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September 3, 2024

Members of the Arizona Legislature

The Honorable Katie Hobbs, Governor

Ms. Elizabeth Alvarado-Thorson, Cabinet Executive Officer and Executive Deputy Director
Arizona Department of Administration

Ms. Jessica Klein, Council Chair
Arizona Governor's Regulatory Review Council

Transmitted herewith is the report, *Performance Audit and Sunset Review of the Arizona Governor's Regulatory Review Council*. This audit was conducted by the independent firm Sjoberg Evashenk Consulting, Inc. under contract with the Arizona Auditor General and was in response to a November 21, 2022, 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 within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Governor's Regulatory Review Council agrees with all the findings and plans to implement all the recommendations. My Office has contracted with Sjoberg Evashenk Consulting, Inc. to follow up with the Arizona Governor's Regulatory Review Council in 6 months to assess its progress in implementing the recommendations. I express my appreciation to Cabinet Executive Officer and Executive Deputy Director Alvarado-Thorson, the Council's members, Council Chair Klein, and Council staff for their cooperation and assistance throughout the audit.

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

Sincerely,

Lindsey A. Perry

Lindsey A. Perry, CPA, CFE
Auditor General

cc: Arizona Governor's Regulatory Review Council members



August 29, 2024

Lindsey A. Perry, Auditor General
2910 N. 44th Street, Ste. 410
Phoenix, AZ 85018

Dear Ms. Perry:

Sjoberg Evashenk Consulting is pleased to submit our report containing the results of the 2024 Performance Audit and Sunset Review of the Arizona Governor's Regulatory Review Council (Council). We conducted this audit on behalf of the Arizona Office of the Auditor General pursuant to a November 21, 2022, resolution of the Joint Legislative Audit Committee.

The objectives of this audit were to evaluate the Council's processes to meet statutory responsibilities to review new rules or rule amendments proposed by Arizona State agencies, and to review each agency's existing rules every 5 years to ensure that such rules remain necessary and effective. This report also provides responses to the statutory sunset factors and our recommendations for improvement.

We appreciate the professionalism and cooperation exhibited throughout the course of this audit by Councilmembers, Council staff, and the Arizona Department of Administration. Also, we thank you for the opportunity to have been of service to the Office of the Auditor General as it has been our pleasure to work with you and your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Skiles", is written over a light blue horizontal line.

George Skiles, Partner
Sjoberg Evashenk Consulting, Inc.

Arizona Auditor General

Performance Audit and Sunset Review of the Arizona Governor's Regulatory Review Council

September 2024



Arizona Governor's Regulatory Review Council (Council)

The Council has taken steps to meet some statutory responsibilities we reviewed but did not always notify agencies as required of 5-year review report deadlines, increasing the risk that ineffective or unnecessary rules remained in effect, and although it approved or denied proposed agency rulemaking packages we reviewed within statutorily required time frames, it lacked a process to track its compliance with these requirements and did not comply with some open meeting law requirements for executive sessions.

Audit purpose

To assess the Council's processes for meeting its statutory responsibilities to (1) review and approve an agency's proposed final rules and (2) schedule, review, and approve each agency's 5-year review of its rules, and to respond to the statutory sunset factors.

Key findings

The Council:

- Did not comply with statutory requirements for sending 90-day notices to agencies that their 5-year review reports were coming due for 5 of the 30 5-year review reports reviewed. Two factors impacted the Council's compliance: (1) data entry errors made by Council staff in its 5-year review report deadline calendar and notices sent to agencies, and (2) management oversight provided of Council staff was insufficient to detect the issues identified.
- Reviewed all 20 rulemaking packages sampled within the 120-day mandated time frame but lacked a process to track rule review requests submitted for review, increasing its risk of a rule not being reviewed timely.
- Complied with statutory quorum requirements for all 7 rules reviewed that became immediately effective.
- Did not ensure executive session recordings, which serve as meeting minutes, included statutorily required information, such as meeting date, time, place, or Councilmember attendance; and did not always notify those present at the meeting of the confidentiality requirements.

Key recommendations

The Council should:

- Review its current practices for fulfilling its statutory responsibilities related to 5-year review reports and implement additional management oversight to better ensure compliance and timely, accurate notifications.
- Develop written policies, procedures, and/or other guidance documents related to its recently implemented process to track rule review requests and its compliance with the 120-day requirement.
- Follow ADOA's open meeting law policies and procedures.

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Introduction

On behalf of the Arizona Auditor General, Sjoberg Evashenk Consulting has completed a performance audit and sunset review of the Arizona Governor’s Regulatory Review Council (Council). This performance audit and sunset review assessed processes for meeting its statutory responsibilities to review (1) new rules or rule amendments proposed by Arizona State agencies and (2) each agency’s existing rules every 5 years on a rotating basis to ensure that such rules are still necessary and effective. This report also provides responses to the statutory sunset factors.

History, mission, and key responsibilities

Established in 1981, the Council was charged with providing oversight and administrative efficiency in the rulemaking process for State agencies, boards, and commissions (agencies); to ensure consistency and compliance with existing statutes; and to ensure that stakeholders’ interests are considered as a part of the rulemaking process.¹

The Council’s primary responsibilities are to (1) review new rules or rule amendments proposed by Arizona State agencies, (2) review each agency’s existing rules every 5 years on a rotating basis to ensure that such rules are still necessary and effective, and (3) receive and consider petitions and appeals from members of the public related to rulemaking.

Each of these key responsibilities are discussed in more detail in the following sections.

MISSION

To serve Arizona’s citizens and stakeholders by reviewing agency regulations and rulemakings to balance protecting Arizona consumers with reducing unnecessary or unduly burdensome regulation while promoting public health, safety, and welfare. The Council strives to ensure all rules are clear, concise, effective, enforced as written, and consistent with other rules and statutes. The Council also serves as a resource to educate, and provide assistance related to, Arizona’s regulatory processes.

Source: Response provided by Council staff.

Key terms

Administrative rule: Agency statements of general applicability that implement, interpret, or prescribe law or policy, or describe an agency’s procedure or practice requirements.

Delegation agreement: A contract between an agency and a political subdivision that authorizes the subdivision to exercise certain powers or duties of the agency.

Economic, small business, and consumer impact statement: A statement submitted with proposed rulemakings that includes analysis of the proposed rule’s potential fiscal impact as well as impact on small businesses and stakeholders.

Final rule: A.R.S. §41-1001 defines final rule as “Any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-0126, and approved by [the Council] pursuant to sections 41-1052 or 41-1053, or approved by the attorney general pursuant to section 41-1044.”

Preamble: A document prepared in connection with rulemakings that contains detailed information about the rule and its background at every stage of the rulemaking process. The purposes of the preamble are to explain the administrative history of the rule, to summarize the purpose of the rule, to provide citations to statutory authority, and to list prior notices published in the Register. A.R.S. §41-1001(16).

¹ In 1981, Governor Bruce Babbitt signed Executive Order Number 81-3 and established the Council “to assure that administrative rules and regulations avoid unnecessary duplication and adverse impact upon the public.” In 1986, the Arizona Legislature codified the establishment of the Council in A.R.S. Title 41, Chapter 6, Article 5.

Rulemaking review

According to A.R.S. §41-1052(C), the Council has 120 days after receipt of an agency's rulemaking package, which should include the (1) rule, (2) preamble, and (3) economic, small business, and consumer impact statement, to review and approve or return an agency's proposed administrative rules. Specifically, A.R.S. §41-1052 requires the Council to ensure that no agency rule becomes effective unless:

1. The economic, small business, and consumer impact statement contains information and analysis required by statute.²
2. The economic, small business, and consumer impact statement is generally accurate.³
3. The probable benefits of the rule outweigh the probable costs of the rule and the rule provides the least burden and costs to persons regulated by the rule.
4. The rule is clear, concise, and understandable to the general public.
5. The rule is not illegal, inconsistent with legislative intent, or beyond the agency's statutory authority; and meets statutory requirements.⁴
6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.⁵
7. The rule is not a substantial change from the proposed rule and any supplemental notices.
8. The preamble discloses any study relevant to the rule that the agency reviewed and considered in the agency's evaluation of or justification for the rule.
9. The rule is not more stringent than a corresponding federal law unless allowed by statute.
10. If a rule requires a permit, the permitting requirement complies with statutory requirements.⁶

² A.R.S. §41-1055(B) lists 8 items that must be included in the economic, small business, and consumer impact statement, such as a cost benefit analysis of the proposed rulemaking and identification of who will be affected.

³ Pursuant to A.R.S. §41-1052(D)(2), the Office of Economic Opportunity assists the Council in its review of the economic, small business, and consumer impact statements. According to a presentation provided by the Office of Economic Opportunity to the Council on January 3, 2024, the Office's analysis includes (1) identifying the rules' stakeholders and how they are impacted, (2) ensuring the benefits of the rules outweigh the costs, and (3) ensuring the rules impose the least possible costs on those impacted.

⁴ A.R.S. §41-1030 states that (A) a rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute, and is made and approved in substantial compliance with statute; (B) an agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact; (C) an agency shall not base a decision regarding any filing or other matter submitted by a licensee on a requirement or condition that is not specifically authorized by a statute, rule, federal law or regulation or state tribal gaming compact; and (D) an agency shall not make a rule (1) under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule, (2) under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority, and (3) that is not specifically authorized by statute.

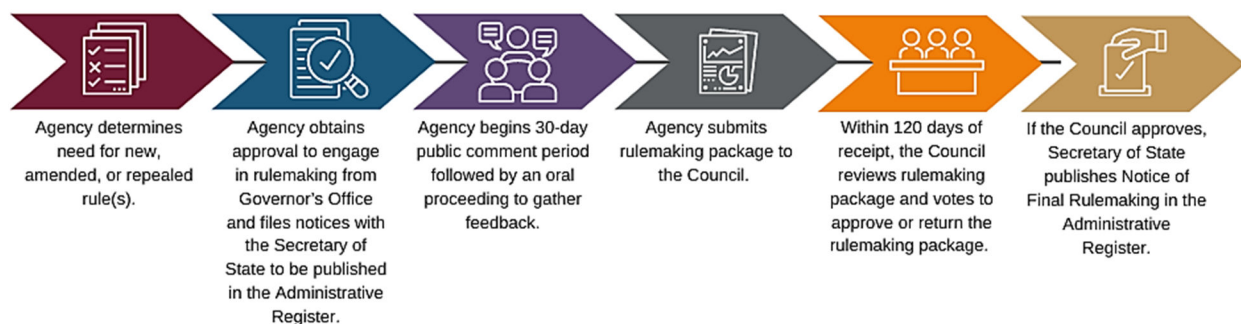
⁵ A.R.S. §41-1023(B) requires that agencies give members of the public the opportunity to submit written comments for 30 days after the proposed rulemaking is published.

⁶ A.R.S. §41-1037 requires that if an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit if the facilities, activities, or practices in the class are substantially similar in nature unless certain provisions apply as defined in A.R.S. §41-1037(A)(1 through 6).

To help ensure the timely review of rulemaking packages, the Council established a yearly schedule with monthly due dates for the submission of rulemaking packages and corresponding public meeting dates. If agencies submit their rulemaking packages on or before the indicated submission date, the rulemaking package should be ready for Council consideration on the corresponding public meeting date. For example, according to the Council's 2024 schedule, if an agency wanted the Council to review a rulemaking package at the February 6, 2024, public meeting, its proposed rules were due to Council staff by December 19, 2023. Likewise, if the agency had to revise the proposed rules after Council staffs' review, the revised rules were due to the Council by January 23, 2024.

See Exhibit 1 for a high-level overview of the rulemaking process.

EXHIBIT 1. ARIZONA ADMINISTRATIVE RULEMAKING PROCESS



Source: Auditor generated from rulemaking process on the Council's website.

Once an agency submits a rulemaking package to the Council, Council staff (1) reviews the rulemaking package to ensure required information and components are included, information is clearly and concisely presented, and rule(s) align with the agency's statutory authority; (2) works with the Arizona Office of Economic Opportunity to assess the accuracy of the economic impact statement; (3) works with the agency to make any necessary revisions prior to the rulemaking package being submitted to the Council; and (4) prepares a memo with staff's analysis and recommendation(s) for approval. One week prior to the public Study Session meeting, Councilmembers individually review the rulemaking package and memo. Councilmembers then discuss the rulemaking package and memo in a public Study Session meeting and then vote to approve or deny the rulemaking package in a subsequent public Council Meeting. If a rulemaking package does not contain the required information or the Council does not approve it, the Council returns it to the agency and asks for it to be resubmitted once the issues are resolved.⁷

5-year report review

Agencies are statutorily required to review their rules at least once every 5 years to determine whether any rule should be amended or repealed and to report the results of their reviews to the Council through the submission of a 5-year review report.⁸ As part of the review process, agencies must review their rules' effectiveness, legality, and impact, focusing on whether each rule achieves its objectives, is authorized by existing statutes, and aligns with the agency's policies. Additionally, agencies should analyze the rules'

⁷ A.R.S. §41-1052 (C) and (D) and 1 Arizona Administrative Code (A.A.C.) 6 Article 2 R1-6-206.

⁸ A.R.S. §41-1056 and 1 A.A.C. 6 Article 3.

probable costs against probable benefits, compliance with federal laws, and for newer regulations, adherence to specific permitting requirements.⁹ These reviews are intended to ensure agency rules are as beneficial and minimally burdensome as possible. Statute requires that the 5-year review report include written criticisms of the rule; estimates of economic, small business, and consumer impacts; and an assessment of the rule's impact on the State's business competitiveness.

Statute requires the Council to schedule a periodic review of each agency's rules, after which the Council must approve or return, in whole or in part, the agency's report.¹⁰ Although statute does not define periodic, in practice, the Council generally requires agencies to submit their 5-year review reports to the Council within 5 years from the date the rule was implemented or 5 years from the date the last 5-year review report was submitted. Additionally, statute requires the Council to send a written notice to the head of the agency whose report is due at least 90 days before the due date of the report.¹¹ Statute does not set a time frame for the Council to review each agency's report submission. Upon review of each agency's report, if the Council determines that the agency's report demonstrates that the rule is materially flawed, the Council has the statutory authority to require the agency to propose an amendment or repeal of the rule by a date no earlier than 6 months after the Council has determined the rule is materially flawed. If the Council accepts the agency's report and finds no material flaw with the agency's report, the current 5-year rule review cycle for the rule will end and the agency must repeat the process again in 5 years.¹²

Exhibit 2 provides a high-level illustration of the 5-year rule review process.

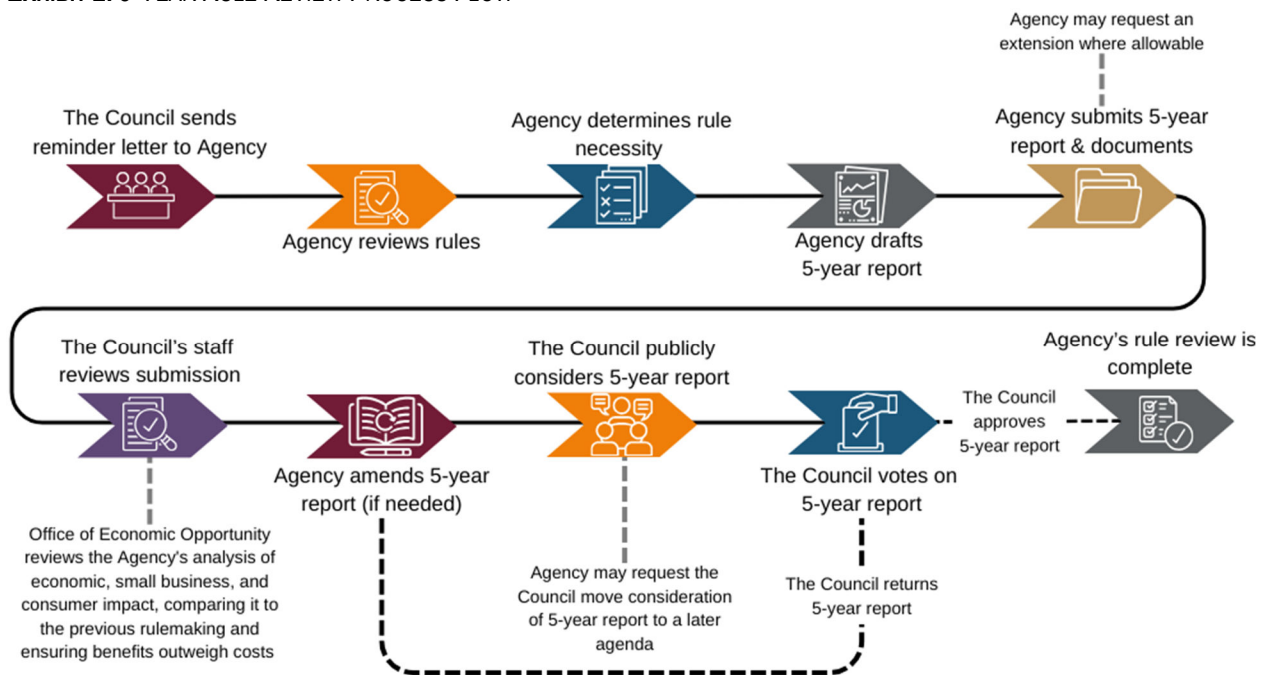
⁹ A.R.S. §41-1037 requires that agencies issue general permits where possible, unless prohibited by law, mandated by State statute, or not technically feasible, or the issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant. A general permit is a regulatory authorization for similar facilities or activities, issued by an agency to qualified applicants who meet specific requirements, requiring less information and no public hearing compared to individual permits.

¹⁰ A.R.S. §41-1056(C).

¹¹ A.R.S. §41-1056(L).

¹² The Council does not maintain records of how many agency reports are accepted and how many are determined to be materially flawed.

EXHIBIT 2. 5-YEAR RULE REVIEW PROCESS FLOW



Source: Auditor-generated from the Council's "Process for Five-Year-Review Report" process flow, interviews with Council staff, A.R.S. §41-1056, and 1 A.A.C. 6 Article 3 R1-6-303 (B).

If an agency needs more time to submit its 5-year review report, statute and rule provide for extension request mechanisms, whereby agencies may request rule review due date extensions. First, agencies may receive a one-time, automatic, 120-day extension after providing the Council with the reason for the extension.¹³ Second, if an agency completes a rulemaking that substantially revises rules scheduled for review within 2 years of the due date of the 5-year review report, the agency may request that the Council reschedule the report due date.¹⁴ Third, an agency may request an extension that is more than 120 days, but does not exceed one year.¹⁵

For any agency that fails to submit its 5-year review report, including submission of a revised report in instances where the Council returns a report to an agency, the agency's rules will expire. In such an event, the Council must:

1. Publish a notice in the next Arizona Administrative Register that states the rules have expired and are no longer enforceable;
2. Notify the Secretary of State that the rules have expired and that the rules are to be removed from the Arizona Administrative Code; and,
3. Notify the agency that the rules have expired and are no longer enforceable.¹⁶

¹³ A.R.S. §51-1056(I), 1 A.A.C. 6 Article 3 R1-6-303 (A).

¹⁴ A.R.S. §51-1056(H), 1 A.A.C. 6 Article 3 R1-6-301 (C).

¹⁵ 1 A.A.C. 6 Article 3 R1-6-303 (B)

¹⁶ A.R.S. §41-1056(J).

Afterwards, an agency would need to go back through the rulemaking process to re-establish the expired rules.¹⁷

Petitions and appeals

The Council is statutorily required to receive and consider hearing petitions and appeals from members of the public on various agency practices, such as an agency's decision to deny an individual's petition regarding whether an existing agency practice or policy constitutes a rule, the person filing the petition is or could be regulated by the rule, and the person filing is or could be required to obtain a license. All petitions and appeals must be submitted to the Council electronically and meet specific formatting requirements, and must include the following information:¹⁸

- The contact information of the person filing the petition or appeal.
- The name of the person being represented by the person filing (if applicable).
- The reason(s) for submitting the petition, including any relevant facts, laws, and statutory authority.
- The reason(s) why the Council should grant the petition.
- Any supporting documents relevant to the petition.

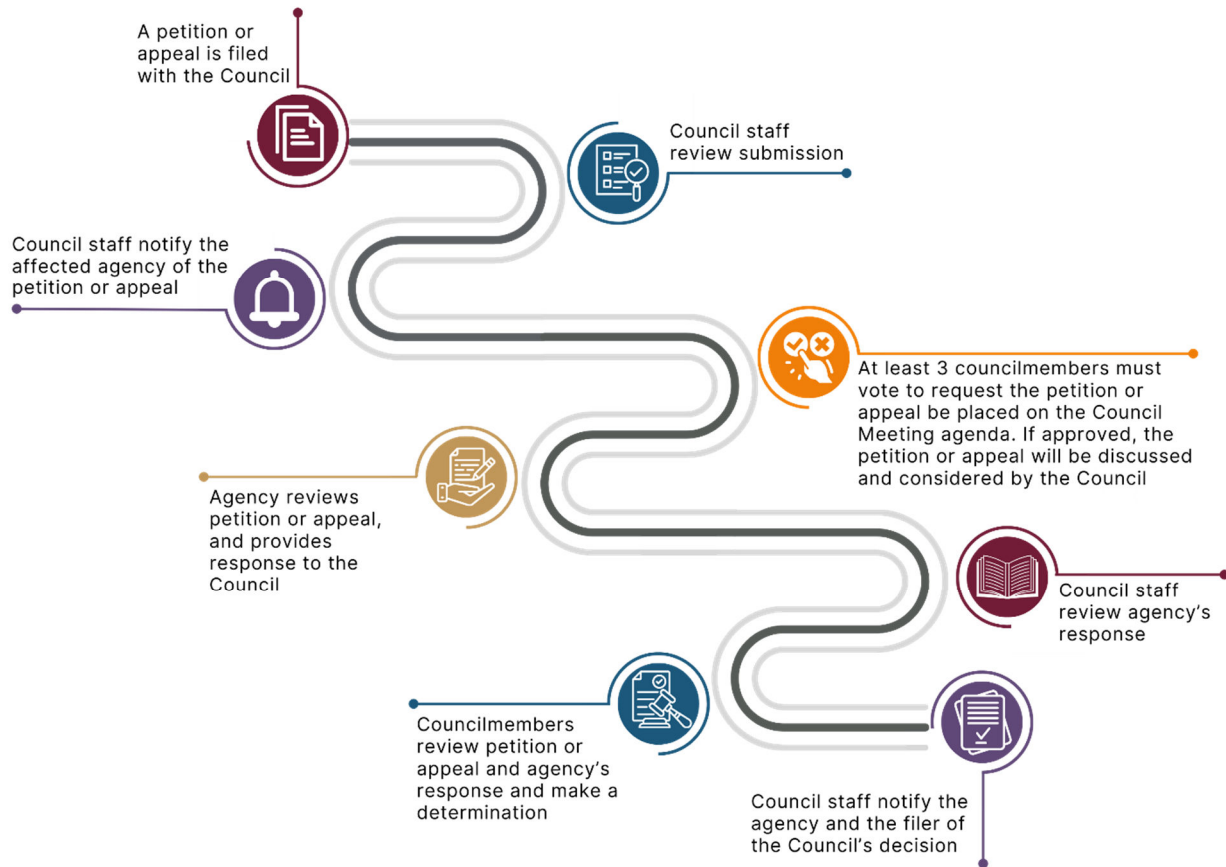
Once a petition or appeal is received, the Council generally follows a similar process to review the submission, as shown in Exhibit 3. After a determination is made, Council staff notify the agency and person or entity that filed the petition or appeal of the Council's decision on whether the petition or appeal is approved or denied.¹⁹

¹⁷ According to Council staff, there have been 7 instances since 2020 where rules were repealed, expired, or moved to a different location in the Administrative Code. However, the Council does not track the specific categories.

¹⁸ 1 A.C.C. 6 Article 4 R1-6-402.

¹⁹ If the Council approves the petition or appeal and determines that the rule should be modified or revised or declares the rule void, the Council must notify the affected agency and person filing the appeal/petition of the decision and send a letter with the reason for the decision and the date of the decision.

EXHIBIT 3: GENERAL PETITION AND APPEAL PROCESS FLOW



Source: Auditor-generated based on the Council's Standard Work Documents.

Council membership and staffing

The Council is established as a division within the Arizona Department of Administration (ADOA) and is composed of a 7-member Council. Six of the Councilmembers are appointed by the Governor for 3-year terms. The Council chairperson is the Assistant Director for Legal Services (General Counsel) of ADOA, who is an ex officio Councilmember and responsible for administering the Council and supervising its employees.²⁰

The composition of the Council must comply with the following requirements:²¹

- At least 1 member to represent the public interest.
- At least 1 member to represent the business community.
- At least 1 member who is a small business owner.

²⁰ A.R.S. §41-1051(A).

²¹ A.R.S. §41-1051(A).

- At least 1 member who is an attorney licensed to practice law in the State.
- One member from a list of 3 persons submitted by the President of the Arizona State Senate.
- One member from a list of 3 persons submitted by the Speaker of the Arizona House of Representatives.²²

As of May 2024, all 7 Councilmember positions were filled with individuals who met the requirements.

In line with the statutory requirement to meet at least once monthly, the Council meets twice per month: once for a Study Session and once for a Council meeting.²³ At the Study Session, Councilmembers meet with agency representatives, the public, and Council staff to discuss proposed rules and 5-year review reports, but the Council generally does not vote or take other legal action during Study Sessions.²⁴ The Council generally votes or takes other legal action on agenda items at the Council meeting following each Study Session.

The Council also employs 2 attorneys and a paralegal whose responsibilities include reviewing State agencies' rules submissions and related appeals; interpreting new and existing legislation and agency policy; researching laws, rules, and policies; facilitating public participation in the rulemaking process; training agency representatives in the rulemaking process; and collecting and reporting agency compliance with 5-year review report statutory requirements. As of April 2024, the paralegal position was vacant.

Revenues and expenditures

The Council receives its revenues from ADOA's State General Fund appropriation. As shown in Exhibit 4, in fiscal year 2024, the Council's budget totaled \$557,700. In addition, as shown in Exhibit 4, in fiscal years 2021 through 2024, most of the Council's expenditures or estimated expenditures were for payroll and related benefits and other operating.

²² Legislative nominees cannot be legislators.

²³ A.R.S. §41-1051(B).

²⁴ According to Council staff, although not typical, the Council does have the ability to take action, including having the ability to vote, at the Study Session. Our review of all rulemaking packages submitted between May 2023 and October 2023 and 18 5-year review reports approved between June 2021 and November 2012 did not identify any instances where this occurred.

EXHIBIT 4. SCHEDULE OF REVENUES AND EXPENDITURES FISCAL YEARS 2021 THROUGH 2024 [UNAUDITED]

	2021 (Actual)	2022 (Actual)	2023 (Actual)	2024 (Estimate)
Revenues				
State General Fund appropriations ^A	\$ 374,900	\$ 355,800	\$ 400,300	\$557,700
Total revenues	\$ 374,900	\$ 355,800	\$400,300	\$557,700
Expenditures				
Personal services and employee related	\$313,344	\$311,732	\$345,001	\$429,013
Professional and outside services	\$542	\$0	\$0	\$50
Travel	\$0	\$0	\$566	\$0
Other operating ^B	\$21,149	\$14,485	\$18,922	\$14,257
Noncapital equipment	\$0	\$0	\$0	\$1,328
Total expenditures	\$335,035	326,217	\$364,489	\$444,648
Excess of revenues over (under) expenditures	\$39,865	\$29,583	\$35,811	\$113,052

Source: Auditor-generated from unaudited financial information provided by the Council.

Note: ^A Revenues reflect portion of ADOA's annual appropriated expenditure authority ADOA internally budgeted for the Council from ADOA. ADOA does not receive a specific appropriation for the Council. Unspent allocations are returned to ADOA's General Fund appropriation.

^B Other operating includes expenditures such as postage and delivery charges, book subscriptions and publications, education and training costs, office supplies, software licenses, professional association dues, and telecommunication charges.

Sunset factors

Pursuant to A.R.S. §41-2954(D), the legislative committees of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of the Council. The sunset factor analysis includes related findings and recommendations.

Sunset factor 1: The key statutory objectives and purposes in establishing the Council.

The Council's key statutory responsibilities include:

- **Reviewing proposed rules**—A.R.S. §41-1052(C) requires the Council to review and approve or return an agency's proposed administrative rules within 120 days of receipt of the rule; preamble; and economic, small business, and consumer impact statement. Between January 2021 and December 2023, the Council received an estimated 175 proposed rulemaking packages for review.²⁵
- **Reviewing 5-year reports**—A.R.S. §41-1056(C) requires the Council 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. Between 2021 and 2023, the Council reviewed and approved 192 5-year review reports.
- **Receiving and hearing appeals**—the Council is also responsible for receiving and considering petitions and 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.²⁶ In fiscal years 2022 and 2023, Council staff reported that the Council received 3 total petitions or appeals.

Sunset factor 2: The Council's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

Although the Council reviewed rules sampled within the 120-day statutory time frame, it lacked a process to track the receipt, completion, and timeliness of its rules reviews to help ensure statutory compliance

A.R.S. §41-1052(C) requires the Council to review and approve or return an agency's proposed administrative rules within 120 days after receipt of an agency's rulemaking package.²⁷ However, the Council lacks a documented process to track rule review requests received or the timeliness of its review.

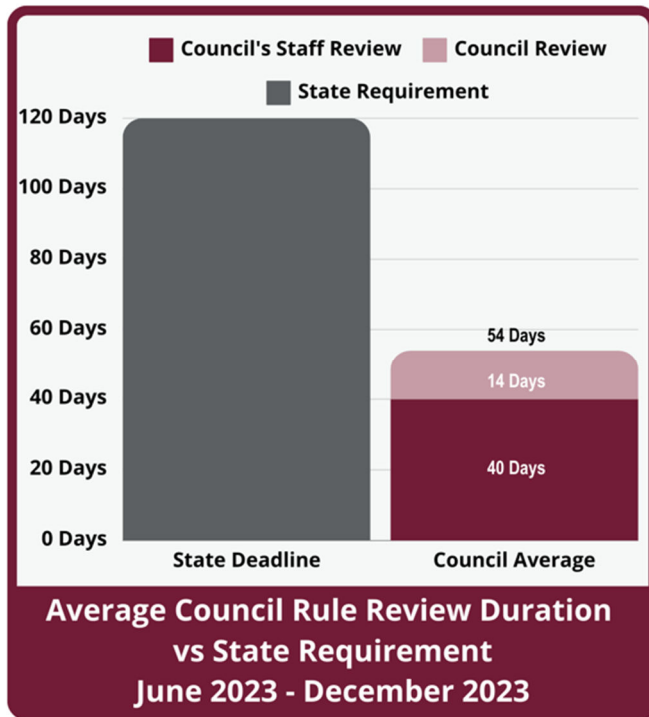
²⁵ The Council does not track rules submitted to the Council for review. To determine the universe of rules submitted, auditors reviewed the Council Study Session agendas to identify rules reviewed by the Council between January 2021 and December 2023 and compiled a universe of rules submitted for the Council's review.

²⁶ A.R.S. §§41-1008(G), 41-1033(E), 41-1033(F), 41-1033(G), 41-1052(B), 41-1055(E), 41-1056(M), 41-1056(N), 41-1056.01(D), 41-1081(F).

²⁷ Auditor benchmarking of other state agencies with similar responsibilities to the Council found that all 7 agencies sampled had rule review timelines between 30 and 90 days.

Instead, Council staff reported that Council staff monitor a central email inbox for rule review requests and generally schedules rules to be reviewed at the next Council meeting.

Our review of a random sample of 20 of the estimated 175 proposed administrative rulemaking packages the Council reviewed between January 2021 and December 2023 found that it completed its review and approval of all 20 within the 120-day time frame required by statute. The Council completed its review and approval of the 20 rulemaking packages we reviewed in an average of 59 days and completed all 20 in 97 days or less.



In addition, to assess the duration of each stage of the review process, we compiled a universe of all rulemaking packages submitted between June 2023 and December 2023 and obtained the dates each rulemaking package was reviewed by Council staff and the Council. During the 7-month period, the Council reviewed 47 rules within an average of 54 days, with the staff review generally taking 40 days and Council review and approval taking 14 days. In addition, the Council approved or returned all 47 rulemaking packages within the 120-day requirement.

Lastly, because the Council does not have a formal process for tracking rules submitted for review, we reviewed all rules submission emails the Council received in a sample of 3 months to assess whether the rule reviews were scheduled for the Council review.²⁸ Although

our review did not identify any instances where rules were not scheduled or reviewed within the 120-day time frame, because the Council did not track rule review requests received, it is at increased risk of missing rule review requests and noncompliance with statutory requirements. The vacancy of the Council paralegal position responsible for scheduling increases this risk.

When notified by the audit team in April 2024, the Council Chair reported that it was in the process of developing a procedure to track its rule review process. Further, according to Council staff, in May 2024, Council staff started including the Council's compliance with A.R.S. §41-1052(C) in its metrics reported to ADOA leadership and, in August 2024, the Council implemented a process to track rulemaking packages received; key dates interim steps of the review process were completed, such as the date Council staff completed their internal review, Study Session date, Council meeting date, and date of Council approval; and whether the Council complied with the 120-day requirement.

²⁸ Our review of 21 rule review requests submitted during January 2021, April 2022, and November 2023 found that all rules were scheduled for the Council review.

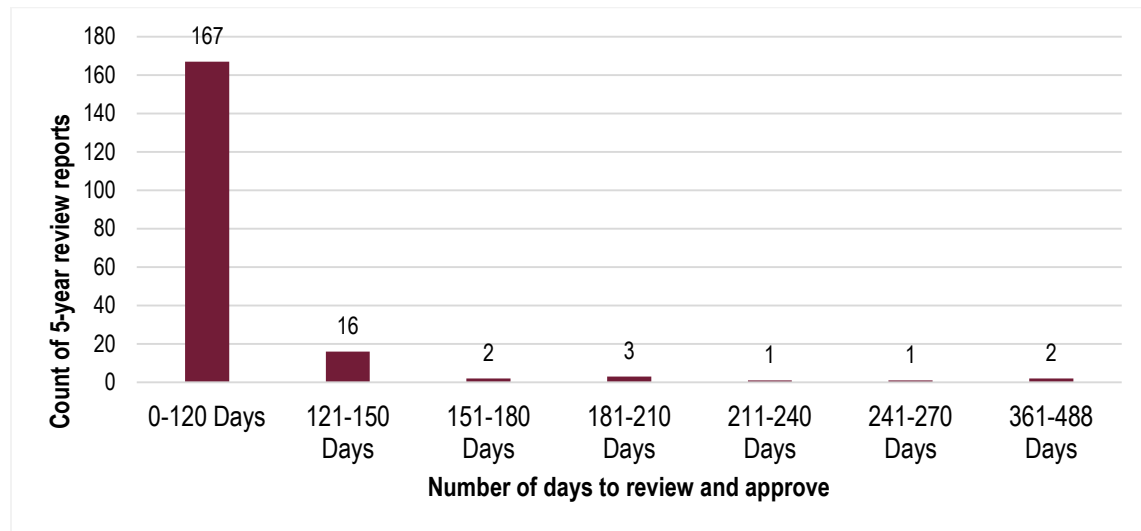
The Council complied with statutory quorum requirements for rules reviewed that became immediately effective

A.R.S. §41-1052(F) requires that if an agency rule is immediately effective, two-thirds of the Council's voting quorum present at the meeting must approve the rule.^{29, 30} Our review of 20 rules the Council reviewed between January 2021 and December 2023 found that 7 of the 20 rules selected for review were effective immediately. In all 7 instances, at least two-thirds of the quorum present at the meeting voted to approve the rules.

Some Council reviews of agency 5-year review reports exceeded 120 days

Of 192 reports the Council reviewed and approved between 2021 and 2023, the Council completed its reviews in an average of 87 days. However, we found that 25 reports (or 13 percent) took longer than 120 days, with durations ranging from 124 to 488 days, as shown in Exhibit 5.³¹

EXHIBIT 5. THE COUNCIL'S REVIEW AND APPROVAL TIME FOR 5-YEAR REVIEW REPORTS, CALENDAR YEARS 2021-2023



Source: Auditor-generated from Council records.

To identify why some of these reports were completed within 120 days and some took longer, we further analyzed a judgmental sample of 30 reports, of which the Council's review and approval for 9 reports took longer than 120 days.

²⁹ The number of Councilmembers required to approve the rule depends upon how many Councilmembers are present at the meeting. For example, if 4 Councilmembers are present (minimum required to meet quorum requirements), 3 of the 4 Councilmembers must approve. If all 7 Councilmembers are present, 5 of the 7 Councilmembers must approve.

³⁰ Pursuant to A.R.S. §41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the notice of final expedited rulemaking.

³¹ The Council has not established a time frame for conducting its review of 5-year review reports. In prior years, the Council had an informal timeline of 90 days, which aligned with its statutory requirement to review rulemakings at the time. Since then, the Council's rulemaking review timeline was amended to 120 days. As such, the audit applied the same time frame to assess the timeliness of the Council's review of 5-year review reports.

Based on discussions with Council staff, the primary cause for the delays identified for the 9 sampled reports was that the Council prioritized processing rulemakings over reviewing these reports.³² Specifically, Council staff reported that it must prioritize rulemakings because they have a statutory requirement to be processed within 120 days of receipt, while there is no such requirement for 5-year review reports.³³ Although Council staff reported that an influx of rulemakings received led it to postpone its review of 5-year review reports, the Council did not provide documentation to support this assertion. Further, because the Council did not track its rulemaking reviews, we could not assess whether the Council's practice to prioritize rulemaking reviews impacted the scheduling of its 5-year reviews.

The Council did not comply with Arizona Revised Statute and its rules related to five 5-year review reports, resulting in untimely notices

The Council is statutorily required to send a written notice to the agency at least 90 days prior to the agency's due date for its 5-year rule review report.³⁴ To support this process, the Council publishes a calendar on its public website with agency 5-year review report due dates that include reports due in the current fiscal year and upcoming 2 fiscal years. If an agency fails to submit its 5-year review report by the due date without being granted an extension, the Council is required to publish a notice in the Arizona Administrative Register and notify both the Secretary of State and the agency that the rule has expired. Our review found that for 2 out of 30 reports reviewed, sampled from the 192 reports the Council reviewed and approved between 2021 and 2023, the Council did not comply with 1 or more of these requirements. Specifically, we found:

- **The Council did not comply with statutory requirements related to sending 90-day notices for 2 rulemaking packages.**
 - In 1 instance, the Council did not send an agency a 90-day notice informing the agency of the report's upcoming due date. Specifically, the Department of Agriculture's 5-year review report of its rules contained in Title 3, Chapter 5, of the Arizona Administrative Code regarding State agricultural library sampling and laboratory certification was due on October 31, 2022; however, the Council did not send the agency its 90-day notice reminding the agency of the report's due date. This occurred because of a data entry error by the Council staff in its 5-year review calendar, resulting in the Council not correctly capturing and reflecting the rulemaking package's due date. Further, the Council did not have a process in place at the time to verify information included in its calendar was correct. As a result of the Council's failure to send the 90-day notice, the agency did not

³² For 1 of the 8 delayed report reviews, the Council reported that the agency was granted a 120-day extension, submitted its report by the extension deadline, and then requested that the report not be added to the agenda until a later date because one of the agency's key employees was out on medical leave.

³³ As discussed in Sunset Factor 1, A.R.S. §41-1052(C) stipulates that the Council has 120 days after receiving an agency's rulemaking package to review and approve or return the agency's proposed rules.

³⁴ A.R.S. §41-1056(L) stipulates that not less than 90 days before the due date of a report, the Council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

submit its 5-year review report until May 6, 2024, over 1.5 years after the due date.³⁵ Further, as of May 2024, the Council has not approved or returned the 5-year review report.

- In 1 instance, the Council sent a 90-day notice with incomplete information that resulted in the agency not timely conducting a 5-year review of some of the agency's rules. Specifically, on October 4, 2021, the Council sent the State Land Department a 90-day notice informing the agency of its upcoming 5-year report due date; however, the notice omitted 1 of the 3 articles due for review.³⁶ A data entry error caused the 90-day notice inaccuracy, and as a result, the agency only submitted a 5-year review report for 2 of the 3 articles on January 31, 2022. The Council voted to reschedule the due date of the report containing the missing article to November 1, 2023, but later granted an extension to the agency of April 30, 2024. The agency submitted its report on April 23, 2024, more than 2 years after the article was originally due for review.³⁷

Council staff reported that it had implemented a routine month-end meeting for the Council staff to verify agency due dates for the following month and ensure the Council sent 90-day notices timely; however, the meeting was not sufficient to mitigate the issues identified. According to Council staff, it did not detect these errors in part because notice and extension documents were stored in multiple locations making it challenging to track. Council staff reported that it updated its processes in January 2024 to better track 5-year review report dates, such as 90-day notice due dates, dates notices are sent, and due date extensions granted, in a single spreadsheet to reduce similar issues from occurring.

The Council's lack of timely and/or accurate notification to agencies can not only affect the Council's compliance with the statutory requirement to inform agencies of rules due for review, but also hamper the ability of agencies to conduct timely and effective reviews of their rules. Consequently, outdated or noncompliant rules may remain in effect, undermining the very purpose of the statutory review process.³⁸ According to Council staff, in January 2024, to better ensure information is not missed, the Council revised its calendar to track 90-day notice due dates, dates notices are sent, and due date extensions in 1 location. In addition, Council staff reported that it completed an extensive review of its 5-year review calendar in July 2024 to identify and correct any errors, ensure information reported in its calendar is accurate and complete, and ensure that reports had been submitted for all required agency rule reviews. Lastly, Council

³⁵ After notification from the audit team on April 10, 2024, on May 2, 2024, the Council asked the Department of Agriculture to confirm whether or not it had submitted its 5-year review report since 2018. After the Department of Agriculture confirmed it had not submitted its 5-year review report, the Council requested the Department of Agriculture submit its 5-year review report immediately. The Department of Agriculture submitted its 5-year review report to the Council on May 6, 2024. The Department of Agriculture's report did not propose any changes to its rules.

³⁶ The omitted article pertained to Title 12, Chapter 5, Article 18, of the Arizona Administrative Code, related to mineral leases on State land, procedures and rights associated with the leases, and the State's reserved mineral interests and protections for landholders against damages caused by mining operations.

³⁷ The State Land Department's 5-year review report submitted to the Council in April 2024 proposed making amendments to 4 of its rules by December 2027.

³⁸ Executive Order No. 81-3 established the Council, finding that it is necessary for the State to provide assurance that administrative rules and regulations avoid unnecessary duplication and adverse impact upon the public and that unnecessary, needlessly costly, or excessive rules and regulations are not in the public interest.

staff reported that in August 2024, the Council added additional columns in the calendar to track interim steps.

Recommendations

The Council should:

1. Develop written policies, procedures, and/or other guidance documents outlining its recently implemented process to track the receipt of rule review requests, dates interim steps were completed (e.g., date Council staff complete their review, Study Session meeting date(s), Council meeting date(s), and the date review was completed), and its compliance with the 120-day requirement.
2. Establish a timeline or target to complete its initial review of 5-year review reports and develop written policies, procedures, and/or other guidance documents outlining its recently implemented process to track this review, including interim steps such as dates council staff completed their review, dates the report was sent back to the agency for revision, and agency initial and resubmission dates.
3. Review its current practices for fulfilling its statutory responsibilities related to 5-year review reports and implement additional management oversight, such as periodically reviewing the 5-year review report deadline calendar to ensure notification timelines were met and implementing a secondary review process of notifications, to better ensure compliance and timely, accurate notifications.
4. Review its 5-year review report deadline calendar to identify and correct any errors, ensure information reported is accurate and complete, and ensure that reports have been submitted for all required agency rule reviews.
 - a. If this review finds that additional reports have not been submitted or reports submitted did not include all required rules, the Council should immediately publish the rule expiration notice and notify the appropriate parties that the rules have expired and are no longer in effect.

Council response: As outlined in its [response](#), the Council agrees with the findings and will implement the recommendations.

Sunset factor 3: The extent to which the Council's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.

Our review did not identify other government agencies or other entities with the same key statutory objectives as the Council. For example, although the Arizona Attorney General is responsible for reviewing and approving emergency administrative rules and filing those rules with the Arizona Secretary of State, the Council does not have statutory responsibility for reviewing and approving emergency rules. In addition, we did not find any agencies whose objectives or responsibilities are close enough to the Council's that combining the agencies would result in better efficiency in achieving the Council's objectives.

Sunset factor 4: The extent to which rules adopted by the Council are consistent with the legislative mandate.

A.R.S. §41-1051(E) provides the Council with general rulemaking authority, allowing it to adopt rules consistent with its enabling statutes; however, based on our review of the Council's enabling statutes and Arizona Administrative Code, the Council does not have any specific rulemaking requirements, and it reported that it has established the rules it deems necessary to meet its legislative mandate.³⁹

Sunset factor 5: The extent to which the Council has provided appropriate public access to records, meetings, and rulemakings, including soliciting public input in making rules and decisions.

Public records requests:

ADOA handles public records requests related to the Council. ADOA maintains a centralized online portal for submission of public records requests that automatically provides receipt on submission of a request—which fulfills the statutory requirement to send the requestor an acknowledgement of the request within 5 business days.⁴⁰ According to ADOA, between July 2021 and April 2024, ADOA received 8 public record requests for Council information.

Our review of all 8 public records requests received found that the requests were fulfilled within 1 to 19 business days, within ADOA's target of fulfilling requests within 20 business days.⁴¹ All of the requests were fulfilled or responded to by email, and as such, none of the requestors were charged a fee to receive copies. Overall, ADOA's public records-request process appears to align with guidance provided in the Arizona Attorney General *Agency Handbook* and the Arizona Ombudsman *Public Records Law Booklet*.

Public rulemaking requirements:

The Council has not had any proposed or finalized rulemakings in the last 3 years before our review. The Council's most recent rulemaking was in 2018 and involved updating its rules on soliciting public input in making rules and decisions to comply with changes to statute (A.R.S. §41-1033) that added a process to petition existing regulatory rules. The Council also changed how agencies must handle public comments on rulemakings and made other minor changes to improve clarity and remove duplicative sections.

Our review found that the Council informed the public of this 2018 rulemaking and its expected impacts, and provided opportunities for and encouraged public input as part of the rulemaking finalized in October 2018. Specifically, the Council published notices of its proposed rulemaking in the Arizona Administrative Register and included a statement detailing the impact on the public. Additionally, the Council provided opportunities for public input by including the name of Council staff who could be contacted to provide input about the proposed rulemaking in the notices, allowing the public to submit written comments on proposed rule changes for at least 30 days after the Secretary of State published the Notice of Proposed Rulemaking in the Administrative Register, and holding meetings where the public could provide input.⁴²

³⁹ In conducting this assessment, we relied, in part, upon Councilmember- and staff-reported information.

⁴⁰ A.R.S. §39-171(B).

⁴¹ A.R.S. §39-121.01(E).

⁴² A.R.S. §41-1023(B).

Open meeting law:

Arizona law requires public bodies, including the Council, to hold all meetings as “public meetings” in accordance with Arizona’s open meeting law. According to the Attorney General’s Agency Handbook, the intent of open meeting law is to maximize public access to the governmental process. To achieve this, open meeting law includes specific requirements regarding public attendance, notice of meetings, and minutes and records maintained for each meeting.

Our review of 5 meetings held between September 2022 and December 2023 found that the Council complied with the open meeting law requirements we reviewed. For example, the Council posted public meeting notices and agendas on its website at least 24 hours in advance and provided meeting recordings within 3 working days after the meetings.

In addition, during the period of review, the Council held 7 executive sessions for allowable reasons. However, our review of all 7 executive sessions found that the Council did not fully comply with all statutory requirements, as shown in Exhibit 6. Specifically, the Council did not ensure the executive session recordings, which serve as the meeting minutes, included information required by statute, such as the meeting date, time, place, and Councilmember attendance; and did not always notify those present at the meeting of the confidentiality requirements.⁴³

EXHIBIT 6. RESULTS OF EXECUTIVE SESSION SAMPLE TESTING

Sample number	Executive session date	Motion to enter executive session stated the statutory grounds for executive session ^A	Recordings include date, time, and place of meeting ^B	Recordings include members present or absent ^B	Notification regarding the confidentiality requirements for executive sessions ^B
1	1/31/2023	Yes	No	Yes	No
2	5/3/2022	Yes	No	No	No
3	3/29/2022	Yes	No	No	No
4	2/22/2022	No	No	No	No
5	7/7/2021	Yes	No	No	No
6	5/18/2021	Yes	No	No	Yes
7	5/4/2021	Yes	No	Yes	Yes

Source: Auditor-generated from review of 4 executive sessions held between February 2022 and January 2023.

Notes: ^A Arizona Attorney General Handbook Section 7.9.1, ^B A.R.S. §38-431.01(C).

In addition, for 1 of the 7 executive sessions reviewed, the Council did not explicitly state the reason for the executive session in the motion, as required by statute.⁴⁴ Guidance provided by the Arizona Attorney General states that the motion must state the ground(s) for the executive session so that the public understands why the public body is entering executive session. For example, a member of the public body

⁴³ A.R.S. §38-431.01(C) through (D).

⁴⁴ A.R.S. §38-431.01(C).

may make the following motion: “I move to enter executive session for the purpose of receiving legal advice on [agenda topic].”

As discussed earlier, the intent of open meeting law is to maximize public access to the governmental process. By not complying with open meeting law requirements for executive sessions, the Council increases its risk of legal challenges, invalidation of decisions made during those sessions, and potential loss of public trust. Further, these requirements were established to ensure transparency and accountability in government activities, both of which are diminished when requirements are not followed.

According to the Council, it infrequently entered into executive sessions and did not have a standard work document or script related to executive session procedures. On April 29, 2024, the Council updated its standard script for the Council Chair or Vice Chair to use both when the Council seeks to go into executive session and during executive session to help ensure statutory compliance.

The Arizona Auditor General’s September 2023 sunset review of ADOA identified similar issues with other ADOA public bodies and recommended that ADOA develop and/or update and implement open meeting law policies and procedures for all ADOA public bodies, such as the Council, to help ensure that they comply with open meeting law requirements, including requirements related to executive session, including notices, agendas, and motions and votes to hold executive session; consult with the Attorney General’s Office to ensure ADOA’s open meeting law policies and procedures comply with open meeting law; and provide training for public body members, such as the Council, and applicable ADOA staff on its open meeting law policies and procedures.⁴⁵

Recommendation

5. The Council should follow ADOA’s open meeting law policies and procedures.

Council response: As outlined in its [response](#), the Council agrees with the finding and will implement the recommendation.

Sunset factor 6: The extent to which the Council timely investigated and resolved complaints that are within its jurisdiction.

The Council does not have authority or responsibility to investigate and resolve complaints. However, as discussed earlier in sunset factor 1, the Council is responsible for receiving and considering petitions and 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 practice or policy constitutes a rule. Between fiscal years 2021 and 2023, the Council received 3 petitions and appeals, all of which it denied within 119 days or less.

⁴⁵ As of May 2024, ADOA was in the process of implementing most of these recommendations. See Arizona Auditor General Report 23-107 *Arizona Department of Administration—Sunset Review*, Initial follow-up report.

Sunset factor 7: The extent to which the level of regulation exercised by the Council is appropriate as compared to other states or best practices, or both.

This factor does not apply because the Council is not a regulatory agency.

Sunset factor 8: The extent to which the Council has established safeguards against possible conflicts of interest.

Arizona law requires employees of public agencies and public officers to avoid conflicts of interest that might influence or affect their official conduct. To determine whether a conflict of interest exists, employees/public officers must first evaluate whether they or a relative has a “substantial interest” in (1) any contract, sale, purchase, or service to the public agency or (2) any decision of the public agency.

If an employee/public officer or a relative has a substantial interest, statute requires the employee/public officer to fully disclose the interest and refrain from voting upon or otherwise participating in the matter in any way as an employee/public officer. The interest must be disclosed in the public agency’s official records, either through a signed document or the agency’s official minutes. To help ensure compliance with these statutory requirements, ADOA’s State Personnel System Employee Handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. ADOA’s disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” In addition, A.R.S. §38-509 requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes, and to make this file available for public inspection.

The Council complied with State and ADOA conflict-of-interest requirements and aligned its conflict-of-interest process with some recommended practices, such as requiring all Council employees to complete a disclosure form upon hire/appointment, fully disclosing any conflicts of interest prior to each meeting and refraining from voting upon or otherwise participating in the matter in any way as an employee/public officer, and maintaining a special file for substantial interest disclosures.

Our review found that 4 of the 7 Councilmembers had completed a conflict-of-interest form upon appointment; however, the Council did not require the remaining 3 Councilmembers to complete a conflict-of-interest form upon appointment. According to ADOA staff, this was an oversight by ADOA staff, and in response to the ADOA September 2023 Sunset Review, in April 2024, ADOA implemented process improvements agency-wide to improve the process of obtaining conflict-of-interest forms, including developing and implementing conflict-of-interest process workflows and a Standard Work procedure for onboarding members of boards, committees, commissions, and councils. In addition, our review of 3 Council meetings and 2 Study Sessions held between September 2022 and December 2023 found that Councilmembers disclosed potential conflicts of interest during the meetings and recused themselves where appropriate.

The Council's current practices do not fully align with recommended practices. Specifically, the Council does not require Councilmembers and employees to submit annual conflict-of-interest statements or attestations, and the Council has not developed written procedures for a remediation process when a conflict is identified for either a Councilmember or Council employee.

The Arizona Auditor General's September 2023 Sunset Review of ADOA identified similar issues with other ADOA public bodies and recommended that ADOA develop and implement internal conflict-of-interest policies and procedures for all ADOA employees and members of public bodies, such as the Council, that include requirements for public officers to complete a disclosure form at appointment; reminding all employees and public officers at least annually to complete a new disclosure form when their circumstances change; and developing a process for remediating conflicts of interest disclosed by employees or members of public bodies.⁴⁶

Recommendation

6. The Council should follow ADOA's conflict-of-interest policies and procedures.

Council response: As outlined in its [response](#), the Council agrees with the finding and will implement the recommendation.

Sunset factor 9: The extent to which changes are necessary for the Council to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.

We did not identify any instances where the Council's statutory responsibilities should be revised or eliminated.

Sunset factor 10: The extent to which the termination of the Council would significantly affect the public health, safety, or welfare.

Terminating the Council could indirectly harm public health, safety, or welfare if its responsibilities were not transferred to another entity. Specifically, the Council is statutorily responsible for the review of State agencies' administrative rules, such as rules adopted and proposed by the Arizona Department of Health Services, the Arizona Department of Child Safety, and the Arizona Department of Economic Security—all of which are responsible for protecting public health, safety, and/or welfare. The Council's statutory responsibilities may also provide other benefits to the public. For example, its review of agencies' rules includes the review of the economic, small business, and consumer impacts of rules, including whether the probable benefits of the proposed rule outweigh its probable costs; review of the clarity and understandability of rules to the general public; and whether the rule proposed is consistent with the agency's statutory rulemaking authority—all of which could affect the general public. In addition, the Council is responsible for ensuring that agency rules incorporate public comment and is responsible for

⁴⁶ As of May 2024, ADOA was in the process of implementing most of these recommendations. See Arizona Auditor General report 23-107 *Arizona Department of Administration—Sunset Review*, Initial follow-up report.

receiving and hearing public appeals concerning the validity of agencies' reported impacts of proposed rules, as well as existing agency practices that may constitute a rule.

Summary of recommendations

Sjoberg Evashenk Consulting makes 6 recommendations to the Council

The Council should:

1. Develop written policies, procedures, and/or other guidance documents outlining its recently implemented process to track the receipt of rule review requests, dates interim steps were completed (e.g., date Council staff complete their review, Study Session meeting date(s), Council meeting date(s), and the date review was completed), and its compliance with the 120-day requirement.
2. Establish a timeline or target to complete its initial review of 5-year review reports and develop written policies, procedures, and/or other guidance documents outlining its recently implemented process to track this review, including interim steps such as dates council staff completed their review, dates the report was sent back to the agency for revision, and agency initial and resubmission dates.
3. Review its current practices for fulfilling its statutory responsibilities related to 5-year review reports and implement additional management oversight, such as periodically reviewing the 5-year review report deadline calendar to ensure notification timelines were met and implementing a secondary review process of notifications, to better ensure compliance and timely, accurate notifications.
4. Review its 5-year review report deadline calendar to identify and correct any errors and ensure information reported is accurate and complete and ensure that reports have been submitted for all required agency rule reviews.
 - a. If this review finds that additional reports have not been submitted or reports submitted did not include all required rules, the Council should immediately publish the rule expiration notice and notify the appropriate parties that the rules have expired and are no longer in effect.
5. Follow ADOA's open meeting law policies and procedures.
6. Follow ADOA's conflict-of-interest policies and procedures.

Appendix A. Scope and methodology

Sjoberg Evashenk Consulting conducted a performance audit and sunset review of the Council on behalf of the Arizona Auditor General pursuant to a November 21, 2022, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq.

We used various methods to address the audit's objectives. These methods included reviewing applicable State statutes and rules; the Council's policies and procedures, reports, and information from its website; and interviewing Council staff. In addition, we used the following specific methods to meet the audit objectives:

- To determine whether the agency completed timely reviews of rulemaking submissions and 5-year review reports, and to assess the quality of information tracked by the Council concerning statutory timelines associated with these activities, we selected 30 completed 5-year review reports out of a population of 192, and 20 out of an estimated 175 rulemaking packages, submitted during calendar years 2021 to 2023 to evaluate the Council's compliance with statutes and rules governing these processes. During this process, we reviewed the Council's records, such as tracking logs, Council and agency emails, the Council meetings and materials, and the Arizona Administrative Register and A.C.C.
- To assess the Board's compliance with State conflict-of-interest requirements and alignment with recommended practices, we reviewed statute, recommended practices, the Arizona Auditor General's September 2023 sunset review report of ADOA, Council policy, completed disclosure forms for all Council staff and all 7 Councilmembers, training presentations on conflict-of-interest compliance, and the Council's meeting minutes and related conflict-of-interest disclosure forms from September 7, 2022; November 29, 2022; April 4, 2023; July 25, 2023; and December 5, 2023.
- To assess the Council's compliance with the State's open meeting law requirements, we reviewed 3 Council meetings and 2 Study Sessions held between September 2022 and December 2023 and all 7 executive sessions held between calendar years 2021 and 2023.
- To obtain additional information for sunset factor 2, we conducted benchmarking to identify agencies with similar authority and responsibilities as the Council. This included agencies in 7 states (California, Missouri, Nevada, North Carolina, Ohio, Pennsylvania, and Texas).
- To obtain information for the Introduction, we compiled and analyzed unaudited financial information from ADOA and the State of Arizona Annual Financial Report for fiscal years 2022 and 2023, and ADOA-provided estimates for fiscal year 2024.

Our work on internal controls included reviewing relevant policies and procedures, statutes, and recommended practices and, where applicable, testing compliance and/or alignments with these requirements and recommended practices. We reported our conclusions on applicable internal controls in Sunset Factors 2 and 8.

We selected our audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We express our appreciation to the Council's governing Councilmembers and staff for their cooperation and assistance throughout the audit.

Council Response

Katie Hobbs
Governor



Elizabeth
Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

ARIZONA DEPARTMENT OF ADMINISTRATION

GOVERNOR'S REGULATORY REVIEW COUNCIL
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August 19, 2024

Lindsey A. Perry, Auditor General
2910 N. 44th Ste.
Suite 410
Phoenix, Arizona 85018

Dear Ms. Perry,

Thank you for providing us with the draft report of the sunset review and performance audit for the Governor's Regulatory Review Council ("GRRC"), housed within the Arizona Department of Administration. We appreciate the opportunity to respond.

Attached, please find our response to the sunset audit findings. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Klein".

Jessica Klein

ADOA General Counsel
Chair, Governor's Regulatory Review Council

CC via email: George Skiles, Partner, Sjoberg Evashenk Consulting, George@secteam.com

Sunset Factor 2: The Council's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

Recommendation 1: The Council should develop written policies, procedures, and or other guidance documents outlining its recently implemented process to track the receipt of rule review requests, dates interim steps were completed (e.g. date council staff complete their review, Study Session meeting date(s), Council Meeting date(s), and the date review was completed), and its compliance with the 120-day requirement.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: GRRC accepts this recommendation and has implemented separate tracking to ensure that all rulemakings are approved within the 120-day window. GRRC staff now use metrics to track whether rule-making submissions have been approved by the Council within 120 days. These metrics are reported out to ADOA leadership to maintain accountability.

Recommendation 2: The Council should establish a timeline or target to complete its initial review of 5-year review reports and develop written policies, procedures, and/or other guidance documents outlining its recently implemented process to track this review, including interim steps such as dates council staff completed their review, dates the report was sent back to the agency for revision, and agency initial and resubmission dates.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: Though a 120-day review timeframe for 5-year review reports is not a statutory requirement, GRRC agrees that this is a best practice. GRRC staff will implement a timeline to complete the initial review of 5-year review reports within 120 days. Council staff already tracks initial submission and Council approval dates in its 5-year review report calendar and tracks Council staff review timelines in its huddle board, but has added additional columns for the dates reports are returned to agencies and/or resubmitted.

Recommendation 3: The Council should review its current practices for fulfilling its statutory responsibilities related to 5-year review reports and implement additional management oversight, such as periodically reviewing the 5-year review report deadline calendar to ensure notification timelines were met and implementing a secondary review process of notifications, to better ensure compliance and timely, accurate notifications.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: To improve oversight and to better track 5-year review report due dates, Council staff has created a single spreadsheet to track 90-day notice due dates, dates notices are sent, and due date extensions granted, to reduce similar issues from occurring.

Recommendation 4: The Council should review its 5-year review report deadline calendar to identify and correct any errors, ensure information reported is accurate and complete, and ensure that reports have been submitted for all required agency rule reviews.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: As of July 2024, Council staff completed an extensive audit of its 5-year review report calendar to identify and correct any errors, ensure information reported is accurate and complete, and ensure that reports have been submitted for all required agency rule reviews. Council staff did not identify any additional agency reports that have not been submitted or reports submitted that did not include all required rules that would necessitate the rule expiration procedures in A.R.S. § 41-1056(J).

Recommendation 4a: If this review finds that additional reports have not been submitted or reports submitted did not include all required rules, the Council should immediately publish the rule expiration notice and notify the appropriate parties that the rules have expired and are no longer in effect.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: As of July 2024, Council staff completed an extensive audit of its 5-year review report calendar to identify and correct any errors, ensure information reported is accurate and complete, and ensure that reports have been submitted for all required agency rule reviews. Council staff did not identify any additional agency reports that have not been submitted or reports submitted that did not include all required rules that would necessitate the rule expiration procedures in A.R.S. § 41-1056(J).

Sunset Factor 5: The extent to which the Council has provided appropriate public access to records, meetings, and rulemakings, including soliciting public input in making rules and decisions.

Recommendation 5: The Council should follow ADOA's open meeting law policies and procedures.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: As of April 2024, GRRC staff updated its public meeting standard script utilized by the Council Chair and Vice Chair to include language to help ensure statutory compliance when seeking to go into, and participating in, executive sessions.

Sunset Factor 8: The extent to which the Council has established safeguards against possible conflicts of interest.

Recommendation 6: The Council should follow ADOA's conflict-of-interest policies and procedures.

Council response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: GRRC staff and council members will be covered by the changes to ADOA processes that were implemented in response to recommendations made during the Auditor General's September 2023 sunset review of ADOA, so conflict-of-interest disclosures will be made in compliance with the annual ADOA conflict-of-interest policies and procedures. These disclosures are in addition to the disclosures made monthly pursuant to GRRC's conflict-of-interest policies and procedures.