

Testimony Thursday October 28<sup>th</sup>, 2010

Little Hoover Commission

I wish to thank the Commission for requesting me to discuss the current state of Arizona's regulatory review structure. I am Allen Malanowski, Economist for the Governor's Regulatory Review Council for the State of Arizona ("GRRC"). I have served as the Economist for GRRC since 1996.

GRRC is an independent agency of the State of Arizona originally established in 1981 by Executive Order. GRRC was substantially reformed in 1995 with the reorganization of the regulatory process, removal of the Attorney General's Office from the process, and the positioning of GRRC as the final approval body for rules and regulations for over 100 state agencies. Arizona has chosen to use the term "rules" for its regulations.

The support of the business community has been pivotal to the development of GRRC, and increases of our responsibilities have come in response to perceived encroachment of regulation. Recent changes from this year, which is the first year in a decade with significant changes in the rulemaking processes, include a further 60 day opportunity for comment at the final rulemaking stage and more information required as a part of the Economic, Small Business, and Consumer Impact Statement which I refer to as an EIS.

GRRC has a very independent role in the process, with six members from outside state government. Administration of GRRC is supported by the Department of Administration which provides the Council Chair. For functional purposes, the Department of Administration's nominee provides the staff, including oversight of the hiring process. Our current Chair is the Assistant Director of Legal Services, who oversees GRRC and several unrelated responsibilities, including providing legal services to the other functions of the Department of Administration, including the State's Risk Management and Purchasing offices. Our functions at GRRC are considered remote from the Governor's Office, and we have very little contact with the Governor's Office in this administration at my level.

Shortly after the 1995 reorganization of GRRC, with the current placement at the end of the regulatory review process, I was hired at GRRC as the economist. Arizona's process is quite simple: Agencies provide notice of intent to do a rulemaking, publish the proposed rules with a brief estimated economic impact statement (often consisting of a few paragraphs), and solicit comments by the public and regulated community. The proposing agency may or may not conduct a hearing.

The agency then provides the notice of final rulemaking for consideration by Council. This is the point where my role as a member of Council staff officially begins. The economic impact statement ("EIS") then arrives as a part of the notice of final rulemaking, and I then begin to perform my analysis. My analysis consists of all the statutory elements of the statute governing the EIS set forth by A.R.S. § 41-1055.

I interact with the proposing agency to ensure the EIS contains all the requisite statutory elements, ask questions to ensure the EIS is functionally accurate, and review any comments from the public.

I have provided some detailed examples of my review of the included sample EIS's for your review, and as you can see, I try to provide a very concise summary of the primary economic impact to Council for their consideration in deciding to approve the rulemaking. Council's responsibility provides that it shall not approve a rulemaking unless the benefits of the rulemaking outweigh the costs in total for all the affected parties in the state.

I provide my memo to Council summarizing the economic impact along with any comments that I have regarding the economic impact. At the Council meeting, Council then takes my comments on the record, considers any public comment, asks the proposing agency to explain any remaining questions, and then votes on the rulemaking. If Council approves, the rulemaking is final and filed with the Secretary of State and goes into effect either immediately, or after 60 days depending on the urgency of the rulemaking. There is a separate process for emergency rulemaking outside of our authority. There is a further process for a five year review of rules, with review by Council of all the rules subject to Council purview. The entire process on a fast timeline comprises six months, but can last years for complex rulemakings. Most rulemaking is completed within one year of starting the process.

At this point in time, after two years of budget crisis, the rulemaking process is currently operating on an as-needed basis due to state-wide budget constraints under a legislatively imposed rulemaking moratorium. We have shrunk from six full-time staff members (administrator, three attorney analysts, one economist, and a project and programs specialist) to two attorney analysts, one economist, and a project and programs specialist. Right now we are currently processing 60% of the prior workload which comprised 80 rulemakings and 90 five year reviews per year. Currently, five year reviews comprise 70% of the workload, and rulemakings granted an exception from the rulemaking process comprise the rest of the workload.

I believe the only reason why the function has been preserved in state government is the experience of the remaining personnel--all the analysts have more than a decade in the office. We are still pursuing our traditional function of providing rulemaking education to agencies, because of the requirement that five-year reviews be held, and because agency personnel are being reassigned to the rulemaking process for agencies on an ad hoc basis, as turnover in state government is still running 15% per annum. Our experience allows us to provide a full training cycle approximately three times per year, and allows someone new to the process to attempt to make a rulemaking, along with staff's guidance.

With this overview, personnel coming into the rulemaking process receive six hours of training in small groups with the economist, and one of the attorneys, in two-hour segments. In my prepared materials, I provided my current training materials, and I use

these materials to train persons to provide a representative EIS. The personnel assigned to rulemaking by their respective agencies usually have a bachelor's degree, with certain agencies employing attorney's as part-time rule writers. There are several retired former state employees providing contract rulemaking services to the smaller agencies through open procurement contracts, with one of the prominent contractors being a retired GRRC administrator. Outside training for EIS creation, or indeed for basic rule writing training, is for the most part, nonexistent. These constraints, along with the fast timeline for rulemaking, and the constant loss of experienced staff comprise some of the greatest challenges to effective change and implementation of regulation in Arizona.

Agencies have, in the past, employed internal and external economists to prepare EIS's for rulemaking. I have had extensive experience with some of the consulting economists. Their primary complaint is about the short timelines for producing the initial EIS, and the short timelines for revision while under my review before final submission along with my analysis to Council. In most cases, personnel with an MBA, or no academic experience, are much more responsive than outside consultant economists to the exigencies of preparing a cogent cost/benefit analysis with sufficient detail for Council review under the constrained circumstances under which the review process currently operates.

In summary, while no process is perfect, after a long evolution, the EIS review has become a useful and respected part of the rule review process. The recent statutory changes included in my materials introduced a few minor new requirements that did not fundamentally change the functions of my responsibilities as GRRC Economist.