Senate Engrossed House Bill

**FILED**
**KEN BENNETT**
**SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 352

# HOUSE BILL 2744

AN ACT

AMENDING SECTIONS 41-1001 AND 41-1001.01, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1001.02; AMENDING SECTIONS 41-1005, 41-1008, 41-1013 AND 41-1024, ARIZONA REVISED STATUTES; REPEALING SECTION 41-1027, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 41-1027; AMENDING SECTIONS 41-1032, 41-1033, 41-1047, 41-1051, 41-1052, 41-1053, 41-1055, 41-1056 AND 41-1057, ARIZONA REVISED STATUTES; REPEALING SECTION 41-1078, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1091, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1091.01; RELATING TO ADMINISTRATIVE PROCEDURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 41-1001, Arizona Revised Statutes, is amended to read:

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.

2. "Code" means the Arizona administrative code.

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

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

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

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

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

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

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

10. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an

agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

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

12. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

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

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

15. "Preamble" means:

(a) For any rule making subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rule making.

(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and any analysis of each study and other supporting material.

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

(vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for ~~a proposed summary~~ AN EXPEDITED rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why ~~summary~~ EXPEDITED proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

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

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

17. "Register" means the Arizona administrative register.

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

19. "Rule making" means the process for formulation and finalization of a rule.

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

21. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion.

A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

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

Sec. 2. Section 41-1001.01, Arizona Revised Statutes, is amended to read:

41-1001.01. Regulatory bill of rights

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.

5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written ~~or oral~~ comments OR TESTIMONY on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D.

(b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.

(c) Providing written ~~or oral~~ comments OR TESTIMONY on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.

9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

10. May file a complaint with the administrative rules oversight committee concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.

13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

14. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 41-1079.

16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

18. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

19. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

Sec. 3. Title 41, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 41-1001.02, to read:

41-1001.02. Clarification of interpretation

A. BEFORE SUBMITTING AN APPLICATION FOR A LICENSE A PERSON MAY REQUEST FROM THE AGENCY ISSUING THE LICENSE A CLARIFICATION OF ITS INTERPRETATION OR APPLICATION OF A STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT AFFECTING THE PERSON'S PREPARATION OF THE APPLICATION FOR A LICENSE BY PROVIDING THE AGENCY WITH A WRITTEN REQUEST THAT STATES:

1. THE NAME AND ADDRESS OF THE PERSON REQUESTING THE CLARIFICATION.

2. THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT OR PART OF THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT THAT THE PERSON IS REQUESTING BE CLARIFIED.

3. ANY FACTS RELEVANT TO THE REQUESTED CLARIFICATION.

4. THE PERSON'S PROPOSED INTERPRETATION OF THE APPLICABLE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT OR PART OF THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT.

5. WHETHER, TO THE BEST KNOWLEDGE OF THE PERSON, THE ISSUES OR RELATED ISSUES ARE BEING CONSIDERED BY THE AGENCY IN CONNECTION WITH AN EXISTING LICENSE OR LICENSE APPLICATION.

B. ON RECEIPT OF A REQUEST THAT COMPLIES WITH SUBSECTION A OF THIS SECTION:

1. THE AGENCY MAY MEET WITH THE PERSON TO DISCUSS THE WRITTEN REQUEST AND SHALL RESPOND WITHIN THIRTY DAYS OF THE RECEIPT OF THE WRITTEN REQUEST WITH A WRITTEN CLARIFICATION OF ITS INTERPRETATION OR APPLICATION AS RAISED IN THE WRITTEN REQUEST.

2. THE AGENCY SHALL PROVIDE THE REQUESTOR WITH AN OPPORTUNITY TO MEET AND DISCUSS THE AGENCY'S WRITTEN CLARIFICATION.

C. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY'S WRITTEN CLARIFICATION PURSUANT TO THIS SECTION DOES NOT CONSTITUTE AN APPEALABLE ACTION AS DEFINED IN SECTION 41-1092 OR AN ACTION AGAINST THE PARTY PURSUANT TO SECTION 41-1092.12.

D. NOTWITHSTANDING ANY OTHER LAW, THIS SECTION DOES NOT APPLY TO THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

Sec. 4. Section 41-1005, Arizona Revised Statutes, is amended to read:

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

2. Order of the Arizona game and fish commission that opens, closes or alters seasons or establishes bag or possession limits for wildlife.

3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.

4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.

5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.

6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.

7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.

8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.

9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.

10. Fees prescribed by section 6-125.

11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.

12. Fees established under section 3-1086.

13. Fee-for-service schedule adopted by the department of economic security pursuant to section 8-512.

14. Fees established under sections 41-2144 and 41-2189.

15. Rule or other matter relating to agency contracts.

16. Fees established under section 32-2067 or 32-2132.

17. Rules made pursuant to section 5-111, subsection A.

18. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

19. Fees or charges established under section 41-511.05.

20. Emergency medical services protocols except as provided in section 36-2205, subsection C.

21. Fee schedules established pursuant to section 36-3409.

22. Procedures of the state transportation board as prescribed in section 28-7048.

23. Rules made by the state department of corrections.

24. Fees prescribed pursuant to section 32-1527.

25. Rules made by the department of economic security pursuant to section 46-805.

26. Schedule of fees prescribed by section 23-908.

27. Procedure that is established pursuant to title 23, chapter 6, article 5 or 6.

28. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

29. Rules made by a marketing commission or marketing committee pursuant to section 3-414.

B. Notwithstanding subsection A, paragraph 22 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a FINAL rule pursuant to an exemption FROM THE APPLICABILITY OF THIS CHAPTER under this section, ANOTHER STATUTE OR SESSION LAW, the agency shall file a copy of the rule with the secretary of state for publication pursuant to section 41-1012 AND PROVIDE A COPY TO THE COUNCIL.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment.

Sec. 5. Section 41-1008, Arizona Revised Statutes, is amended to read:

41-1008. Fees; specific statutory authority

A. ~~Beginning on July 1, 1999,~~ Except as provided in subsection C OF THIS SECTION, an agency shall not:

1. Charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.

2. Make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.

B. ~~Beginning on July 1, 1999,~~ An agency shall identify the statute or tribal state gaming compact that authorizes the fee on documents relating to collection of the fee.

C. An agency authorized by statute or tribal state gaming compact to conduct background checks may charge a fingerprint fee without a statute expressly authorizing the fee.

D. UNLESS THE LEGISLATURE GRANTS AN EXPRESS EXEMPTION THROUGH STATUTE OR SESSION LAW FROM ALL REQUIREMENTS OF THIS CHAPTER FOR ESTABLISHING OR INCREASING A FEE, AN AGENCY SHALL COMPLY WITH ALL APPLICABLE RULE MAKING PROVISIONS TO ESTABLISH OR INCREASE THE FEE. THE AGENCY SHALL NOT CHARGE OR RECEIVE THE FEE UNTIL THE RULE ESTABLISHING OR INCREASING THE FEE IS EFFECTIVE UNDER THE APPLICABLE LAW OF THIS STATE.

E. A FEE THAT IS ESTABLISHED OR INCREASED BY EXEMPT RULE MAKING FROM AND AFTER SEPTEMBER 30, 2012 IS EFFECTIVE FOR TWO YEARS UNLESS AN EXTENSION IS GRANTED BY THE COUNCIL.

F. AFTER THE EXPIRATION OF THE APPLICABLE PERIOD UNDER SUBSECTION E OF THIS SECTION, THE AGENCY SHALL NOT CHARGE OR RECEIVE THE FEE UNLESS THE AGENCY HAS COMPLIED WITH THE RULE MAKING REQUIREMENTS OF THIS CHAPTER TO ESTABLISH OR INCREASE THE FEE.

G. A PERSON REGULATED BY THE RULE MAY PETITION THE COUNCIL TO ESTABLISH A DATE THAT IS DIFFERENT THAN THE DATE UNDER SUBSECTION E OF THIS SECTION BUT NO EARLIER THAN TWO YEARS AFTER THE EXEMPT RULE IS MADE. THE AGENCY SHALL RESPOND TO THE PETITION WITHIN TWO WEEKS AFTER THE COUNCIL NOTIFIES THE AGENCY THAT THE PETITION HAS BEEN FILED. WITHIN SIXTY DAYS THE COUNCIL SHALL GRANT OR DENY THE PETITION AFTER CONSIDERING WHETHER THE PUBLIC INTEREST REQUIRES A DIFFERENT DATE.

Sec. 6. Section 41-1013, Arizona Revised Statutes, is amended to read:

41-1013. Register

A. The secretary of state shall publish the register at least once each month, including the information which is provided under subsection B of this section and which is filed with the secretary of state during the preceding thirty days. The secretary of state shall publish an index to the register at least twice each year.

B. The register shall contain:

1. A schedule of the time, date and place of all hearings on proposed repeals, makings or amendments of rules.

2. Each governor's executive order.

3. Each governor's proclamation of general applicability, and each statement filed by the governor in granting a commutation, pardon or reprieve or stay or suspension of execution where a sentence of death is imposed.

4. A summary of each attorney general's opinion.

5. Each governor's appointment of state officials and board and commission members.

6. A table of contents.

7. The notice and agency summary of each docket opening.

8. The full text and accompanying preamble of each proposed rule.

9. The full text and accompanying preamble of each final rule.

10. The full text and accompanying preamble of each emergency rule.

11. Supplemental notices of a proposed rule ~~or summary rule~~.

12. PROPOSED AND FINAL NOTICES OF EXPEDITED RULE MAKING AND NOTICES THAT AN OBJECTION WAS RECEIVED REGARDING A PROPOSED EXPEDITED RULE MAKING.

~~12.~~ 13. A summary of council action on each rule.

~~13.~~ 14. The full text of any exempt final rule filed with the secretary of state pursuant to section 41-1005, subsection C.

~~14.~~ 15. The ~~identification~~ NOTICE and a summary of substantive policy statements and notice and a summary of any guidance document publication or revision submitted by an agency. THE NOTICE FOR A SUBSTANTIVE POLICY STATEMENT SHALL CONTAIN THE WEBSITE ADDRESS WHERE THE FULL TEXT OF THE DOCUMENT IS AVAILABLE, IF PRACTICABLE.

~~15.~~ 16. Notices of oral proceedings, public workshops or other meetings on an open rule making docket.

C. The register shall be available by subscription and for single copy purchase. The charge for each register or periodic subscription shall be a reasonable charge, not to exceed all costs of production and distribution of the register.

D. For purposes of this section, full text publication in the register includes all new, amended or added language and such existing language as the proposing agency deems necessary for a proper understanding of the proposed rule. Rules that are undergoing extensive revision may be reprinted in whole. Existing rule language not required for understanding shall be omitted and marked "no change".

Sec. 7. Section 41-1024, Arizona Revised Statutes, is amended to read:

41-1024. Time and manner of rule making

A. An agency may not submit a rule to the council until the rule making record is closed.

B. Within one hundred twenty days after the close of the record on the proposed rule making, an agency shall take one of the following actions:

1. Submit the rule to the council~~,~~ or, if the rule is exempt pursuant to section 41-1057, to the attorney general.

2. Terminate the proceeding by publication of a notice to that effect in the register.

C. Before submitting a rule to the council or the attorney general, an agency shall consider the written submissions, the oral submissions or any memorandum summarizing oral submissions and the economic, small business and consumer impact statement regarding the rule or information in the preamble.

D. Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the making of a rule.

E. Unless exempted by section 41-1005 or 41-1057 or unless the rule is an emergency rule made pursuant to section 41-1026, if the agency chooses to make the rule, the agency shall submit a rule package to the council and to the committee. The rule package shall include:

1. The preamble.

2. The exact words of the rule, including existing language and any deletions.

3. The economic, small business and consumer impact statement.

F. If the rule is exempt pursuant to section 41-1005, the agency shall file it as a final rule with the secretary of state.

G. If the rule is exempt from council approval, pursuant to section 41-1057, the agency shall submit the rule package set forth in subsection E of this section to the attorney general for approval pursuant to section 41-1044.

H. An agency shall not file a final rule with the secretary of state without prior approval from the council, unless the final rule is exempted pursuant to section 41-1005 or 41-1057 or the rule is an emergency rule made pursuant to section 41-1026 or ~~a summary proposed~~ AN EXPEDITED rule made pursuant to section 41-1027.

Sec. 8. Repeal

Section 41-1027, Arizona Revised Statutes, is repealed.

Sec. 9. Title 41, chapter 6, article 3, Arizona Revised Statutes, is amended by adding a new section 41-1027, to read:

41-1027. Expedited rule making

A. AN AGENCY MAY CONDUCT EXPEDITED RULE MAKING PURSUANT TO THIS SECTION IF THE RULE MAKING DOES NOT INCREASE THE COST OF REGULATORY COMPLIANCE, INCREASE A FEE OR REDUCE PROCEDURAL RIGHTS OF PERSONS REGULATED AND DOES ONE OR MORE OF THE FOLLOWING:

1. AMENDS OR REPEALS RULES MADE OBSOLETE BY REPEAL OR SUPERSESSION OF AN AGENCY'S STATUTORY AUTHORITY.

2. AMENDS OR REPEALS RULES FOR WHICH THE STATUTE ON WHICH THE RULE IS AUTHORIZED HAS BEEN DECLARED UNCONSTITUTIONAL BY A COURT WITH JURISDICTION, THERE IS A FINAL JUDGMENT AND NO STATUTE HAS BEEN ENACTED TO REPLACE THE UNCONSTITUTIONAL STATUTE.

3. MAKES, AMENDS OR REPEALS RULES THAT REPEAT VERBATIM EXISTING STATUTORY AUTHORITY GRANTED TO THE AGENCY.

4. MAKES, AMENDS OR REPEALS RULES RELATING ONLY TO INTERNAL GOVERNMENTAL OPERATIONS THAT ARE NOT SUBJECT TO VIOLATION BY A PERSON.

5. CORRECTS TYPOGRAPHICAL ERRORS, MAKES ADDRESS OR NAME CHANGES OR CLARIFIES LANGUAGE OF A RULE WITHOUT CHANGING ITS EFFECT.

6. ADOPTS OR INCORPORATES BY REFERENCE WITHOUT MATERIAL CHANGE FEDERAL STATUTES OR REGULATIONS PURSUANT TO SECTION 41-1028, STATUTES OF THIS STATE OR RULES OF OTHER AGENCIES OF THIS STATE.

7. REDUCES OR CONSOLIDATES STEPS, PROCEDURES OR PROCESSES IN THE RULES.

B. IF THE PROPOSED EXPEDITED RULE MAKING IS SOLELY FOR A PURPOSE PRESCRIBED IN SUBSECTION A, PARAGRAPH 1, 3 OR 5 OF THIS SECTION, AN AGENCY SHALL NOTIFY THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE COUNCIL OF THE PROPOSED EXPEDITED RULE MAKING. THE NOTICE SHALL CONTAIN THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE AGENCY CONTACT PERSON AND THE EXACT WORDING OF THE PROPOSED EXPEDITED RULE MAKING AND INDICATE HOW THE PROPOSED EXPEDITED RULE MAKING ACHIEVES THE PURPOSE PRESCRIBED IN SUBSECTION A, PARAGRAPH 1, 3 OR 5 OF THIS SECTION.

C. IF THE PROPOSED EXPEDITED RULE MAKING IS FOR A PURPOSE PRESCRIBED IN SUBSECTION A, PARAGRAPH 2, 4, 6 OR 7 OF THIS SECTION, AN AGENCY SHALL FILE A REQUEST FOR PROPOSED EXPEDITED RULE MAKING WITH THE GOVERNOR AND NOTIFY THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE COUNCIL OF THE REQUEST. THE REQUEST SHALL CONTAIN THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE AGENCY CONTACT PERSON AND THE EXACT WORDING OF THE PROPOSED EXPEDITED RULE MAKING AND AN EXPLANATION OF HOW THE PROPOSED EXPEDITED RULE MAKING MEETS THE CRITERIA IN SUBSECTION A OF THIS SECTION.

D. THE GOVERNOR MAY APPROVE THE REQUEST FOR EXPEDITED RULE MAKING IF THE REQUEST COMPLIES WITH SUBSECTION A OF THIS SECTION.

E. ON DELIVERY OF THE NOTICE REQUIRED IN SUBSECTION B OF THIS SECTION OR ON APPROVAL BY THE GOVERNOR OF A REQUEST FOR PROPOSED EXPEDITED RULE MAKING THE AGENCY SHALL FILE A NOTICE OF THE PROPOSED EXPEDITED RULE MAKING WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE NEXT STATE ADMINISTRATIVE REGISTER CONTAINING THE INFORMATION AND PROVISIONS OF THE PROPOSED RULE MAKING FILED WITH THE GOVERNOR PURSUANT TO SUBSECTION B OR C OF THIS SECTION AND ALLOW ANY PERSON TO PROVIDE WRITTEN COMMENT TO THE AGENCY FOR AT LEAST THIRTY DAYS AFTER PUBLICATION IN THE REGISTER, INCLUDING OBJECTIONS TO THE RULE MAKING BECAUSE IT DOES NOT MEET THE CRITERIA PURSUANT TO SUBSECTION A OF THIS SECTION. THE AGENCY SHALL ADEQUATELY RESPOND IN WRITING TO THE COMMENTS ON THE PROPOSED EXPEDITED RULE MAKING.

F. AN AGENCY MAY NOT SUBMIT AN EXPEDITED RULE TO THE COUNCIL THAT IS SUBSTANTIALLY DIFFERENT FROM THE PROPOSED RULE CONTAINED IN THE NOTICE OF PROPOSED EXPEDITED RULE MAKING. HOWEVER, AN AGENCY MAY TERMINATE AN EXPEDITED RULE MAKING PROCEEDING PURSUANT TO SUBSECTION K OF THIS SECTION AND COMMENCE A NEW RULE MAKING PROCEEDING FOR THE PURPOSE OF MAKING A SUBSTANTIALLY DIFFERENT RULE. AN AGENCY SHALL USE THE CRITERIA PRESCRIBED IN SECTION 41-1025, SUBSECTION B FOR DETERMINING WHETHER AN EXPEDITED RULE IS SUBSTANTIALLY DIFFERENT FROM THE PUBLISHED PROPOSED EXPEDITED RULE.

G. AFTER ADEQUATELY ADDRESSING, IN WRITING, ANY WRITTEN OBJECTIONS, AN AGENCY SHALL FILE A REQUEST FOR APPROVAL WITH THE COUNCIL. THE REQUEST SHALL CONTAIN THE NOTICE OF PROPOSED EXPEDITED RULE MAKING FILED WITH THE SECRETARY

OF STATE PURSUANT TO THIS SECTION AND THE AGENCY'S RESPONSES TO ANY WRITTEN COMMENTS. THE COUNCIL MAY REQUIRE A REPRESENTATIVE OF AN AGENCY WHOSE PROPOSED EXPEDITED RULE MAKING IS UNDER EXAMINATION TO ATTEND A COUNCIL MEETING AND ANSWER QUESTIONS. THE COUNCIL MAY COMMUNICATE TO THE AGENCY ITS COMMENTS ON THE PROPOSED EXPEDITED RULE MAKING WITHIN THE SCOPE OF SUBSECTION A OF THIS SECTION AND REQUIRE THE AGENCY TO RESPOND TO ITS COMMENTS OR TESTIMONY IN WRITING. A PERSON MAY SUBMIT WRITTEN COMMENTS TO THE COUNCIL THAT ARE WITHIN THE SCOPE OF SUBSECTION A OF THIS SECTION.

H. BEFORE AN AGENCY FILES A NOTICE OF FINAL EXPEDITED RULE MAKING WITH THE SECRETARY OF STATE, THE COUNCIL SHALL APPROVE ANY PROPOSED EXPEDITED RULE MAKING. THE COUNCIL SHALL NOT APPROVE THE RULE UNLESS:

1. THE RULE SATISFIES THE CRITERIA FOR EXPEDITED RULE MAKING PURSUANT TO SUBSECTION A OF THIS SECTION.

2. THE RULE IS CLEAR, CONCISE AND UNDERSTANDABLE.

3. THE RULE IS NOT ILLEGAL, INCONSISTENT WITH LEGISLATIVE INTENT OR BEYOND THE AGENCY'S STATUTORY AUTHORITY.

4. THE AGENCY, IN WRITING, ADEQUATELY ADDRESSED THE COMMENTS ON THE PROPOSED RULE AND ANY SUPPLEMENTARY PROPOSAL.

5. IF APPLICABLE, THE PERMITTING REQUIREMENTS COMPLY WITH SECTION 41-1037.

6. THE RULE IS NOT A SUBSTANTIAL CHANGE, CONSIDERED AS A WHOLE, FROM THE PROPOSED RULE AND ANY SUPPLEMENTARY PROPOSAL.

7. THE RULE IMPOSES THE LEAST BURDEN AND COSTS TO PERSONS REGULATED BY THE RULE.

I. ON RECEIPT OF COUNCIL APPROVAL, THE AGENCY SHALL FILE A NOTICE OF FINAL EXPEDITED RULE MAKING WITH THE SECRETARY OF STATE THAT CONTAINS THE INFORMATION AND PROVISIONS REQUIRED IN SUBSECTION B OR C OF THIS SECTION AND THAT THE AGENCY DID RECEIVE APPROVAL FROM THE COUNCIL PURSUANT TO THIS SECTION.

J. THE EXPEDITED RULE MAKING BECOMES EFFECTIVE THIRTY DAYS FOLLOWING PUBLICATION OF THE NOTICE OF FINAL EXPEDITED RULE MAKING.

K. AN AGENCY MAY TERMINATE AN EXPEDITED RULE MAKING PROCEEDING ON APPROVAL OF THE GOVERNOR AND WRITTEN NOTICE TO THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE COUNCIL.

Sec. 10. Section 41-1032, Arizona Revised Statutes, is amended to read:

41-1032. <u>Effective date of rules</u>

A. A rule FILED PURSUANT TO SECTION 41-1031 becomes effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the secretary of state and the time and date are affixed as provided in section 41-1031, unless the rule making agency includes in the preamble information that demonstrates that the rule needs to be effective immediately on filing in the office of the secretary of state and the time and date are affixed as provided in section 41-1031. A rule may only be effective immediately for any of the following reasons:

1. To preserve the public peace, health or safety.

2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.

3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.

4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.

5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

B. Notwithstanding subsection A of this section, a rule making agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.

C. This section does not affect the validity of an existing rule until the new or amended rule that is filed with the secretary of state is effective pursuant to this section.

Sec. 11. Section 41-1033, Arizona Revised Statutes, is amended to read:

41-1033. Petition for a rule or review of a practice or policy

A. Any person, in a manner and form prescribed by the agency, may petition an agency requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rule making proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A OF THIS SECTION. The appeal shall be limited to whether an existing agency practice or substantive policy statement constitutes a rule. The council CHAIRPERSON shall place this appeal on the agenda of ~~it's~~ THE COUNCIL'S next meeting if at least three council members make such a request of the council ~~chairman~~ CHAIRPERSON within two weeks after the filing of the appeal.

C. IF THE COUNCIL RECEIVES INFORMATION INDICATING THAT AN EXISTING AGENCY PRACTICE OR SUBSTANTIVE POLICY STATEMENT MAY CONSTITUTE A RULE AND AT LEAST FOUR COUNCIL MEMBERS REQUEST THE CHAIRPERSON THAT THE MATTER BE HEARD IN A PUBLIC MEETING:

1. WITHIN NINETY DAYS OF RECEIPT OF THE FOURTH COUNCIL MEMBER REQUEST, THE COUNCIL SHALL DETERMINE IF THE AGENCY PRACTICE OR SUBSTANTIVE POLICY STATEMENT CONSTITUTES A RULE.

2. WITHIN TEN DAYS OF RECEIPT OF THE FOURTH COUNCIL MEMBER REQUEST, THE COUNCIL SHALL NOTIFY THE AGENCY THAT THE MATTER HAS BEEN OR WILL BE PLACED ON AN AGENDA.

3. WITHIN THIRTY DAYS OF RECEIVING NOTICE FROM THE COUNCIL, THE AGENCY SHALL SUBMIT A STATEMENT THAT ADDRESSES WHETHER THE EXISTING AGENCY PRACTICE OR SUBSTANTIVE POLICY STATEMENT CONSTITUTES A RULE.

D. FOR THE PURPOSES OF SUBSECTION C OF THIS SECTION, THE COUNCIL MEETING SHALL NOT BE HELD UNTIL THE EXPIRATION OF THE AGENCY RESPONSE PERIOD PRESCRIBED IN SUBSECTION C, PARAGRAPH 3 OF THIS SUBSECTION.

~~C.~~ E. An agency practice or substantive policy statement ~~appealed to and~~ considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or statement constitutes a rule, the practice or statement shall be considered void.

~~D.~~ F. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

Sec. 12. Section 41-1047, Arizona Revised Statutes, is amended to read:

41-1047. Committee review of rules; practices alleged to constitute rules; substantive policy statements

The committee may review any proposed or final rule, ~~summary~~ EXPEDITED rule, agency practice alleged to constitute a rule or substantive policy statement for conformity with statute and legislative intent. The committee may hold hearings on whether a proposed or final rule, ~~summary~~ EXPEDITED rule, agency practice alleged to constitute a rule or substantive policy statement is consistent with statute and legislative intent. The committee may comment to the agency, attorney general or council on whether the proposed or final rule, ~~summary~~ EXPEDITED rule, agency practice alleged to constitute a rule or substantive policy statement is consistent with statute or legislative intent. The committee may designate a representative to testify before the council. The council shall consider the comments of the committee and any testimony. The administrative records shall contain the comments of the committee and any testimony.

Sec. 13. Section 41-1051, Arizona Revised Statutes, is amended to read:

41-1051. Governor's regulatory review council; membership; terms; compensation; powers

A. A governor's regulatory review council is established that consists of six members who are appointed by the governor pursuant to section 38-211, and the director of the department of administration or the assistant

director of the department of administration who is responsible for administering the council. The director or assistant director is an ex officio member and chairperson of the council. The council shall elect a vice-chairperson to serve as chairperson in the chairperson's absence. The governor shall appoint at least one member who represents the public interest, at least one member who represents the business community, one member from a list of three persons who are not legislators submitted by the president of the senate and one member from a list of three persons who are not legislators submitted by the speaker of the house of representatives. At least one member of the council shall be an attorney licensed to practice law in this state. The governor shall appoint the members of the council for staggered terms of three years. A vacancy occurring during the term of office of any member shall be filled by appointment by the governor for the unexpired portion of the term in the same manner as provided in this section.

B. The council shall meet at least once a month at a time and place set by the chairperson and at other times and places as the chairperson deems necessary.

C. Members of the council are eligible to receive compensation in an amount of two hundred dollars for each day on which the council meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The chairperson, subject to chapter 4, articles 5 and 6 of this title, shall employ, determine the conditions of employment of and specify the duties of administrative, secretarial and clerical employees as the chairperson deems necessary.

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

F. The council shall make ~~the following information~~ A LIST OF AGENCY RULES APPROVED OR RETURNED PURSUANT TO SECTIONS 41-1027 AND 41-1052 AND SECTION 41-1056, SUBSECTION C FOR THE PREVIOUS TWELVE MONTH PERIOD available to the public on request and on the council's website. ~~:~~

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

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

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

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

41-1052. Council review and approval

A. Before filing a final rule SUBJECT TO THIS SECTION with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement that meets the requirements of section 41-1055. The governor's office of strategic planning

1 and budgeting shall prepare the economic, small business and consumer impact
2 statement if the legislature appropriates monies for this purpose.
3 B. The council shall accept an early review petition of a proposed
4 rule, in whole or in part, if the proposed rule is alleged to violate any of
5 the criteria prescribed in subsection D of this section and if the early
6 petition is filed by a person who would be adversely impacted by the proposed
7 rule. The council may determine whether the proposed rule, in whole or in
8 part, violates any of the criteria prescribed in subsection D of this
9 section.
10 C. Within one hundred twenty days of receipt of the rule, preamble and
11 economic, small business and consumer impact statement, the council shall
12 review and approve or return, in whole or in part, the rule, preamble or
13 economic, small business and consumer impact statement. An agency may
14 resubmit a rule, preamble or economic, small business and consumer impact
15 statement if the council returns the rule, economic, small business and
16 consumer impact statement or preamble, in whole or in part, to the agency.
17 D. The council shall not approve the rule unless:
18 1. The economic, small business and consumer impact statement contains
19 information from the state, data and analysis prescribed by this article.
20 2. The economic, small business and consumer impact statement is
21 generally accurate.
22 3. The probable benefits of the rule outweigh WITHIN THIS STATE the
23 probable costs of the rule and the agency has demonstrated that it has
24 selected the alternative that imposes the least burden and costs to persons
25 regulated by the rule, including paperwork and other compliance costs,
26 necessary to achieve the underlying regulatory objective.
27 4. The rule is written in a manner that is clear, concise and
28 understandable to the general public.
29 5. The rule is not illegal, inconsistent with legislative intent or
30 beyond the agency's statutory authority.
31 6. The agency adequately addressed, IN WRITING, the comments on the
32 proposed rule and any supplemental proposals.
33 7. The rule is not a substantial change, considered as a whole, from
34 the proposed rule and any supplemental notices.
35 8. The preamble discloses a reference to any study relevant to the
36 rule that the agency reviewed and either did or did not rely on in the
37 agency's evaluation of or justification for the rule.
38 9. The rule is not more stringent than a corresponding federal law
39 unless there is statutory authority to exceed the requirements of that
40 federal law.
41 10. If a rule requires a permit, the permitting requirement complies
42 with section 41-1037.
43 E. The council shall verify that a rule with new fees does not violate
44 section 41-1008. The council shall not approve a rule that contains a fee

increase unless two-thirds of the voting quorum present vote to approve the rule.

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

G. IF THE RULE RELIES ON SCIENTIFIC PRINCIPLES OR METHODS, INCLUDING A STUDY DISCLOSED PURSUANT TO SUBSECTION D, PARAGRAPH 8 OF THIS SECTION, AND A PERSON SUBMITS AN ANALYSIS TO THE COUNCIL QUESTIONING WHETHER THE RULE IS BASED ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES OR METHODS, THE COUNCIL SHALL NOT APPROVE THE RULE UNLESS THE COUNCIL DETERMINES THAT THE RULE IS BASED ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES OR METHODS THAT ARE SPECIFIC AND NOT OF A GENERAL NATURE. IN MAKING A DETERMINATION OF RELIABILITY OR VALIDITY, THE COUNCIL SHALL CONSIDER THE FOLLOWING FACTORS AS APPLICABLE TO THE RULE:

(a) THE AUTHORS OF THE STUDY, PRINCIPLE OR METHOD HAVE SUBJECT MATTER KNOWLEDGE, SKILL, EXPERIENCE, TRAINING AND EXPERTISE.

(b) THE STUDY, PRINCIPLE OR METHOD IS BASED ON SUFFICIENT FACTS OR DATA.

(c) THE STUDY IS THE PRODUCT OF RELIABLE PRINCIPLES AND METHODS.

(d) THE STUDY AND ITS CONCLUSIONS, PRINCIPLES OR METHODS HAVE BEEN TESTED OR SUBJECTED TO PEER REVIEWED PUBLICATIONS.

(e) THE KNOWN OR POTENTIAL ERROR RATE OF THE STUDY, PRINCIPLE OR METHOD HAS BEEN IDENTIFIED ALONG WITH ITS BASIS.

(f) THE METHODOLOGY AND APPROACH OF THE STUDY, PRINCIPLE OR METHOD ARE GENERALLY ACCEPTED IN THE SCIENTIFIC COMMUNITY.

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

~~H.~~ I. At any time during the ~~sixty~~ THIRTY days immediately following receipt of the rule, a person may submit written comments to the council that are within the scope of subsection D, E ~~or~~, F OR G of this section. The council may permit ~~oral comments~~ TESTIMONY at a council meeting within the scope of subsection D, E ~~or~~, F OR G of this section.

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

~~J.~~ K. The absence of comments pursuant to subsection D, E ~~or~~, F OR G of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

L. THE COUNCIL SHALL REVIEW AND APPROVE OR REJECT A NOTICE OF PROPOSED EXPEDITED RULE MAKING PURSUANT TO SECTION 41-1027.

Sec. 15. Section 41-1053, Arizona Revised Statutes, is amended to read:

41-1053. Council review of expedited rules

A. After receipt of the ~~summary~~ EXPEDITED rule package from the agency, the council shall place the ~~summary~~ EXPEDITED rule on its consent agenda for approval unless a member of the council or the committee requests a hearing.

B. If a hearing is requested, the council shall act on the ~~summary~~ EXPEDITED rule pursuant to section 41-1052 or shall remand the ~~summary~~ EXPEDITED rule to the agency for initiation of a rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

~~C. If the council returns the rule pursuant to section 41-1052 or remands the rule, the proposed summary rule's interim effect is revoked as of the date of initial publication of the proposed summary rule in the register unless the council orders otherwise.~~

~~D.~~ C. The council, at any time a proposed ~~summary~~ EXPEDITED rule is pending, may disapprove the ~~summary~~ EXPEDITED rule making and order initiation of a regular rule making pursuant to sections 41-1022, 41-1023 and 41-1024. ~~The council's disapproval of the proposed summary rule revokes the interim effect of the proposed summary rule as of the date of initial publication of the proposed summary rule in the register unless the council orders otherwise.~~

Sec. 16. Section 41-1055, Arizona Revised Statutes, is amended to read:

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

A. The economic, small business and consumer impact summary IN THE PREAMBLE shall include:

1. An identification of the proposed rule making, including all of the following:

(a) The conduct and its frequency of occurrence that the rule is designed to change.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

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

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed ~~summary~~ EXPEDITED rule, the name and address of agency employees who may be contacted to submit or request

additional data on the information included in the economic, small business and consumer impact statement.

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

1. An identification of the proposed rule making.

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

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

(b) The administrative and other costs required for compliance with the proposed rule making.

(c) A description of the methods PRESCRIBED IN SECTION 41-1035 that the agency may use to reduce the impact on small businesses, WITH REASONS FOR THE AGENCY'S DECISION TO USE OR NOT TO USE EACH METHOD. ~~These methods may include:~~

~~(i) Establishing less costly compliance requirements in the proposed rule making for small businesses.~~

~~(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rule making.~~

~~(iii) Exempting small businesses from any or all requirements of the proposed rule making.~~

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

6. A statement of the probable effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

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

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter AND IS NOT REQUIRED TO FILE A PETITION PURSUANT TO SUBSECTION E OF THIS SECTION for the following rule makings:

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

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

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

2. PROPOSED EXPEDITED RULE MAKING OR FINAL EXPEDITED RULE MAKING.

E. BEFORE FILING A PROPOSED RULE WITH THE SECRETARY OF STATE, AN AGENCY MAY PETITION THE COUNCIL FOR A DETERMINATION THAT THE AGENCY IS NOT REQUIRED TO FILE AN ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT. THE PETITION SHALL DEMONSTRATE BOTH OF THE FOLLOWING:

1. THE RULE MAKING DECREASES MONITORING, RECORD KEEPING, COSTS OR REPORTING BURDENS ON AGENCIES, POLITICAL SUBDIVISIONS, BUSINESSES OR PERSONS.

2. THE RULE MAKING DOES NOT INCREASE MONITORING, RECORD KEEPING, COSTS OR REPORTING BURDENS ON PERSONS SUBJECT TO THE PROPOSED RULE MAKING.

F. THE COUNCIL SHALL PLACE A PETITION UNDER SUBSECTION E OF THIS SECTION ON THE AGENDA OF ITS NEXT MEETING IF AT LEAST FOUR COUNCIL MEMBERS MAKE SUCH A REQUEST OF THE COUNCIL CHAIRPERSON WITHIN TWO WEEKS AFTER THE FILING OF THE PETITION.

~~E.~~ G. The ~~economic, small business and consumer impact statement~~ PREAMBLE for a rule making that is exempt pursuant to subsection D OR E of this section shall state that the ~~proposed~~ rule making is exempt FROM THE REQUIREMENTS TO PREPARE AND FILE AN ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT.

~~F.~~ H. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.

~~G.~~ I. If a person submits an analysis to the agency ~~that compares~~ REGARDING the rule's impact on the competitiveness of businesses in this state ~~to the impact on~~ AS COMPARED TO THE COMPETITIVENESS OF businesses in other states, the agency shall consider the ~~analyses~~ ANALYSIS.

Sec. 17. Section 41-1056, Arizona Revised Statutes, is amended to read:

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, INCLUDING RULES MADE PURSUANT TO AN EXEMPTION FROM THIS CHAPTER OR ANY PART OF THIS CHAPTER, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. THE REPORT SHALL CONTAIN A CERTIFICATION THAT THE AGENCY IS IN COMPLIANCE WITH SECTION 41-1091. For each rule, the report shall include a concise analysis of all of the following:

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

2. Written criticisms of the rule received during the previous five years, INCLUDING ANY WRITTEN ANALYSES SUBMITTED TO THE AGENCY QUESTIONING WHETHER THE RULE IS BASED ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES OR METHODS.

3. Authorization of the rule by existing statutes.

4. Whether the rule is consistent with STATUTES OR other rules made by the agency~~,~~ AND current agency enforcement policy ~~and current agency views regarding the wisdom of the rule~~.

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

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

7. Any analysis submitted to the agency by another person ~~that compares~~ REGARDING the rule's impact on this state's business competitiveness ~~to the impact on~~ AS COMPARED TO THE COMPETITIVENESS OF businesses in other states.

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

9. A determination that the PROBABLE BENEFITS OF THE RULE OUTWEIGH WITHIN THIS STATE THE PROBABLE COSTS OF THE RULE, AND THE rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

10. A DETERMINATION THAT THE RULE IS NOT MORE STRINGENT THAN A CORRESPONDING FEDERAL LAW UNLESS THERE IS STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF THAT FEDERAL LAW.

11. FOR RULES ADOPTED AFTER JULY 29, 2010 THAT REQUIRE THE ISSUANCE OF A REGULATORY PERMIT, LICENSE OR AGENCY AUTHORIZATION, WHETHER THE RULE COMPLIES WITH SECTION 41-1037.

B. AN AGENCY MAY ALSO INCLUDE AS PART OF THE REPORT THE TEXT OF A PROPOSED EXPEDITED RULE PURSUANT TO SECTION 41-1027.

~~B.~~ C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A OF THIS SECTION.

D. THE COUNCIL MAY REVIEW RULES OUTSIDE OF THE FIVE-YEAR REVIEW PROCESS IF REQUESTED BY AT LEAST FOUR COUNCIL MEMBERS.

E. THE COUNCIL MAY REQUIRE THE AGENCY TO PROPOSE AN AMENDMENT OR REPEAL OF THE RULE BY A DATE NO EARLIER THAN SIX MONTHS AFTER THE DATE OF THE MEETING AT WHICH THE COUNCIL CONSIDERS THE AGENCY'S REPORT ON ITS RULE IF THE COUNCIL DETERMINES THE AGENCY'S ANALYSIS UNDER SUBSECTION A OF THIS SECTION DEMONSTRATES THAT THE RULE IS MATERIALLY FLAWED, INCLUDING THAT THE RULE:

1. IS NOT AUTHORIZED BY STATUTE.

2. IS INCONSISTENT WITH OTHER STATUTES, RULES OR AGENCY ENFORCEMENT POLICIES AND THE INCONSISTENCY RESULTS IN A SIGNIFICANT BURDEN ON THE REGULATED PUBLIC.

3. IMPOSES PROBABLE COSTS, INCLUDING COSTS TO THE REGULATED PERSON, THAT SIGNIFICANTLY EXCEED THE PROBABLE BENEFITS OF THE RULE WITHIN THIS STATE.

4. IS MORE STRINGENT THAN A CORRESPONDING FEDERAL LAW AND THERE IS NO STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF FEDERAL LAW.

5. IS NOT CLEAR, CONCISE AND UNDERSTANDABLE.

6. DOES NOT USE GENERAL PERMITS IF REQUIRED UNDER SECTION 41-1037.

7. DOES NOT IMPOSE THE LEAST BURDEN TO PERSONS REGULATED BY THE RULE AS NECESSARY TO ACHIEVE THE UNDERLYING REGULATORY OBJECTIVE OF THE RULE.

8. DOES NOT RELY ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES AND METHODS, INCLUDING A STUDY, IF THE RULE RELIES ON SCIENTIFIC PRINCIPLES OR METHODS, AND A PERSON HAS SUBMITTED AN ANALYSIS UNDER SUBSECTION A OF THIS SECTION QUESTIONING WHETHER THE RULE IS BASED ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES OR METHODS. IN MAKING A DETERMINATION OF VALIDITY OR RELIABILITY, THE COUNCIL SHALL CONSIDER THE FACTORS LISTED IN SECTION 41-1052, SUBSECTION G.

F. AN AGENCY MAY REQUEST AN EXTENSION OF NO LONGER THAN ONE YEAR FROM THE DATE SPECIFIED BY THE COUNCIL PURSUANT TO SUBSECTION E OF THIS SECTION BY SENDING A WRITTEN REQUEST TO THE COUNCIL THAT:

1. IDENTIFIES THE REASON FOR THE EXTENSION REQUEST.

2. DEMONSTRATES GOOD CAUSE FOR THE EXTENSION.

G. THE AGENCY SHALL NOTIFY THE COUNCIL OF AN AMENDMENT OR REPEAL OF A RULE FOR WHICH THE COUNCIL HAS SET AN EXPIRATION DATE UNDER SUBSECTION E OF THIS SECTION. IF THE AGENCY DOES NOT AMEND OR REPEAL THE RULE BY THE DATE SPECIFIED BY THE COUNCIL UNDER SUBSECTION E OF THIS SECTION OR THE EXTENDED DATE UNDER SUBSECTION F OF THIS SECTION, THE RULE AUTOMATICALLY EXPIRES. THE COUNCIL SHALL FILE A NOTICE OF RULE EXPIRATION WITH THE SECRETARY OF STATE AND NOTIFY THE AGENCY OF THE EXPIRATION OF THE RULE.

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

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

~~E.~~ J. If an agency fails to submit its report, including a revised report pursuant to ~~subsection B~~ SUBSECTIONS A AND C OF THIS SECTION, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

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

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

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

~~F.~~ K. If a rule expires as provided in subsection ~~E~~ J OF THIS SECTION and the agency wishes to reestablish the rule, the agency shall comply with ~~article 3~~ THE REQUIREMENTS of this chapter.

~~G.~~ L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due~~, the governor and the director of the department of administration~~. The notice shall list the rules to be reviewed and the date the report is due.

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

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

Sec. 18. Section 41-1057, Arizona Revised Statutes, is amended to read:

41-1057. Exemptions

A. In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.

2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.

3. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928.

4. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

B. AN AGENCY EXEMPT UNDER SUBSECTION A OF THIS SECTION MAY ELECT TO FOLLOW THE REQUIREMENTS OF THIS ARTICLE INSTEAD OF SECTION 41-1044 FOR A PARTICULAR RULE MAKING. THE AGENCY SHALL INCLUDE WITH A FINAL RULE MAKING FILED WITH COUNCIL A STATEMENT THAT THE AGENCY HAS ELECTED TO FOLLOW THE REQUIREMENTS OF THIS ARTICLE.

Sec. 19. Repeal

Section 41-1078, Arizona Revised Statutes, is repealed.

Sec. 20. Section 41-1091, Arizona Revised Statutes, is amended to read:

41-1091. Substantive policy statements; directory

A. An agency shall file substantive policy statements pursuant to section 41-1013, subsection B.

B. An agency shall ensure that the first page of each substantive policy statement includes the following notice:

> This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under ~~Arizona Revised Statutes~~ section 41-1033, ARIZONA REVISED STATUTES, for a review of the statement.

C. The agency shall publish at least annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The agency shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules and substantive policy statements and any materials incorporated by reference in

1 the rules or substantive policy statements shall be open to public inspection
2 at the office of the agency director.
3 ~~D. On or before June 30 of each year, the agency head shall certify to~~
4 ~~the council that the agency is in compliance with this section.~~
5 Sec. 21. Title 41, chapter 6, article 9, Arizona Revised Statutes, is
6 amended by adding section 41-1091.01, to read:
7 41-1091.01. Posting substantive policy statement and rules
8 AN AGENCY SHALL POST ON THE AGENCY'S WEBSITE:
9 1. THE FULL TEXT OF EACH RULE CURRENTLY IN USE OR THE WEBSITE ADDRESS
10 AND LOCATION OF THE FULL TEXT OF EACH RULE CURRENTLY IN USE.
11 2. EACH SUBSTANTIVE POLICY STATEMENT CURRENTLY IN USE, INCLUDING ITS
12 FULL TEXT, IF PRACTICABLE.
13 3. THE NOTICE REQUIRED BY SECTION 41-1091, SUBSECTION B.

APPROVED BY THE GOVERNOR MAY 14, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2012.

Passed the House February 23, 2012

by the following vote: 56 Ayes,

0 Nays, 3 Not Voting 1 vacant

Speaker of the House

Chief Clerk of the House

Passed the Senate April 19, 2012

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

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. 2744

**HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE**

April 30, 2012,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

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

30th day of April, 2012,

at 4:30 o'clock P M.

Secretary to the Governor

Approved this 14th day of

May, 2012,

at 10:47 o'clock A M.

Janice K. Brewer
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this 14th day of May, 2012,

at 3:21 o'clock P M.

Secretary of State

**H.B. 2744**