

House Engrossed  
rulemaking review; time frame

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

# HOUSE BILL 2389

AN ACT

AMENDING SECTION 41-1095, ARIZONA REVISED STATUTES; RELATING TO RULEMAKING REVIEW.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1095, Arizona Revised Statutes, is amended to  
3 read:

4 41-1095. Review by agency; definitions

5 A. For an agency ~~that~~ TO WHICH the legislature has granted a  
6 ~~one-time~~ ONETIME rulemaking exemption, within ~~one year~~ SIX MONTHS after a  
7 rule has been adopted the agency shall review the rule adopted under the  
8 rulemaking exemption to determine whether any rule adopted under the  
9 rulemaking exemption should be amended or repealed. The agency shall  
10 prepare and obtain council approval of a written report summarizing ~~its~~  
11 THE AGENCY'S findings, ~~its~~ THE AGENCY'S supporting reasons and any  
12 proposed course of action. The report shall contain a certification that  
13 the agency is in compliance with section 41-1091. The report shall  
14 include a concise analysis of all of the following:

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

17 2. Written criticisms of the rule received since the rule was  
18 adopted, including any written analyses submitted to the agency  
19 questioning whether the rule is based on valid scientific or reliable  
20 principles or methods.

21 3. Authorization of the rule by existing statutes.

22 4. Whether the rule is consistent with statutes or other rules made  
23 by the agency and current agency enforcement policy.

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

25 6. The estimated economic, small business and consumer impact of  
26 the rule.

27 7. Any analysis submitted to the agency by another person regarding  
28 the rule's impact on this state's business competitiveness as compared to  
29 the competitiveness of businesses in other states.

30 8. If applicable, that the agency completed any additional process  
31 required by law, ~~including the requirement for the agency to publish~~  
32 ~~otherwise exempt rules or provide the public with an opportunity to~~  
33 ~~comment on the rules.~~

34 9. A determination that the probable benefits of the rule outweigh  
35 within this state the probable costs of the rule, and the rule imposes the  
36 least burden and costs to persons regulated by the rule, including  
37 paperwork and other compliance costs, necessary to achieve the underlying  
38 regulatory objective.

39 10. A determination that the rule is not more stringent than a  
40 corresponding federal law unless there is statutory authority to exceed  
41 the requirements of that federal law.

42 11. For rules that require the issuance of a regulatory permit,  
43 license or agency authorization, whether the rule complies with section  
44 41-1037.

1 B. An agency may also include as part of the report the text of a  
2 proposed expedited rule pursuant to section 41-1027.

3 C. The council may require the agency to propose an amendment or  
4 repeal of the rule by a date not earlier than ~~six months~~ NINETY DAYS after  
5 the date of the meeting at which the council considers the agency's report  
6 on its rule if the council determines the agency's analysis under  
7 subsection A of this section demonstrates that the rule is materially  
8 flawed, including that the rule:

9 1. Is not authorized by statute.

10 2. Is inconsistent with other statutes, rules or agency enforcement  
11 policies and the inconsistency results in a significant burden on the  
12 regulated public.

13 3. Imposes probable costs, including costs to the regulated person,  
14 that significantly exceed the probable benefits of the rule within this  
15 state.

16 4. Is more stringent than a corresponding federal law and there is  
17 no statutory authority to exceed the requirements of federal law.

18 5. Is not clear, concise and understandable.

19 6. Does not use general permits if required under section 41-1037.

20 7. Does not impose the least burden to persons regulated by the  
21 rule as necessary to achieve the underlying regulatory objective of the  
22 rule.

23 8. Does not rely on valid scientific or reliable principles and  
24 methods, including a study, if the rule relies on scientific principles or  
25 methods, and a person has submitted an analysis under subsection A of this  
26 section questioning whether the rule is based on valid scientific or  
27 reliable principles or methods. In making a determination of validity or  
28 reliability, the council shall consider the factors listed in section  
29 41-1052, subsection G.

30 D. An agency may request an extension of not longer than six months  
31 from the date specified by the council pursuant to subsection C of this  
32 section by sending a written request to the council that:

33 1. Identifies the reason for the extension request.

34 2. Demonstrates good cause for the extension.

35 E. The agency shall notify the council of an amendment or repeal of  
36 a rule for which the council has set an expiration date under subsection C  
37 of this section. If the agency does not amend or repeal the rule by the  
38 date specified by the council under subsection C of this section or the  
39 extended date under subsection D of this section, the rule automatically  
40 expires. The council shall file a notice of rule expiration with the  
41 secretary of state and notify the agency of the expiration of the rule.

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

6 G. If an agency fails to submit its report pursuant to subsection A  
7 of this section, or file an extension before the due date of the report or  
8 if ~~it~~ THE AGENCY files an extension and does not submit ~~its~~ THE AGENCY'S  
9 report within the extension period, the rule expires and the council  
10 shall:

11 1. Cause a notice to be published in the next register that states  
12 the rule has expired and is no longer enforceable.

13 2. Notify the secretary of state that the rule has expired and that  
14 the rule is to be removed from the code.

15 3. Notify the agency that the rule has expired and is no longer  
16 enforceable.

17 H. If a rule expires as provided in subsection G of this section  
18 and the agency wishes to reestablish the rule, the agency shall comply  
19 with the requirements of chapter 6 of this title.

20 I. At least ninety days before the due date of a report, the  
21 council shall send a written notice to the head of the agency whose report  
22 is due. The notice shall list the rule to be reviewed and the date the  
23 report is due.

24 J. For the purposes of this section, "agency", "council" and "rule"  
25 have the same meanings prescribed in section 41-1001.