

**GOVERNOR’S REGULATORY REVIEW COUNCIL (GRRC)  
MINUTES OF THE  
MARCH 31, 2015 STUDY SESSION**

The Governor’s Regulatory Review Council study session was held on **Tuesday, March 31, 2015**, at **9:00 a.m.**, at the Arizona Department of Administration, 100 N. 15th Avenue, Third Floor Conference Room, Phoenix, Arizona.

**PRESENT:**

<b>Council Chair:</b>	Bret Parke
<b>Council Member:</b>	Lori Daniels
<b>Council Member:</b>	Michael Preston Green
<b>Council Member:</b>	Jason Isaak
<b>Council Member:</b>	Marc Osborn (arrived at 9:05)
<b>Council Member:</b>	Connie Wilhelm
<b>GRRC Staff Attorney:</b>	Scott Cooley
<b>GRRC Staff Attorney:</b>	Christopher Klemminich

**ABSENT:**

<b>Council Member:</b>	Warde Nichols
<b>Attorney General Representative:</b>	Christopher Munns

**CALL TO ORDER:**

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

**DISCUSSION OF MINUTES:**

<b>Council Meeting Minutes 3/3/2015:</b>	No Discussion
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**DISCLOSURE OF CONFLICTS OF INTEREST:**

None

**DISCUSSION AGENDA:**

**D. Five-Year-Review Reports for Discussion:**

- 1. ARIZONA DEPARTMENT OF AGRICULTURE (F-15-0301)**  
Title 3, Chapter 6, Article 1, Marketing

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

**2. ARIZONA DEPARTMENT OF AGRICULTURE (F-15-0302)**

Title 3, Chapter 1, Article 1, Administration; Article 2, Practice and Procedure Contested Cases and Appealable Agency Actions; Article 3, Public Participation in Rulemaking

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

**3. ARIZONA RADIATION REGULATORY AGENCY (F-15-0307)**

Title 12, Chapter 1, Article 2, Registration, Installation and Service of Ionizing Radiation-Producing Machines; And Certification of Mammography Facilities

**Scott Cooley** gave a report on the legal and economic impact analysis for this agenda item.

**Council Member Isaak** commented regarding the inconsistent cross-reference noted in R12-1-208.

**Mr. Cooley** acknowledged Council Member Isaak's comment and noted the matter for follow up with the agency.

**4. ARIZONA DEPARTMENT OF VETERANS' SERVICES (F-15-0308)**

Title 4, Chapter 40, Article 1, Definitions; Article 2, General Provisions; Article 3, Application and Admission Process; Article 5, Resident Support; Article 6, Resident Responsibilities and Conduct; Article 7, Involuntary Resident Discharge; Article 8, Resident Trust Fund; Article 9, Appeal Process

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

**Council Member Osborn** commented as to the timing of the agency's request for a rulemaking exemption.

**Mr. Klemnich** responded to Council Member Osborn's comment: The agency reports it will request an exception from the Governor's office by June 2016.

**Council Member Osborn:** In the future, agencies should include in their report both when they are going to request an exception and the target date for actually getting the rulemaking completed.

**5. ARIZONA BOARD OF BEHAVIORAL HEALTH EXAMINERS (F-15-0401)**

Title 4, Chapter 6, Article 1, Definitions; Article 2, General Provisions; Article 3, Licensure; Article 4, Social Work; Article 5, Counseling; Article 6, Marriage and Family Therapy; Article 7, Substance Abuse Counseling; Article 8, License Renewal and Continuing Education; Article 9, Appeal of Licensure or License Renewal Ineligibility; Article 10, Disciplinary Process for Unprofessional Conduct; Article 11, Standards of Practice

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

**Council Chair Parke** asked for confirmation that the Board is on target for making the rule changes referenced in the report.

**Mr. Klemnich** responded to Bret Parke's comment.

**Council Member Isaak** asked whether rules promulgated under exempt rulemaking come up in the next five-year-review and will have an associated EIS?

**Mr. Klemnich** responded that the rules promulgated under exempt rulemaking would be reviewed although an EIS would not be prepared.

**Council Chair Parke** further responded that exempt rulemaking allows for an agency to make rules without an EIS but five-year-review reports now require even exempt rules to be reviewed.

**Scott Cooley** also responded that a fee rule done under an exemption is good for two years unless an agency gets permission from Council to continue to use it or unless the agency did a rulemaking to put the fee rules permanently in place pursuant to A.R.S. § 41-1008, in which case the fees would be reviewed and there would be an EIS associated with that.

**Council Chair Parke:** With regard to Mr. Klemnich's comment on the EIS, this is the five-year-review he is referencing, so the economic impact of the changes is not assessed. They will be part of the stakeholder process through the November rulemaking process.

**Council Member Osborn** asked about the interplay between agencies that have a rulemaking exemption and the Governor's moratorium (Executive Order 2015-01)?

**Mr. Klemnich** responded: The Board is going to be requesting an exception from the Governor's office shortly and I would imagine they will cite the fact that these rules need to be done by November 1<sup>st</sup> in order to be in compliance with statute as one of the grounds for getting an exception.

**Council Chair Parke:** The moratorium also includes a requirement that even in a situation where it is mandated by statute to make rules, an agency has to seek an exception from the moratorium.

**Council Member Osborn:** So in those cases, if the Governor's Office wanted to request the agency do a full EIS as a condition for getting their approval for an exempt rulemaking, they could do that?

**Mr. Klemminich** responded to Council Member Osborn's comment.

**6. ARIZONA DEPARTMENT OF TRANSPORTATION (F-15-0402)**  
Title 17, Chapter 5, Article 5, Motor Carrier Financial Responsibility

**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 ENVIRONMENTAL QUALITY (R-15-0204)**  
Title 18, Chapter 2, Article 7, Existing Stationary Source Performance Standards

Repeal: R18-2-733, R18-2-733.01

Amend: R18-2-701, R18-2-734

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

**2. RADIATION REGULATORY AGENCY-MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS (R-15-0302)**

Title 12, Chapter 2, Article 1, General Provisions; Article 2, Application and Certification of Technologists; Article 3, Licensing Time-Frames; Article 4, Schools of Practical Radiologic Technology; Article 5, Nuclear Medicine Technologist; Article 6, Practical Technologist in Bone Densitometry

Repeal: R12-2-104, R12-2-201, R12-2-202, R12-2-203, R12-2-204, R12-2-205, R12-2-206, R12-2-207, R12-2-301, R12-2-401, R12-2-402, R12-2-403, R12-2-404, R12-2-405, R12-2-406, Article 5, R12-2-501, R12-2-502, R12-2-503, R12-2-504, R12-2-505, R12-2-506, Article 6, R12-2-601, R12-2-602, R12-2-603, R12-2-604, R12-2-605

Amend: R12-2-101, R12-2-102, Article 2, Article 3, Article 4

New Section: R12-2-104, R12-2-201, R12-2-202, R12-2-203, R12-2-204,  
R12-2-205, R12-2-206, R12-2-207, R12-2-208, R12-2-301,  
R12-2-302, R12-2-303, R12-2-304, R12-2-305, R12-2-401,  
R12-2-402, R12-2-403, R12-2-404, R12-2-405, R12-2-406

**Scott Cooley** gave a report on the legal and economic impact analysis for this agenda item.

**Council Chair Parke** commented regarding mention of information of fee requirements. There are no substantive changes to fees?

**Mr. Cooley** responded that this rulemaking does not include any fee changes as the fees are controlled by statute.

**3. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION  
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS  
(R-15-0303)**

Title 4, Chapter 33, Article 1, General; Article 2, Nursing Care Institution  
Administrator Licensing; Article 3, Administrator-In-Training Program; Article 4,  
Assisted Living Facility Manager Certification;

Amend: R4-33-101, R4-33-108, R4-33-203, R4-33-208, R4-33-302,  
R4-33-401, R4-33-402, R4-33-407, R4-33-408

New Section: R4-33-212 and R4-33-411

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

**Council Chair Parke:** I would note from the EIS, there were 392 duplicate certificates to 225 managers, so that universe appears to be in the 170- range of positions that may need an additional appointment.

**Mr. Klemminich:** Correct. The Board believes it is less than that, but that is the largest possible number.

**4. ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY  
(R-15-0305)**

Title 4, Chapter 36, Article 4, Permissible Consumer Fireworks

Amend: R4-36-401

**Scott Cooley** gave a report on the legal and economic impact analysis for this agenda item.

**Council Chair Parke** directed Mr. Cooley to confirm with the agency that there were no inquiries or complaints that arose out of the typographical error of the date of the proceedings.

**Council Chair Parke** reported to Council as to the status of the GRRC economist position given the hiring freeze imposed on the state agencies and specifically the Department of Administration.

**Council Member Green** asked whether it is legally required for GRRC to have a staff economist?

**Council Chair Parke:** The requirement is that the EIS is prepared by the agencies and it is summarized in a memorandum which makes it easier for the Council to get through the department's materials. But as each memorandum notes, and I support this language: "GRRC staff reviewed the EIS and make the following comments. They are made to assist Council in its review and may be used as the Council determines". The extent of the review that is required under law arguably can be met by staff, whether an attorney or an economist, in certifying compliance that they have provided the information that is required to be reviewed for the rulemaking or 5YRR. With regard to substance, that is the Council's purview and that is within the Council's discretion to determine whether that EIS should be returned to the agency with specific examples of what else should be included in the EIS to meet Council approval.

**Council Member Osborn:** Over the long term, getting that position filled is important because cost-benefit is such a core element, especially when we get into more contentious rule packages. The whole statute is set up to say: Do the costs outweigh the benefit? Have we picked the most cost-effective option?

**Council Chair Parke:** I invite you to express any of your concerns or requests through the regular channels. You can submit them through our staff and that will be on the record. You can submit them anywhere else you see fit.

**Council Member Osborn** suggested the possibility of using an economist on contract.

**Council Member Isaac** suggested the possibility of using an economist intern.

**Council Member Isaac** asked about whether there is still an approximately one year time lag for the Secretary of State to get rules published into the Code?

**Mr. Cooley** confirmed that is still the case due to staffing levels at that agency.

**Council Member Isaac** asked if there is a way for GRRC to be of further help to get information disseminated to the general public or to the Secretary of State's office?

**Council Member Osborn** suggested inviting the Secretary of State or her staff to a future meeting to have a discussion about how to streamline that process.

**Council Members Isaac** and **Green** further commented on the Secretary of State Code publications process.

**Council Chair Parke:** The Register publishes those rules that have been approved for the general public and that is probably why the priority is on the Register as opposed to the Code because that is the newest material coming out. So, in the vein you are talking about, could it be done more expeditiously, and could GRRC and Secretary of State try to work out something to get materials posted more quickly, that is a possibility, but the Register serves the purpose to which are you alluding, which is get the materials out there before it is Codified. What happens is the packages that we review and approve are submitted for publication. A standard publication window is about 3 weeks, so that is when they format, publish, bind, all the things you have to do logistically.

**Council Member Isaac** commented that his comments are focused towards, for example, people affected by the Behavioral Health Examiners package, who may not know to look at the Register.

Additional comments were made by **Mr. Cooley**, **Council Member Green**, and **Council Chair Parke** regarding the Secretary of State website and Code publishing backlog.

## F. ADJOURNMENT

**Council Chair Parke** adjourned the study session at approximately 10:28 a.m.

Respectfully submitted,  
*/S/epc*  
*GRRC Program Specialist*