

**GOVERNOR’S REGULATORY REVIEW COUNCIL (GRRC)
MINUTES OF THE
FEBRUARY 24, 2015 STUDY SESSION**

The Governor’s Regulatory Review Council study session was held on **Tuesday, February 24, 2015**, at **9:00 a.m.**, at the Arizona Department of Administration, 100 N. 15th Avenue, Third Floor Conference Room, Phoenix, Arizona.

PRESENT:

Council Chair:	Bret Parke
Council Member:	Connie Wilhelm
Council Member:	Warde Nichols
Council Member:	Lori Daniels
Council Member:	Michael Preston Green

GRRC Staff Attorney:	Scott Cooley
GRRC Staff Attorney:	Christopher Klemminich
GRRC Intern:	Patricia Grant

ABSENT:

Council Member:	Marc Osborn
Council Member:	Jason Isaak

CALL TO ORDER:

Council Chair Parke called the Study Session to order at approximately 9:00 a.m.

DISCUSSION OF MINUTES:

Council Meeting Minutes 2/3/2015:	No Discussion
Special Council Meeting Minutes 2/11/2015:	No Discussion

DISCLOSURE OF CONFLICTS OF INTEREST:

None

DISCUSSION AGENDA:

D. Five-Year-Review Reports for Discussion:

- 1. INDUSTRIAL COMMISSION OF ARIZONA (F-14-0903)**
Title 20, Chapter 5, Article 2, Self-Insurance Requirements for Individual Employers and Workers’ Compensation Pools Organized under A.R.S. §§ 11-952.01(B) and 41-621.01

Scott Cooley gave a report on the legal analysis for this agenda item.

Christopher Klemmich gave a report on the economic impact analysis for this agenda item.

2. INDUSTRIAL COMMISSION OF ARIZONA (F-14-0904)

Title 20, Chapter 5, Article 1, Workers' Compensation Practice and Procedure

Scott Cooley gave a report on the legal analysis for this agenda item.

Christopher Klemmich gave a report on the economic impact analysis for this agenda item.

Council Member Michael Preston Green commented: GRRC Staff indicated they have a minor concern involving one rule and so do I. I do not understand how we can go from "shall" to "permissive" in terms of looking at a guide for the evaluation of permanent impairment. A bible for doctors, in terms of evaluating permanent impairment, has always been the American Medical Association Guide and now all of a sudden we are seemingly leaving that open to whatever standard. I am interested as to why?

Stephen Ball for the Industrial Commission responded that there was a Supreme Court case last year and at issue was whether or not the Commission was unlawfully delegating rulemaking to the American Medical Association ("AMA") by using the AMA guides. The Supreme Court noted that the language is permissive so there is no unlawful delegation. That is the main reason why the agency intends to keep it as permissive.

Council Member Michael Preston Green posed a follow up question: So if it is permissive, what does the Industrial Commission call it? What rule do they follow? It strikes me that if you don't want to delegate to the AMA you should develop your own rule which indicates the standard by which the evaluation is done.

Stephen Ball for the Industrial Commission responded to Council Member Green's comment: Doctors should follow the AMA guides and most, if not all, do. There are cases where the AMA guides may not address that particular issue, in which case the doctors can come up with another kind of standard or test to follow.

3. ARIZONA DEPARTMENT OF REVENUE (F-15-0102)

Title 15, Chapter 2, Subchapter A, General and Administrative; Article 1, Definitions and General Provisions; Article 2, General Accounting Provisions; Subchapter B, Withholding; Article 1, Withholding by Employer; Article 2, Withholding as Payment of Tax for Employee; Subchapter C, Individuals; Article 1, Payment and Collection of Tax; Article 2, Additions to Arizona Gross Income; Article 3, Subtractions from Arizona Gross Income; Article 4, Deductions; Article 5, Credits; Article 6, Nonresidents; Subchapter D, Corporations; Article 1, General; Article 3, Subtractions from Arizona Gross Income; Article 4, Multistate Division of Income; Article 5,

Business and Nonbusiness Income; Article 6, Property Factor; Article 7, Payroll Factor; Article 8, Sales Factor; Article 9, Departure from Standard Apportionment and Allocation Provisions; Article 10, Credits; Subchapter E, Tax-Exempt Organizations; Article 1, Organizations Exempt from Tax; Article 2, Denial of Exempt Status; Article 3, Returns of Exempt Organizations; Subchapter F, Estates and Trusts; Article 1, Returns; Subchapter G, Partnerships; Article 1, Taxation of Partnerships

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

Chairman Parke asked whether the tax forms are the operative documents and that is why with the inconsistencies with statute that the agency is not seeking any changes with regard to the adjusted gross income and deductions?

Christopher Klemminich responded to Chairman Parke's comment: Yes, I believe that is correct. They are enforcing what was put into statute.

Rory Wilson for Arizona Department of Revenue also responded to Chairman Parke's comment: The tax payers go to the forms, instructions and also rulings the agency puts out. The rules are occasionally used by corporate tax payers and tax preparers will sometimes go to those rules, but generally speaking, the agency relies on the forms and instructions.

Chairman Parke confirmed that the forms and instructions are updated with the statutory language but the rules are inconsistent.

**4. ARIZONA STATE LAND DEPARTMENT
BOARD OF APPEALS (F-15-0104)**
Title 12, Chapter 5, Article 23, Board of Appeals

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

5. ARIZONA BOARD OF FINGERPRINTING (F-15-0105)
Title 13, Chapter 11, Article 1, Board of Fingerprinting

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

6. ARIZONA STATE LAND DEPARTMENT (F-15-0201)
Title 12, Chapter 5, Article 20, Common Mineral Materials; Article 21, Oil and Gas Leases

Patricia Grant gave a report on the legal analysis for this agenda item.

Christopher Klemmich gave a report on the economic impact analysis for this agenda item.

Chairman Parke noted in the proposed action that it says "R12-5-2106 - repeal the rule." Is there an opportunity to just let the rule expire since this is the Five Year Rule Review process?

Christopher Klemmich responded to Chairman Parke: Some agencies are hesitant to allow rules to expire because they do not want to interfere with the rulemaking moratorium and Executive Order 2015-01.

Chairman Parke: I think it is a question for follow up with the agency. Currently the moratorium also requires agencies to review rules for repeal before September 1, 2015 and so it seems consistent to me.

Patricia Grant: The agency informed me they were waiting for additional instructions from the Governor's Office.

7. ARIZONA DEPARTMENT OF TRANSPORTATION (F-15-0202)

Title 17, Chapter 4, Article 5, Safety

Patricia Grant gave a report on the legal analysis for this agenda item.

Christopher Klemmich gave a report on the economic impact analysis for this agenda item.

Chairman Parke asked GRRC staff regarding R17-4-507. The agency's report states it appears more stringent than federal law and then it mentions it as "no longer enforced". Is there another opportunity for expiration? The report states "in addition the department did not complete 507 because the subject matter is now regulated by statute" and it also says "there is redundancy in the rule since A.R.S. § 28-3158(F) already prohibits the use of a person's social security number as the person's identification number". Chairman Parke directed GRRC staff to inquire about that rule.

8. ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-15-0303)

Title 13, Chapter 2, Article 1, General Provisions; Article 2, Agency Licenses; Article 3, Registration Certificates; Article 4, Regulation

Scott Cooley gave a report on the legal analysis for this agenda item.

Christopher Klemmich gave a report on the economic impact analysis for this agenda item.

9. ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS (F-15-0304)

Title 2, Chapter 9, Article 1, General Provisions

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

E. CONSIDERATION AND DISCUSSION OF RULES:

**1. ARIZONA DEPARTMENT OF AGRICULTURE
OFFICE OF PEST MANAGEMENT (R-15-0304)**

Title 4, Chapter 29, Article 1, General and Administrative Provisions; Article 2, Certification, Registration and Licensure; Continuing Education; Article 3, Pest Management; Article 5, Recordkeeping and Reporting

Amend: R4-29-102, R4-29-103, R4-29-202, R4-29-203, R4-29-204, R4-29-207,
R4-29-208, R4-29-304, R4-29-307, R4-29-308, R4-29-501, R4-29-503

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

F. ADJOURNMENT

Council Chair Parke adjourned the study session at approximately 10:16 a.m.

Respectfully submitted,
/S/epc
GRRC Program Specialist