



Arizona House of Representatives
House Majority Research
MEMORANDUM

Carolyn Atwater
Legislative Research Analyst
Government Reform and Government
Finance Accountability Committee

1700 W. Washington
Phoenix, AZ 85007-2848
Office (602) 926-3535
FAX (602) 417-3181

To: JOINT LEGISLATIVE AUDIT COMMITTEE

Re: Governor's Regulatory Review Council

Date: December 21, 2006

Attached is the final report of the sunset review of the Governor's Regulatory Review Council, which was conducted by the House of Representatives Government Reform and Government Finance Accountability and Senate Government Accountability and Reform Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Ken Bennett

Speaker of the House of Representatives
Representative Jim Weiers

Senate Members
Senator Jack Harper, Cochair
Senator Bob Burns
Senator Albert Hale
Senator Richard Miranda
Senator Thayer Verschoor

House Members
Representative Bill Konopnicki, Cochair
Representative Kirk Adams
Representative Ted Downing
Representative Phil Lopes
Representative John McComish

Governor's Regulatory Review Council
Department of Library, Archives & Public Records
Auditor General

Senate Republican Staff
Senate Research Staff
Senate Democratic Staff
Senate Resource Center

House Majority Staff
House Research Staff
House Democratic Staff
Chief Clerk

**COMMITTEE OF REFERENCE REPORT:
GOVERNOR'S REGULATORY REVIEW COUNCIL**

Background

Pursuant to Section 41-2953, Arizona Revised Statutes, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Governor's Regulatory Review Council (GRRC) to the House of Representatives Government Reform and Government Finance Accountability and Senate Government Accountability and Reform Committee of Reference.

GRRC is a 7-member council that reviews and approves state agencies' 5-year rule review reports. They receive and consider public appeals on proposed rules, and GRRC either approves the rules as submitted, filing them with the Secretary of State's office, or sends their comments back to the agency for further review. Most state agencies formulate their rules through GRRC, except those with specific exemptions including the Arizona Board of Regents, the Arizona Board of Education and certain programs at the Arizona Health Care Cost Containment System.

Committee of Reference Sunset Review Procedures

The Committee of Reference held a public hearing on November 29, 2006, to review GRRC's response to the sunset factors as required by A.R.S. § 41-2954, subsection F, and to receive public testimony (*See Attachment 4*). Testimony was received from Dale Chapman, Performance Audit Manager, Office of the Auditor General and Alex Turner, Arizona Department of Administration Ex-Officio Member/Chairman, Governor's Regulatory Review Council.

Committee of Reference Recommendations

The Committee of Reference recommended a ten-year continuation of the Governor's Regulatory Review Council, and requested that staff research the possibility of improving the information flow between the public comment portion of the process back to the Legislature.

SUNSET REPORT REQUIREMENTS

Pursuant to Section 41-2954 subsection F, Arizona Revised Statutes

*** Note: The following answers are a summary of the information provided by GRRC. Please see Attachment 2 for the complete response to the sunset factors required by A.R.S. § 41-2954, subsection F.

I. The objective and purpose in establishing the agency.

GRRC was established by executive order in 1981 to “examine proposed administrative rules” that had an economic impact on any state, county, city or town agency. Still a part of the Arizona Department of Administration, GRRC was created in statute in 1986 and given statutory authority to examine all proposed rules. In 1995, the Legislature amended the role of GRRC, granting them “final approval authority over all proposed administrative rules, except those that are exempted from the rulemaking process,” and appropriating FTE’s to assist in the rule review process. GRRC approves rules in their final proposed form.

In addition to reviewing agency rules, GRRC also reviews 5-year reports, which are submitted by state agencies “documenting their internal review of their administrative rules,” receives and hears appeals from members of the public and reports on certain agency practices “regarding their compliance with specific statutory mandates.”

II. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.

GRRC has generally met its objectives and purposes by reviewing and approving agency rules, and reviewing and approving agency 5-year reports. These reviews and approvals are completed within the statutory time frame, and agencies have been generally satisfied with GRRC’s performance.

III. The extent to which the agency has operated within the public interest.

GRRC’s activities, including ensuring agencies address public comments on their administrative rules, hearing appeals on specific agency actions and providing information on agency rule making activity that only indirectly impacts the general public.

IV. The extent to which rules adopted by the agency are consistent with the legislative mandate.

GRRC has adopted rules that appear to be within its legislative mandate, and updated their rules in December 2003. GRRC operates under 17 rules that cover

practices which involve the general public, including scheduling public meetings, placing a rule on GRRC's public meeting agenda and the receiving and hearing of appeals.

V. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

GRRC has followed all requirements of the administrative rulemaking process when adopting their own rules, including soliciting and addressing public comments. GRRC complies with the State's open meeting laws and follows procedures set forth by the Secretary of State.

VI. The extent to which the agency has been able to investigate and resolve complaints within its jurisdiction.

GRRC has no statutory authority to investigate and resolve complaints.

VII. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

The Attorney General is not responsible for prosecuting actions under GRRC's enabling legislation. Members of the public may file a civil suit, and the State Solicitor General's Office would represent GRRC. To date, GRRC has not been the subject of any civil action.

VIII. The extent to which the agency has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.

Due to legislative changes in 2003, GRRC no longer is required to submit an annual report to the Governor and members of the Legislature. Certain elements from the annual report are published on the Web site and made available to the public upon request.

There are two statutory changes that have been considered to streamline the administrative rule making process. The first would amend ARS § 41-1055, which currently requires agencies to submit an economic impact statement (EIS) with most administrative rule packages. GRRC has considered a statutory change to allow agencies to document that an administrative rule has no economic impact, rather than requiring an EIS with every submittal. The second proposed change would amend ARS § 41-1056 to allow agencies to forego review of rules that have been revised within the 5-year period.

IX. The extent to which changes are necessary in the agency's laws to adequately comply with the factors listed in this subsection.

No legislative changes are necessary.

X. The extent to which termination of the agency would significantly harm the public health, safety or welfare.

Terminating GRRC would not have a direct impact on the general public's health, safety or welfare, but some of GRRC's processes indirectly affect the general public. GRRC receives public appeal and comment on agency practices and ensures that agency rules incorporate public comment. They also review proposed administrative rule to ensure statutory compliance and determine whether the probable benefits of the proposed rule outweigh its probably cost.

XI. The extent to which the level of regulation exercised by the agency is appropriate and whether less stringent levels of regulation would be appropriate.

The current level of regulation is generally appropriate.

XII. The extent to which the agency has used private contractors in the performance of its duties and how the effective use of private contractors could be accomplished.

GRRC does not use any private contractors. Audit work did not identify any opportunities for GRRC to privately contract any of its responsibilities.

Additional Questions

I. Identification of the problem or the needs that the agency is intended to address.

GRRC is the final step in the rulemaking process, and reviews most draft agency rules to ensure that they are necessary, to avoid duplication and protect the impact on the public. It also reviews agency 5-year reports and receives and hears appeals regarding agency practices.

II. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of the agency and its anticipated accomplishments.

Agencies submitted 115 rules packages for review and action by GRRC in 2005-2006. GRRC repealed 326 rules, made 528 new rules, amended 610 existing rules and renumbered 34 existing rules, totaling 1,508 rulemaking actions for the year. GRRC also reviewed 36 5-year reports, summarizing a total of 956 rules.

III. An identification of any other agencies having similar, conflicting, or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

GRRC is not aware of another agency having similar, conflicting or duplicate objectives.

IV. An assessment of the consequences of eliminating the agency.

GRRC outlined their benefits and duties, stating that they can indirectly impact and benefit the general public.

V. An assessment of the consequences of consolidating GRRC with another agency.

GRRC outlined their benefits and duties, stating that they can indirectly impact and benefit the general public

Attachments

1. Letter from Rep. Bill Konopnicki to GRRC requesting information.
2. Sunset factors pursuant to A.R.S. § 41-2954, subsection F.
3. Meeting Notice.
4. Minutes of Committee of Reference Meeting.

BILL KONOPNICKI
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 926-5409
CAPITOL FAX: (602) 417-3105
TOLL FREE: 1-800-352-8404
bkonopnicki@azleg.gov

COMMITTEES:
GOVERNMENT REFORM AND
GOVERNMENT FINANCE
ACCOUNTABILITY, CHAIRMAN
APPROPRIATIONS (B)
COMMERCE

DISTRICT 5

August 16, 2006

Mr. Alex Turner
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Mr. Turner,

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by a legislative Committee of Reference. On completion of the sunset review, the Committee recommends to continue, revise, consolidate, or terminate the agency.

As you are aware, The Joint Legislative Audit Committee (JLAC) has directed the Office of the Auditor General (OAG) to conduct the Governors Regulatory Review Council audit and assigned the sunset review to the Committee of Reference comprised of members of the House of Representatives Government Reform & Government Finance Accountability Committee and the Senate Government Accountability and Reform Committee.

In addition to the OAG audit and the 12 sunset factors addressed in the OAG report, the Committee of Reference is required to consider certain factors, pursuant to A.R.S. § 41-2954 (F), in deciding whether to recommend continuance, modification or termination of the Council. Please provide your response to those factors as provided below:

1. An identification of the problem or the needs that the agency is intended to address.
2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.
3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

In addition to responding to the factors in A.R.S. § 41-2954 F, please provide the Committee of Reference with copies of minutes from your Council meetings during the past year and your most recent annual report. Your response should be received by October 13, 2006, so we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Steven Moortel
Arizona House of Representatives
1700 West Washington Suite H
Phoenix, AZ 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at (602) 926-5409 or Steven Moortel, Legislative Analyst at 602-926-5987.

Sincerely,

Bill Konopnicki
State Representative
Chair, Government Reform & Government
Finance Accountability Committee



Governor's Regulatory Review Council

REPORT HIGHLIGHTS PERFORMANCE AUDIT

Subject

The Governor's Regulatory Review Council (GRRC) reviews and has final approval over most agency rules. A rule is an agency statement that implements, interprets, or sets law or policy. GRRC reviews agency rules to ensure that they were properly developed and that they comply with specific statutory criteria.

Our Conclusion

GRRC has generally met its purpose by ensuring that rules are properly developed and consistent with statute, and by reviewing and approving agency 5-year rule review reports. Further, for the rule packages auditors reviewed, GRRC met the statutory review time frame.



2006

February • Report No. 06-01

Administrative Rulemaking Process and GRRC's Role in Process

Statutes define the administrative rulemaking process and specify the steps agencies must undertake to adopt rules. The process is lengthy—the time frames outlined in statute for completing the required steps total about 10 months. As shown in the figure on page 2, agencies are responsible for completing most of the process. GRRC's role is near the end of the process, when it provides a final review and approval.

What does GRRC review?

GRRC reviews proposed agency rules to ensure that:

- The agency has authority to make the rule and that it does not conflict with existing law;
- The wording is clear, concise, and understandable;
- The rule contains a complete and accurate economic impact statement and that the probable benefits of the rule outweigh its probable costs; and
- The agency addressed public comments.

In fiscal year 2005, GRRC approved the adoption, repeal, amendment, or renumbering of 1,183 administrative rules submitted by 39 different state agencies.

these rules was consistent with statute and complied with the criteria established to approve rules. In addition, GRRC reviewed these rule packages within the statutory time frame. GRRC has 90 days from the time it receives an agency's rule package to review and approve the final rules, or return them to the agency. In fact, GRRC reviewed nine of the rule packages in fewer than 60 days.

Other GRRC functions

At least once every 5 years, each agency must review its rules to determine whether the rules need amendment or repeal. The agency develops a plan for making needed revisions and submits a report to GRRC for review and approval. Although statutes do not specify a time frame, auditors' review of five rule review reports found that GRRC reviewed them in 90 days or fewer.

GRRC may also hear appeals from the public regarding certain agency practices, including an agency's decision to deny an individual's petition regarding whether an existing agency practice or policy constitutes a rule. In fiscal year 2005, GRRC received two appeals.

Reviews are done in a timely manner and follow statute. For the ten rule packages that auditors reviewed, GRRC's review of

Administrative Rulemaking Process and GRRC's Specific Role in Process

Agency Process

GRRC Process

Agency determines an administrative rule is needed.

Agency opens a **rulemaking docket** and files a notice with the Secretary of State, who then publishes it in the *Arizona Administrative Register (Register)*.

Agency drafts proposed administrative rules and **economic impact statement** and may obtain informal public comment.

Agency publishes draft of administrative rules in the *Register* and opens formal public comment period. Agency has 30 days to receive formal written comments and may hold a public meeting to receive oral comments. This step may occur more than once if the comments result in substantial changes to the rules.

Agency drafts final administrative rules and addresses all formal public comments. Final draft administrative rules must be submitted to GRRC within 120 days after close of public comment period.

If GRRC returns the rules and:

Minor revisions are required, the agency can make GRRC's revisions and resubmit the revised rules to GRRC.

Substantial revisions are required, the agency must publish a notice of Supplemental Rulemaking in the *Register* and allow for a second public comment period. After making revisions, the agency must then resubmit the revised rules to GRRC.

GRRC has 90 days to review the final administrative rule package, including the economic impact statement, against statutory criteria and either approve or return the rule package to the agency.

If approved, GRRC files a final copy of rules with the Secretary of State. The rules then become effective in 60 days. Rules can become effective immediately if the agency requests and two-thirds of GRRC voting members present approve the rules.

Rulemaking docket—Provides information about the rule's subject, time frame for administrative rulemaking, and the proposed rule's status. Automatically terminates 1 year after the notice is published if the agency does not proceed with the process.

Economic impact statement—Describes how the proposed rule will affect the regulated community, small businesses, and consumers.

TO OBTAIN MORE INFORMATION

A copy of the full report can be obtained by calling
(602) 553-0333



or by visiting our Web site at:
www.azauditor.gov

Contact person for this report:
Dale Chapman

Source: *Arizona Rulemaking Manual*, GRRC training materials, and A.R.S. §41-1001 et seq.



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Governor's Regulatory Review Council

FEBRUARY • 2006
REPORT NO. 06 - 01



Debra K. Davenport
Auditor General

The Auditor General is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. Her mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, she provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits of school districts, state agencies, and the programs they administer.

The Joint Legislative Audit Committee

Representative **Laura Knaperek**, Chair

Senator **Robert Blendu**, Vice Chair

Representative **Tom Boone**

Senator **Carolyn Allen**

Representative **Ted Downing**

Senator **John Huppenthal**

Representative **Pete Rios**

Senator **Richard Miranda**

Representative **Steve Yarbrough**

Senator **Harry Mitchell**

Representative **Jim Weiers** (*ex-officio*)

Senator **Ken Bennett** (*ex-officio*)

Audit Staff

Melanie Chesney, Director

Dale Chapman, Manager and Contact Person

Danielle Mariano, Team Leader

Copies of the Auditor General's reports are free.

You may request them by contacting us at:

Office of the Auditor General

2910 N. 44th Street, Suite 410 • Phoenix, AZ 85018 • (602) 553-0333

Additionally, many of our reports can be found in electronic format at:

www.azauditor.gov



DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

February 21, 2006

Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Mr. Alex Turner, Chairman
Governor's Regulatory Review Council

Transmitted herewith is a report of the Auditor General, A Performance Audit and Sunset Review of the Governor's Regulatory Review Council (GRRC). This report is in response to a May 24, 2005, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting with this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

Included with this report is a written response from the Governor's Regulatory Review Council.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on February 22, 2006.

Sincerely,

Debbie Davenport
Auditor General

Enclosure

PROGRAM FACT SHEET

Governor's Regulatory Review Council (GRRC)

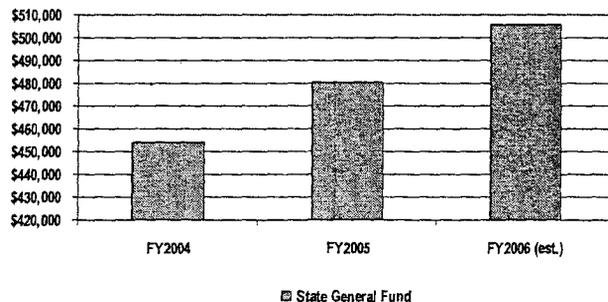
Services:

The Governor's Regulatory Review Council (GRRC) has the following responsibilities:

- Review proposed administrative rules to ensure that they meet specific statutory criteria. In fiscal year 2005, GRRC received and approved the adoption, repeal, amendment, or renumbering of 1,183 rules.
- Maintain a list of agencies that need to conduct a 5-year review of their administrative rules, as well as review and approve agencies' reports on their reviews.
- Receive and consider public appeals regarding three areas of agency practice, including an agency's decision to deny an individual's petition regarding whether an existing agency practice or policy constitutes an administrative rule. In fiscal year 2005, GRRC received two appeals.
- Compile reports on each agency's efforts to review its rules, agency compliance with overall licensing time frames, and whether agencies maintain a directory summarizing all applicable rules and substantive policy statements.

Program revenue:

\$505,900 (fiscal year 2006, estimated)



Membership and staffing:

GRRC consists of six members appointed by the Governor and one ex-officio member representing the director of the Department of Administration who also serves as the GRRC chair. A.R.S. §41-1051(A) requires that GRRC be composed of the following:

- At least one public interest member,
- At least one business community member,
- One member from a list of three nonlegislators recommended by the President of the Senate,
- One member from a list of three nonlegislators recommended by the Speaker of the House, and
- Two at-large members.

As of December 2005, GRRC had five staff members and two vacancies. The filled positions included three attorney analysts, one economist, and an office manager.

Facilities and equipment:

The Governor's Regulatory Review Council was established within and continues to be a part of the Department of Administration (Department). It occupies a total of 1,968 square feet of office space in the Department's building at 100 North 15th Avenue in Phoenix. The Department leases this building under the PLTO (private lease-to-own) program and was scheduled to pay approximately \$2.6 million in rent for the entire building during fiscal year 2005. GRRC's equipment includes typical office equipment.

Mission:

GRRC's mission is "to assist the Governor's Regulatory Review Council and agencies to fulfill their rulemaking responsibilities under the Administrative Procedure Act."

Program goals:

- "To deliver customer service that is second to none in the Governor's Regulatory Review Council subprogram."
- "To aggressively pursue innovative solutions and/or opportunities in the Governor's Regulatory Review Council subprogram."

Adequacy of performance measures:

GRRC has developed a number of performance measures that are in line with its goals, and include quality, input, output, outcome, and efficiency measures. These include measures for customer satisfaction with GRRC's services, the number of rules GRRC receives annually, the percentage of administrative rules that the council acts upon in a way that is consistent with staff recommendations, and the percentage of informal or courtesy reviews of agencies' proposed rules that GRRC conducts in 2 months or less.

However, GRRC could benefit from additional performance measures that provide more information on the efficiency of its activities. For example, while GRRC has measures for the number of rules it receives annually, and the percentage of those rules that are approved in the initial council hearing, it does not track the length of time it takes for a rule package to be approved. Adding such a measure would help GRRC demonstrate how long it takes to complete its reviews and whether it complies with its 90-day statutory review and approval time frame.

Source: Auditor General staff compilation of unaudited information obtained from the Arizona Financial Information System (AFIS) for the years ended June 30, 2004 and 2005; Arizona Revised Statutes, Master List of State Government Programs; and other information provided by the Department, including revenue and expenditure estimates for the year ended June 30, 2006.

SUMMARY

The Office of the Auditor General has conducted a performance audit and sunset review of the Governor's Regulatory Review Council (GRRC) pursuant to a May 24, 2005, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

GRRC was established by executive order in 1981 to examine proposed administrative rules that state agency directors determined would have an economic impact on any state, county, city, or town agency; community college district; or school district.¹ In 1986, GRRC was created in statute and given authority to review all proposed rules. In 1995, the Legislature made sweeping changes to the rulemaking process that expanded GRRC's role, including giving GRRC final approval authority over all proposed administrative rules, except those that are exempted from the rulemaking process. GRRC consists of six members who are appointed by the Governor and one ex-officio member representing the director of the Department of Administration, who also serves as the GRRC chair.

GRRC's responsibility to review and approve rules comes at the end of a lengthy rulemaking process. Before submitting proposed rules to GRRC for their review and approval, agencies must have already gone through several steps, including determining whether an administrative rule is needed, opening and publishing a rulemaking docket or public record, drafting the proposed rule and analyzing the costs and benefits associated with the rule, soliciting public comment, and drafting proposed final rules that incorporate or otherwise address any public comments received. After these steps have been completed, agencies must submit their proposed final administrative rules to GRRC for review. According to A.R.S. §41-1052, GRRC must then review proposed rules against several statutory criteria, which require that:

- The language of the administrative rule must be clear, concise, and understandable,
- The agency has statutory authority to make the administrative rule, including authority for new or increased fees and for requests that a rule become effective immediately,

¹ The Governor's Regulatory Review Council was established within and continues to be a part of the Department of Administration. However, GRRC has its own sunset date.

- The administrative rule does not conflict with existing law,
- The probable benefits of the administrative rule outweigh its probable costs,
- The administrative rule contains a generally accurate economic impact statement,
- The economic impact statement describes the probable costs or benefits of the administrative rule,
- The economic impact statement includes statements on the administrative rule's probable effects on small businesses and state revenues, and
- The agency adequately addressed public comments on the administrative rule.

GRRC has 90 days from the date it receives an agency's rule package to approve or return an agency's final rules. In fiscal year 2004, GRRC reported that it approved the adoption, repeal, amendment, or renumbering of 1,330 individual rules and returned 3 rules. In fiscal year 2005, GRRC reported that it approved the adoption, repeal, amendment, or renumbering of all 1,183 individual rules it reviewed.

In addition to its responsibilities within the administrative rulemaking process, GRRC performs several other duties. These include reviewing and approving agencies' 5-year reviews of their administrative rules; receiving and considering appeals from the public regarding certain agency practices; and reporting on agencies' efforts to make necessary changes to administrative rules, compliance with licensing time frames, and whether each agency maintains a directory summarizing the subject matter of all current applicable rules and substantive policy statements, and that the directory, rules, and substantive policy statements are available to the public.

Sunset Factors (see pages 13 through 22)

GRRC has generally met its objectives and purposes by effectively reviewing and approving agency rules and by reviewing and approving agency 5-year rule review reports. Specifically:

- GRRC's review of administrative rules consistent with statute—GRRC has established various policies, procedures, and mechanisms to help ensure that its required review and approval of proposed administrative rules complies with statutory criteria and time frames. Auditors reviewed a random sample of ten proposed administrative rule packages submitted to GRRC between September 2004 and August 2005. This review showed that GRRC met its various statutory requirements with regard to such matters as ensuring that the

language of the proposed rule was clear, concise, and understandable; that the agency has the statutory authority to adopt the administrative rule; and that the probable benefits of the proposed rule outweighed its probable costs. Although GRRC reports that it does not determine the timeliness of its reviews, GRRC completed its review of the random sample of 10 rule packages within the 90-day time frame required by A.R.S. §41-1052(B). Additionally, comments from six agency rule-writers who auditors interviewed showed general satisfaction with GRRC's performance. To help ensure the timely review of rule packages, GRRC has established a yearly schedule with monthly due dates for the submission of rule packages and corresponding public meeting dates. If agencies submit their rule packages on or before the indicated submission date, the rule package should be ready for GRRC member consideration on the corresponding public meeting date. GRRC's adoption of a standardized process for reviewing administrative rules also contributes to its ability to meet the statutory time frame requirement.

- GRRC's analysis of 5-year review reports follows established process—GRRC also follows specific policies and procedures to ensure that the reports agencies produce documenting their internal analysis of their own rules every 5 years comply with statutory requirements. According to A.R.S. §41-1056(A), at least once every 5 years, each agency must review its administrative rules to determine if any rules need to be amended or repealed and then, as necessary, develop a plan for making needed revisions to its rules. Agencies must prepare a report documenting their review and submit it to GRRC. GRRC must then review these reports for compliance with various statutory criteria, such as whether the report includes an analysis of any written criticisms an agency's administrative rules received during the previous 5 years. Based on auditors' review of a random sample of five rule review reports that GRRC received in fiscal year 2005, GRRC's review of these reports conformed to its policies. Additionally, although GRRC does not have a statutorily required time frame for completing its review of these reports, based on auditors' review of the random sample of five rule review reports, it took GRRC 90 days or fewer to review and approve all five of these reports. Finally, while GRRC cannot require agencies to proceed with the plans they develop for making needed revisions to their rules, it has taken steps to encourage agencies to do so.

TABLE OF CONTENTS



Introduction & Background	1
Sunset Factors	13
Agency Response	
Figure:	
1 Administrative Rulemaking Process and GRRC's Specific Role in Process	4
Table:	
1 Governor's Regulatory Review Council Schedule of Revenues and Expenditures Years Ended or Ending June 30, 2004, 2005, and 2006 (Unaudited)	10

INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a performance audit and sunset review of the Governor's Regulatory Review Council (GRRC) pursuant to a May 24, 2005, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

History and composition

GRRC was established by executive order in 1981 to examine proposed administrative rules that state agency directors determined would have an economic impact on any state, county, city, or town agency; community college district; or school district.¹ Administrative rules are agency statements of general applicability that implement, interpret, or prescribe law or policy, or describe the agency's procedure or practice requirements. In 1986, GRRC was created in statute and given statutory authority to examine all proposed rules. In 1995, the Legislature made sweeping changes to the rulemaking process that significantly expanded GRRC's role. First, it received final approval authority over all proposed administrative rules, except those that are exempted from the rulemaking process. Second, GRRC was provided with staff to assist in its enhanced rule review function. Lastly, the Legislature moved GRRC's review and approval to the end of the administrative rulemaking process so that it could approve rules in their final form. Currently, GRRC defines its mission as assisting agencies in fulfilling their rulemaking responsibilities under statute.

GRRC consists of six members who are appointed by the Governor and one ex-officio member representing the director of the Department of Administration, who also serves as the GRRC chair. A.R.S. §41-1051(A) requires that GRRC be composed of the following:

- At least one public interest member,
- At least one business community member,
- One member from a list of three nonlegislators recommended by the President of the Senate,

GRRC has final approval authority for proposed administrative rules, except for those exempted from the rulemaking process.

¹ The Governor's Regulatory Review Council was established within and continues to be a part of the Department of Administration. However, GRRC has its own sunset date.

- One member from a list of three nonlegislators recommended by the Speaker of the House, and
- Two at-large members.

Additionally, A.R.S. §41-1051(A) requires that at least one of the GRRC members be a licensed Arizona attorney. Members serve staggered 3-year terms.

Importance of administrative rules

According to the Office of the Secretary of State's *Arizona Rulemaking Manual*, administrative rules are a necessary part of the legislative process for several reasons:

- **Implementing legislative policy**—Administrative rules help agencies implement the broad public policy prescribed in statute. Specifically, statute can direct state agencies to provide services or perform specific regulatory functions, while administrative rules detail the requirements or processes for doing so. For example, A.R.S. §32-1606(B) directs the Board of Nursing to license professional and practical nurses. Administrative rules adopted by the Board of Nursing explain the specific requirements for licensure, such as how to apply for a license.
- **Communicating with the public**—Administrative rules allow agencies to communicate statutory requirements to the public. For example, A.R.S. §36-594 gives the Department of Economic Security (DES) the authority to revoke or suspend the license of a home for developmentally disabled adults. However, DES administrative rules explain under what circumstances this can occur and the process a home must take to appeal this action.
- **Setting standards and limits**—Administrative rules set standards and limits for government. For example, DES administrative rules identify the information that its Adult Protective Services Division (APS) must request from the person or entity reporting neglect and/or abuse of a vulnerable adult. As a result, all APS staff have clear guidelines for the information they need to collect regarding allegations of abuse or neglect.

The factors listed above not only make administrative rules necessary, but common. Arizona's state agencies issue hundreds of administrative rules each year to achieve goals such as ensuring that the public has safe food, clean air, and licensed health care providers. For example, GRRC reports that for fiscal year 2005, it approved the adoption, repeal, amendment, or renumbering of 1,183 administrative rules from 39 state agencies, including the Departments of Agriculture and Environmental Quality and the Board of Nursing.

Important Definitions

Statute—A law established by a legislative body such as the Arizona Legislature.

Rule—An agency statement of general applicability that implements, interprets, or sets law or policy, or describes an agency's procedures or practices.

Policy—An agency statement that defines its internal policies or procedures.

Source: A.R.S. §41-1001, the *Arizona Rulemaking Manual*, and *Black's Law Dictionary*.

In fiscal year 2005, GRRC approved the adoption, repeal, amendment, or renumbering of 1,183 administrative rules from 39 agencies.

Administrative rulemaking process

The administrative rulemaking process is statutorily defined and specifies the steps agencies must undertake to adopt rules, as well as certain exceptions to this process. State agencies have several responsibilities in the administrative rulemaking process before GRRC becomes involved, such as determining if an administrative rule is needed, drafting the administrative rule, and soliciting public comment regarding the proposed rule. After agencies have completed all of these steps, GRRC is required to review an agency's proposed administrative rules to ensure they conform to several statutory criteria, such as whether the administrative rule is clear and concise and in compliance with the agency's legislative mandate. Additionally, statute provides for certain exceptions to the administrative rulemaking process.

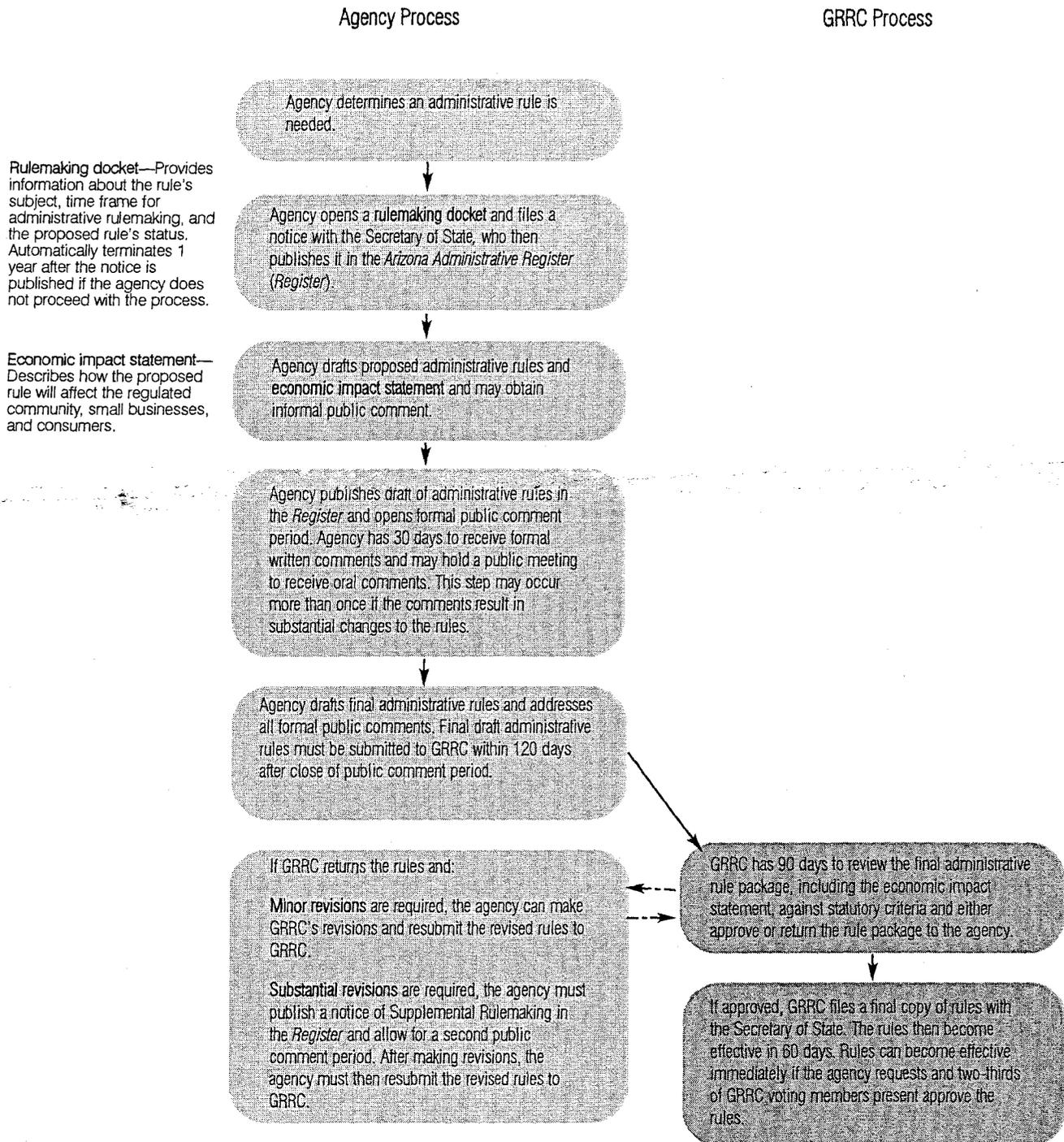
Agencies' rulemaking responsibilities—State agencies have several responsibilities in the formal administrative rulemaking process, which can be time-consuming to complete. For example, once an agency has drafted its rules, the time frames specified in statute to complete the required reviews and public notice requirements total approximately 10 months. These include maximum time frames for some steps that could be completed more quickly than the indicated time frame. Additionally, there are many factors that can influence the overall amount of time it takes for agencies to complete this process, including the complexity of the proposed rules and the amount of time and resources an agency can devote to the administrative rulemaking process.

Time frames in statute require approximately 10 months to complete the administrative rulemaking process.

As illustrated in Figure 1 (see page 4), the steps an agency must complete within the administrative rulemaking process, including statutory time frames for these steps, are as follows:

- **Determining if an administrative rule is needed**—Before an agency begins the administrative rulemaking process, it must determine whether an administrative rule is needed. For example, statute requires agencies to adopt administrative rules in order to set licensing time frames, establish licensing requirements, and collect administrative fees. In other instances statute *may* permit, but not require, an agency to write a rule. For example, A.R.S. §36-502(C) indicates that the Department of Health Services, Division of Behavioral Health may adopt rules concerning leaves, visits, and absences of patients from evaluation agencies and mental health treatment agencies. However, no state agency has been charged with the responsibility to ensure that agencies have adopted all the administrative rules required by statute or necessary to carry out their legislative mandates.
- **Opening a rulemaking docket**—State agencies begin the formal administrative rulemaking process by opening a docket. Agencies maintain a docket or public record to provide information to the public about the rule's subject, the time

Figure 1: Administrative Rulemaking Process and GRRC's Specific Role in Process



Source: *Arizona Rulemaking Manual*, GRRC training materials, and A.R.S. §41-1001 et seq.

frame for the administrative rulemaking process, and the rule's status. When an agency opens a docket, it must file a notice with the Office of the Secretary of State, which then publishes an announcement in the *Arizona Administrative Register (Register)*. An administrative rulemaking docket automatically terminates 1 year after the notice is published if an agency does not proceed with the administrative rulemaking process. Once the agency opens a docket, it can begin to draft its proposed rules, which should include a draft of the rule's economic impact statement.¹

- **Soliciting public comment**—After opening an administrative rulemaking docket, the agency solicits public comment on its proposed administrative rules. This occurs in two phases. First, while drafting its administrative rules, an agency may meet informally with stakeholders to solicit feedback on suggested language and subject matter. Then, once it completes its draft of the proposed administrative rules and publishes this draft, also known as the Notice of Proposed Rulemaking, in the *Register*, it has 30 days to receive formal written comments on the proposed administrative rules. If an agency receives a written request for a public meeting during this 30-day period, it must hold a meeting to receive oral comments from interested parties. This meeting cannot be held less than 30 days after its location and time are published in the *Register*. Although an agency does not have to hold a public meeting unless requested, GRRC recommends that agencies routinely hold such meetings and include the dates in their Notice of Proposed Rulemaking. This provides the public with a forum to provide comments regarding the proposed rules and avoids delays in the process if a meeting is requested. An agency would have to go through the public comment period a second time if the first comment period resulted in substantial changes to the rules published in the Notice of Proposed Rulemaking.
- **Drafting final rules**—Following the close of the administrative rulemaking record, which is the last date on which the agency will receive public comment, it can begin drafting its final administrative rules. In doing so, it must address all comments provided during the formal public comment period by either modifying the administrative rule or preparing an explanation as to why the administrative rule was not changed. Within 120 days of closing its public comment period, an agency must submit its final administrative rules to GRRC for review.

Economic Impact Statement (EIS)

Definition—The EIS describes how the rule will affect the regulated community, small businesses, and consumers.

An EIS must include:

- An identification of the persons who will be directly affected by the rule.
- A cost-benefit analysis.
- A statement of the rule's probable effect on state revenues.
- A description of any less-intrusive or less-costly alternative methods for achieving the purpose proposed in the rule.

Source: A.R.S. §41-1055.

¹ According to A.R.S. §41-1055(D), agencies are not required to prepare an economic impact statement for certain proposed rules, including when the proposed rule decreases monitoring, recordkeeping, 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.

GRRC's rulemaking-related responsibilities—Within the administrative rulemaking process, GRRC has a specific responsibility to ensure that proposed rules satisfy several statutory criteria before they can be approved. Thus, GRRC is required to review proposed rules against statutory criteria, including criteria which require that:

- The language of the administrative rule must be clear, concise, and understandable,
- The agency has statutory authority to make the administrative rule, including authority for new or increased fees and for requests that a rule become effective immediately,
- The administrative rule does not conflict with existing law,
- The probable benefits of the administrative rule outweigh its probable costs,
- The administrative rule contains a generally accurate economic impact statement,
- The economic impact statement describes the probable costs or benefits of the administrative rule,
- The economic impact statement includes statements on the administrative rule's probable effects on small businesses and state revenues, and
- The agency adequately addressed public comments on the administrative rule.

GRRC has 90 days from the date it receives an agency's rule package to review and approve or return an agency's final rules.

GRRC has 90 days from the date it receives an agency's rule package to review and approve or return an agency's final rules. During that time, GRRC staff works with the agency to revise the administrative rules so that they conform to the statutory criteria. As part of its monthly public meetings, GRRC members vote on whether to approve the administrative rules or return them to the agency for further changes. If the rules are returned, the agency can make GRRC's indicated revisions and resubmit the revised rules to GRRC. However, if the returned rules require substantial changes, the agency must publish a Notice of Supplemental Rulemaking in the *Register* and allow for a second public comment period. After it addresses any additional public comments and makes the necessary revisions to the rules, the agency must then resubmit them to GRRC.

According to GRRC, in fiscal year 2004 it approved the adoption, repeal, amendment, or renumbering of 1,330 individual rules and only returned 3 individual rules to their respective agencies. Agencies later resubmitted 2 of the 3 rules for GRRC approval in that fiscal year. In fiscal year 2005, GRRC approved the adoption, repeal, amendment, or renumbering of all 1,183 of the rules it reviewed. If GRRC

approves the rules, GRRC staff file a final copy with the Office of the Secretary of State. The administrative rules become effective 60 days after this filing. If an agency requests and demonstrates the need, a rule can become effective immediately if two-thirds of the GRRC voting quorum present approve the rule.

Alternative administrative rulemaking procedures—While most agencies must follow the statutorily required administrative rulemaking process to adopt rules, statute provides for exceptions to this process. As specified below, these exceptions may or may not require GRRC's review and approval of the proposed rules.

- **Exemptions**—An agency with an exemption may adopt administrative rules without following any of the steps in the administrative rulemaking process, other than submitting the final administrative rule to the Office of the Secretary of State for publication in the *Register*. Through statute, the Legislature has permanently exempted several agencies in full or in part from the regular administrative rulemaking process, including agencies such as the Arizona Board of Regents, the Arizona State Board of Education, the Arizona Corporation Commission, and agencies headed by a single elected official. However, the Arizona Board of Regents and the Arizona State Board of Education are statutorily required to receive public comment on their proposed rules, and the Arizona Corporation Commission must adopt rules under a substantially similar rulemaking process. The rules of agencies headed by a single elected official and the Arizona Corporation Commission are reviewed and approved by the Attorney General. Additionally, statute permanently exempts administrative rules that cover certain subjects from the regular administrative rulemaking process, including the regulation of motor vehicle operation and the use of public works, including streets and highways.

State agencies can also receive specific exemptions from the administrative rulemaking process. For example, in 2004, the Legislature granted the Arizona Healthcare Cost Containment System (AHCCCS) a year-long exemption from the rulemaking process for the purpose of drafting rules related to the agency's ability to qualify trusts created pursuant to the Federal Social Security Act. According to a GRRC official, agencies might request exemptions from the full process or part of the process to more quickly adopt rules. The Attorney General's Office is responsible for reviewing and approving rules that are exempted under A.R.S. §41-1057, including rules adopted by agencies headed by a single elected official and the Arizona Corporation Commission. However, rules made under other exemptions are not reviewed for appropriateness by an outside agency.

- **Summary administrative rulemaking**—In addition to exemptions, A.R.S. §41-1027 provides for a summary administrative rulemaking process that allows

Agencies can receive specific exemptions from the administrative rulemaking process.

state agencies to repeal obsolete administrative rules and/or administrative rules that repeat statute verbatim. This process significantly shortens the administrative rulemaking process, but still requires that GRRRC review and approve rules that an agency is proposing to repeal. Summary administrative rules temporarily take effect after the agency has a proposed summary administrative rulemaking published in the *Register*. The agency then has 90 days to receive informal public comment and submit the final summary administrative rules to GRRRC for review and approval. According to a GRRRC official, since this process is typically used to repeal rules where the agency no longer has the authority for the rule, public comment is usually not provided. GRRRC can then either hold a hearing on the administrative rules or approve them through a consent agenda at its monthly public meetings. Consent agendas are typically used as a time-saving device and include agency items that are minor or unlikely to generate controversy. Typically, one vote is taken to approve or disapprove all of the items on a consent agenda. After GRRRC approves the administrative rules, it files a final summary administrative rule package with the Office of the Secretary of State. This process cannot be used by agencies to adopt new rules.

- **Emergency administrative rulemaking**—If an agency determines that one of several emergency situations exists, A.R.S. §41-1026 allows it to undertake an emergency administrative rulemaking. Instances when agencies may adopt emergency rules include those that involve the protection of the public's health, safety, or welfare, and to avoid violating federal law. By using this process to adopt an administrative rule, an agency forgoes the formal public comment period and GRRRC's review and approval. Instead, the Attorney General reviews and approves the emergency administrative rules and then submits them to the Office of the Secretary of State for publication in the *Register*. However, an agency cannot receive approval for an emergency administrative rule if the emergency situation is the result of its own delay or inaction. Emergency rules expire after 180 days and may only be renewed for one additional 180-day period. An official with the Office of the Secretary of State reported that between January 2000 and December 2005, agencies have filed 33 emergency rules.

GRRRC's additional duties

In addition to its responsibilities within the administrative rulemaking process, GRRRC has the following responsibilities:

- **Approving agencies' 5-year reviews of their administrative rules**—GRRRC is responsible for maintaining a list of agencies that need to conduct a 5-year review of their administrative rules, as well as reviewing and approving agencies' reports on their reviews. According to A.R.S. §41-1056(A), at least once every 5

years, each agency must review its administrative rules to determine if any rules need to be amended or repealed and then as necessary, develop a plan for making needed revisions. Agencies must prepare a report documenting their review and submit it to GRRRC, which ensures that the agency's assessment complies with statute. GRRRC then approves or returns the report to the agency for changes. If an agency has substantially revised an administrative rule within 2 years of its scheduled 5-year review, it does not have to complete an analysis of that rule.

- **Hearing appeals on certain agency practices**—A.R.S. §§41-1033, 41-1056.01, and 41-1081 require GRRRC to receive and consider hearing appeals on three areas of agency practice. The first type of appeal may occur after an agency denies an individual's petition regarding an existing agency practice or policy that the individual believes constitutes an administrative rule. The second type of appeal may occur after an agency denies an individual's petition that the economic impact statement accompanying a rule either did not estimate or did not adequately estimate the economic impact. Finally, the public may also submit appeals to GRRRC regarding an agency's decision to enter a delegation agreement, which allows for the delegation of an agency function to a political subdivision. For example, the Department of Environmental Quality (DEQ) has delegated specific water quality management responsibilities to Apache County. Appeals must be submitted to GRRRC within a specified period of time following the agency's decision.

Once an appeal has been received, GRRRC then decides whether it will consider the appeal at a public meeting. GRRRC does not have to hear all of the appeals it receives. In fact, an appeal can be put on GRRRC's monthly public meeting agenda only if within 2 weeks of its receipt, three or more GRRRC members indicate that it should be heard. In fiscal year 2005, GRRRC reported receiving only two appeals, each concerning different agency policies that were not reflected in administrative rule, but which members of the public felt constituted an administrative rule. One of these appeals involved an AHCCCS policy regarding changes to an administrative overhead allowance calculation that a healthcare organization thought should be reflected in administrative rule. GRRRC heard and denied this appeal. While GRRRC placed the second appeal on its public meeting agenda, which concerned DEQ not following one of its administrative rules, GRRRC dismissed the appeal as it lacked jurisdiction to hear it.

- **Preparing compliance reports**—GRRRC compiles reports based on information it annually receives from agencies regarding their compliance with specific statutory mandates. First, GRRRC receives annual updates and compiles a report on the status of agency efforts to revise their rules under the 5-year review process. GRRRC then must list the agencies that report a lack of progress on revising their rules on its Web site. Second, any agency that issues a license

must provide GRRC with information on its compliance with its overall licensing time frames. The Governor, the President of the Senate, and the Speaker of the House of Representatives receive copies of GRRC's report summarizing this information. Third, all agency heads must certify to GRRC that the agency is in compliance with statute by maintaining a directory summarizing the subject matter of all current applicable rules and substantive policy statements, and that the directory, rules, and substantive policy statements are available to the public. GRRC must then note the agencies that are not in compliance with this requirement on its Web site. Finally, GRRC includes all of this information in its annual report.

Staffing and budget

In order to fulfill its responsibilities, GRRC has seven full-time staff positions, two of which were vacant as of December 2005. The positions include an administrator responsible for overseeing the agency's day-to-day operations; four staff attorney analysts who assist in the review of administrative rules; an economist responsible for assessing each administrative rule's economic impact; and an office manager who oversees GRRC's files, meeting agendas, and other administrative activities.

GRRC does not have a line-item in the state budget. Instead, it receives monies from the State General Fund through an appropriation made to the Department of Administration. Table 1 illustrates GRRC's actual revenues and expenditures for fiscal years 2004 and 2005, and the estimated revenues and expenditures for fiscal year

Table 1: Governor's Regulatory Review Council
Schedule of Revenues and Expenditures
Years Ended or Ending June 30, 2004, 2005, and 2006
(Unaudited)

	2004 (Actual)	2005 (Actual)	2006 (Estimated)
Revenues:			
State General Fund appropriations	<u>\$454,160</u>	<u>\$480,800</u>	<u>\$505,900</u>
Expenditures:			
Personal services and employee related	411,138	441,624	462,325
Professional and outside services	2,813	2,884	3,000
Other operating	32,295	36,035	40,575
Equipment		189	
Total expenditures	<u>446,246</u>	<u>480,732</u>	<u>505,900</u>
Excess of revenues over expenditures	<u>\$ 7,914</u>	<u>\$ 68</u>	<u>\$ -0-</u>

Source: Auditor General staff analysis of financial information provided by the Department of Administration from its Arizona Financial Information System for the years ended June 30, 2004 and 2005, and department-prepared estimates for the year ending June 30, 2006.

2006. For fiscal years 2004 and 2005, GRRC spent approximately 91 percent of its budget on staff salaries and related employee expenditures. This trend is expected to continue for fiscal year 2006. In fiscal year 2006, both revenues and expenditures are estimated to be approximately \$506,000.

Audit scope and methodology

This performance audit focused on GRRC's responsibilities within the administrative rulemaking process and its process for reviewing and approving agency reports related to 5-year rule reviews. GRRC's performance was also analyzed in accordance with the 12 statutory sunset factors. This report presents information on the administrative rulemaking process, as well as GRRC's performance relative to its responsibilities within the responses to the 12 statutory sunset factors.

Auditors used a variety of methods to study the issues addressed in this report. These methods included interviewing GRRC members, its former administrator, and staff; and reviewing statutes; GRRC's monthly meeting minutes from fiscal year 2005; the Secretary of State's *Arizona Rulemaking Manual*; and GRRC's policies and procedures.

In addition, to evaluate GRRC's timeliness in reviewing rule packages and the agency's 5-year rule review reports, the consistency with which it applies its policies and procedures, and the customer service it provides, auditors reviewed and conducted an analysis of a random sample of 10 of the 97 administrative rulemaking packages GRRC received between September 2004 and August 2005 and a random sample of 5 of the twenty-four 5-year agency reports submitted to GRRC between July 2004 and June 2005. Auditors also interviewed rule-writers from 6 state agencies and reviewed all 78 of GRRC's customer service surveys returned in fiscal year 2005.¹

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to GRRC's members, former administrator, and staff for their cooperation and assistance throughout the audit.

¹ Auditors interviewed rule-writers from the Department of Agriculture, the Arizona Health Care Cost Containment System, the Board of Nursing, the Department of Insurance, the Lottery Commission, and the Radiation Regulatory Agency. These agencies were selected based on their varying sizes and the differing complexity of their administrative rules.

SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Governor's Regulatory Review Council (GRRC) should be continued or terminated.

1. The objective and purpose in establishing GRRC.

GRRC was established by executive order in 1981 to examine proposed administrative rules that state agency directors determined would have an economic impact on any state, county, city, or town agency; community college district; or school district. Administrative rules are agency statements of general applicability that implement, interpret, or prescribe law or policy, or describe an agency's procedure or practice requirements. In 1986, GRRC was established in statute and given authority to review all proposed rules. In 1995, the Legislature made sweeping changes to the rulemaking process that significantly expanded GRRC's role. First, it received final approval authority over all proposed administrative rules, except those that are exempted from the rulemaking process. Second, GRRC was provided with staff to assist in its enhanced rule review function. Lastly, the Legislature moved GRRC's review and approval to the end of the administrative rulemaking process so that it could approve rules in their final form. Currently, GRRC defines its mission as assisting agencies in fulfilling their rulemaking responsibilities under statute.

A.R.S. §41-1052 requires GRRC to ensure that no agency rule becomes effective unless:

- The language of the rule is clear, concise, and understandable,
- The agency has statutory authority to make the rule, including authority for new or increased fees and for requests that a rule become effective immediately,
- The rule does not conflict with existing law,
- The probable benefits of the rule outweigh its probable costs,

In 1995, the Legislature significantly expanded GRRC's role within the rulemaking process.

- The rule contains a generally accurate economic impact statement,
- The economic impact statement describes the probable costs or benefits of the rule and its probable effects on small businesses and state revenues, and
- The agency adequately addressed public comments on the rule.

In addition to reviewing agency rules, GRRC has the following three statutory responsibilities:

- **Reviewing 5-year reports**—A.R.S. §41-1056(B) requires GRRC to review and approve or return the reports that agencies submit documenting their internal review of their administrative rules. A.R.S. §41-1056(A) requires that agencies complete reviews of their administrative rules every 5 years to determine if any rules need to be amended or repealed and to develop a plan for making the identified revisions.
- **Receiving and hearing appeals**—GRRC also receives and considers appeals from members of the public on various agency practices, including an agency's decision to deny an individual's petition regarding whether an existing agency practice or policy constitutes a rule.
- **Reporting on certain agency practices**—GRRC must annually prepare reports based on information it receives from agencies regarding their compliance with specific statutory mandates. These mandates include requiring agencies to update GRRC on their progress in completing the administrative rule revision plan they included in their 5-year review report; requiring agencies that issue licenses to provide GRRC with information on their compliance with licensing time frames, which GRRC compiles in a report and sends to the Legislature and Governor's Office; and requiring that all agencies certify to GRRC that they maintain a directory summarizing the subject matter of all current applicable rules and substantive policy statements, and that the directory, rules, and substantive policy statements are available to the public.

2. The effectiveness with which GRRC has met its objectives and purpose and the efficiency with which it has operated.

GRRC has generally met its objectives and purposes by effectively reviewing and approving agency rules and by reviewing and approving agency 5-year rule review reports. Specifically:

- **GRRC's review of administrative rules consistent with statute**—GRRC has established various policies, procedures, and mechanisms to help ensure that its required review and approval of proposed administrative rules complies with statutory criteria and time frames. According to A.R.S. §41-1052, GRRC must review proposed administrative rules submitted by state agencies for compliance with various statutory criteria. As previously mentioned, some of these include whether the language of the administrative rule is clear and concise, whether the agency has the statutory authority to adopt the administrative rule, and whether the benefits of the administrative rule outweigh its costs. GRRC has established various policies and procedures to help ensure that its review of proposed administrative rules appropriately encompasses these criteria. For example, GRRC analysts must prepare memos that document their analysis of each proposed administrative rule and complete a checklist that documents their response to several questions regarding whether the proposed administrative rule complies with the criteria. Based on auditors' review of a random sample of ten proposed administrative rules submitted to GRRC between September 2004 and August 2005, GRRC's review of these proposed administrative rules conformed to its policies and procedures.

GRRC must review administrative rules for compliance with statutory criteria, including whether the rule is clear and concise.

- **GRRC reviews and approves rules within statutory time frame**—According to A.R.S. §41-1052(B), GRRC has 90 days to review and approve or return an agency's proposed administrative rules. To assess the timeliness of GRRC's review, auditors reviewed a random sample of ten proposed administrative rule packages submitted to GRRC between September 2004 and August 2005. Although GRRC reports that it does not determine the timeliness of its reviews, GRRC completed its review of the random sample of ten rule packages within the 90-day time frame required by statute. In fact, GRRC completed its review and approval of nine of these rule packages in fewer than 60 days.

To help ensure the timely review of rule packages, GRRC has established a yearly schedule with monthly due dates for the submission of rule packages and corresponding public meeting dates. If agencies submit their rule packages on or before the indicated submission date, the rule package should be ready for GRRC member consideration on the corresponding public meeting date. For example, according to GRRC's 2005 schedule, if an agency wanted to have a rule package reviewed at the December 6, 2005, public meeting, it had to submit its proposed rules to GRRC staff by October 24, 2005. Likewise, if the agency had to make revisions to the proposed rules after GRRC staff reviewed them, it had to forward the revised rules to GRRC by November 16, 2005. GRRC's adoption of a standardized process for reviewing administrative rules also contributes to its ability to meet the statutory time frame requirement.

GRRC staff work with agencies to make any necessary revisions before the package is sent to GRRC for formal review and approval.

While GRRC completed its review of the ten sample rule packages within the 90-day time frame, in some cases this time period does not include the time a rule package may be back with an agency for needed revisions. After an agency submits a package to GRRC, GRRC staff will work with the agency to make any necessary revisions before the package is sent to GRRC for formal review and approval. If a package is returned to an agency, GRRC does not count against the 90-day requirement the time the package is back with the agency. For example, it took a total of 141 days to approve one rule package in the sample of ten rule packages that auditors reviewed. This was because the agency required additional time to make the revisions that GRRC staff suggested. This process of GRRC staff working with the agencies to revise their rule packages can shorten the review process by helping prevent instances in which GRRC formally returns a rule package, requiring the agency to resubmit it and wait for GRRC staff to review it again.

- GRRC's analysis of 5-year review reports follows established process— GRRC also follows specific policies and procedures to ensure that the reports that agencies produce documenting their internal analysis of their own rules every 5 years comply with statutory requirements. If an agency's analysis determines that any of their rules require revision, the report must also include a plan with a target date for completing these revisions. According to A.R.S. §41-1056(B), GRRC must review these reports for compliance with various statutory criteria, such as whether the report includes an analysis of any written criticisms an agency's administrative rules received during the previous 5 years. Similar to its review of administrative rule packages, GRRC analysts must prepare memos that document their analysis of each report and complete a checklist that documents their response to several questions regarding whether the report complies with the statutory requirements. Based on auditors' review of a random sample of five rule review reports that GRRC received in fiscal year 2005, GRRC's review of these reports conformed to its policies and procedures.

Additionally, while GRRC cannot require agencies to proceed with the plans they develop for making needed revisions to their rules, it has taken steps to encourage agencies to do so. GRRC indicated that some agencies resubmit their previous 5-year report without having taken any of the planned actions outlined in its previous report. However, GRRC has taken steps to attempt to reform this behavior by requiring an agency that resubmits the same report from the previous 5 years to provide GRRC with a monthly oral progress report on its efforts to update its rules. Additionally, in some cases, GRRC's chairman has written a formal letter to an agency director expressing concern with the status of the agency's rule revisions. Further, A.R.S. §41-1056(C) allows GRRC to decline giving its approval to a

duplicate report and instead require the agency to submit a new report in 1 year. However, GRRC indicates that it has not used this option and instead has required the monthly oral progress reports.

- **GRRC conducts review of 5-year rule review reports in a timely manner—**Although GRRC does not have a statutorily required time frame for completing its review of these reports, GRRC also tries to complete them within 90 days. Based on auditors' review of a random sample of five rule review reports that GRRC received in fiscal year 2005, it took GRRC 90 days or less to review and approve all five of these reports.
- **State agencies generally satisfied with GRRC's performance—**State agencies generally report satisfaction regarding GRRC's review and approval of proposed administrative rules and 5-year review reports and the assistance that GRRC provided to agencies during these processes. Auditors interviewed six agency rule-writers to assess their satisfaction with GRRC. Four of these six agency rule-writers rated GRRC's overall performance between a seven and a nine on a scale of one to ten, with ten being the highest. One of the two remaining agency rule-writers rated GRRC's overall performance at a five on the same scale, while the other rule-writer rated the performance of GRRC staff at between a seven and an eight and its members at a five.¹ In addition, all six of the rule-writers reported that GRRC's analysts were generally easy to contact, while five of the six indicated that GRRC was responsive to their questions. Further, four of the six rule-writers indicated that they found GRRC's feedback constructive, although two reported that GRRC's proposed revisions to their administrative rules sometimes changed the administrative rule's meaning. However, both of these rule-writers indicated that an agreement could usually be reached with the GRRC analyst regarding appropriate revisions. Likewise, while three of the six rule-writers indicated that they would like quicker feedback from GRRC's analysts, two of these three rule-writers indicated that they recognized that the delays were due to GRRC's workload.

Similarly, GRRC has received favorable feedback from the customer service survey forms it requests agencies that go through the GRRC process to complete. The survey asks respondents to rate GRRC in seven areas such as the GRRC staff's professionalism and their overall satisfaction with GRRC. Seventy-eight of these survey forms were returned in fiscal year 2005 for a response rate of approximately 62 percent. Fifty-nine of the respondents gave GRRC the maximum score in all survey areas rated.

Over 75 percent of the customer service surveys that GRRC received in fiscal year 2005 gave GRRC the maximum score in all survey areas rated.

¹ While the interviewed rule-writers were not asked to rate GRRC staff and members separately, one rule-writer provided separate ratings.

3. The extent to which GRRC has operated in the public interest.

Although GRRC's operations primarily affect state agencies, some of its activities, such as ensuring that agencies address public comments on their administrative rules, hearing appeals regarding specific agency actions, and providing required information on agency rulemaking activities, can indirectly impact the general public. Specifically:

- GRRC ensures public comments addressed—A.R.S. §41-1052(C) requires GRRC to ensure that comments from members of the public regarding agencies' proposed administrative rules are adequately addressed. Based on auditor review of a random sample of ten proposed administrative rule packages submitted to GRRC between September 2004 and August 2005, for all ten rule packages, GRRC determined and noted whether the agency addressed all public comments.
- GRRC hears public appeals—A.R.S. §§41-1033, 41-1056.01, and 41-1081 also require GRRC to receive and hear appeals on three areas of agency practice, including an agency's decision to deny an individual's petition regarding whether an existing agency practice or policy constitutes a rule. As previously discussed, GRRC reported receiving two appeals in fiscal year 2005, each concerning different agency policies that were not reflected in administrative rule, but which members of the public felt constituted an administrative rule. GRRC heard and denied the first appeal. However, although GRRC placed the second appeal on its public meeting agenda, which concerned an agency that was not following one of its administrative rules, GRRC dismissed the appeal because it lacked jurisdiction to hear it.
- GRRC provides required information—GRRC provides information within its annual report and on its Web site regarding agency rulemaking activities. Specifically, GRRC reports on the number of agency administrative rules approved or returned, agencies that do not certify compliance with the requirement that they maintain a directory summarizing the subject matter of all current applicable rules and substantive policy statements, and agencies that have reported a lack of progress toward addressing needed revisions to their administrative rules.

Additionally, GRRC assists state agencies with the administrative rulemaking process by conducting training seminars and informal courtesy reviews of proposed administrative rules. Specifically, nearly every month, GRRC staff provide training seminars on the administrative rulemaking process and various administrative rulemaking topics to state agency rule-writers. These seminars cover topics including methods for successfully navigating the administrative rulemaking process and guidelines for preparing the 5-year rule review report.

GRRC conducts training seminars nearly every month on the administrative rulemaking process and other rulemaking topics for agency rule-writers.

Additionally, when time permits, GRRC staff review an agency's proposed rules before the agency formally submits them to GRRC for review and approval within the 90-day time frame. Although this is not a statutory requirement, it allows agency rule-writers to receive feedback from GRRC staff on their proposed administrative rules and make suggested revisions prior to the formal submission of the proposed administrative rules to GRRC. If its workload permits, GRRC tries to complete these reviews in 2 months or less.

4. The extent to which rules adopted by GRRC are consistent with the legislative mandate.

GRRC has adopted rules that appear to be within its legislative mandate. A.R.S. §41-1051(E) grants GRRC the authority to make rules. GRRC last made substantial changes to its rules in December 2003. The 17 rules GRRC has adopted cover several of its practices that involve the public, including the scheduling of its public meetings, placing a rule on GRRC's public meeting agenda, and the receiving and hearing of appeals. Audit work did not identify the need for any additional rules.

5. The extent to which GRRC has encouraged input from the public before adopting its rules, and the extent to which it has informed the public as to its actions and their expected impact on the public.

GRRC has followed all the requirements of the administrative rulemaking process when adopting its own rules, including opening a docket for proposed rulemaking, publishing a Notice of Proposed Rulemaking in the *Arizona Administrative Register*, and soliciting and addressing public comments. Because its operations primarily affect state agencies, GRRC officials reported that the agency took several steps to ensure it received feedback from agency rule-writers regarding its own administrative rules, including holding discussions with agency rule-writers before drafting administrative rules, requesting that several agency rule-writers review the draft administrative rules, posting the draft administrative rules on its Web site, sending an e-mail to all rule-writers informing them of the posting and inviting their comments, and discussing the rules at a regular public meeting, which was conducted in accordance with open meeting laws.

GRRC has also complied with the State's open meeting laws. GRRC has posted public meeting notices at least 24 hours in advance at the required location, made agendas available to the public, maintained meeting minutes, and filed the required statement of where meeting notices will be posted with the Secretary of State.

6. The extent to which GRRC has been able to investigate and resolve complaints that are within its jurisdiction.

GRRC does not have authority to investigate and resolve complaints.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

GRRC's actions are limited to reviewing and approving adopted and existing rules established by state agencies. As a result, the Attorney General's Office is not responsible for prosecuting actions under GRRC's enabling legislation. However, members of the public can file civil litigation if they believe a rule was not made in substantial compliance with statute, or if they question the interpretation or application of rule. While the State Solicitor General's Office would represent GRRC in such cases, GRRC reports that it has not been the subject of any civil action.

8. The extent to which GRRC has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

The Legislature last enacted laws that affected GRRC in 2003 when it revised A.R.S. §41-1051 so that GRRC no longer had to submit its annual report to the Governor and all members of the Legislature. Instead, the revised version of the statute requires GRRC to publish certain elements from its annual report on its Web site and make it available to the public upon request. This information includes a list of agency rules approved or returned by GRRC, and a list of agencies that report a lack of progress implementing the plan described in their 5-year review report for making needed revisions to their rules.

According to a GRRC official, GRRC and the Department of Administration have considered two statutory changes that should streamline the administrative rulemaking process. The first of these is a change to A.R.S. §41-1055, which requires agencies to submit an economic impact statement (EIS) with most administrative rule packages. In the EIS, each agency must provide an assessment as to whether the probable benefits from the proposed administrative rule outweigh its probable costs. However, according to GRRC officials, almost half of the administrative rule packages it reviews have no economic impact beyond the cost of writing the administrative rule. Consequently, GRRC has considered a statutory change that would allow agencies to document that an administrative rule has no economic impact, rather than requiring them to prepare an entire EIS. However, as part of the

GRRC is considering two statutory changes that could result in greater efficiency within the administrative rulemaking and the 5-year review process.

proposal, if a member of the public disagrees with the agency's assessment, the agency would be required to complete an EIS.

GRRC is also considering a change to A.R.S. §41-1056, which requires state agencies to conduct a review and analysis of their administrative rules every 5 years, identify needed changes to their administrative rules, and provide a report to GRRC on this review and analysis as well as a plan for addressing the needed changes. Currently, statute allows agencies to forgo reviews of administrative rules they have revised in the previous 2 years. However, GRRC is proposing that agencies not be required to include in their 5-year review and report administrative rules that have been revised within the previous 5-year period. This proposed change would limit the number of rules that need to be included in an agency's 5-year reviews and, according to GRRC, improve the efficiency of this process.

Although GRRC is considering these changes, it does not anticipate proposing any changes for consideration during the 2006 legislative session.

- 9 The extent to which changes are necessary in the laws of GRRC to adequately comply with the factors listed in this subsection.

Audit work did not identify any necessary statutory changes.

10. The extent to which the termination of GRRC would significantly harm the public's health, safety, or welfare.

Terminating GRRC would not directly harm public health, safety, or welfare. However, as previously discussed, some of GRRC's processes indirectly affect the general public. For example, GRRC helps ensure that agency rules incorporate public comment and GRRC receives and hears appeals on agency practices that potentially should be reflected in rule, but are not. Additionally, GRRC reviews agencies' proposed administrative rules to ensure that they comply with statutory criteria, including whether the agency has authority to write the rule and whether the probable benefits of the proposed rule outweigh its probable costs.

11. The extent to which the level of regulation exercised by GRRC is appropriate and whether less or more stringent levels of regulation would be appropriate.

The audit found that the current level of regulation exercised by GRRC is generally appropriate.

12. The extent to which GRRC has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

GRRC does not use any private contractors in the performance of its duties. Additionally, audit work did not identify any opportunities for GRRC to contract any of its responsibilities.

AGENCY RESPONSE

Janet Napolitano
Governor



William Bell
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL**

100 North 15th Avenue • ROOM 402
PHOENIX, ARIZONA 85007
(602) 542-2058

February 15, 2006

Debra K. Davenport, CPA
Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85016

Dear Ms. Davenport:

We have reviewed the February 8, 2006 final draft of the sunset audit report of the Governor's Regulatory Review Council. I would like to express the sincere appreciation of the Council for the hard work and professionalism of your staff in performing the audit.

As there are no findings or recommendations in the final draft, this letter serves as the Council's written response in accordance with Joint Legislative Audit Committee procedures.

Again, thank you for your work in accomplishing the sunset audit of the Governor's Regulatory Review Council.

Sincerely,

Graham Alex Turner
Chairman

Performance Audit Division reports issued within the last 24 months

04-03	Behavioral Health Services' HB2003 Funding for Adults with Serious Mental Illness	05-02	Department of Administration—Financial Services Division
04-04	Department of Emergency and Military Affairs and State Emergency Council	05-03	Government Information Technology Agency (GITA) & Information Technology Authorization Committee (ITAC)
04-05	Department of Environmental Quality—Water Quality Division	05-04	Department of Economic Security—Information Security
04-06	Department of Environmental Quality—Waste Programs Division	05-05	Department of Economic Security—Service Integration Initiative
04-07	Department of Environmental Quality—Air Quality Division	05-06	Department of Revenue—Audit Division
04-08	Department of Environmental Quality—Sunset Factors	05-07	Department of Economic Security—Division of Developmental Disabilities
04-09	Arizona Department of Transportation, Motor Vehicle Division— State Revenue Collection Functions	05-08	Department of Economic Security—Sunset Factors
04-10	Arizona Department of Transportation, Motor Vehicle Division—Information Security and E-government Services	05-09	Arizona State Retirement System
04-11	Arizona Department of Transportation, Motor Vehicle Division—Sunset Factors	05-10	Foster Care Review Board
04-12	Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers	05-11	Department of Administration—Information Services Division and Telecommunications Program Office
05-L1	Letter Report—Department of Health Services—Ultrasound Reviews	05-12	Department of Administration—Human Resources Division
05-01	Department of Economic Security—Division of Employment and Rehabilitation Services—Unemployment Insurance Program	05-13	Department of Administration—Sunset Factors
		05-14	Department of Revenue—Collections Division
		05-15	Department of Revenue—Business Reengineering/Integrated Tax System
		05-16	Department of Revenue—Sunset Factors

Future Performance Audit Division reports

Arizona Health Care Cost Containment System—Healthcare Group

Janet Napolitano
Governor



William Bell
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

GOVERNOR'S REGULATORY REVIEW COUNCIL

100 North 15th Avenue • ROOM 402
PHOENIX, ARIZONA 85007
(602) 542-2058

October 12, 2006

Steven Moortel
Arizona House of Representatives
1700 West Washington Street, Suite H
Phoenix, Arizona 85007

Re: Sunset Review – Governor's Regulatory Review Council

Dear Mr. Moortel,

This is in response to Representative Konopnicki's letter of August 16, 2006, in which he requested we provide you with information regarding the recent sunset review of the Governor's Regulatory Review Council ("GRRC"). We are happy to provide you with the information needed to fulfill the requirements of A.R.S. § 41-2954(F).

Factor 1: An identification of the problem or the needs that the agency is intended to address.

For most agencies, review by GRRC is the final step in the rulemaking process. GRRC reviews most draft agency rules to ensure that they are necessary, and to avoid duplication and adverse impact on the public. GRRC assesses whether a rule is clear, concise, and understandable; legal, consistent with legislative intent and within the agency's statutory authority; and whether the benefits of a rule outweigh the cost of compliance. GRRC also reviews whether the agency solicited and adequately considered public comment. If a rule does not meet these criteria, GRRC returns it to the agency for further consideration.

Further, A.R.S. § 41-1056 requires each agency to review all of its rules at least once every five years to determine whether any rule should be amended or repealed, and to summarize its findings in a report to GRRC. The statute also requires agencies to

Steven Moortel
October 12, 2006
Page Two

annually report to GRRC on their progress toward completing the courses of action established in their Five Year Review Reports.

In addition, agencies are annually required to report to GRRC compliance with their time-frame rules. GRRC also receives and hears appeals regarding agency practices or substantive policy statements that a member of the public contends must be in rule.

Factor 2: A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

In 2005-2006, agencies submitted 115 rule packages for review and action by GRRC. In these packages, the agencies repealed 336 rules, made 528 new rules, amended 610 existing rules, and renumbered 34 existing rules, for a total of 1,508 rulemaking actions.

Also during 2005-2006, GRRC received and approved 36 Five Year Review Reports. The reports summarized reviews of 956 rules.

A copy of GRRC's 2006 annual report, as well copies of GRRC's Monthly Performance Measures for July 2005 through September 2006, are enclosed.

Factor 3: An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

GRRC is not aware of another agency having similar, conflicting or duplicate objectives.

Factor 4: An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

GRRC ensures that agency rules are properly developed and consistent with statute; clear, concise and understandable; that the benefits of the rules outweigh the cost; and that public comment is sought and considered. While these responsibilities primarily affect state agencies, they indirectly impact and benefit the general public.

As requested, I have also enclosed copies of GRRC's Minutes for the past year, as well as a copy of GRRC's 2006 Annual Report.

Steven Moortel
October 12, 2006
Page Three

I appreciate the opportunity to provide this information. If you require any further information or assistance, please feel free to contact me.

Sincerely,



Graham Alex Turner
Chair, Governor's Regulatory Review Council

Interim agendas can be obtained via the Internet at <http://www.azleg.state.az.us/InterimCommittees.asp>

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE GOVERNMENT ACCOUNTABILITY AND REFORM AND HOUSE GOVERNMENT REFORM AND GOVERNMENT FINANCE ACCOUNTABILITY COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF GOVERNORS REGULATORY REVIEW COUNCIL

Date: Wednesday, November 29, 2006

Time: 9:05 a.m.. or upon adjournment of the Committee on Government Reform and
Government Finance Accountability

Place: HHR 3

AGENDA

1. Call to Order
2. Opening Remarks
3. Auditor General Report on the Regulatory Review Council
4. Presentation by the Director of Governors Regulatory Review Council
5. Public Testimony
6. Discussion
7. Recommendations by the Committee of Reference
8. Adjourn

Members:

Senator Jack Harper, Co-Chair
Senator Robert Burns
Senator Albert Hale
Senator Richard Miranda
Senator Thayer Verschoor

Representative Bill Konopnicki, Co-Chair
Representative Cheryl Chase
Representative Phil Lopes
Representative John McComish
Representative John Nelson

11/28/06

br

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

----- DOCUMENT HEADER -----

----- DOCUMENT HEADER -----

ARIZONA STATE LEGISLATURE
Forty-seventh Legislature – Second Regular Session

**SENATE GOVERNMENT ACCOUNTABILITY AND REFORM AND HOUSE
GOVERNMENT REFORM AND GOVERNMENT FINANCE ACCOUNTABILITY
COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF
GOVERNOR'S REGULATORY REVIEW COUNCIL**

Minutes of Meeting
Wednesday, November 29, 2006
House Hearing Room 3 -- 9:05 a.m. or upon adjournment of the
Committee on Government Reform and Government Finance Accountability

Chairman Konopnicki called the meeting to order at 9:17 a.m. and attendance was noted by the secretary.

Members Present

Senator Burns	Representative Downing
Senator Verschoor	Representative Lopes
Senator Jack Harper, Cochair	Representative McComish
	Representative Adams
	Representative Konopnicki, Cochair

Members Absent

Senator Hale
Senator Miranda

Speakers Present

Dale Chapman, Performance Audit Manager, Office of the Auditor General
Alex Turner, Arizona Department of Administration Ex-Officio Member/Chairman, Governor's Regulatory Review
Council

OPENING REMARKS

Senator Burns opined that the function performed by the Governor's Regulatory Review Council (GRRC) is important, but having been in the regulated community for a number of years, he would like to share some observations. The fact that a Governor's council reviews rules and regulations is basically wrong, but unfortunately, the Legislature delegated all kinds of responsibility to agencies in the form of rules and regulation

over the years, which have the effect of law on the people that are regulated. The Executive branch is allowed to write, enforce and review rules through GRRC, so the "fox is watching the henhouse." A better system would be to have the Legislature conduct the review, and if an agency is getting out of hand as far as overburdening rules and regulations, there would be a much better chance of reeling that in; however, the separation of powers issue has arisen in that regard when attempts were made to establish a regulatory review committee at the legislative level in the past. When the policing agency writes and enforces the rules and regulations, the rules and regulations are often written for the convenience of the enforcer and not to protect the people as the top priority.

AUDITOR GENERAL REPORT ON THE GOVERNOR'S REGULATORY REVIEW COUNCIL

Dale Chapman, Performance Audit Manager, Office of the Auditor General, gave a slide presentation regarding the audit performed on GRRC including the following findings (Attachment 1):

- Review of rules consistent with statute.
- Reviews completed within statutory time frames.
- Review of five-year reports consistent with statute.
- State agencies generally satisfied with GRRC.

Senator Burns stated that he is concerned with the public comment portion of the process because he has been involved in sessions where hundreds of people showed up with the vast majority in opposition to the proposed rules, but the agency adopted the rules anyway. There is a strong communication link between the agency and GRRC, but he questioned what kind of communication is available to the public, especially the regulated community that has to comply with the rules and regulations being developed, and in some cases, lose their business by not being able to comply.

Mr. Chapman responded that a few comment periods were identified during the audit where the public has an opportunity to provide input on the proposed rules. First, there is an informal public comment period when an agency is drafting the rules where the agency can notify stakeholders of the process and solicit informal comments. Once an agency publishes the draft rules in the Arizona Administrative Register, there is a 30-day formal public comment period where an agency is required to receive and address all public comments received. Also, if the agency receives a request to hold a formal hearing regarding the draft rules during that time, the agency must do so.

Senator Burns said the agency is required to listen, but questioned what kind of requirements are in place to take action based upon public comments. Mr. Chapman replied that agencies are required to address formal comments received during the formal comment period through revision to the proposed rules, or note why it is not possible to revise the rules. Once the rules go to GRRC, one item reviewed is whether public comments were appropriately addressed.

Senator Harper asked if GRRC approval of a rule change submitted by an agency to give grants to an exclusively gay or lesbian organization would be considered consistent or allowable with state statutes or the Constitution. Mr. Chapman replied that the audit was limited to reviewing GRRC's compliance with the statute and did not include review of any specific rules or topics.

Mr. Chapman indicated to Mr. Downing that while drafting proposed rules the agency is responsible for drafting an economic impact statement, which GRRC reviews to ensure that it is generally accurate, describes the probable costs or benefits of the rule and the probable effect on small business, state revenue and a few other items. The audit di

not include a review of the specific economic impact statements the agencies prepared, but did include a review of GRRC's review of those statements. GRRC retains an economist to review the statements and the reviews were found to be consistent with GRRC's statutory mandate.

In response to Mr. Downing, Mr. Chapman said he did not hear any comments from consumers or others that the statements may not reflect the full scope of the impact of a rule nor is he familiar with any attempt to change the composition of the seven-member council to reflect appointments by the Legislature and the Governor.

Mr. Chapman advised Mr. Adams that GRRC's customer feedback referenced in the audit refers to agencies that submit rules to GRRC for review. As far as he knows, no survey is done with the regulated community to solicit opinions on GRRC's rule-making process.

PRESENTATION BY THE CHAIRMAN OF GOVERNOR'S REGULATORY REVIEW COUNCIL

Alex Turner, Arizona Department of Administration (ADOA) Ex-Officio Member/Chairman, Governor's Regulatory Review Council, noted that of the six appointed members, two are legislative appointees. There is one ex-officio member, an ADOA representative, who acts as chairman. There are legislative appointees, one appointed by the Speaker of the House, currently the Vice-Chairman, who is Stan Barnes. The second member is appointed by the President of the Senate, which is Marc Osborn. A small business advocate is appointed by the Governor, which is Yvonne Hunter. In addition, three public members are appointed by the Governor, Chuck Blanchard, Sam Coppersmith and Chris Thomas. He clarified that the ex-officio chairman is automatically the director or assistant director of ADOA.

Mr. Turner related to Mr. Downing that most GRRC members recuse themselves in situations where there would be a statutory conflict or an appearance of impropriety. For example, he would not vote on anything relating to ADOA regardless of whether or not he is involved. He advised Senator Verschoor that the terms of the council members are staggered. The two legislative appointees are on holdover as their terms expired in January 2006, and two gubernatorial appointees expire in January 2007. The terms are for three years.

Senator Verschoor asked if all state agencies formulate rules through GRRC. Mr. Turner said all agencies not included in the list of exemptions are subject to rule review by GRRC. Some agencies exempted include the Arizona Board of Regents, the Arizona Department of Education and certain agencies are given exemptions for a specific period of time. For example, the School Facilities Board received a two-year exemption when it was created, and subsequent to the two years, must go through the GRRC process. Other agencies have specific programs that are exempted, such as certain programs at the Arizona Health Care Cost Containment System. The only review exempt agencies would be subject to review if a member of the public requests a superior court review.

Senator Burns remarked that he misspoke in his opening comments when he said the Legislature does not conduct review. There is a joint Regulatory Reform and Enforcement Study Committee that reviews, but can only report and suggest, and has no authority to make changes.

Senator Verschoor asked if any agencies, other than those that are exempt, do not go through GRRC. Mr. Turner responded that there is a mechanism in statute so if a member of the public believes an agency is ignoring its rule making responsibilities or attempting to administer a particular program by means of policy when the policy should be in rule and subject to the GRRC process and public comment, that person can write a letter to the agency director who has a statutory time period in which to respond. If the member of the public is dissatisfied with the

determination, it can be appealed to GRRC, which would ultimately decide if the agency's actions should be subject to rule-making.

When Senator Verschoor asked about the Game and Fish Department and the National Guard, Mr. Turner said he does not know off hand if Game and Fish has any exemptions, but a large number of the agency's rules go through GRRC. As to the National Guard, military affairs have a certain number of exemptions. He believes a review was conducted indicating there may be a collision between the National Guard making rules and following mandate rules by the U.S. Department of Defense.

Senator Burns noted that Mr. Turner said a member is appointed to the council by the Speaker and a member is appointed by the President, but according to the web page for the council, the President and Speaker submit a list of three people from which the Governor chooses, so the Governor actually appoints all six members. The web page also says the members serve at the pleasure of the Governor, so even if those members are chosen from the list provided by the President and Speaker, the Governor can remove the members.

Mr. Downing asked if there have been any complaints that the economic impact studies do not sufficiently cover the impact on affected parties and how improvements can be made.

Mr. Turner said that has occurred. If a problem is found with an economic impact statement, the agency is given the choice of correcting it before potentially being shut down in a public meeting or going forward and taking a chance. There is a lot of back and forth discussion in the 90-day period that GRRC staff utilizes to address deficiencies or questions that come up in the rules, the analysis of the public comment or the economic impact statement, which is reviewed by an economist on staff. The economist writes a formal memo for the official record as to whether or not the agency statement adequately addresses the statutory requirements, which is primarily the impact on small business and whether the value of the rule outweighs the impact.

Mr. Downing asked if there is a mechanism to provide feedback to the Legislature if an ambiguity is discovered in statutory language during discussions with an agency. Mr. Turner responded that it depends on how serious the ambiguity is. If the agency has the ability to make the rule, he does not believe there is any communication to the Legislature, but if it is serious enough to call into question, GRRC would communicate to the agency that the rule cannot be made or the agency is taking a chance because GRRC will have a problem with it. If attorneys on GRRC staff address the ambiguity as minor, the attorneys will point it out in a memo that is placed in the official record stating the issue for the council, and the council must address whether or not the agency has the statutory authority to go forward with the rule.

Mr. Downing indicated that he agrees with Senator Burns that public input is a concern and asked how improvements can be made. Mr. Turner replied that the Council tends to bend over backwards to hear public concerns and on numerous occasions asked an agency to discuss certain issues brought up in council meetings by members of the regulated community. The council has the ability to postpone consideration of a rules package until the next meeting. In fact, at the last regularly scheduled council meeting, concerns were raised by the public about a fairly significant environmental rule relating to air quality, so the rule package was pulled off the regular meeting agenda and GRRC held a special meeting to negotiate with industry members. Four of the five major stakeholder provided input while the fifth stakeholder remained neutral. GRRC tries to facilitate that, if possible, but ultimately, it reviews rules for compliance to the statute and does not review policy decisions behind the rules; therefore, GRRC is obligated to go with whatever policy the agency makes as long as the agency obeyed the statutes. If the agency makes a mistake, an amendment to the rule will be presented to GRRC later.

As far as making improvements, he added that he does not know how any legislative change could require a agency to pay more attention to public comment. The issue would be how to handle an instance where the agency disagrees with a segment of the regulated public, which is a very difficult problem he does not know how to resolve.

Senator Verschoor asked if GRRC ever repeals rules from agencies. Mr. Turner answered that is the purpose of the five-year review whereby the agency reviews its rules and decides which are archaic or need to be changed or repealed; in fact, a significant portion of the 1,183 rules in the last fiscal year were repealed.

DISCUSSION/RECOMMENDATIONS

Senator Burns remarked that although the system is flawed, self-imposed by the legislative body, GRRC has an important function, so he supports continuing the agency because it shines some light on the process and gives the public an opportunity to point out problems within the process. There is also the Regulatory Reform and Enforcement Study Committee, and he has had some contact from the regulated community about requests that may go before that committee in the future. The Members need to keep their eyes and ears open as to how the GRRC process could be improved based on input from the regulated community through that particular committee.

~~Mr. Downing surmised that part of the reason for delegating to the agencies is because the Legislators are in such a hurry making legislation, so GRRC is essentially the quality control section. He recommended finding some mechanism so that in instances where there is disagreement between an agency and the public, information can be provided to the Legislature, perhaps through the regulatory committee Senator Burns mentioned, so Legislators do not have to hear about issues from a disgruntled constituent.~~

Senator Burns recommended that some mechanism be put in place to alert the Legislature, especially on controversial issues that come up in the middle of the process, i.e., the public comment portion.

Chairman Konopnicki opined that this has been a healthy discussion that pointed out some things that need to be addressed, but does not negate moving forward with 10-year continuation of the agency. Excellent suggestions were made.

Senator Harper moved that the Committee of Reference recommend a 10-year continuation of the Governor's Regulatory Review Council.

Senator Burns stated that based on the discussion relative to feedback of public comment, the motion should include direction to staff to research the possibility of improving the information flow between the public comment portion of the process back to the Legislature.

Senator Harper added that the motion should include Senator Burns' suggestion to direct staff to research the possibility of improving the information flow between the public comment portion of the process back to the Legislature. The motion carried.

Without objection, the meeting adjourned at 10:13 a.m.

Linda Taylor, Committee Secretary
December 1, 2006

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk.)

----- DOCUMENT FOOTER -----

SENATE GAR AND HOUSE GRGFA
COR SUNSET OF THE GOVERNOR'S
REGULATORY REVIEW COUNCIL

2

November 29, 2006

----- DOCUMENT FOOTER -----