

REFERENCE TITLE: agency review; rules; automatic expiration

State of Arizona
Senate
Fifty-sixth Legislature
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2024

SB 1343

Introduced by
Senators Petersen: Shamp; Representatives Bliss, Hernandez C, Montenegro,
Peña

AN ACT

AMENDING SECTIONS 41-1011, 41-1051 AND 41-1056, ARIZONA REVISED STATUTES;
RELATING TO THE GOVERNOR'S REGULATORY REVIEW COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1011, Arizona Revised Statutes, is amended to
3 read:

4 41-1011. Preparation and publication of code and register

5 A. The secretary of state shall prepare and publish the code and
6 register.

7 B. The secretary of state shall prescribe a uniform numbering
8 system and have reasonable discretion to determine the form and style for
9 rules filed with and published by the office. The secretary of state
10 shall refuse to accept a rule notice or other notice filing if the notice
11 or filing does not comply with the secretary of state's prescribed filing
12 requirements, numbering system, form and style.

13 C. The secretary of state shall assign titles and chapters to
14 agencies and prepare, arrange and correlate rules and other text as
15 necessary when publishing the code and register. The secretary of state
16 may not alter the sense, meaning or effect of any rule but may renumber
17 rules and parts of rules, rearrange rules, change reference numbers to
18 agree with renumbered rules and parts of rules, substitute the proper rule
19 number for "the preceding rule" and similar terms, delete figures if they
20 are merely a repetition of written words, change capitalization for the
21 purpose of uniformity and correct manifest clerical or typographical
22 errors. With the consent of the attorney general, the secretary of state
23 may remove from the code a provision of a rule that a court of final
24 appeal declares unconstitutional or otherwise invalid and a rule made by
25 an agency that is abolished if the rule is not transferred to a successor
26 agency. The secretary of state shall remove a rule from the code when
27 notified by the governor's regulatory review council that the rule has
28 expired pursuant to section 41-1056, subsection ~~J~~ M.

29 Sec. 2. Section 41-1051, Arizona Revised Statutes, is amended to
30 read:

31 41-1051. Governor's regulatory review council; membership;
32 terms; compensation; powers

33 A. The governor's regulatory review council is established
34 consisting of six members who are appointed by the governor pursuant to
35 section 38-211 and who are subject to sections 38-291 and 38-295 and the
36 director of the department of administration or the assistant director of
37 the department of administration who is responsible for administering the
38 council. The director or assistant director is an ex officio member and
39 chairperson of the council. The council shall elect a ~~vice-chairperson~~
40 **VICE CHAIRPERSON** to serve as chairperson in the chairperson's absence.
41 The governor shall appoint at least one member who represents the public
42 interest, at least one member who represents the business community, at
43 least one member who is a small business owner, one member from a list of
44 three persons who are not legislators submitted by the president of the
45 senate and one member from a list of three persons who are not legislators

1 submitted by the speaker of the house of representatives. At least one
2 member of the council shall be an attorney licensed to practice law in
3 this state. The governor shall appoint the members of the council for
4 staggered terms of three years. A vacancy occurring during the term of
5 office of any member shall be filled by appointment by the governor for
6 the unexpired portion of the term in the same manner as provided in this
7 section.

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

11 C. Members of the council are eligible to receive compensation in
12 an amount of ~~two hundred dollars~~ \$200 for each day on which the council
13 meets and reimbursement of expenses pursuant to title 38, chapter 4,
14 article 2.

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

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

21 F. The council shall make a list of agency rules approved or
22 returned pursuant to sections 41-1027 and 41-1052 and section 41-1056,
23 subsection ~~E~~ F for the previous twelve-month period available to the
24 public on request and on the council's website.

25 Sec. 3. Section 41-1056, Arizona Revised Statutes, is amended to
26 read:

27 41-1056. Review by agency

28 A. At least once every five years, each agency shall review all of
29 its rules, including rules made pursuant to an exemption from this chapter
30 or any part of this chapter, to determine whether any rule should be
31 amended or repealed. The agency shall prepare and obtain council approval
32 of a written report summarizing its findings, its supporting reasons and
33 any proposed course of action. The report shall contain a certification
34 that the agency is in compliance with section 41-1091. For each rule, the
35 report shall include a concise analysis of all of the following:

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

38 2. Written criticisms of the rule received during the previous five
39 years, including any written analyses submitted to the agency questioning
40 whether the rule is based on valid scientific or reliable principles or
41 methods.

42 3. Authorization of the rule by existing statutes.

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

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

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

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

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

9 9. A determination that the probable benefits of the rule outweigh
10 within this state the probable costs of the rule, and the rule imposes the
11 least burden and costs to persons regulated by the rule, including
12 paperwork and other compliance costs, necessary to achieve the underlying
13 regulatory objective.

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

17 11. For rules adopted after July 29, 2010 that require the issuance
18 of a regulatory permit, license or agency authorization, whether the rule
19 complies with section 41-1037.

20 B. ANY ANALYSIS THAT IS PERFORMED PURSUANT TO SUBSECTION A OF THIS
21 SECTION AND THAT EXAMINES THE ECONOMIC IMPACT, COMPLIANCE, IMPLEMENTATION
22 OR OTHER COSTS OF THE RULE, TO THE GREATEST EXTENT POSSIBLE SHALL USE
23 ACTUAL IMPACTS AND COSTS FROM THE LAST FIVE YEARS THAT THE RULE HAS BEEN
24 IN EFFECT AS THE BASIS FOR ANY CALCULATION RATHER THAN ONLY USING
25 ESTIMATED IMPACTS AND COSTS.

26 C. ANY RULE REGARDING OCCUPATIONAL LICENSES ADOPTED BY AN AGENCY
27 PURSUANT TO TITLE 32 SHALL AUTOMATICALLY EXPIRE AT THE CONCLUSION OF THE
28 FIVE-YEAR REVIEW UNLESS THE AGENCY PERFORMS A REVIEW PURSUANT TO
29 SUBSECTION A OF THIS SECTION AND DOES ALL OF THE FOLLOWING:

30 1. READOPTS THE CODE CHAPTER PURSUANT TO ARTICLE 3 OF THIS CHAPTER.

31 2. PUBLISHES AN EVALUATION OF THE BURDENS ON SIMILAR OCCUPATIONAL
32 LICENSES IN ALL STATES THAT BORDER THIS STATE AND JUSTIFIES ANY INSTANCE
33 WHERE THIS STATE IMPOSES A GREATER BURDEN ON A LICENSEE THAN ANY
34 NEIGHBORING STATES.

35 3. PUBLISHES A REPORT AVAILABLE ON THE AGENCY'S WEBSITE THAT
36 INCLUDES ANALYSES AND RESPONSES TO PUBLIC COMMENTS.

37 D. THE AUTOMATIC EXPIRATION OF A RULE PURSUANT TO SUBSECTION C OF
38 THIS SECTION DOES NOT APPLY TO RULES THAT MEET ANY THE FOLLOWING:

39 1. ARE REQUIRED TO COMPLY WITH FEDERAL LAW OR RECEIVE FEDERAL
40 MONIES.

41 2. ARE ADOPTED PURSUANT TO RULEMAKING AUTHORITY UNDER THE
42 CONSTITUTION OF THIS STATE.

43 3. ARE ADOPTED BY A REGULATING ENTITY THAT IS DIRECTLY MANAGED BY AN
44 ELECTED OFFICIAL IN THIS STATE.

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

3 ~~C.~~ F. The council shall schedule the periodic review of each
4 agency's rules and shall approve or return, in whole or in part, the
5 agency's report on its review. The council may grant an agency an
6 extension from filing an agency's report. If the council returns an
7 agency's report, in whole or in part, the council shall inform the agency
8 of the manner in which its report is inadequate and, in consultation with
9 the agency, shall schedule submission of a revised report. The council
10 shall not approve a report unless the report complies with subsection A of
11 this section.

12 ~~D.~~ G. The council may review rules outside of the five-year review
13 process if requested by at least four council members.

14 ~~E.~~ H. The council may require the agency to propose an amendment
15 or repeal of the rule by a date ~~no~~ NOT earlier than six months after the
16 date of the meeting at which the council considers the agency's report on
17 its rule if the council determines the agency's analysis under subsection
18 A of this section demonstrates that the rule is materially flawed,
19 including that the rule:

- 20 1. Is not authorized by statute.
- 21 2. Is inconsistent with other statutes, rules or agency enforcement
22 policies and the inconsistency results in a significant burden on the
23 regulated public.
- 24 3. Imposes probable costs, including costs to the regulated person,
25 that significantly exceed the probable benefits of the rule within this
26 state.
- 27 4. Is more stringent than a corresponding federal law and there is
28 no statutory authority to exceed the requirements of federal law.
- 29 5. Is not clear, concise and understandable.
- 30 6. Does not use general permits if required under section 41-1037.
- 31 7. Does not impose the least burden to persons regulated by the
32 rule as necessary to achieve the underlying regulatory objective of the
33 rule.
- 34 8. Does not rely on valid scientific or reliable principles and
35 methods, including a study, if the rule relies on scientific principles or
36 methods, and a person has submitted an analysis under subsection A of this
37 section questioning whether the rule is based on valid scientific or
38 reliable principles or methods. In making a determination of validity or
39 reliability, the council shall consider the factors listed in section
40 41-1052, subsection G.

41 ~~F.~~ I. An agency may request an extension of ~~no~~ NOT longer than one
42 year from the date specified by the council pursuant to subsection ~~E.~~ H of
43 this section by sending a written request to the council that:

- 44 1. Identifies the reason for the extension request.
- 45 2. Demonstrates good cause for the extension.

1 ~~G.~~ J. The agency shall notify the council of an amendment or
2 repeal of a rule for which the council has set an expiration date under
3 subsection ~~F~~ H of this section. If the agency does not amend or repeal
4 the rule by the date specified by the council under subsection ~~F~~ H of
5 this section or the extended date under subsection ~~F~~ I of this section,
6 the rule automatically expires. The council shall file a notice of rule
7 expiration with the secretary of state and notify the agency of the
8 expiration of the rule.

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

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

18 ~~J.~~ M. If an agency fails to submit its report, including a revised
19 report, pursuant to subsection A or ~~E~~ F of this section, ~~or~~ **FAILS TO** file
20 an extension before the due date of the report or ~~if it~~ files an extension
21 and does not submit its report within the extension period **OR IF AN**
22 **OCCUPATIONAL LICENSING AGENCY HAS NOT TIMELY ADOPTED ITS RULES PURSUANT TO**
23 **SUBSECTION C OF THIS SECTION**, the rules scheduled for review expire and
24 the council shall:

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

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

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

31 ~~K.~~ N. If a rule expires as provided in subsection ~~J~~ M of this
32 section and the agency wishes to reestablish the rule, the agency shall
33 comply with the requirements of this chapter.

34 ~~L.~~ O. Not less than ninety days before the due date of a report,
35 the council shall send a written notice to the head of the agency whose
36 report is due. The notice shall list the rules to be reviewed and the
37 date the report is due.

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

42 ~~N.~~ Q. A person who is required to obtain or could be required to
43 obtain a license may petition the council to require an agency to consider
44 including a recommendation for reducing a licensing time frame in the
45 five-year report.