

**GOVERNOR'S REGULATORY REVIEW COUNCIL (GRRC)
MINUTES OF THE
SEPTEMBER 29, 2015, STUDY SESSION**

The Governor's Regulatory Review Council study session was held on **Tuesday, September 29, 2015**, at **10:00 a.m.**, at the Arizona Department of Administration, 100 N. 15th Avenue, Conference Room 300, Phoenix, Arizona.

PRESENT:

Council Chair:	Bret Parke
Council Member:	Lori Daniels
Council Member:	Connie Wilhelm
Council Member:	Jason Isaak
Council Member:	John Sundt
Council Member:	Brenda Burns (via telephone)
GRRC Staff Attorney:	Scott Cooley
GRRC Staff Attorney:	Chris Kleminich
GRRC Intern:	Kara Kerker
GRRC Staff Assistant:	Dolores Habre

ABSENT:

Council Member:	Michael Lofton
Attorney General Representative:	Christopher Munns

CALL TO ORDER:

Council Chair Bret Parke called the Study Session to order at 10:00 a.m.

Council Chair Parke introduced the newest Council Member John H. Sundt

DISCUSSION OF MINUTES:

Council Meeting Minutes 9/1/2015:	No Discussion
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DISCLOSURE OF CONFLICTS OF INTEREST:

None

DISCUSSION AGENDA:

D. Five-Year-Review Reports for Discussion:

1. INDUSTRIAL COMMISSION OF ARIZONA (F-15-0802)

Title 20, Chapter 5, Article 8, Occupational Safety and Health Rules of Procedure before the Industrial Commission of Arizona

Scott Cooley gave a report on the legal and economic analysis for this agenda item. Council Member Isaak asked if Mr. Cooley knew when they would apply for the exemption. Mr. Cooley responded he did not know as it was not in the report. The representative from Industrial Commission confirmed there is no date; however the sooner the better.

2. ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-15-1002)
Title 7, Chapter 3, Article 1, Rulemaking; Article 2, Adjudications

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

3. ARIZONA DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS (F-15-1003)
Title 8, Chapter 3, Article 1, Military Installation Fund

Kara Kerker gave a report on the legal and economic analysis for this agenda item.

E. CONSIDERATION AND DISCUSSION OF RULES:

1. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-15-0902)
Title 18, Chapter 14, Article 3, Permit and Compliance Fees

New Article: Article 3
New Section: R18-14-301
New Section: R18-14-302
New Section: R18-14-303

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

Council Member Burns commented she spoke to a few legislatures and the Director of the Joint Legislative Budget Committee. She wanted to make sure she wasn't missing anything. She spoke with Richard Stavneak and he told her it would make more sense to get legislation deposit it the dedicated funds first and that Mr. Stavneak also mentioned there's a request in the 2017 budget for a new state drinking water fee of \$1.2M but that's not guaranteed and absolutely no assurance of any of this.

Trevor Baggiore, Director of Water Quality Division of ADEQ commented that the agency has not approached the leadership of JLBC or the Legislature as it's not their role as a Department. They've spoken with their Governor's Office Advisor and continue to try. Ultimately, ADEQ does have statutory authority to charge these fees.

Council Member Burns asked if Mr. Baggiore knows how much General Fund money ADEQ gets overall. Mr. Baggiore responded ADEQ currently receives nothing.

Council Member Burns commented that Mr. Stavneak pointed out that currently there is no General Fund money. Which continues to reinforce to Council Member Burns that all these people paying fees is to boost the General Fund. Council Member Burns is having a difficulty getting around that and legislation should run first. Why not run a bill that addresses both, sets

up the fund and imposes the fee? That makes a lot more sense to Member Burns and the Mr. Stavneak agrees with that.

Council Member Wilhelm as Mr. Baggione whether discussions with Governor's Office if they have indicated that taking money from the General Fund be money they collected would be in their budget.

Mr. Baggione responded there have been specific discussions about transferring those funds. The discussion with the Governor's Office have that possibility but at this time it's not a proposal in budget.

Council Member Isaak asked what the emergency is. He understands there's a process, there's timing. What would the negative impact be if the Council were not to pass this next week? What is the impact directly to ADEQ if this does not happen? But instead happens after legislative action next year or at a time where these stakeholders know that their fees are actually going to a service.

Mr. Baggione responded that the FY 2016 budget cycle the Department is not in a emergency state. There are currently other funds that are being used to subsidize this program. So people who are not getting the benefit of this program are currently paying for it. The Department does not foresee this as sustainable model because they believe it should a fee for service model as the rest of their Department has gone to and also because the funding they are currently receiving is questionable every year. They would prefer a stable funding source so they can ensure this important program is paid for in the long term and they can plan accordingly. The Department is going to continue to encourage those that make law and change law to make this change because it make sense for the Department and it's a fiscally sound policy so people are paying for what they should be paying for. They are getting service on the backs of other fees are collected for.

Council Member Isaak commented about whether the other fees are set properly and could they be reduced...benefitting the General Fund is great for everybody but for those that are fee for service, that would a hard check to write if he was the stakeholder. He's heard nothing from the stakeholders, however, he's heard from the Department that the Governor's Office has granted this package.

Council Member Burns referenced the 32 comments from individuals about these fees going into the General Fund.

Chris Kleminich confirmed there were 99 overall that the Department received and 32 were related to the General Fund issue.

Council Member Burns commented the money would go to the General Fund forever. The issue should be made at the Legislature so we can get it on the right track, if it's doable.

Council Member Isaak commented on conditional approval about whether they could pass this on condition of an appropriation or passage of a bill.

Scott Cooley clarified that statutes don't provide for conditional approval.

Chairman Parke commented the Council had talked about delaying an effective date.

Council Member Burns commented a delaying effective date doesn't mean anything if nothing has been done.

Council Member Sundt asked about agencies collecting fees for service, does a portion of the fees go to the General Fund and come back in form of an appropriation.

Mr. Baggio responded that based on his experience in air and water quality the answer is no. It does not go to the General Fund and then come back to the agency.

Chairman Parke gave clarification because of an ancient statute that allows it to go to the General Fund because they had a General Fund appropriation, so the answer is yes on that front. There's also appropriation level, you may have a fee for service fund that attains a certain level but the agency only has an amount that they are authorized through appropriation to spend. There could be additional monies in that fund that were not spent as part of the appropriation to feed that fee for service program.

Council Member Wilhelm commented that Legislatures, on numerous occasions spent those funds on every agency.

Mr. Baggio commented that the Department does have statute authority for this rule. Their intent is to use the processes that are available to them to get that law changed. The draft language has been submitted. This is the only part that did not get changed to the fee for service model the rest of the Department has. We're trying to be consistent with their model and think it is appropriate to approve this rule as it is now as they work through the other pieces of changing the legislation. If it's proposed a delayed effectiveness the Department would not oppose that if it was after the legislative session it would give them a chance of possibility of getting the statute changed during the next legislative session. Also, he will be able to attend the October 6, 2015 meeting, however, his Deputy Director Randy Maddis will represent ADEQ at the meeting.

2. ARIZONA STATE BOARD OF BARBERS (R-15-1001)

Title 4, Chapter 5, All Articles

Amend: R4-5-101
Amend: R4-5-102
Amend: R4-5-103
Amend: R4-5-104
Amend: R4-5-106
Amend: R4-5-107
Amend: R4-5-108
Amend: R4-5-109
Amend: Article 2
Amend: R4-5-201
Amend: R4-5-202
Amend: R4-5-203
Amend: R4-5-301
Amend: R4-5-302
Amend: R4-5-303

Amend: R4-5-304
Amend: R4-5-401
Amend: R4-5-402
Amend: R4-5-403
Amend: R4-5-404
Amend: R4-5-405
Amend: Exhibit 1
Amend: Exhibit 2
Amend: R4-5-406
Amend: R4-5-407
Amend: R4-5-408
Amend: R4-5-409
Amend: R4-5-411
Amend: R4-5-501
Amend: R4-5-502
New Section: R4-5-305
New Table: Table 1
Renumber: R4-5-109
Renumber: R4-5-204
Repeal: R4-5-105
Repeal: R4-5-410

Chris Klemnich gave a report on the legal and economic analysis for this agenda item.

Chairman Parke commented on the proposed fee increase was not approved by the Governor's Office. Did the original fee proposal include the service fee for the non-sufficient funds.

Chris Klemnich answered, yes the Governor's Office was aware of that.

Chairman Parke asked about the exception approval appeared to grant the authority to continue to pursue the NSF fee as opposed to additional fees.

Chris Klemnich read the exact language of the approval...the Governor's Office is not approving the Board's rulemaking proposal to increase fees, which is talking about the Board's existing fees.

Council Member Burns asked if this was standard.

Chris Klemnich answered yes.

Chairman Parke commented on the amendment to Rule 107 citing lack of personnel. That due to a lack of personnel they're decreasing the number of times they must be inspected annually. Is there any rational behind that question.

Sam Barcelona, Assistant Director of the Barber Board. At one time they were inspecting twice a year. Some shops are inspected more than that because they were cited a number of times. So they wanted to limit their inspections to all shops and focus their time on the shops who were in violation. It would give them more time to conduct inspections to their schools.

Chairman Parke commented on Rule 108 overhauling licensing timeframes...there's not a lot of rationalization or justification in the rulemaking materials. For example 7 days to 105 days is a 15

time increase. What is your compliance in the past or what time of analysis did you make to judge that 15 time increase.

Mr. Barcelona stated they really don't know where the number 105 factored into this and neight does their rule maker. The reason for expanding the days is to make sure the shops' documentation is in compliance with State standards. He reiterated he didn't know where the number 105 came from.

Council Member Sundt commented 105 days is pretty extreme to not know where that came from.

Council Member Wilhelm asked how many does the Board actually license.

Chris Klemich responded, the Board told him 250 shop licenses are issued annually.

Council Member Sundt commented about the increase of fees paid and increasing the time people wait to be licensed, decreasing the number of inspection, increasing the amount of infrastructure requirements and increasing the number of places. If you close a location or move a location you have to reapply for licensure. There's a lot going on here that seems to be generating an increase and income and decrease in inspection and increase in requirements. He'd really like to know where increase and wait times came from and what the rational was for that.

Chairman Parke commented that a business who might have gotten a license in 7 days now has the potential to not get their license any sooner than 105 day. With no justification of the increase in days it's difficult to swallow the economic impact.

Chris Klemich commented the Board believes it's complying with its 7 day timeframe because the process is that someone who applies for a shop license get a receipt of some kind that allows them operate and that occurs within the 7 day window. The inspection still has to come forth and the actual license still has to be issued. The 7 day timeframe was initially a mistake for the shop licenses because it common sense.

Mr. Barcelona commented on the size of the staff for the Barber Board of 2.8 staff who have to tour the whole state and deliver the licenses with inspections. Sometimes they have to Yuma or Safford and back and by the time they get back to the central office there's another license there and still have a whole state to cover.

Council Member Burns mentioned that the two points Chairman Parke commented on were the same two concerns she has and would hope to see some amendments or good rational sent to the Council prior to the Council voting.

Council Member Sundt asked if there's a centralized record keeping in each location.

Maryjane... responded the record keeping the Council is referring to is on the schools keeping a record of their students, but also, the schools send records to the Board's central location of every student and keep records of monthly hours for each student. Also the 2.8 inspectors have to divide their time in the office to take care of administrative problems, they're not 100% inspectors.

Council Member Sundt asked about the change on Subsection I, if the Board make a finding it's to be effective immediately, is there an opportunity for a rehearing or review. What's the appeals process then, is it civil litigation?

Chairman Parke responded it would be OAH. Meaning you have to exhaust...

Council Member Isaak as what the plan going forward regarding Rule 108? He knows how antiquated the rules and consistent they are to barbering, it's a unique profession in its history and heritage. He wants to make sure that the bulk of this rule is done. He wants to target what they have concern with and if they have to carve those out or make amendments. In terms of the timeframe on 108, he's be really interested in right sizing those. Based on the Board's abilities are.

Chairman Parke commented that during the week between the Council Meeting and the majority of the comments is regarding 107 and 108 the Council agrees on the lack of information on some of those. He asked the Board to come up with a more analytical justification to support a timeframe the Council can support. The justifications needs to be mapped out to make the Council understand in a form that logical as to why they're making people wait and what's compelling the Board to move it to that. Administrative functions are a factor. You can work with GRRC staff and have minutes to refresh your memory. If you have other questions, please follow up with staff. You have a week to rationalize were these are at now and see if that's the best director for your Board, if not, you can talk about amendments and staff will help identify what is a substantial change or what might change the outlook their rule package based on the outcome on your analysis.

3. ARIZONA GAME AND FISH DEPARTMENT (R-15-1002)

Title 12, Chapter 4, Article 4, Live Wildlife

Amend: R12-4-401
Amend: R12-4-402
Amend: R12-4-403
Amend: R12-4-404
Amend: R12-4-405
Amend: R12-4-406
Amend: R12-4-407
Amend: R12-4-408
Amend: R12-4-409
Amend: R12-4-410
Amend: R12-4-411
Amend: R12-4-412
Amend: R12-4-413
Amend: R12-4-414
Repeal: R12-4-415
Repeal: R12-4-416
Amend: R12-4-417
Amend: R12-4-418
Repeal: R12-4-419
Amend: R12-4-420
Amend: R12-4-421
Amend: R12-4-422
Amend: R12-4-423
Amend: R12-4-424
Amend: R12-4-425

Amend: R12-4-426
Amend: R12-4-427
Amend: R12-4-428
Amend: R12-4-430

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

Chairman Parke commented in terms of consumers, the noted impacts are central to two areas. Those associated with financial liability for a private individual or businesses held by the Department. He did not note any significant...and attachment 1 gives a breakdown of those fees.

Mr. James Badman asked to speak and indicated opposition to the rule package specifically Rules 406 and 426.

Scott Cooley explained Rule 406 is the rule that lists restricted live wildlife and 426 is the rule on non-human primates, which is being beefed up because non-human primates carry dangerous diseases and are dangerous themselves.

Chairman Parke commented that Mr. Badman is also opposed to transgenic and primate bans and wanted non-human primates de-listed from the ban. The Department considered those particular non-human primates and said no. During the process of considering comments and going through rulemaking there was an infant that was injured by a non-human primate which was considered as well in the rulemaking.

Scott Cooley commented that the information was shared with him by the Commission's attorney with respect of one of species where an infant had been injured by one of the primates listed in Mr. Badman's comments.

James Badman commented that he works for ASU and is an Associate Director of Animal Care and that was going to be a huge regulation for them and he appreciates the consideration. Additional concerns came up later. The complete ban on transgenics is the three biggest users of transgenics. The largest being research and second being agriculture and the third being industry, which is biotech. I think it would have significant impact. A sweeping ban on transgenics has an impact on wildlife because they would have to breed with wildlife. He thinks there needs to further insight on it and he's happy to get the information to them. Regarding the primates, the disease factor is of concern such as Herpes V, is found in calves too.

Council Member Isaak asked if for clarification on the rules to be promulgated, is Mr. Badman suggesting that there would be no more animal research.

Mr. Badman responded the one of his jobs at ASU is to maintain the wildlife permits, so the transgenic one he would have to apply for a holding permit and track every transgenic animal. It's almost impossible, especially with zebra fish used in research, it would be impossible to track them. You're talking thousands and thousands of rodents that are transgenics.

Chairman Parke asked the Department to comment on some of issues and concerns raised.

Pat Krotch, Field Supervisor for Game and Fish, he served as team lead for Article IV review process would like to respond to Mr. Badman's comments. Article 406 is the restricted species rule, it's been under analysis for the species pointed out by Mr. Cooley. Many species are not restricted

in the State, most of them. They can be taken from the wild and possessed as pets. Restriction is not a ban, restriction is essentially requires a special license and some reason to hold the animal. They can be possessed under a variety of special licenses administered by the Department as outlined in Article IV. Species can also be held under exemption such as hunting and fishing licenses, lots of lizards, snakes, small animals and things like that you could take and possess under a hunting and fishing license. There's a grandfather clause under 425 which comes into play, if we place an additional animal under restriction that people currently hold legally, in many cases, such as the proposed primate change they would be able to continue to hold those animals legally under that exemption. So we wouldn't be running around taking people's monkeys away. There are many times that they'll take animals off this list depending on an analysis or management change. A current example is hedge hogs are proposing to come off the list and be available for the pet trade. They license zoos and research facilities and without this they really cannot ensure that there are impacts to the wildlife population. They did address Mr. Badman's transgenic issue. They did make that concession and adjustment and so that under research the exemption for facilities will exist for them not to be restricted status.

Chairman Parke commented this idea of thousands of mice that are being used, thousands of the zebra fish they multiply quickly. You made a concession so you know that is not a concern even though he commented Council about today.

Mr. Krautch answered that was correct, that concession has been met and outlined by Mr. Cooley.

...but it's not an exception for agriculture or industry.

Mr. Krautch commented he understood they do not have jurisdiction over agriculture or domestic animals so that would not be an issue from the Game and Fish Department.

Chairman Parke asked what the regulatory scheme for those animals if the commenter is confused or...I see nods, he asked for affirmative language to reflect into the minutes.

Mr Krautch commented the current proposed change is to list transgenic species with the exemption with those utilized under research facilities license. The effect would be for potential animals in the pet trade that become created through transgenic procedures would be restricted so the Department could evaluation their impact to native wildlife population.

Chairman Parke commented about the pet market and the research facilities but you said you don't regulate agriculture and biotech. In other words, in your opinion to transgenic dairy cows, which is a domestic animal and it's in agriculture use, that's not a restriction they would have to be concerned about.

Council Member Isaak commented about transgenic chicken and blue grosbeak. That chicken is still livestock and even though it could impact a species you do have jurisdiction over this rule does not contemplate regulating that transgenic livestock.

Chairman Parke commented that Mr. Badman's comment about the animal at large where there are already municipal codes but Chairman Parke wanted clarification that those municipal codes would still be affective with regard to unpredictable animals.

Mr. Krautch commented that they want to open up communicate and a dialogue with non-human primate owners to be able to alleviate the issue of someone has a primate, it has a problem, the

person gives it to another person so now you don't have any communication with the person that has the primate because they're not restricted. Then there are several incidents of primates that are constantly causing a public safety threat. We don't have the ability to get out ahead of this without putting them under a status where they can develop a data base to communicate with those people.

Mr. Badman commented about the municipal codes for the repeat offenders and according to Sheriff Joe's site he has housing for primates. He has ability, according to his website, to house...and it shouldn't fall on Game and Fish, an officer would make that decision.

Council Member Sundt, regarding wildlife, Game and Fish is not regulating domestic animals but I see regulations in there referring to grass carp, that being located in the watershed, maybe it's technically wildlife that are being farmed. So I'm concerned about the blurred edges. Do they have any suggestion as to what he could read or look at jurisdictionally or charter of the Commission.

Mr. Krauth commented that the rules are strictly tied to the protection of native species or native habitat. The example of grass carp, they are known to take over reservoirs and destroy habitat for native fishery species. There was a need from the community from businesses to build a control on grass carp that cannot reproduce. These are carefully managed and stocked and certified as ...in order to meet the need of businesses and still protect the native resource.

Scott Cooley commented that in some of the rules references the Department of Agriculture. Agriculture regulates cattle, sheep, horses the domestic animals where the money is. The Department of Agriculture has some regulations related to transgenic. That would be their jurisdiction...

Chairman Parke thanked Mr. Badman for working through Member Lofton to get to the Council and reminded everyone they have a week between this meeting and the action meeting and encouraged Mr. Badman to think about the comments that were made today by the Department, re-establish what his position is, bring comments to the action meeting and asked him to focus on some things that haven't been made in accommodation so there's not a blurring again of these items and try to get some clarity between him and Game and Fish on the domestic/commercial animal operation interface and how it affects...so they can come to a good decision for this package and try to get the best information before the Council to do that.

4. ARIZONA GAME AND FISH DEPARTMENT (R-15-1003)

Title 12, Chapter 4, Article 2, Licenses, Permits, Stamps, Tags

Amend: R12-4-202

Chris Klemnich gave a report on the legal and economic analysis for this agenda item.

5. ARIZONA STATE RETIREMENT SYSTEM BOARD (R-15-1004)

Title 2, Chapter 8, Article 1, Retirement System, Defined Benefit Plan; Article 4, Practice and Procedure Before the Board; Article 5, Purchasing Service Credit; Article 6, Public Participation in Rulemaking; Article 7, Contributions not Withheld

Amend: R2-8-104
Amend: R2-8-115
Amend: R2-8-118
Amend: R2-8-120
Amend: R2-8-123
Amend: R2-8-126
Amend: R2-8-401
Amend: R2-8-501
Amend: R2-8-601
Amend: R2-8-701

Chris Kleminich gave a report on the legal and economic analysis for this agenda item.

F. EXPEDITED RULES (CONSENT AGENDA):

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-15-0901)
Title 18, Chapter 2, Article 3, Permits and Permit Revisions; Article 9, New Source Performance Standards; Article 11, Federal Hazardous Air Pollutants

Amend: R18-2-210
Amend: R18-2-333
Amend: R18-2-901
Amend: R18-2-1101
Amend: Appendix 2

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

G. DISCUSSION OF THE COUNCIL'S 2016 CALENDAR

Chris Kleminich commented to Council about the draft calendar that has been presented to them, noting the Study Sessions are being kept at the Council's request to generally be held on Tuesdays except after a state holiday they will be held on Wednesdays. Also, staff is proposing submit final materials to the Council on a Friday, which will give Council two weekends to review the materials rather than one week. If Council has any comments on the calendar let staff know prior to the Tuesday meeting to incorporate those into the calendar.

Chairman Parke adjourned the meeting at 12:29 p.m.

Respectfully submitted,
/S/dh
GRRC Executive Staff Assistant