b) A split of any samples taken during the inspection if the split of
8 any samples would not prohibit an analysis from being conducted or render an
9 analysis inconclusive.

10 (c) Copies of any analysis performed on samples taken during the
11 inspection.

12 6. Inform each person whose conversation with the agency inspector or
13 regulator during the inspection is tape recorded that the conversation is
14 being tape recorded.

15 7. Inform each person interviewed during the inspection that
16 statements made by the person may be included in the inspection report.

17 B. On initiation of an inspection of any premises of a regulated
18 person, an agency inspector or regulator shall provide the following in
19 writing:

20 1. The rights described in subsection A of this section.

21 2. The name and telephone number of a contact person available to
22 answer questions regarding the inspection.

23 3. The due process rights relating to an appeal of a final decision of
24 an agency based on the results of the inspection, including the name and
25 telephone number of a person to contact within the agency and any appropriate
26 state government ombudsman.

27 C. An agency inspector or regulator shall obtain the signature of the
28 regulated person or on-site representative of the regulated person on the
29 writing prescribed in subsection B of this section indicating that the
30 regulated person or on-site representative of the regulated person has read
31 the writing prescribed in subsection B of this section and is notified of the
32 regulated person's or on-site representative of the regulated person's
33 inspection and due process rights. The agency shall maintain a copy of this
34 signature with the inspection report and shall leave a copy with the
35 regulated person or on-site representative of the regulated person. If a
36 regulated person or on-site representative of the regulated person is not at
37 the site or refuses to sign the writing prescribed in subsection B of this
38 section, the agency inspector or regulator shall note that fact on the
39 writing prescribed in subsection B of this section.

40 D. An agency that conducts an inspection shall give a copy of the
41 inspection report to the regulated person or on-site representative of the
42 regulated person either:

43 1. At the time of the inspection.

44 2. Notwithstanding any other state law, within thirty working days
45 after the inspection.

1 3. As otherwise required by federal law.

2 E. The inspection report shall contain deficiencies identified during
3 an inspection. Unless otherwise provided by law, the agency may provide the
4 regulated person an opportunity to correct the deficiencies unless the agency
5 determines that the deficiencies are:

6 1. Committed intentionally.

7 2. Not correctable within a reasonable period of time as determined by
8 the agency.

9 3. Evidence of a pattern of noncompliance.

10 4. A risk to any person, the public health, safety or welfare or the
11 environment.

12 F. If the agency allows the regulated person an opportunity to correct
13 the deficiencies pursuant to subsection E of this section, the regulated
14 person shall notify the agency when the deficiencies have been corrected.
15 Within thirty days of receipt of notification from the regulated person that
16 the deficiencies have been corrected, the agency shall determine if the
17 regulated person is in substantial compliance and notify the regulated person
18 whether or not the regulated person is in substantial compliance. If the
19 regulated person fails to correct the deficiencies or the agency determines
20 the deficiencies have not been corrected within a reasonable period of time,
21 the agency may take any enforcement action authorized by law for the
22 deficiencies.

23 G. An agency decision pursuant to subsection E or F of this section is
24 not an appealable agency action.

25 H. At least once every month after the commencement of the inspection
26 an agency shall provide a regulated person with an update on the status of
27 any agency action resulting from an inspection of the regulated person. An
28 agency is not required to provide an update after the regulated person is
29 notified that no agency action will result from the agency inspection or
30 after the completion of agency action resulting from the agency inspection.

31 I. This section does not authorize an inspection or any other act that
32 is not otherwise authorized by law.

33 J. This section applies only to inspections necessary for the issuance
34 of a license or to determine compliance with licensure requirements. This
35 section does not apply:

36 1. To criminal investigations, investigations under tribal state
37 gaming compacts and undercover investigations that are generally or
38 specifically authorized by law.

39 2. If the inspector or regulator has reasonable suspicion to believe
40 that the regulated person may be engaged in criminal activity.

41 3. To the Arizona peace officer standards and training board
42 established by section 41-1821.

43 K. If an inspector or regulator gathers evidence in violation of this
44 section, the violation shall not be a basis to exclude the evidence in a
45 civil or administrative proceeding, if the penalty sought is the denial,

1 suspension or revocation of the regulated person's license or a civil penalty
2 of more than one thousand dollars.

3 L. Failure of an agency, board or commission employee to comply with
4 this section:

5 1. Constitutes cause for disciplinary action or dismissal ~~in~~
6 ~~accordance with~~ PURSUANT TO section 41-770.

7 2. Shall be considered by the judge and administrative law judge as
8 grounds for reduction of any fine or CIVIL penalty.

9 M. An agency may make rules to implement subsection A, paragraph 5 of
10 this section.

11 N. Nothing in this section shall be used to exclude evidence in a
12 criminal proceeding.

13 Sec. 6. Section 41-1011, Arizona Revised Statutes, is amended to read:

14 41-1011. Publication and distribution of code and register:

15 online databases

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

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

22 C. The secretary of state shall prepare, arrange and correlate all
23 rules and other text as necessary for the publication of the code and the
24 register. The secretary of state may not alter the sense, meaning or effect
25 of any rule but may renumber rules and parts of rules, rearrange rules,
26 change reference numbers to agree with renumbered rules and parts of rules,
27 substitute the proper rule number for "the preceding rule" and similar terms,
28 delete figures if they are merely a repetition of written words, change
29 capitalization for the purpose of uniformity and correct manifest clerical or
30 typographical errors. With the consent of the attorney general the secretary
31 of state may remove from the code a provision of a rule that a court of final
32 appeal declares unconstitutional or otherwise invalid and a rule made by an
33 agency that is abolished if the rule is not transferred to a successor
34 agency.

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

39 E. ON OR BEFORE DECEMBER 31, 2014, THE SECRETARY OF STATE SHALL
40 ESTABLISH AN ONLINE DATABASE OF CODES, ORDINANCES AND BUSINESS LICENSE
41 REQUIREMENTS FOR EACH AGENCY THAT IS SEARCHABLE BY AGENCY, DATE, TOPIC,
42 ORDINANCE NUMBER, TYPE OF BUSINESS FOR COMPLIANCE AND TYPE OF ACTIVITY FOR
43 COMPLIANCE. THE SECRETARY OF STATE SHALL LINK THE COUNTY INFORMATION TO THE
44 SEARCHABLE DATABASE PRESCRIBED IN SUBSECTION D. EACH COUNTY SHALL SUPPLY

1 INFORMATION TO THE SECRETARY OF STATE IN A MANNER AND FORMAT PRESCRIBED BY
2 THE SECRETARY OF STATE.

3 F. ON OR BEFORE DECEMBER 31, 2015, THE SECRETARY OF STATE SHALL
4 ESTABLISH AN ONLINE DATABASE OF CODES, ORDINANCES AND BUSINESS LICENSE
5 REQUIREMENTS FOR EACH CITY AND TOWN THAT IS SEARCHABLE BY CITY OR TOWN, DATE,
6 TOPIC, ORDINANCE OR CODE NUMBER, TYPE OF BUSINESS FOR COMPLIANCE AND TYPE OF
7 ACTIVITY FOR COMPLIANCE. THE SECRETARY OF STATE SHALL LINK THE CITY OR TOWN
8 INFORMATION TO THE SEARCHABLE DATABASE PRESCRIBED IN SUBSECTION D. EACH CITY
9 OR TOWN SHALL SUPPLY INFORMATION TO THE SECRETARY OF STATE IN A MANNER AND
10 FORMAT PRESCRIBED BY THE SECRETARY OF STATE.

11 Sec. 7. Section 41-1027, Arizona Revised Statutes, is amended to read:

12 41-1027. Summary rule making

13 A. An agency may use the summary rule making procedure set forth in
14 this section in place of the rule making procedure set forth in sections
15 41-1021 through 41-1024 for the following actions:

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

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

20 3. REPEAL OF OTHER OBSOLETE RULES OR RULES DEEMED BY THE AGENCY TO BE
21 INEFFECTIVE AS LONG AS THE REPEAL DOES NOT INCREASE THE COST OF COMPLIANCE OR
22 REDUCE PROCEDURAL RIGHTS OF THE PERSONS REGULATED.

23 B. An agency shall initiate summary rule making by filing the proposed
24 summary rule with the council and the secretary of state for publication in
25 the next register. The notice filed with the secretary of state shall
26 include the preamble.

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

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

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

35 F. The summary rule making procedures of this section are not
36 available for rules exempted from council approval pursuant to section
37 41-1057.

38 Sec. 8. Title 41, chapter 6, article 3, Arizona Revised Statutes, is
39 amended by adding section 41-1037, to read:

40 41-1037. General permits; issuance of traditional permit

41 A. IF AN AGENCY PROPOSES A NEW RULE OR AN AMENDMENT TO AN EXISTING
42 RULE THAT REQUIRES THE ISSUANCE OF A REGULATORY PERMIT, LICENSE OR AGENCY
43 AUTHORIZATION, THE AGENCY SHALL USE A GENERAL PERMIT IF THE FACILITIES,
44 ACTIVITIES OR PRACTICES IN THE CLASS ARE SUBSTANTIALLY SIMILAR IN NATURE
45 UNLESS ANY OF THE FOLLOWING APPLIES:

1 1. A GENERAL PERMIT IS PROHIBITED BY FEDERAL LAW.
2 2. THE ISSUANCE OF AN ALTERNATIVE TYPE OF PERMIT, LICENSE OR
3 AUTHORIZATION IS SPECIFICALLY AUTHORIZED BY STATE STATUTE.
4 3. THE ISSUANCE OF A GENERAL PERMIT IS NOT TECHNICALLY FEASIBLE OR
5 WOULD NOT MEET THE APPLICABLE STATUTORY REQUIREMENTS.
6 4. THE ISSUANCE OF A GENERAL PERMIT WOULD RESULT IN ADDITIONAL
7 REGULATORY REQUIREMENTS OR COSTS BEING PLACED ON THE PERMIT APPLICANT.
8 5. THE PERMIT, LICENSE OR AUTHORIZATION IS ISSUED PURSUANT TO SECTION
9 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-595.03, 36-596,
10 36-596.54, 41-1967.01 OR 46-807.
11 6. THE PERMIT, LICENSE OR AUTHORIZATION IS ISSUED PURSUANT TO TITLE V
12 OF THE CLEAN AIR ACT.
13 B. THE AGENCY RETAINS THE AUTHORITY TO REVOKE AN APPLICANT'S ABILITY
14 TO OPERATE UNDER A GENERAL PERMIT AND TO REQUIRE THE APPLICANT TO OBTAIN A
15 TRADITIONAL PERMIT IF THE APPLICANT IS IN SUBSTANTIAL NONCOMPLIANCE WITH THE
16 APPLICABLE REQUIREMENTS FOR THE GENERAL PERMIT.
17 Sec. 9. Section 41-1051, Arizona Revised Statutes, is amended to read:
18 41-1051. Governor's regulatory review council; membership;
19 terms; compensation; powers
20 A. A governor's regulatory review council is established that consists
21 of six members who are appointed by the governor ~~and who serve at the~~
22 ~~pleasure of the governor~~ PURSUANT TO SECTION 38-211, and the director of the
23 department of administration or the assistant director of the department of
24 administration who is responsible for administering the council. The
25 director or assistant director is an ex officio member and chairperson of the
26 council. The council shall elect a vice-chairperson to serve as chairperson
27 in the chairperson's absence. The governor shall appoint at least one member
28 who represents the public interest, at least one member who represents the
29 business community, one member from a list of three persons who are not
30 legislators submitted by the president of the senate and one member from a
31 list of three persons who are not legislators submitted by the speaker of the
32 house of representatives. At least one member of the council shall be an
33 attorney licensed to practice law in this state. The governor shall appoint
34 the members of the council for staggered terms of three years. A vacancy
35 occurring during the term of office of any member shall be filled by
36 appointment by the governor for the unexpired portion of the term in the same
37 manner as provided in this section.
38 B. The council shall meet at least once a month at a time and place
39 set by the chairperson and at other times and places as the chairperson deems
40 necessary.
41 C. Members of the council are eligible to receive compensation in an
42 amount of two hundred dollars for each day on which the council meets and
43 reimbursement of expenses pursuant to title 38, chapter 4, article 2.
44 D. The chairperson, subject to chapter 4, articles 5 and 6 of this
45 title, shall employ, determine the conditions of employment OF and specify

1 the duties of administrative, secretarial and clerical employees as the
2 chairperson deems necessary.

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

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

7 1. A list of agency rules approved or returned pursuant to section
8 41-1052.

9 2. A list of agencies not certifying compliance as provided in section
10 41-1091.

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

13 Sec. 10. Section 41-1052, Arizona Revised Statutes, is amended to
14 read:

15 41-1052. Council review and approval

16 A. Before filing a final rule with the secretary of state, an agency
17 shall prepare, transmit to the council and the committee and obtain the
18 council's approval of the rule and its preamble and economic, small business
19 and consumer impact statement ~~which~~ THAT meets the requirements of section
20 41-1055. THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING SHALL
21 PREPARE THE ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT IF THE
22 LEGISLATURE APPROPRIATES MONIES FOR THIS PURPOSE.

23 B. Within ninety days of receipt of the rule, preamble and economic,
24 small business and consumer impact statement, the council shall review and
25 approve or return, in whole or in part, the rule, preamble or economic, small
26 business and consumer impact statement. An agency may resubmit a rule,
27 preamble or economic, small business and consumer impact statement if the
28 council returns the rule, economic, small business and consumer impact
29 statement or preamble, in whole or in part, to the agency.

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

31 1. The economic, small business and consumer impact statement contains
32 ~~the~~ information FROM THE STATE, data and analysis prescribed by this article.

33 2. The economic, small business and consumer impact statement is
34 generally accurate.

35 3. The probable benefits of the rule outweigh the probable costs of
36 the rule AND THE AGENCY HAS DEMONSTRATED THAT IT HAS SELECTED THE ALTERNATIVE
37 THAT IMPOSES THE LEAST BURDEN AND COSTS TO PERSONS REGULATED BY THE RULE,
38 INCLUDING PAPERWORK AND OTHER COMPLIANCE COSTS, NECESSARY TO ACHIEVE THE
39 UNDERLYING REGULATORY OBJECTIVE.

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

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

44 6. The agency adequately addressed the comments on the proposed rule
45 and any supplemental proposals.

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

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

6 9. THE RULE IS NOT MORE STRINGENT THAN A CORRESPONDING FEDERAL LAW
7 UNLESS THERE IS STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF THAT
8 FEDERAL LAW.

9 10. IF A RULE REQUIRES A PERMIT, THE PERMITTING REQUIREMENT COMPLIES
10 WITH SECTION 41-1037.

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

15 E. The council shall verify that a rule with an immediate effective
16 date complies with section 41-1032. The council shall not approve a rule
17 with an immediate effective date unless two-thirds of the voting quorum
18 present vote to approve the rule.

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

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

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

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

38 Sec. 11. Section 41-1055, Arizona Revised Statutes, is amended to
39 read:

40 41-1055. Economic, small business and consumer impact statement

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

43 1. An identification of the proposed rule making, INCLUDING ALL OF THE
44 FOLLOWING:

1 (a) THE CONDUCT AND ITS FREQUENCY OF OCCURRENCE THAT THE RULE IS
2 DESIGNED TO CHANGE.

3 (b) THE HARM RESULTING FROM THE CONDUCT THE RULE IS DESIGNED TO CHANGE
4 AND THE LIKELIHOOD IT WILL CONTINUE TO OCCUR IF THE RULE IS NOT CHANGED.

5 (c) THE ESTIMATED CHANGE IN FREQUENCY OF THE TARGETED CONDUCT EXPECTED
6 FROM THE RULE CHANGE.

7 2. A brief summary of the information included in the economic, small
8 business and consumer impact statement.

9 3. If the economic, small business and consumer impact summary
10 accompanies a proposed rule or a proposed summary rule, the name and address
11 of agency employees who may be contacted to submit or request additional data
12 on the information included in the economic, small business and consumer
13 impact statement.

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

16 1. An identification of the proposed rule making.

17 2. An identification of the persons who will be directly affected by,
18 bear the costs of or directly benefit from the proposed rule making.

19 3. A cost benefit analysis of the following:

20 (a) The probable costs and benefits to the implementing agency and
21 other agencies directly affected by the implementation and enforcement of the
22 proposed rule making. THE PROBABLE COSTS TO THE IMPLEMENTING AGENCY SHALL
23 INCLUDE THE NUMBER OF NEW FULL-TIME EMPLOYEES NECESSARY TO IMPLEMENT AND
24 ENFORCE THE PROPOSED RULE. THE PREPARER OF THE ECONOMIC, SMALL BUSINESS AND
25 CONSUMER IMPACT STATEMENT SHALL NOTIFY THE JOINT LEGISLATIVE BUDGET COMMITTEE
26 OF THE NUMBER OF NEW FULL-TIME EMPLOYEES NECESSARY TO IMPLEMENT AND ENFORCE
27 THE RULE BEFORE 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, INCLUDING THE
12 MONETIZING OF THE COSTS AND BENEFITS FOR EACH OPTION AND PROVIDING THE
13 RATIONALE FOR NOT USING NONSELECTED ALTERNATIVES.

14 C. If for any reason adequate data are not reasonably available to
15 comply with the requirements of subsection B of this section, the agency
16 shall explain the limitations of the data and the methods that were employed
17 in the attempt to obtain the data and shall characterize the probable impacts
18 in qualitative terms. The absence of adequate data, if explained in
19 accordance with this subsection, shall not be grounds for a legal challenge
20 to the sufficiency of the economic, small business and consumer impact
21 statement.

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

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

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

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

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

36 F. THE COST-BENEFIT ANALYSIS REQUIRED BY SUBSECTION B OF THIS SECTION
37 SHALL CALCULATE ONLY THE COSTS AND BENEFITS THAT OCCUR IN THIS STATE.

38 G. IF A PERSON SUBMITS AN ANALYSIS TO THE AGENCY THAT COMPARES THE
39 RULE'S IMPACT ON THE COMPETITIVENESS OF BUSINESSES IN THIS STATE TO THE
40 IMPACT ON BUSINESSES IN OTHER STATES, THE AGENCY SHALL CONSIDER THE ANALYSES.

41 Sec. 12. Section 41-1056, Arizona Revised Statutes, is amended to
42 read:

43 41-1056. Review by agency

44 A. At least once every five years, each agency shall review all of its
45 rules to determine whether any rule should be amended or repealed. The

1 agency shall prepare and obtain council approval of a written report
2 summarizing its findings, its supporting reasons and any proposed course of
3 action. For each rule, the report shall include a concise analysis of all of
4 the following:

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

7 2. Written criticisms of the rule received during the previous five
8 years.

9 3. Authorization of the rule by existing statutes.

10 4. Whether the rule is consistent with other rules made by the agency,
11 current agency enforcement policy and current agency views regarding the
12 wisdom of the rule.

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

14 6. The estimated economic, small business and consumer impact of the
15 rules as compared to the economic, small business and consumer impact
16 statement prepared on the last making of the rules.

17 7. ANY ANALYSIS SUBMITTED TO THE AGENCY BY ANOTHER PERSON THAT
18 COMPARES THE RULE'S IMPACT ON THIS STATE'S BUSINESS COMPETITIVENESS TO THE
19 IMPACT ON BUSINESSES IN OTHER STATES.

20 8. IF APPLICABLE, THAT THE AGENCY COMPLETED THE PREVIOUS FIVE-YEAR
21 REVIEW PROCESS.

22 9. A DETERMINATION THAT THE RULE IMPOSES THE LEAST BURDEN AND COSTS TO
23 PERSONS REGULATED BY THE RULE, INCLUDING PAPERWORK AND OTHER COMPLIANCE
24 COSTS, NECESSARY TO ACHIEVE THE UNDERLYING REGULATORY OBJECTIVE.

25 B. The council shall schedule the periodic review of each agency's
26 rules and shall approve or return, in whole or in part, the agency's report
27 on its review. THE COUNCIL MAY GRANT AN AGENCY AN EXTENSION FROM FILING AN
28 AGENCY'S REPORT. 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~~ ON OR BEFORE THE DATE
42 PRESCRIBED BY THE COUNCIL.

43 E. If an agency fails to submit its report, including a revised report
44 pursuant to subsection B, or file an extension before the due date of the
45 report or if it files an extension and does not submit its report within the

1 extension period, the rules scheduled for review expire and the council
2 shall:

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

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

7 3. Notify the agency that the rules have expired and are no longer
8 enforceable.

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

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

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

22 I. A PERSON WHO IS REGULATED OR COULD BE REGULATED BY AN OBSOLETE RULE
23 MAY PETITION THE COUNCIL TO REQUIRE AN AGENCY THAT HAS THE OBSOLETE RULE TO
24 CONSIDER INCLUDING THE RULE IN THE FIVE YEAR REPORT WITH A RECOMMENDATION FOR
25 REPEAL OF THE RULE.

26 Sec. 13. Section 41-1056.01, Arizona Revised Statutes, is amended to
27 read:

28 41-1056.01. Impact statements; appeals

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

32 1. The actual economic, small business or consumer impact
33 significantly exceeded the impact estimated in the economic, small business
34 and consumer impact statement submitted during the making of the rule.

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

39 3. THE AGENCY DID NOT SELECT THE ALTERNATIVE THAT IMPOSES THE LEAST
40 BURDEN AND COSTS TO PERSONS REGULATED BY THE RULE, INCLUDING PAPERWORK AND
41 OTHER COMPLIANCE COSTS, NECESSARY TO ACHIEVE THE UNDERLYING REGULATORY
42 OBJECTIVE.

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

1 C. Within thirty days after receiving the copy of the petition, the
2 agency shall reevaluate the rule and its economic impacts and publish notice
3 of the petition in the register. For at least thirty days after publication
4 of the notice the agency shall afford persons the opportunity to submit in
5 writing statements, arguments, data and views on the rule and its impacts.
6 Within thirty days after the close of comment, the agency shall publish a
7 written summary of comments received, the agency's response to those
8 comments, and the final decision of the agency on whether to initiate a rule
9 making or to amend or repeal the rule. The agency shall initiate any such
10 rule making within forty-five days after publication of its final decision.

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

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

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

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

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

32 Sec. 14. Title 41, chapter 25, article 1, Arizona Revised Statutes, is
33 amended by adding section 41-2754, to read:

34 41-2754. Commission on privatization, efficiency and
35 competition; members; terms; compensation; duties;
36 staff; judicial review

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

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

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

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

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

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

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

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

17 D. THE COMMISSION SHALL:

18 1. SELECT A CHAIRPERSON FROM AMONG ITS MEMBERS.

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

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

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

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

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

30 7. TRANSMIT A COMPLETE REPORT OF EACH MEETING TO THE LEGISLATURE AND
31 THE GOVERNOR, INCLUDING RECOMMENDATIONS TO REMEDY VIOLATIONS OF PROHIBITIONS
32 ON COMPETITION WITH PRIVATE ENTERPRISE AND FINDINGS ON NECESSARY EXCEPTIONS
33 TO THE PROHIBITIONS.

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

38 F. THE STATE AGENCY, UNIVERSITY OR COMMUNITY COLLEGE DISTRICT SHALL
39 RESPOND TO THE COMMISSION IN WRITING WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF
40 A COMPLAINT TRANSMITTED UNDER SUBSECTION D, PARAGRAPH 4 OF THIS SECTION AND
41 SHALL EITHER DENY OR CONCUR WITH THE COMPLAINT AND INDICATE ANY NECESSARY AND
42 CONTEMPLATED REMEDIAL MEASURES. WHEN A SPECIFIC COMPLAINT CONCERNING SECTION
43 41-2753, SUBSECTION A, PARAGRAPH 1 IS RECEIVED BY THE COMMISSION REGARDING
44 THE PROVIDING OF GOODS, SERVICES OR FACILITIES AS A VALUABLE EDUCATIONAL OR
45 RESEARCH EXPERIENCE FOR ITS STUDENTS OR TO FULFILL ITS PUBLIC SERVICE

1 MISSION, A COMMUNITY COLLEGE DISTRICT OR UNIVERSITY SHALL FILE WITH THE
2 RESPONSE TO THE COMMISSION EITHER A WRITTEN DESCRIPTION OF WHAT IT BELIEVES
3 IS THE VALUABLE EDUCATIONAL OR RESEARCH EXPERIENCE FOR ITS STUDENTS OR A
4 WRITTEN DESCRIPTION OF THIS PUBLIC SERVICE MISSION, AS APPLICABLE.

5 G. THE COMMISSION MAY EVALUATE AND REVIEW OPPORTUNITIES TO CONTRACT
6 WITH PRIVATE ENTERPRISE THAT ARE DEEMED TO BE IN THE PUBLIC INTEREST. THE
7 PUBLIC AGENCIES OFFERING SERVICES SUBJECT TO REVIEW SHALL BE INVOLVED AS
8 PARTICIPANTS IN THE EVALUATION PROCESS. THE COMMISSION MAY HOLD PUBLIC
9 HEARINGS AS A PART OF ITS EVALUATION PROCESS AND SHALL REPORT ITS
10 RECOMMENDATIONS TO THE LEGISLATURE AND THE GOVERNOR.

11 H. THE COMMISSION SHALL SOLICIT PETITIONS OF INTEREST FROM PRIVATE
12 SECTOR SERVICE PROVIDERS AS THE COMMISSION DEEMS APPROPRIATE. THE COMMISSION
13 MAY EVALUATE AND REVIEW THE PETITIONS AND MAY HOLD PUBLIC HEARINGS AS PART OF
14 THE EVALUATION PROCESS. THE COMMISSION MAY RECOMMEND SOME OR ALL OF THE
15 PETITIONS TO THE GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET FOR FURTHER
16 REVIEW PURSUANT TO SECTION 41-2773. A PERSON DOES NOT HAVE A CAUSE OF ACTION
17 BASED ON THE FAILURE OF THE COMMISSION TO CONSIDER A PETITION OF INTEREST OR
18 TO MAKE A RECOMMENDATION. THIS SUBSECTION DOES NOT APPLY TO THE ARIZONA
19 BOARD OF REGENTS, THE UNIVERSITIES UNDER ITS JURISDICTION OR COMMUNITY
20 COLLEGE DISTRICTS.

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

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

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

39 Sec. 15. Title 41, chapter 27, article 2, Arizona Revised Statutes, is
40 amended by adding section 41-3020.01, to read:

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

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

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

1 Sec. 16. Section 49-401.01, Arizona Revised Statutes, is amended to
2 read:

3 49-401.01. Definitions

4 In this chapter, unless the context otherwise requires:

5 1. "Administrator" means the administrator of the United States
6 environmental protection agency.

7 2. "Adverse effects to human health" means those effects that result
8 in or significantly contribute to an increase in mortality or an increase in
9 serious irreversible or incapacitating reversible illness, including adverse
10 effects that are known to be or may reasonably be anticipated to be caused by
11 substances that are acutely toxic, chronically toxic, carcinogenic,
12 mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

13 3. "Adverse environmental effect" means any significant and widespread
14 adverse effect which may reasonably be anticipated on wildlife, aquatic life,
15 or other natural resources, including adverse impacts on populations of
16 endangered or threatened species or significant degradation of environmental
17 quality over broad areas.

18 4. "Arizona Grand Canyon visibility transport commission class I
19 areas" means the following four mandatory federal class I areas in this state
20 that were the subject of recommendations made by the Grand Canyon visibility
21 transport commission pursuant to the clean air act:

- 22 (a) Grand Canyon national park.
- 23 (b) Petrified Forest national park.
- 24 (c) Sycamore Canyon Wilderness.
- 25 (d) Mount Baldy Wilderness.

26 5. "Arizona mandatory federal class I areas" means the following eight
27 national parks and wilderness areas that are designated as mandatory federal
28 class I areas in this state pursuant to the clean air act and does not
29 include the Arizona Grand Canyon visibility transport commission class I
30 areas:

- 31 (a) Pine Mountain Wilderness.
- 32 (b) Mazatzal Wilderness.
- 33 (c) Sierra Ancha Wilderness.
- 34 (d) Superstition Wilderness.
- 35 (e) Saguaro Wilderness.
- 36 (f) Galiuro Wilderness.
- 37 (g) Chiricahua Wilderness.
- 38 (h) Chiricahua National Monument Wilderness.

39 6. "Attainment area" means any area in this state that has been
40 identified in regulations promulgated by the administrator as being in
41 compliance with national ambient air quality standards.

42 7. "Begin actual construction" means initiation of physical on-site
43 construction activities on an emissions unit that are of a permanent nature.
44 For purposes of title I, parts C and D and section 112 of the clean air act,
45 these activities include installation of building supports and foundations,

1 laying of underground pipework and construction of permanent storage
2 structures. For purposes other than title I, parts C and D and section 112
3 of the clean air act, these activities do not include installation of
4 building supports and foundations, laying of underground pipework and
5 construction of permanent storage structures.

6 8. "Building", "structure", "facility" or "installation" means all of
7 the pollutant-emitting activities which belong to the same industrial
8 grouping, are located on one or more contiguous or adjacent properties and
9 are under the control of the same person or persons under common control
10 except the activities of any vessel. Pollutant-emitting activities shall be
11 considered as part of the same industrial grouping if they belong to the same
12 major group which has the same two digit code, as described in the standard
13 industrial classification manual, 1972, as amended by the 1977 supplement.

14 9. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42
15 United States Code sections 7401 through 7671) as amended by the clean air
16 act amendments of 1990 (P.L. 101-549).

17 10. "Commence" means, as applied to construction of a source:

18 (a) For purposes other than title IV of the clean air act, that the
19 owner or operator has obtained all necessary preconstruction approval or
20 permits required by federal law and this chapter and has done either of the
21 following:

22 (i) Begun or caused to begin a continuous program of physical on-site
23 construction of the source to be completed within a reasonable time.

24 (ii) Entered into binding agreements or contractual obligations, which
25 cannot be cancelled or modified without substantial loss to the owner or
26 operator, to undertake a program of construction of the source to be
27 completed within a reasonable time.

28 (b) For purposes of title IV of the clean air act, that the owner or
29 operator has undertaken a continuous program of construction or that an owner
30 or operator has entered into a contractual obligation to undertake and
31 complete within a reasonable time a continuous program of construction.

32 11. "Construction" means any physical change in a source or change in
33 the method of operation of a source including fabrication, erection,
34 installation or demolition of a source that would result in a change in
35 actual emissions.

36 12. "Conventional air pollutant" means any pollutant for which the
37 administrator has promulgated a primary or secondary national ambient air
38 quality standard.

39 13. "Federally listed hazardous air pollutant" means any air pollutant
40 adopted pursuant to section 49-426.03, subsection A and not deleted pursuant
41 to that subsection.

42 14. "Grand Canyon visibility transport commission" means the visibility
43 transport commission established pursuant to section 169B of the clean air
44 act for the region affecting the visibility of the Grand Canyon national
45 park.

1 15. "Grand Canyon visibility transport commission class I areas" means
2 the following sixteen mandatory federal class I areas in the region of Grand
3 Canyon national park that were the subject of recommendations by the Grand
4 Canyon visibility transport commission pursuant to the clean air act:

- 5 (a) Grand Canyon national park in Arizona.
- 6 (b) Sycamore Canyon Wilderness in Arizona.
- 7 (c) Petrified Forest national park in Arizona.
- 8 (d) Mount Baldy Wilderness in Arizona.
- 9 (e) San Pedro Parks Wilderness in New Mexico.
- 10 (f) Mesa Verde national park in Colorado.
- 11 (g) Weminuche Wilderness in Colorado.
- 12 (h) Black Canyon of the Gunnison Wilderness in Colorado.
- 13 (i) West Elk Wilderness in Colorado.
- 14 (j) Maroon Bells-Snowmass Wilderness in Colorado.
- 15 (k) Flat Tops Wilderness in Colorado.
- 16 (l) Arches national park in Utah.
- 17 (m) Canyonlands national park in Utah.
- 18 (n) Capitol Reef national park in Utah.
- 19 (o) Bryce Canyon national park in Utah.
- 20 (p) Zion national park in Utah.

21 16. "Hazardous air pollutant" means any federally listed hazardous air
22 pollutant and any air pollutant that the director has designated as a
23 hazardous air pollutant pursuant to section 49-426.04, subsection A and has
24 not deleted pursuant to section 49-426.04, subsection B.

25 17. "Hazardous air pollutant reasonably available control technology"
26 means an emissions standard for hazardous air pollutants which the director,
27 acting pursuant to section 49-426.06, subsection C, or the control officer,
28 acting pursuant to section 49-480.04, subsection C, determines is reasonably
29 available for a source. In making the foregoing determination the director
30 or control officer shall take into consideration the estimated actual air
31 quality impact of the standard, the cost of complying with the standard, the
32 demonstrated reliability and widespread use of the technology required to
33 meet the standard and any non-air quality health and environmental impacts
34 and energy requirements. For purposes of this definition, an emissions
35 standard may be expressed as a numeric emissions limitation or as a design,
36 equipment, work practice or operational standard.

37 18. "Maintenance area" means any nonattainment area that has been
38 redesignated by the administrator to attainment status.

39 19. "Major source" means a stationary source or a group of stationary
40 sources that is located within a contiguous area, that is under common
41 control and that is defined as a major source in section 501(2) of the clean
42 air act or that is a major emitting facility as defined in title I, part C of
43 the clean air act or that is defined in department rules as a major source
44 consistent with the clean air act.

1 20. "Mandatory federal class I areas" means those national parks,
2 monuments and wilderness areas that are included in 40 Code of Federal
3 Regulations sections 81.400 through 81.436 pursuant to the clean air act.

4 21. "Maximum achievable control technology" means an emission standard
5 that requires the maximum degree of reduction in emissions of the hazardous
6 air pollutants subject to this chapter, including a prohibition on such
7 emissions where achievable, and that the director, after considering the cost
8 of achieving such emission reduction and any non-air quality health and
9 environmental impacts and energy requirements, determines to be achievable by
10 an affected source to which such standard applies, through application of
11 measures, processes, methods, systems or techniques including measures which:

12 (a) Reduce the volume of, or eliminate emissions of, such pollutants
13 through process changes, substitution of materials or other modifications.

14 (b) Enclose systems or processes to eliminate emissions.

15 (c) Collect, capture or treat such pollutants when released from a
16 process, stack, storage or fugitive emissions point.

17 (d) Are design, equipment, work practice, or operational standards,
18 including requirements for operator training or certification.

19 (e) Are a combination of the above.

20 22. "Minor source" means any stationary or portable source that is not
21 a major source.

22 23. "Mobile source" means any combustion engine, device, machine or
23 equipment that operates during transport and that emits or generates air
24 contaminants whether in motion or at rest.

25 24. "Modification" or "modify" means a physical change in or change in
26 the method of operation of a source which increases the ~~actual~~ emissions of
27 any regulated air pollutant emitted by such source by more than any relevant
28 de minimis amount or which results in the emission of any regulated air
29 pollutant not previously emitted by more than such de minimis amount. AN
30 INCREASE IN EMISSIONS AT A MINOR SOURCE SHALL BE DETERMINED BY COMPARING THE
31 SOURCE'S POTENTIAL TO EMIT BEFORE AND AFTER THE MODIFICATION. THE FOLLOWING
32 EXEMPTIONS APPLY:

33 (a) A PHYSICAL OR OPERATIONAL CHANGE DOES NOT INCLUDE ROUTINE
34 MAINTENANCE, REPAIR OR REPLACEMENT.

35 (b) AN INCREASE IN THE HOURS OF OPERATION OR IF THE PRODUCTION RATE IS
36 NOT CONSIDERED AN OPERATIONAL CHANGE UNLESS SUCH INCREASE IS PROHIBITED UNDER
37 ANY FEDERALLY-ENFORCEABLE PERMIT CONDITION OR OTHER PERMIT CONDITION THAT IS
38 ENFORCEABLE AS A PRACTICAL MATTER.

39 (c) A CHANGE IN OWNERSHIP AT A SOURCE IS NOT CONSIDERED A
40 MODIFICATION.

41 25. "National ambient air quality standard" means the ambient air
42 pollutant concentration limits established by the administrator pursuant to
43 42 United States Code section 7409.

1 26. "Nonattainment area" means any area in this state that is
2 designated as prescribed by section 49-405 and where violations of national
3 ambient air quality standards have been measured.

4 27. "Nonattainment area plan" means an air pollution control plan
5 developed in accordance with 42 United States Code sections 7501 through
6 7515.

7 28. "Permitting authority" means the department or a county department
8 or agency that is charged with enforcing a permit program adopted pursuant to
9 section 49-480, subsection A.

10 29. "Planning agency" means an organization designated by the governor
11 pursuant to 42 United States Code section 7504.

12 30. "Portable source" means any stationary source that is capable of
13 being transported and operated in more than one county of this state.

14 31. "Potential to emit" means:—

15 ~~(a) For purposes of section 112 of the clean air act, the maximum~~
16 ~~capacity of a stationary source to emit a pollutant, excluding secondary~~
17 ~~emissions, taking into account controls that are enforceable under any~~
18 ~~federal law or regulation or that are inherent in the design of the source.~~

19 ~~(b) For purposes other than section 112 of the clean air act, the~~
20 ~~maximum capacity of a stationary source to emit a pollutant, excluding~~
21 ~~secondary emissions, taking into account controls that are enforceable under~~
22 ~~any federal, state or local law, rule or regulation or that are inherent in~~
23 ~~the design of the source.~~

24 (b) UNDER ITS PHYSICAL AND OPERATIONAL DESIGN. ANY PHYSICAL OR
25 OPERATIONAL LIMITATION ON THE CAPACITY OF THE SOURCE TO EMIT A POLLUTANT,
26 INCLUDING AIR POLLUTION CONTROL EQUIPMENT AND RESTRICTIONS ON HOURS OF
27 OPERATION OR ON THE TYPE OR AMOUNT OF MATERIAL COMBUSTED, STORED, OR
28 PROCESSED, SHALL BE TREATED AS PART OF ITS DESIGN IF THE LIMITATION OR THE
29 EFFECT IT WOULD HAVE ON EMISSIONS IS ENFORCEABLE AS A PRACTICAL MATTER.

30 32. "Primary standard attainment date" means the date defined within a
31 nonattainment area plan in accordance with 42 United States Code sections
32 7401 through 7515 or applicable regulations adopted by the United States
33 environmental protection agency by January 1, 1999 and after which date
34 primary national ambient air quality standards may not be violated.

35 33. "Reasonable further progress" means the schedule of emission
36 reductions defined within a nonattainment area plan as being necessary to
37 come into compliance with a national ambient air quality standard by the
38 primary standard attainment date.

39 34. "Source" means any building, structure, facility or installation
40 that may cause or contribute to air pollution or the use of which may
41 eliminate, reduce or control the emission of air pollution.

42 35. "State implementation plan" means the accumulated record of
43 enforceable air pollution control measures, programs and plans adopted by the
44 director and submitted to the administrator pursuant to 42 United States Code
45 section 7410.

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.

18 Sec. 19. Purpose

19 Pursuant to section 41-2955, subsection E, Arizona Revised Statutes,
20 the legislature establishes the commission on privatization, efficiency and
21 competition to limit government competition with private enterprise in the
22 offering of goods and services, to provide additional economic opportunities
23 to private industry and to address issues and complaints concerning
24 government competition with private industry.

25 Sec. 20. Retention of members

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

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.

Passed the House March 3, 2010

by the following vote: 41 Ayes,

18 Nays, 1 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate April 28, 2010

by the following vote: 18 Ayes,

12 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

 day of , 20

at o'clock M.

Secretary to the Governor

Approved this day of

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this day of , 20

at o'clock M.

Secretary of State

H.B. 2260

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 28, 2010,

by the following vote: 37 Ayes,

22 Nays, 1 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of April, 2010

at 11:50 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 10 day of

May, 2010,

at 11:40 o'clock A. M.

[Signature]
Governor of Arizona

H.B. 2260

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10th day of May, 2010,

at 4:10 o'clock P. M.

[Signature]
Secretary of State