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ARIZONA CORPORATION COMMISSION

RC 000008-98-01194

STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

Docket

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AZ CORP COMMISSION

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DOCUMENT CONTROL

February 11, 1999

Governor's Regulatory Review Council
Attn: Mr. Scott Cooley
1400 West Washington
Phoenix, Arizona 85007

RE: A.A.C. R14-1-103

Dear Council Members:

On December 10, 1998, the Arizona Corporation Commission ("Commission") adopted the above referenced rule. The following information is provided for your use in reviewing the enclosed rules pursuant to A.A.C. R1-6-103:

1. The close of record and the date the rules were adopted by the agency:

The Commission closed the record and adopted the rule at its December 10, 1998 Open Meeting.

2. Dates the following were published in the Arizona Register:

a. Notice of Docket Opening:

4 A.A.R. 2710, September 25, 1998

b. Notice of Proposed Rulemaking:

4 A.A.R. 2905, October 9, 1998

c. Any supplemental notices:

None

d. Notice of oral proceeding:

The Notice of Proposed Rulemaking provided notice of the November 10, 1998 public hearing (oral proceeding) for the rule.

e. Any other notice of public participation:

The Commission posted notice for its December 10, 1998 Open Meeting in compliance with Arizona's open meeting laws.

Arizona Corporation Commission
DOCKETED

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3. A statement of whether definitions of terms contained in statutes or other rules and used in the adopted rule have been attached:

The rules do not rely upon any special definitions that relate to any particular statute.

4. A statement that the rulemaking relates to a 5-year review report and the date the report was accepted by the Council:

Not applicable

5. A list of documents enclosed:

- a. Notice of Final Rulemaking, including preamble. (Exhibit A)
- b. Table of contents for the adopted rules. (Exhibit A)
- c. Text of the adopted rule. (Exhibit A)
- d. An economic, small business, and consumer impact statement. (Exhibit B)
- e. Concise explanatory statement. (Exhibit C)
- d. Copy of the general and specific statutes authorizing the rules. (Exhibit D)
- e. Commission Decision Number 61271, adopting rule, dated December 10, 1998. The exhibits to the order (Concise Explanatory Statement and Economic Impact Statement) have been omitted from the order in an effort to reduce repetitive documents being furnished to the Council. (Exhibit E)

There are no materials incorporated by reference.

Please let me know if I can be of any assistance to you in your review process. Please feel free to contact Bill Parkerson at 542-0776 or Elizabeth Bentley at 542-3995. Thank you for your cooperation.

Sincerely,


Stuart R. Brackney
Acting Executive Secretary

Enclosures

ALL STATE LEGAL 800-222-0510 EDS11 RECYCLED



NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;

SECURITIES REGULATION

CHAPTER 1. CORPORATION COMMISSION

CORPORATIONS AND ASSOCIATIONS

PREAMBLE

1. Sections Affected Rulemaking Action

R14-1-103 New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Arizona Constitution, Article XV, §§ 4, 5, 6, and 19

Authorizing statute: A.R.S. § 10-130

Implementing statute: A.R.S. §§ 41-1072 through -1078

3. The effective date of the rules: Upon filing with the Secretary of State

4. A list of all previous notices appearing in the Register addressing the final rule:

4 A.A.R. 2710, September 25, 1998 (Notice of Docket Opening).

4 A.A.R. 2905, October 9, 1998 (Notice of Proposed Rulemaking)

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Joanne MacDonnell, Director, Corporations Division

Bill Parkerson, Deputy Director, Corporations Division

Address: Arizona Corporation Commission

1200 West Washington

Phoenix, Arizona 85007

Telephone: (602) 542-3521

Facsimile number: (602) 542-0900

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The purpose of this rulemaking is to implement time-frames for the processing of applications for licenses issued by the Corporations Division ("Division") of the Arizona Corporation Commission. These licenses include articles of incorporation, applications for authority to transact business, applications for authority to conduct affairs, articles of merger, articles of domestication, articles of organization, and applications for registration of foreign limited liabilities companies. The new rule implements requirements identified in A.R.S. §§ 41-1072 through -1078. The majority of applications for licenses filed with the Division are handled on an "expedited" basis. This expedited process is prescribed by statute in A.R.S. § 10-122.F.2 and is not covered by R14-1-103.

The Commission believes that the overall time frame of 360 days prescribed in R14-1-103 is necessary in order to ensure that the Division will be able to timely process all applications. The Division cannot control the number of filings it receives and the timing of those filings. Corporate filings have risen steadily since 1981, and last year continued this trend.

The Division's backlog of unprocessed non-expedited applications is currently five to seven weeks. However, during January and February of 1998, the Division had approximately nine to ten months of backlogged applications. This resulted from a high number of year-end filings. In the ensuing year, the Division has made changes to increase productivity, such as redesigning its phone bank and making additional information available on its web page. The Division also received an infusion of \$60,000 from the Commission's Securities Division in order to hire temporary employees. These measures have reduced the backlog considerably, but the additional money received from the Securities Division was an extraordinary circumstance that will not recur.

Several new procedures that will soon be implemented have the potential to slow processing time of corporate filings. In the coming year, the Division will be redesigning its computer system and acquiring an imaging system. Both of these projects will improve the quality of the public records maintained by the Commission. However, at least during the implementation period and possibly thereafter, these systems will add to processing time.

In summary, based on historical experience, expected seasonal fluctuations in workload, staffing levels which have remained relatively constant since 1994, and the estimated time associated with the implementation of new systems, the Division believes that a time period of 360 days is necessary in order to ensure its ability to comply with the proposed rule.

7. A reference to any study that the agency proposes to rely on in the evaluation or justification for the final rule and where the public may obtain or review the study, all data underlying each study, and analysis of the study and any other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Proposed Rule 103 establishes time-frames within which the Corporations Division shall process licenses issued by the Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. Proposed Rule 103 is mandated by A.R.S. §§ 1072 through -1078 ("the time-frame statutes").

The Proposed Rule will have minimal financial impact unless the Commission routinely fails to meet the time-frames. Such failure would require the Commission to refund the filing fee to the applicant, resulting in a small cost savings to the regulated public. The Commission, however, does not foresee difficulty in complying with the proposed time-frames.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R14-1-103(C): insert "of the date" after "days"

R14-1-103(C): replace "of" with "on" after "date"

R14-1-103(C): after "deficiency", insert "or permit the applicant to remedy the deficiencies

based on the following two factors:

1. Amount of information or work necessary to remedy the deficiencies; or
2. Effect on other Commission priorities."

R14-1-103(E)(1): insert "completeness" after "Administrative"

Other grammatical and stylistic changes have been made to the text of the proposed rule at the recommendation of the Staff of the Governor's Regulatory Review Council.

11. **A summary of the principal comments and the agency response to them:**

No written comments on the Rule have been filed in this Docket, and there were no public comments on the Rule at the hearing. Prior to the hearing, the Corporations Division discussed the Rule with its advisory council, which consists of representatives from businesses that follow corporations issues, and of attorneys from various law practices around the state. The Corporations Division stated that the advisory council did not suggest any changes to the Rule as proposed.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

13. **Incorporations by reference and their location in the rules:**

Not applicable

14. **Was this rule previously adopted as an emergency rule?**

No

15. **The full text of the rules follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION
CHAPTER 1. CORPORATION COMMISSION
CORPORATIONS AND ASSOCIATIONS
ARTICLE 1. IN GENERAL**

Section

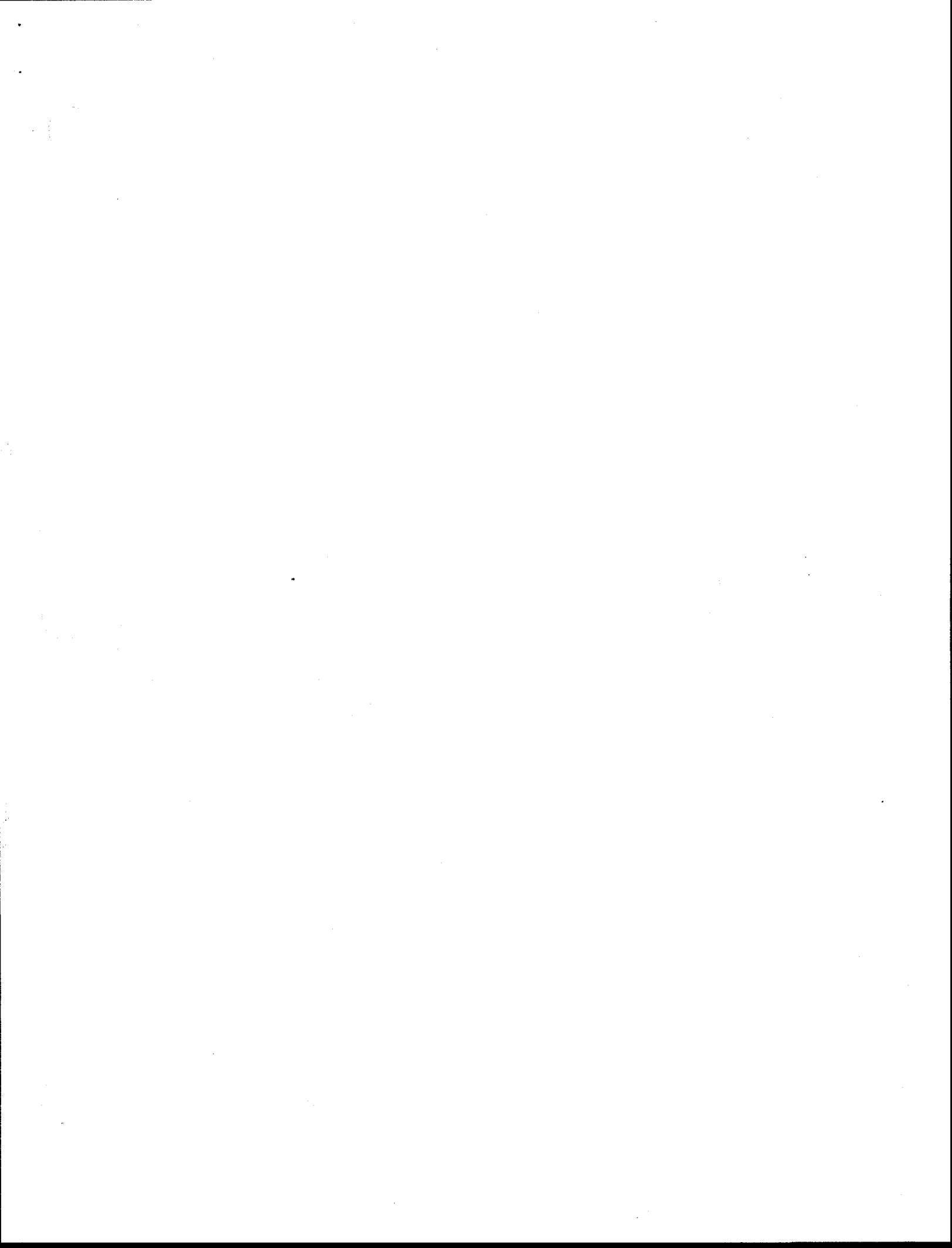
R14-1-103. Licensing Time-frames

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION
CHAPTER 1. CORPORATION COMMISSION
CORPORATIONS AND ASSOCIATIONS
ARTICLE 1. IN GENERAL

Section

R14-1-103. Licensing Time-frames

- A.** This rule prescribes time-frames for the processing of any certificate or license issued by the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes.
- B.** Within 270 calendar days after receipt of an initial or renewal application for any certificate or license provided pursuant to Title 10 or Title 29 of the Arizona Revised Statutes, staff shall notify the applicant, in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
- C.** The Commission may terminate an application if the applicant does not remedy all deficiencies within 30 calendar days of the date on the notice of deficiency or permit the applicant to remedy the deficiencies based on the following two factors:
- 1.** Amount of information or work necessary to remedy the deficiencies; or
 - 2.** Effect on other Commission priorities.
- D.** After an application has been deemed administratively complete, and the applicant has been notified in writing, staff shall have 90 calendar days for substantive review of the application.
- E.** For purposes of A.R.S. Title 41, Chapter 6, Article 7.1, the Commission has established the following time-frames:
- 1.** Administrative completeness review time-frame: 270 calendar days.
 - 2.** Substantive review time-frame: 90 calendar days.
 - 3.** Overall time-frame: 360 calendar days.



ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A.A.C. R14-1-103

This explanatory statement is provided to comply with the provisions of A.R.S. §§ 41-1052 and 41-1055.

A. Economic, Small Business, and Consumer Impact Summary.

1. Proposed Rulemaking.

Proposed rule A.A.C. R14-1-103 ("Rule") establishes time-frames within which the Corporations Division ("Division") shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. The Rule is mandated by A.R.S. §§ 41-1072 et seq. ("Time-Frame Statutes").

The Rule sets forth the following time-frames: 1) administrative review time-frame, 270 days; 2) substantive review time-frame, 90 days; and 3) overall time frame, 360 days. These proposed time-frames more or less codify the amount of time currently necessary to process applications for licenses covered by the Time Frame Statutes, with additional time included in order to accommodate seasonal fluctuations in work load. These time-frames also assume that the Division will continue to maintain its current number of full time employees, will receive necessary budget appropriations in the future, and will continue to receive approximately the same number of filings at present levels.

In general, there should be no economic impact from the adoption of the proposed rules. Because the Rule essentially codifies the Division's existing practices, the economic impact of the adoption of the Rule is minimal.

2. Information contained in this report.

This economic, small business, and consumer impact statement for the Rule analyzes the costs, savings, and benefits that will accrue to the Commission and the public. The Rule's impact upon established Commission procedures, Commission staff time, and other administrative costs is minimal. The benefits to the Commission are minimal. The benefits provided to the public are non-quantifiable. The Rule should benefit the Commission's relations with the regulated public by providing clear time-frames for processing applications.

3. Name and address of agency employees to contact regarding this report.

Joanne MacDonnell
Director of Corporations
Arizona Corporation Commission
1300 West Washington
Phoenix, AZ 85007

Bill Parkerson
Deputy Director of Corporations
Arizona Corporation Commission
1300 West Washington
Phoenix, AZ 85007

B. Economic, Small Business, and Consumer Impact Statement.

1. Proposed Rulemaking.

Proposed A.A.C. R14-1-103 ("Rule") establishes time frames within which the Corporations Division ("Division") shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 20 of the Arizona Revised Statutes. The Rule is mandated by A.R.S. §§ 41-1072 et seq. ("Time-Frame Statutes").

The Rule sets forth the following time-frames: 1) administrative review time-frame, 270 days; 2) substantive review time-frame, 90 days; and 3) overall time frame; 360 days. The Corporate Filings Section of the Division receives an average of 860 items each week. These items include articles of incorporation, articles of merger, articles of correction, notices of publication, and applications for authority to transact business. Although the Time Frame Statutes apply only to applications for licenses, the Division believes that it is important to process all filings as expeditiously as possible. The Division currently processes approximately 860 items per week, though the filings received by the Division are seasonal and peak at the end of the year and at the end of June. Accordingly, the Division has chosen time-frames that consider the Division's overall work load as well as the work necessary to process the items covered by the time-frame statutes.

These proposed time-frames more or less codify the amount of time currently necessary to process applications for licenses covered by the Time Frame Statutes, with additional time included in order to accommodate seasonal fluctuations in work load. These time-frames also assume that the Division will continue to have its current number of full time employees and will receive necessary budget appropriations in the future.

Further, the Commission has assumed that the number of corporate filings will continue to increase.

In general there should be no economic impact from the adoption of the Rule. Because the Rule essentially codifies the Division's existing practices, the economic impact of the adoption of the rule is minimal.

2. Person who are affected, bear costs or directly benefit from the proposed rulemaking.

a. Those Affected

Those affected by the proposed rulemaking include persons seeking to file articles of incorporation, articles of merger, and applications for authority to transact business. For fiscal year 1998, the Division processed 13,190 articles of incorporation, 1,118 articles of merger, 3,841 applications for authority for corporations, 8,733 articles of organization, and 782 applications for registration for limited liability companies.

b. Cost Bearers

The costs associated with the rulemaking process will be borne by the Corporations Division.

c. Beneficiaries

The citizens of Arizona and the corporations and limited liability companies governed by Title 10 and Title 29 of the Arizona Revised Statutes may benefit from the imposition of clear time-frames for the application process.

3. Cost/Benefit Analysis.

a. Probable costs and benefits to the implementing agencies

The Rule will have minimal financial impact unless the Commission routinely fails to meet the time-frames. Such a failure would require the Commission to refund the filing fee to the applicant, resulting in a small cost savings to the regulated public. The Commission would also pay a penalty into the general fund. The Division, however, does not foresee difficulty in complying with the proposed time-frames.

b. Probable costs and benefits to political subdivisions

None.

c. Probable costs and benefits to business

None.

4. Private and public employment impact

The Rule should have no impact upon private and public employment.

5. Impact on small business

a. Identification of the small businesses subject to the proposed rulemaking.

No small business will be adversely affected by the proposed Rule. Any profit corporation, non-profit corporation, or limited liability company that meets the definition of "small business" set forth in A.R.S. § 41-1001.19 may benefit from the imposition of clear time-frames for the application process.

b. Administrative and other costs required for compliance with the proposed rulemaking.

None.

- c. **Description of the methods that the agency may use to reduce the impact on small business.**

Not applicable.

- d. **Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Private persons and consumers who file articles of incorporation, articles of merger, or applications with the Commission pursuant to Title 10 and Title 29 will be affected by the proposed rulemaking. The rule will have no financial impact upon applicants unless the Commission fails to meet the time-frames. If the Commission fails to meet the time-frames, the application fee is returned to the individual(s), and the application process continues. The Division does not foresee difficulty in complying with the time-frames set forth in the Rule.

6. Probable Effect on State Revenues.

The Rule will have no effect upon state revenues unless the Commission fails to meet the time-frames. The Commission would then pay a penalty, as established in A.R.S. § 41-1077, into the general fund. It is unlikely that this penalty will occur.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking.

The rulemaking is mandated by A.R.S. §§ 41-1072 et seq.; therefore, no alternative is possible.

8. **If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.**

Not applicable.

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**CONCISE EXPLANATORY STATEMENT
A.A.C. R14-1-103**

This explanatory statement is provided to comply with the provisions of A.R.S. § 41-1036.

I. CHANGES IN THE TEXT OF THE PROPOSED RULE FROM THAT CONTAINED IN THE NOTICE OF RULEMAKING FILED WITH THE SECRETARY OF STATE

R14-1-103(C): insert "of date" after "days"

R14-1-103(C): replace "of" with "on" after "date"

R14-1-103(C): after "deficiency", insert "or permit the applicant to remedy the deficiencies based on the following two factors:

1. Amount of information or work necessary to remedy the deficiencies; or
2. Effect on other Commission priorities."

R14-1-103(E)(1): insert "completeness" after "Administrative"

Other grammatical and stylistic changes have been made to the text of the proposed rule at the recommendation of the Staff of the Governor's Regulatory Review Council.

II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULE

ARTICLE 1. IN GENERAL

A.A.C. R14-1-103: In response to the requirement of A.R.S. § 41-1072 *et seq.* to enact licensing time-frame rules, the Arizona Corporation Commission initiated rulemaking to prescribe time-frames for the processing of any certificate or license issued by the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. To provide the public with clear time-frames for processing certificate or license applications, the Commission has promulgated new rule A.A.C. R14-1-103. A.A.C. R14-1-103 establishes an overall time-frame of 360 calendar days, which includes an administrative review time-frame of 270 calendar days and a substantive review time-frame of 90 calendar days.

The Corporation Commission recognized a need for specific time-frames applicable to the procedures mandated by A.R.S. § 41-1074 for deficient applications. A.A.C. R14-1-103 therefore provides that once a notice of deficiency has issued, the applicant has thirty calendar days in which to satisfy those deficiencies. If the applicant does not remedy all deficiencies within thirty days of notice, the Commission may terminate the application. Once an application is terminated, the time-frames required by A.A.C. R14-1-103 will begin anew upon re-application.

A.A.C. 14-1-103 is designed to provide the public with clear time-frames for the processing of applications. No oral or written public comments were received concerning the rule.

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CONSTITUTION OF ARIZONA

Dispute arising from contractual agreement between a railroad and a private industrial shipper over operation of a car-pulling device used in loading and unloading operations by shipper is of a private nature between parties to the contract, and therefore, relief, if any, must be sought in courts, not before the corporation commission. *Op. Atty. Gen. No. 76-5, p. 97, 1976-77.*

23. — Mandamus, contracts

Where electric cooperative was entitled to have proposed contract approved by corporation commission, supreme court would, by mandamus, require approval of such contract to rehearse and secure to cooperative the right it had to full use and enjoyment of its certificate of public convenience and necessity, which included the right to enter into contracts with customers to provide electric service, pursuant to law and existing rules and regulations of commission. *Application of Trijon Elec. Co-op., Inc. (1963) 92 Ariz. 371, 377 P.2d 309.*

Where electric cooperative was entitled to approval of proposed contract with area developer, in view of present urgent need of developer for power, the serious financial loss it had suffered and would continue to suffer by reason of delay, the public aspect of questions presented, and long and costly procedure involved in ordinary processes of appeal, there was no plain, speedy and adequate remedy at law, and hence remedy of mandamus was available to developer and cooperative to require the corporation commission to approve the contract. *Id.*

If the effect of either of orders of Arizona corporation commission in disapproving proposed contract with electric cooperative and in issuing amended certificates of convenience and necessity was to defeat or usurp jurisdiction of supreme court where proceeding had been commenced for mandamus requiring commission to approve or show cause why commission should not approve such contract with cooperative, or to render any judgment to be entered by supreme court mandatory, such order would be void. *Id.*

21. Common carriers

Arizona is committed to the doctrine of regulated monopoly in the area of common carriers. *Arizona Corp. Commission v. Superior Court In and for Maricopa County (1969) 105 Ariz. 56, 459 P.2d 489.*

Under this section and Const. Art. 15, § 2 and Civ. Code 1913, § 2277 et seq. (see, now, § 40-201 et seq.), it was obligatory upon common carriers to accept and transport between points within state privately owned equipment of circuses under rules, regulations, and rates, when reasonable and just, prescribed by corporation commission, although carrier had not filed with commission rates therefor. *Southern Pac. Co. v. State (1917) 19 Ariz. 20, 165 P. 303, 86 Ariz. 39 S.Ct. 317, 249 U.S. 472, 63 L.Ed. 713.*

The November 25, 1980 amendment of Const. Art. 15, §§ 2 and 10 defining "public service corporations" and "common carriers" removed corporations engaged in carrying persons or property from the definitions of "common carrier" and "public service corporation" and, thus, from the constitutionally-based jurisdiction of the corporation commission, but, on question whether legislature could constitutionally direct the commission to continue to regulate motor carriers as common carriers and public service corporations after the amendment of the constitution in view of legislative intent to have commission continue the regulation until July 1, 1982 in accordance with Laws 1979 Ch. 203, § 15, commission should continue to exercise authority over common carriers until such time as a court might otherwise direct. *Op. Atty. Gen. No. 181-019.*

Certificate of convenience and necessity would be required for operation of bus which, following irregular routes, would pick up and discharge passengers upon presentation by passenger of complimentary pass issued by business firms situated along the irregular routes, where, at present, irregular routes, bus operator would present complimentary passes to the business establishments for reimbursement at a prearranged figure. *Op. Atty. Gen. No. 64-30-1.*

State corporation commission had authority to make reasonable rules, regulations, and orders governing contract carriers of passengers and property. *Op. Atty. Gen. No. 61-45.*

State corporation commission had authority to make reasonable rules, regulations, and orders governing contract carriers of passengers and property. *Op. Atty. Gen. No. 61-45.*

THE CORPORATION COMMISSION

25. Cooperative utilities
Cooperative utilities are subject to jurisdiction of state corporation commission. *Op. Atty. Gen. No. 61-43.*

Cooperative utility must receive a certificate of convenience and necessity from certain area. *Id.*

§ 4. Power to inspect and investigate

Section 4. The Corporation Commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the State, and for the purpose of the Commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the State. Said Commission shall have power to take testimony under commission or deposition either within or without the State.

Cross References

Investigation, hearing and appeal powers in general, see A.R.S. § 40-211 et seq.

Law Review Commentaries

Constitutional Convention of 1910. *Ariz. State L.J.* 1, 1938, p. 1.
Judicial review. 19 *Ariz. L. Rev.* 488 (1977).
Ariz. L. Rev. 947 (1974).

Notes of Decisions

1778 et seq.), and receives its sanction under the police power of the state."
*Const. Art. 14, §§ 8 and 17 and this section did not make corporations other than public service corporations subject to whole or in part to regulation by the corporation commission within Laws 1942, ch. 90, § 7 (A.R.S. § 40-101) forbidding commissioners owning stocks or bonds of corporations subject to such regulation. *State v. Jones (1914) 15 Ariz. 215, 137 P. 541.**

1. In general
In the case of *Wylie v. Phoenix Assur. Co.* (1933) 42 Ariz. 131, 22 P.2d 845, the court said:
"Article 15 of the Constitution does not, in terms, confer on the corporation commission power to regulate the business of insurance like it does the business of public service corporations. The commission's power to regulate the insurance business, except to the limited extent indicated in chapters 4 and 5 of said article, is statutory. Chapter 36, Revised Code of 1928 (section in conformity with articles of incorporation state corporation commission prior to providing utility service to its customers, and, if the cooperative's articles of incorporation indicate that its intent and purpose is to serve only its members, cooperative must be certified to serve only its members in the certain area. *Id.*

and bylaws of the corporation. Op. Atty. Gen. No. 74-6.

2. Express powers

The corporation commission is authorized under this section to take testimony under commission or deposition either within or without the state; and the failure of provisions of this section to specify anything else which might be done out-of-state would be fatal to any hearings the commission might conduct outside Arizona. Op. Atty. Gen. No. 182-126.

The Arizona corporation commission has authority to refuse to issue certificate of incorporation to domestic corporation if transaction of an unlawful business is contemplated on the face of the articles of incorporation. Op. Atty. Gen. No. 72-11.

The Arizona corporation commission does not have authority to withhold the issuance of a certificate of incorporation to a domestic corporation, pending further inquiry by the commission to determine whether or not the transaction of an unlawful business is contemplated, if the commission has reason to think that the transaction of an unlawful business may be contemplated. Id.

The corporation commission, under its existing constitutional and statutory authority, cannot promulgate a general order which would bar persons convicted of certain felonies from holding office as directors or officers of domestic corporations or foreign corporations doing business in Arizona. Id.

3. Implied powers

The corporation commission's powers are not limited to those expressly granted by constitution, but commission may exercise all powers necessary or necessary in performance of its duties. Garvey v. Trew (1946) 64 Ariz. 342, 170 P.2d 845, certiorari denied 67 S.Ct. 297, 329 U.S. 784, 91 L.Ed. 673.

The corporation commission has no implied powers and its powers do not exceed those to be derived from a strict construe-

tion of the Constitution and implementing statutes. Commercial Life Ins. Co. v. Wright (1946) 61 Ariz. 129, 166 P.2d 933.

4. Judicial powers

No judicial power is vested in or can be exercised by the corporation commission unless that power is expressly granted by the constitution. Trego Elec. Corp. v. Robinson (1939) 67 Ariz. 358, 196 P.2d 470.

The construction of an option agreement between public utility and electric cooperative for the purchase of electric transmission and distribution lines and facilities and all water distribution properties was a judicial function and the courts rather than the corporation commission have jurisdiction to determine validity of such agreement, although eventually the contract of sale, if valid, must have the sanction and approval of the corporation commission before it becomes effective. Id.

5. Expenditures

Legislature had right to make appropriation by Laws 1945, 1st S.S., Ch. 11 (repealed) to corporation commission for payment of federal power commission's expenses in making investigation, authorized by Ch. 11, to ascertain fair value of property of public service corporations furnishing gas or electricity as basis for rate-making. Garvey v. Trew (1946) 61 Ariz. 342, 170 P.2d 845, certiorari denied 67 S.Ct. 297, 329 U.S. 784, 91 L.Ed. 673.

6. Sale of securities

The corporation commission's specific constitutional power over sale of securities is limited to grant by this section of power to inspect and investigate, but the legislature may enlarge or extend the power and duties of the commission over the subject matter of which it has already been given jurisdiction and other matters of same class not expressly or impliedly except by other provisions of Constitution. Commercial Life Ins. Co. v. Wright (1946) 61 Ariz. 129, 166 P.2d 933.

§ 5. Power to issue certificates of incorporation and licenses

Section 5. The Corporation Commission shall have the sole power to issue certificates of incorporation to companies organizing under the laws of this State, and to issue licenses to foreign corporations to do business in this State, except as insurers, as may be prescribed by law.

Domestic and foreign insurers shall be subject to licensing, control and supervision by a department of insurance as prescribed by law. A director of the department of insurance shall be appointed by the Governor with the consent of the Senate in the manner prescribed by law for a term which may be prescribed by law. Amendment approved election Nov. 5, 1968, eff. Jan. 28, 1969; election Nov. 2, 1976, eff. Nov. 22, 1976.

Historical Note

The governor, on January 28, 1969, proclaimed that the amendment of this section, as proposed by Laws 1968, S.C.R. No. 7, § 1, filed March 19, 1968, had been approved by a majority of the electors in the November 5, 1968 general election and had become law.

The 1969 amendment inserted "except as insurers," in the first paragraph, and added the second paragraph.

The governor, on November 22, 1976, proclaimed that the amendment of this section, as proposed by Laws 1976, S.C.R. No. 1001, § 5, filed July 5, 1976, had been approved by a majority of the electors in the November 2, 1976 general election and had become law.

Cross References

Admission of foreign corporations for transaction of business in Arizona, see A.R.S. § 10-106 et seq.
Public service corporations, rate increases, see § 4-30-550

Law Review Commentaries

Utility rate regulation, legal aspects of future tests period, Gail L. Gibbons, 16 Ariz. Rev. 947 (1974).

Notes of Decisions

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tain felonies from holding office as directors or officers of domestic corporations or foreign corporations doing business in Arizona. *Id.*

2. Purpose

Provision of this section giving corporation commission "sole power" to license foreign corporations manifested intent that legislative power was to be under administrative, regulatory, and judicial powers of committee Life Ins. Co. v. Equitable Life Assur. Soc. of U.S. (1967) 101 Ariz. 591, 422 P.2d 710.

3. Amendment to constitutional provision

The five sections of Laws 1976, S.C.R. No. 1009 proposing amendments to this section and Const. Art. 6 § 36, Art. 6, l. 1, Art. 11, § 3, and Art. 11, § 5, would have to be considered as contemplating the submission of five separate propositions for separate consideration by the voters and, therefore, would be unconstitutional. *Op. Atty. Gen.* No. R76-314, p. 115, 1976-77.

1. Incorporators

Either an Arizona corporation or a foreign corporation, not incorporated in or qualified to do business in Arizona, could be incorporator of a separate corporation being newly organized, where purpose of new corporation is to act as subsidiary of parent one and to carry out purposes for which parent corporation was formed. *Op. Atty. Gen.* No. 61-65.

5. Insurers—In general

In the case of *Wylie v. Phoenix Assur. Co.* (1933) 42 Ariz. 139, 22 P.2d 845, the court said:

"Article 15 of the Constitution does not, in terms, confer on the corporation commission power to regulate the business of insurance like it does the business of public service corporations. The commission's power to regulate the insurance business, except to the limited extent indicated in sections 1 and 5 of said article, is statutory, chapter 38, Revised Code of 1928 (section 1773 et seq.), and receives its sanction under the police power of the state."

All foreign and domestic insurers must file a certificate of disclosure with the corporation commission pursuant to A.R.S. § 10-128, but the insurance department has

exclusive regulatory power over foreign insurers. *Op. Atty. Gen.* No. F79-311.

Insurance department, not the corporation commission, must continue to regulate those portions of a motor club's services which actually constitute insurance and must oversee those sections of the service contract which are actually an insurance policy. *Op. Atty. Gen.* No. 77-143.

6. Foreign insurers

Foreign insurer was entitled to rely upon certificate of authority issued by director of insurance and its mortgage investment contract was valid notwithstanding invalidity of provision of insurance code relating to appointment of director for failure to require that he act under supervision of corporation commission. *Selective Life Ins. Co. v. Equitable Life Assur. Soc. of U.S.* (1957) 101 Ariz. 591, 422 P.2d 710.

7. Foreign corporations—In general

No conditions may be imposed upon right of foreign corporations to do business within state except those prescribed by legislature. *Kreiss v. Clerk of Superior Court In and For Cochise County* (1976) 111 Ariz. 371, 510 P.2d 305.

Where a foreign corporation and its agent have been licensed to do business in Arizona, constitutional requirements are fulfilled, and court must approve bail bond with such corporation as surety if in form it meets the conditions imposed for release from incarceration. *Id.*

Const. Art. 14, § 17 and this section relating to licensing of foreign corporations are not self-executing, as procedures under which corporation commission will operate are left to be prescribed by law. *Selective Life Ins. Co. v. Equitable Life Assur. Soc. of U.S.* (1967) 101 Ariz. 591, 422 P.2d 710.

Const. Art. 14, § 17 and this section relating to licensing of foreign corporations are not self-executing, as procedures under which corporation commission will operate are left to be prescribed by law. *Id.*

Under this section and Civ. Code 1913, § 3486, duty of state corporation commission to issue license to foreign fraternal beneficiary societies to do business in the state after a showing of compliance with the law was mandatory and would be enforced by mandamus. *Arizona Corp. Comm. v. Herald of Liberty* (1916) 17 Ariz. 462, 151 P. 202.

THE CORPORATION COMMISSION

The Arizona corporation commission does not have authority to withhold the issuance of a license to a foreign corporation, pending further inquiry by commission to determine whether or not the transaction of an unlawful business is contemplated, if the commission has reason to think that the transaction of an unlawful business may be contemplated. *Op. Atty. Gen.* No. 72-11.

8. Professional foreign corporations

State corporation commission lacks power to license foreign professional corporations. *Op. Atty. Gen.* No. 71-38.

9. Debits, foreign corporations

Foreign business which had qualified to do business pursuant to A.R.S. § 10-481 et seq. (repealed; now A.R.S. § 10-106 et seq.) was not thereafter required to comply with provision of A.R.S. § 10-173 (repealed) regarding limitations on corporation indebtedness. *Op. Atty. Gen.* No. 73-22-1.

10. Actions and proceedings involving foreign corporations

Act of director of insurance of Arizona in issuing certificate of authority to foreign corporation to transact business in Arizona

§ 6. **Enlargement of powers by legislature; rules and regulations**
Section 6. The law-making power may enlarge the powers and extend the duties of the Corporation Commission, and may prescribe rules and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings.

Cross References

Regulation of public service corporations by commission generally, see A.R.S. § 10-201 et seq.

Regulatory provisions relating to corporations generally, see A.R.S. § 10-607 et seq.

Law Review Commentaries

Constitutional Convention of 1910. Ariz. State L.J. 1, 1978, p. 1.

Notes of Decisions

In general 1 (Commission powers—Con't'd)

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Reduction of commission powers 4
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 In general 10
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1. In general
 Legislative construction given by Civ. Code Art. 1914, § 2277-2362 (now A.R.S. 40-101 et seq.) to the words "corporations" and "public service corporations" in this article, creating, incorporation commission, would be followed by United States supreme court, in absence of decision of Arizona supreme court to the contrary, despite Const. Art. 14, defining "corporation," since the legislature was empowered by this section to enlarge powers of such commission. Van Dyke v. Geary (D.C. 1917) 47 S.Ct. 483, 244 U.S. 39, 61 L.Ed. 973.

2. Legislative powers—In general
 Legislature has control over corporation commission in exercise of its constitutional duties only through granting or withholding of appropriations. Garvey v. Trew (1946) 64 Ariz. 342, 170 P.2d 845, certiorari denied 67 S.Ct. 297, 329 U.S. 784, 91 L.Ed. 673.

Legislation could, by reason of its power to enact laws which protect public health, safety, and welfare, grant state corporation commission authority to regulate and govern private or contract carriers of persons and property. Op. Atty. Gen. No. 61-45.

3. — Enlargement of commission powers by legislature

Legislature may enlarge powers and extend duties of corporation commission. Selective Life Ins. Co. v. Equitable Life Assur. Soc. of U.S. (1967) 101 Ariz. 594, 422 P.2d 170, Garvey v. Trew (1946) 64 Ariz. 342, 170 P.2d 845, certiorari denied 67 S.Ct. 297, 329 U.S. 784, 91 L.Ed. 673.

Unless there is a constitutional grant of power over carriers, legislature cannot grant to the corporation commission additional control over carriers as an exercise of police power or otherwise. American Bus Lines, Inc. v. Arizona Corp. Commission (1981) 129 Ariz. 595, 633 P.2d 401.

Provision of this section that the law-making power may enlarge the powers and extend the duties of the corporation commission does not allow the legislature to give "public service corporation" designation to corporations not listed in Const. Art. 15, § 2 defining that term, and, thus, A.R.S. 5-40-281 requiring certificate of public convenience and necessity before construction by public service corporation is unconstitutional insofar as it attempts to expand commission's jurisdiction to regulate, as public service corporations, businesses not defined as such under Const. Art. 15, § 2. Railroad v. Arizona Corp. Comm'n. (1981) 129 Ariz. 116, 629 P.2d 83.

The corporation commission's specific constitutional power over sale of securities is limited to inspection and investigation, but the legislature may enlarge or extend the power and duties of the commission over the subject matter of which it has already been given jurisdiction and other matters of same class not expressly or implicitly exempt by other provisions of Constitution. Commercial Life Ins. Co. v. Wright (1948) 64 Ariz. 129, 166 P.2d 943.

This section, providing that law-making power could enlarge powers and extend the duties of the corporation commission did not authorize legislature to enlarge the commission's jurisdiction to include subject matter intended to be excluded from commission's jurisdiction by Const. Art. 15, § 2, but merely authorized legislature to enlarge or extend powers and duties of the commission over subject matter of which commission had been given jurisdiction by Const. Art. 15, § 2 by Constitution and other matters of the same class not expressly or implicitly exempt from commission's jurisdiction by other provisions of Constitution. Menderson v. City of Phoenix (1938) 51 Ariz. 280, 76 P.2d 321.

Provision of this section that law-making power could enlarge the powers and extend the duties of the corporation commission did not authorize legislature to extend commission's jurisdiction over transportation lines owned and operated by municipalities. Id.

4. — Reduction of commission powers by legislature
 Legislature may not decrease the powers or duties of the corporation commission. Selective Life Ins. Co. v. Equitable Life Assur. Soc. of U.S. (1967) 101 Ariz. 594, 422 P.2d 170, Garvey v. Trew (1946) 64 Ariz. 342, 170 P.2d 845, certiorari denied 67 S.Ct. 297, 329 U.S. 784, 91 L.Ed. 673.

Since this section expressly authorizes the legislature to enlarge the powers and extend the duties of the corporation commission, but nowhere authorizes it to restrict or limit its powers, it thereby implicitly forbids the legislature from exercising any of the powers vested in the commission. State v. Tucson Gas, Electric Light & Power Co. (1914) 16 Ariz. 294, 138 P. 781.

5. — Rates and regulations, legislative powers

Fact that corporation commission had power, under Const. Art. 15, § 3 to classify public service corporations and to prescribe rates and charges, did not preclude legislature from amending A.R.S. § 40-501, subsec. A, par. 8 [repealed] to permit private motor carriers to tow disabled vehicles, since legislature, under this section, could enlarge powers and extend duties of commission and had power to make rules and regulations not expressly given to commission. Arizona Corp. Commission v. S & L Service, Inc. (1953) 93 Ariz. 380, 381 P.2d 104.

The paramount power to make all such rules and regulations governing public service corporations is not specifically and expressly given corporation commission by some constitutional provision rests in legislature, which may exercise such powers directly or delegate them on such terms and limitations as it thinks proper to such commission. Corporation Commission v. Pacific Greyhound Lines (1939) 54 Ariz. 159, 94 P.2d 443.

6. Commission powers—In general
 The corporation commission has power under Const. Art. 15, § 3 to enter into contracts with federal power commission for co-operation under Federal Power Act, 16 U.S.C.A. 797, without objection from legislature. Garvey v. Trew (1946) 64 Ariz. 342, 170 P.2d 845, certiorari denied 67 S.Ct. 297.

Corporation commission had exclusive jurisdiction to regulate operation of motor vehicles as common carrier for hire within state, whether inside or outside of municipality, except so far as more local police regulations are concerned. Northwest Rapid Transit Co. v. City of Phoenix (1932) 41 Ariz. 71, 15 P.2d 951.

Under Civ. Code 1913, § 3114 (repealed), providing for issuance of licenses to insurance agents, and Laws 1915, Ch. 58 (repealed), making it unlawful for a foreign insurance company to write or accept any insurance policy except through its lawfully appointed and authorized agent, and providing that when a solicitor or agent accepted an application from any person not provided with a certificate the commission should, upon the proof or notice, suspend or revoke the certificate of such agent or solicitor, the corporation commission, which was authorized to hear such charges, had no power to grant a rehearing after having once disposed of the charges in favor of the insurance agent, nor could it grant a rehearing under its rules promulgated pursuant to this section declaring that all applications relating to matters over which the commission had jurisdiction and which were not covered by preventing rules had to be made by a petition; the procedure being such as the commission might prescribe. Johnson v. Bells (1929) 21 Ariz. 365, 188 P. 271.

Though a street railway franchise was granted by a city, the corporation commission had power thereafter, under this section, Const. Art. 15, § 3, and Civ. Code 1913, § 2277 et seq. (now A.R.S. § 40-104 et seq.) to order the company to change the routes of certain of its lines and authorize abandonment of a portion of a line, and such order was ample authority for abandonment by the company of said portion; franchise not being inviolable except upon mutual consent of immediate parties thereto. Phoenix Ry. Co. of Arizona v. Lount (1929) 21 Ariz. 299, 187 P. 931.

CONSTITUTION OF ARIZONA

7. — Constitutional amendment, commission powers

The November 26, 1980 amendment of Const. Art. 15, § 2 and in defining "public service corporations" and "common carriers" removed corporations engaged in carrying persons or property from the definition of "common carrier" and "public service corporation" and, thus, from the constitutionally-based jurisdiction of the transportation commission, but, on question whether legislature could constitutionally direct the commission to continue to regulate motor carriers as common carriers and public service corporations after the amendment of the constitution in view of legislative intent to have commission continue the regulation until July 1, 1982 in accordance with Laws 1979, Ch. 261, § 15, commission should continue to exercise authority over common carriers until such time as a court might otherwise direct. *Op. Atty. Gen. No. 181-019.*

8. — Implied commission powers

Corporation commission of Arizona has no implied powers. *Kendall v. Malcom* (1965) 98 Ariz. 329, 404 P.2d 414.

9. Judicial functions

When it rules on applications for certificates of public convenience and necessity, corporation commission performs a judicial function. *Walker v. Le Concini* (1950) 86 Ariz. 143, 341 P.2d 933.

The construction of an option agreement between public utility and electric cooperative for the purchase of electric transmission and distribution lines and facilities and all water distribution properties was a judicial function and the courts rather than the corporation commission have jurisdiction to determine validity of such agreement, although eventually the contract of sale, if valid, must have the sanction and approval of the corporation commission before it becomes effective. *Tracy Elec. Co-op. v. Kallstrom* (1948) 67 Ariz. 358, 196 P.2d 470.

§ 7. Connecting and intersecting lines of transportation and communications corporations

Section 7. Every public service corporation organized or authorized under the laws of the State to do any transportation or transmission business within the State shall have the right to construct and operate lines connecting any points within the State, and to connect at the State

10. Rules and regulations, in general

State corporation commission had authority to make reasonable rules and regulations and orders governing private carriers of passengers and property, i.e., any person not included in term "common motor carrier" or "contract motor carrier" who transports by vehicle in excess of 6,000 pounds unladen weight property of which such person is owner, lessee or bailee, when such transportation is for purpose of sale, lease, rent, or bailment or in furtherance of any commercial enterprise, but authority to regulate would not extend to passengers. *Op. Atty. Gen. No. 61-45.*

State corporation commission had authority to make reasonable rules, regulations, and orders governing contract carriers of passengers and property. *Id.*

State corporation commission had jurisdiction to require private motor carriers to comply with commission's general orders relative to safety requirements. *Op. Atty. Gen. No. 59-66.*

11. Municipal operation of business

Corporation commission lacks jurisdiction over a municipality in regard to municipal utility's determination of what fields of business, including public utilities, it will enter and over question of feasibility, desirability, or consideration to be paid by municipality in regard to acquisition or purchase of public utilities. *Op. Atty. Gen. No. 62-7.*

12. Violation of commission orders

Upon violation of corporation commission's general orders, complaint could be secured from county attorney charging that motor carrier was in violation and guilty of a misdemeanor or commission's rules and regulations could be enforced by filing a criminal complaint charging a misdemeanor pursuant to A.R.S. § 40-660 [repealed], and commission could also fine anyone violating its rules by citing any violation before the commission for contempt and by collecting, in a civil action, any fine assessed. *Op. Atty. Gen. No. 59-61.*

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boundaries with like lines; and every such corporation shall have the right with any of its lines to cross, intersect, or connect with, any lines of any other public service corporation.

Cross References

Connecting services and facilities between companies, see A.R.S. § 40-325 et seq.

Law Review Commentaries

Power plant and transmission line siting, improving Arizona's legislative approach. *Law & Soc. Order*, 1974, p. 519.

§ 8. Transportation by connecting carriers

Section 8. Every public service corporation doing a transportation business within the State shall receive and transport, without delay or discrimination, cars loaded or empty, property, or passengers delivered to it by any other public service corporation doing a similar business, and deliver cars, loaded or empty, without delay or discrimination, to other transportation corporations, under such regulations as shall be prescribed by the Corporation Commission, or by law.

Cross References

Connecting services and facilities between companies, see A.R.S. § 40-325 et seq.

Notes of Decisions

1. In general
This section, authorizing the legislature to exercise its authority in the formulation of regulations to govern the interchange by transportation companies of cars, property, and passengers, and Const. Art. 15, § 9, Light & Power Co. (1914) 15 Ariz. 291, 138 P. 781.

§ 9. Transmission of messages by connecting carriers

Section 9. Every public service corporation engaged in the business of transmitting messages for profit shall receive and transmit, without delay or discrimination, any messages delivered to it by any other public service corporation engaged in the business of transmitting messages for profit, and shall, with its lines, make physical connection with the lines of any public service corporation engaged in the business of transmitting messages for profit, under such rules and regulations as shall be prescribed by the Corporation Commission, or by law. Provided, that such public service corporations shall deliver messages to other such corporations, without delay or discrimination, under such rules and regulations as shall be prescribed by the Corporation Commission, or by law.

Upon violation of corporation commission's general orders, complaint could be secured from county attorney charging that motor carrier was in violation and guilty of a misdemeanor or commission's rules and regulations could be enforced by filing a criminal complaint charging a misdemeanor

pursuant to A.R.S. § 40-660 (repealed), and commission could also fine anyone violating its rules by citing any violation before the commission for contempt and by conducting, in a civil action, any fine assessed. Op. Atty. Gen. No. 59-61.

§ 17. Appeal to courts

Section 17. Nothing herein shall be construed as denying to public service corporations the right of appeal to the courts of the State from the rules, regulations, orders, or decrees fixed by the Corporation Commission, but the rules, regulations, orders, or decrees so fixed shall remain in force pending the decision of the courts.

Appeal in action to set aside order of commission, see A.R.S. § 40-254(1).

Cross References

Notes of Decisions

- In General 1
- Federal courts 3
- Jurisdiction of appellate court 2
- Parties 5
- Scope of appellate review 1

Transp. Co. (1964) 95 Ariz. 185, 388 P.2d 236.

Superior court, in order to affirm, modify or set aside corporation commission order, must find that commission's decision was unreasonable or unlawful upon clear and satisfactory evidence. *Id.*

2. Jurisdiction of appellate court

Where corporation commission had failed for nine months after company had applied for relief from confiscatory telephone rates to grant any relief, the superior court, on application by the company, had jurisdiction to allow the company to collect, pending determination by the court that a legal rate was fixed by proper public authority, temporary rates, as against claim that such jurisdiction was denied to superior court by Const. Art. 15, § 3, conferring heard powers upon the commission to regulate rates and service and that to permit the exercise of such jurisdiction would violate the due process of law clause. *Arizona Corp. Comm'n v. Mountain States Tel. & Tel. Co.* (1951) 71 Ariz. 401, 228 P.2d 749.

Where corporation commission failed for nine months after company had applied for relief from confiscatory telephone rates to grant any relief, contention that the superior court was without jurisdiction to grant temporary relief pending determination by the court of legal rate, because of reminders by mandamus and contempt proceedings was without merit, as mandamus would be merely a repetition of any existing order

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with time limitations, and the contempt proceedings would not protect the company against interim confiscation. *Id.*

3. Federal courts

Suit by carrier to enjoin enforcement of reparation order by Arizona corporation commission was within jurisdiction of federal court as involving federal question, in view of severity of penalties under state law. *El Paso & S.W.R. Co. v. Arizona Corporation Commission* (U.C.1931) 51 P.2d 573.

4. Scope of appellate review

Scope of appellate review of superior court decision on review of rate-making decision of the corporation commission is extensive with the superior court's scope, with the exception of hearing new evidence. *City of Tucson v. Citizens Utilities Water Co.* (1972) 17 Ariz.App. 477, 498 P.2d 551.

Rule that hearing before superior court on review of corporation commission order is de novo means only that trial court is empowered to reach independent conclusion, and does not mean that court may enter judgment independent and free of A.R.S. § 40-254, limiting authority to *af.*

§ 18. Repeal approved election Nov. 3, 1970, cff. Nov. 27, 1970

Historical Note

The governor, on November 27, 1970, proclaimed that the repeal of this section, as proposed by Laws 1970, H.C.M. No. 14, § 4, filed May 12, 1970, had been approved by a majority of the electors in the November 3, 1970 general election and had become law. The repealed section provided that each corporation commissioner was to receive a

designated salary "until otherwise provided by law"; together with his normal necessary expenses while away from home in the discharge of his duties; prior to the repeal of this section, the salary provision was supported by A.R.S. former § 38-601.

§ 19. Power to impose fines

Section 19. The Corporation Commission shall have the power and authority to enforce its rules, regulations, and orders by the imposition of such fines as it may deem just, within the limitations prescribed in Section 16 of this Article.

Cross References

Violations and penalties, generally, see A.R.S. § 40-121 et seq.

Word "modify", in A.R.S. § 40-254, empowering superior court to affirm, modify or set aside corporation commission order, does not grant right to exercise or supervise essential function of commission. *Arizona Corp. Commission v. Fred Harvey*

§ 10-128

CORPORATIONS AND ASSOCIATIONS
Title 10

4. That all annual filing fees due before the date of the certificate have been paid.

5. That, according to the records of the commission, the corporation is in good standing in this state.

C. Subject to any qualification stated in the certificate, a certificate of good standing issued by the commission may be relied on as conclusive evidence of the matters stated in the certificate.

Added by Laws 1994, Ch. 223, § 4, eff. Jan. 1, 1996.

Historical and Statutory Notes

Former § 10-123, relating to certificates of disclosure of violations of corporations, was repealed by Laws 1994, Ch. 223, § 3, effective January 1, 1996. For source information and for the continuation of the subject matter of the repealed section, see the Disposition Tables for Title 10 preceding § 10-301, ante.

Another former § 10-123 was repealed by Laws 1975, Ch. 69, § 1, effective July 1, 1976. For disposition of the subject matter of the repealed section, see Disposition Tables preceding § 10-001.

§ 10-128.01. Repealed by Laws 1994, Ch. 223, § 3, eff. Jan. 1, 1996

Historical and Statutory Notes

The repealed section, added by Laws 1978, Ch. 22, § 2, provided for a statement of bankruptcy or receivership and interrogatories prior to subsequent incorporation. See, now, § 10-1623.

§ 10-129. Blank

Historical and Statutory Notes

Former § 10-129, added by Laws 1975, Ch. 69, § 2, amended by Laws 1976, Ch. 148, § 61; Laws 1984, Ch. 191, § 1; Laws 1989, Ch. 305, § 1; related to filing fees. See, now, § 10-122.

§ 10-129.01. Repealed by Laws 1994, Ch. 223, § 3, eff. Jan. 1, 1996

Historical and Statutory Notes

The repealed section, added by Laws 1992, Ch. 118, § 1, amended by Laws 1992, Ch. 118, §§ 2 and 3, related to a public access fund.

ARTICLE 3. ARIZONA CORPORATION COMMISSION

§ 10-130. Powers

The commission has the power and authority reasonably necessary to enable it to administer this title efficiently and to perform the duties imposed on it by this title, including the power and authority to make rules and regulations for those purposes.

Added by Laws 1994, Ch. 223, § 4, eff. Jan. 1, 1996.

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DEFINITIONS, NOTICE AND SHAREHOLDERS
Ch. 1

§ 10-140

Historical and Statutory Notes

Source: A.R.S. former § 10-139, Laws 1975, Ch. 09, § 2. Former § 10-130, relating to certificates of good standing for license and registration re-
newals, was repealed by Laws 1994, Ch. 223, § 3, effective January 1, 1996. For source information and for the continuation of the subject matter of the repealed section, see the Disposition Tables for Title 10 preceding § 10-001, ante.

Cross References

Nonprofit corporations, powers, see § 10-2543.

Library References

Corporations 391, 395, 649, 650. WESTLAW Topic No. 101. C.J.S. Corporations §§ 530, 533, 534, 901, 904-906.

Notes of Decisions

Lawful purpose 1
1. Lawful purpose
The Arizona corporation commission must determine whether a corporation appears to conform to the requirement that it be organized for a lawful purpose, and the commission is authorized to utilize interrogatories as an investigative tool. Op.Atty.Gen. No. 179-157.

§ 10-131. Repealed by Laws 1994, Ch. 223, eff. Jan. 1, 1996

Historical and Statutory Notes

The repealed section, added by Laws 1990, Ch. 44, § 1, related to delivery of documents by means of facsimile transmission.

§§ 10-135 to 10-139. Repealed by Laws 1995, Ch. 223, § 3, eff. Jan. 1, 1996

Historical and Statutory Notes

The repealed sections, provided for civil liability for false statements, interrogatory or signature violations, interrogatories by the commission, information disclosed by interrogatories, and powers of the corporation commission. For source information and for the continuation of the subject matter of the repealed sections, see the Disposition Tables for Title 10 preceding § 10-001, ante.

ARTICLE 4. DEFINITIONS, NOTICE AND SHAREHOLDERS

The heading of Article 4 was changed from "Definitions" to "Definitions, Notice and Shareholders" by Laws 1995, Ch. 69, § 3, effective January 1, 1996.

Forms

See West's Arizona Legal Forms, Business Organizations, Corporations.

§ 10-140. Definitions

In chapters 1 through 17 of this title,¹ unless the context otherwise requires:

§ 41-1063

STATE GOVERNMENT

STATE GOVERNMENT

§ 41-1073

§ 41-1063. Decisions and orders

Notes of Decisions

2. **Fineings**
State liquor board was required to make findings of fact to support decision transferring ownership and location of liquor license. *City of Phoenix v. 3613 Ltd. (App. Div.1 1997) 191 Ariz. 68, 982 P.2d 290, review denied.*

§ 41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal

Administrative Code References

Licensing process and requirements for child welfare agencies, see A.A.C. R6-5-7421. Social services, licenses, adverse action pending appeal, see A.A.C. R6-5-7505

Notes of Decisions

1. **Construction and application**
Arden-Maryfair, Inc. v. State, Dept. of Liquor Licenses and Control (1979) (main volume) 123 Ariz. 340, 699 P.2d 793.
Chalkboard, Inc. v. Bramble, C.A.9 (Ariz.)1989, 902 F.2d 1376, certiorari denied 111 S.Ct. 609, (main volume) 498 U.S. 980, 112 L.Ed.2d 621.

§ 41-1065. Hearing on denial of license or permit

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by § 41-1061. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.
Amended by Laws 1997, Ch. 221, § 183.

§ 41-1066. Compulsory testimony; privilege against self-incrimination

Notes of Decisions

Use of testimony in criminal proceedings 1
Validity 2
Waiver 2

Validity

To pass constitutional muster, state use-immunity statute must provide immunity no less extensive than Fifth Amendment privilege against self-incrimination. *State v. Gertz (App. Div.1 1995) 186 Ariz. 38, 918 P.2d 1056, reconsideration denied, review denied.*

1. Use of testimony in criminal proceedings

Trial court should not have permitted state to use defendant's compelled immunized testimony from collateral administrative hearing in defendant's trial for sexual abuse, kidnapping, and fraudulently procuring administration of narcotic drug, even though defendant did not object to state's use of immunized testimony until after trial.
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Ariz. 38, 918 P.2d 1056, reconsideration denied, review denied.

2. **Waiver**
Witness can intentionally relinquish protection that use-immunity statute affords, but only when objection is required by rule or statute, or when use of immunized testimony is clear, does waiver result from failure to object. *State v. Gertz (App. Div.1 1995) 186 Ariz. 38, 918 P.2d 1056, reconsideration denied, review denied.*

§ 41-1067. Applicability of article

This article only applies to contested cases of agencies that are exempt from article 10 of this chapter as provided in § 41-109202.
Added by Laws 1998, Ch. 57, § 51.

ARTICLE 7.1. LICENSING TIME FRAMES

Article 7.1, consisting of §§ 41-1072 to 41-1078, was added by Laws 1996, Ch. 102, § 42, effective July 20, 1996.

Administrative Code References

Pharmacist licensure, examination, see A.A.C. R4-23-202. Registrar of contractors, application process, see A.A.C. R4-9-113.

§ 41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.
Added by Laws 1996, Ch. 102, § 42.

Administrative Code References

Board of medical examiners, time frames for licenses, etc., see A.A.C. R4-16-104, R4-16-105. Child care facilities, licensure, see A.A.C. R9-5-206. Department of Revenue, bingo, initial license application time-frames, see A.A.C. R15-7-308. Game and fish, licenses, definitions, see A.A.C. R12-4-106. Licensing process for child welfare agencies, see A.A.C. R6-5-7401 et seq. Permits, distribution of drugs, time-frame, see A.A.C. R4-21-602. Physician assistants, certification, renewal, approval, see A.A.C. R4-17-102. State board of nursing, licensure, certification, approval, see A.A.C. R4-19-102.

§ 41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules

to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
 2. The resources of the agency granting or denying the license.
 3. The economic impact of delay on the regulated community.
 4. The impact of the licensing decision on public health and safety.
 5. The possible use of volunteers with expertise in the subject matter area.
 6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
 7. The possible increased cooperation between the agency and the regulated community.
 8. Increased agency flexibility in structuring the licensing process and personnel.
- D. This article does not apply to licenses issued either:
1. Pursuant to tribal state gaming compacts.
 2. Within seven days after receipt of initial application.
 3. By a lottery method.
- Added by Laws 1996, Ch. 102, § 42. Amended by Laws 1998, Ch. 57, § 52.

Historical and Statutory Notes

1996 Reviser's Note:

Pursuant to authority of § 41-1304.02, in the section heading "exception" was substituted for "exemption".

Administrative Code References

Board of occupational therapy examiners, see A.A.C. R4-43-206;	Developmental home, time frame for granting or denying a license or certificate, see A.A.C. Certification and registration, CPA certificates by examination, see A.A.C. R4-1-341.
Department of Administration, public building maintenance, solicitation, etc., see A.A.C. R2-6-304, 2-6-404.	Permit applications, Greyhound racing, see A.A.C. R19-2-303, R19-2-306.
Department of Water Resources, licensing time-frames, see A.A.C. R12-15-401.	Horse racing, see A.A.C. R19-2-109, State board for private postsecondary education, licensure, see A.A.C. R4-39-102.

§ 41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

Added by Laws 1996, Ch. 102, § 42.

Administrative Code References

Licensing process and requirements for child welfare agencies, site inspection, see A.A.C. R6-5-7406, R6-5-7412.

§ 41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

Added by Laws 1996, Ch. 102, § 42.

Administrative Code References

Certification and registration, CPA certificates Department of Water Resources, licensing time-frames, see A.A.C. R4-1-341.

§ 41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to § 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
 2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.
- Added by Laws 1996, Ch. 102, § 42.

Administrative Code References

Child care facilities, licensure, initial license application time-frames, see A.A.C. R9-5-202.	Natural resources, application for permit to drill, see A.A.C. R12-7-104.
Licensing of environmental laboratories, see A.A.C. R9-14-603.	State board of nursing, written order, hearing, see A.A.C. R4-19-102.

§ 41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to

§ 41-1076, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be one percent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

Added by Laws 1996, Ch. 102, § 43, eff. Jan. 1, 1998. Amended by Laws 1998, Ch. 57, § 53.

Historical and Statutory Notes

Laws 1996, Ch. 102, § 78, provides: "Section 78. Delayed effective date "Section 41-1077, Arizona Revised Statutes, as added by § 43 of this act, is effective from and after December 31, 1997."

Administrative Code References

Health services, licensing of governmental laboratories, fees, see A.A.C. 189-14-800.

§ 41-1078. Reporting; compliance with time frames

A. Beginning on September 1, 1998 for agencies that have established time frames before July 1, 1998 and by September 1 of each year thereafter for all agencies that issue licenses, each agency shall report to the governor's regulatory review council on summary forms developed by the council the agency's compliance level with its overall time frames for the prior fiscal year. The agency reports shall include the number of licenses issued or denied by the agency within the applicable time frames, the dollar amount of all fees returned to applicants and all penalties paid to the state general fund due to the agency's failure to comply with the applicable time frames and, if this article does not apply to licenses issued by the agency because the licenses are issued within seven days after receipt of initial application, a certification by category of license, including a statutory reference for the category of license, that the agency has complied with the seven-day requirement.

B. By December 1 of each year, the governor's regulatory review council shall compile the summary forms submitted by the agencies pursuant to subsection A and present them to the governor, the president of the senate, the speaker of the house of representatives and the cochairmen of the administrative rules oversight committee.

Added by Laws 1996, Ch. 102, § 42. Amended by Laws 1998, Ch. 57, § 54.

§ 41-1079. Information required to be provided

- A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:
1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established pursuant to title 41, chapter 12, article 8.
Added by Laws 1998, Ch. 57, § 55.

ARTICLE 8. DELEGATION OF FUNCTIONS, POWERS OR DUTIES

Article 8, Delegation of Functions, Powers or Duties, consisting of §§ 41-1081 to 41-1084, was added by Laws 1994, Ch. 363, § 28, effective January 1, 1995.

§ 41-1081. Standards for delegation

A. No agency may enter into or amend any delegation agreement unless the delegation agreement clearly sets forth all of the following:

- 1. Each function, power or duty being delegated by the agency, the term of the agreement and the procedures for terminating the agreement.
2. The standards of performance required to fulfill the agreement.
3. The types of fees that will be imposed on regulated parties and the legal authority for imposing any such fees.
4. The qualifications of the personnel of the political subdivision responsible for exercising the delegated functions, powers or duties.
5. Record keeping and reporting requirements.
6. Auditing requirements if the delegation agreement includes the transfer of funds from the delegating agency to the political subdivision.
7. A definition of the enforcement role if enforcement authority is being delegated.
8. Procedures for resolving conflicts between the parties to the delegation agreement.
9. Procedures for amending the delegation agreement.
10. The names and addresses of primary contact persons at both the delegating agency and the political subdivision.

B. An agency that seeks to delegate functions, powers or duties shall file with the secretary of state a summary of the proposed delegation agreement. The summary shall provide the name of a person to contact in the agency with questions or comments and shall state that a copy of the proposed delegation agreement may be obtained upon request from the agency. The secretary of state shall publish the summary in the next register.

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.

E. After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.

F. A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives

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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

1
2 JIM IRVIN
3 COMMISSIONER-CHAIRMAN
4 RENZ D. JENNINGS
5 COMMISSIONER
6 CARL J. KUNASEK
7 COMMISSIONER

DEC 10 1998

DOCKETED BY

cm

8 IN THE MATTER OF PROPOSED
9 RULEMAKING TO PROVIDE TIME
10 FRAMES FOR THE PROCESSING OF
11 APPLICATIONS PURSUANT TO TITLE
12 10 AND TITLE 29 OF THE ARIZONA
13 REVISED STATUTES.

DOCKET NO. RC-00000A-98-0494

14 DECISION NO. 61271

OPINION AND ORDER

15 DATE OF HEARING: November 10, 1998

16 PLACE OF HEARING: Phoenix, Arizona

17 PRESIDING OFFICER: Teena Wolfe

18 APPEARANCES: Ms. Joanne MacDonnell, Director of Corporations; Mr. Bill
19 Parkerson, Deputy Director of Corporations; Mr. Patrick J.
20 Black, Staff Attorney, Legal Division, on behalf of the
21 Arizona Corporation Commission.

22 **BY THE COMMISSION:**

23 On September 4, 1998, the Corporations Division ("Division") of the Arizona Corporation
24 Commission ("Commission") forwarded to the Commission a proposal recommending that the
25 Commission adopt proposed Rule A.A.C. R14-1-103 ("Rule"). The Rule would establish time-
26 frames within which the Division must process regular applications for licenses issued by the
27 Division pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. By Decision No. 61118
28 (September 15, 1998), the Commission directed that a hearing be scheduled for the purpose of taking
public comment regarding the Rule. By Procedural Order dated September 21, 1998, the public
comment hearing was scheduled for November 10, 1998. The Notice of Proposed Rulemaking was
published in the Arizona Administrative Register on October 9, 1998. Notice of the public comment
hearing was also directly provided to the Business Law Section of the State Bar of Arizona and to
CT Corporation System and CSC. CT Corporation System and CSC provide incorporating services
in the state of Arizona.

1 The public comment hearing on the Rule took place as scheduled on November 10, 1998.
2 No written comments on the Rule have been filed in this Docket, and there were no public
3 comments on the Rule at the hearing. The Division stated that prior to the hearing, it discussed the
4 Rule with its advisory council, which consists of representatives from CT Corporation System and
5 CSC, and of attorneys from various law practices around the state. The Division stated that the
6 advisory council did not suggest any changes to the Rule as proposed. The Division further
7 explained that because most filings processed by the Division are filed as expedited applications, the
8 Rule will not affect the time-frames of most filings. The Rule does not affect expedited applications,
9 which are already covered by A.R.S. § 10-122.

10 At the public hearing, the Division explained why the Rule should be adopted, stating that
11 it initiated this rulemaking to bring the Commission into compliance with A.R.S. § 41-1072 et seq.
12 ("Time Frame Statutes"). The Time Frame Statutes require any state agency that issues licenses to
13 have licensing time-frame rules in place no later than December 31, 1998.

14 The Rule contemplates one general track for all certificate and licensing applications
15 processed by the Division. In compliance with the Time Frame Statutes, the Rule would establish
16 an overall time-frame consisting of two subcomponents, which are an administrative completeness
17 review time-frame and a substantive review time-frame. Based on the current and historic volume
18 of filings, the Rule establishes an administrative completeness review time-frame of 270 days and
19 a substantive review time-frame of 90 days. The Rule thus requires an overall time frame of 360
20 days for the processing of applications for certificates or licenses pursuant to Title 10 and Title 29
21 of the Arizona Revised Statutes.

22 The Rule also has provisions specifying time-frames for the handling of administratively
23 incomplete applications. A.R.S. § 41-1074 provides procedures for such deficient applications but
24 does not specify time-frames. Under A.R.S. § 41-1074, if an application is deemed administratively
25 incomplete, the Division shall provide written notice to the applicant specifying all deficiencies. The
26 Rule further specifies that upon notice of deficiency, the applicant shall have 30 calendar days in
27 which to satisfy those deficiencies, and that if the applicant does not remedy all deficiencies within
28

1 thirty calendar days of notice, the Commission may terminate the application.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 FINDINGS OF FACT

6 1. On September 4, 1998, the Division forwarded to the Commission a proposal
7 recommending that the Commission adopt the Rule.

8 2. On September 15, 1998, the Commission issued Decision No. 61118 which
9 directed that a hearing be scheduled regarding the Rule for the purpose of taking public comment.

10 3. By Procedural Order issued September 21, 1998, the public comment hearing was
11 scheduled for November 10, 1998 in Phoenix, Arizona. The Notice of Proposed Rulemaking was
12 published in the Arizona Administrative Register on October 9, 1998.

13 4. The hearing was held as scheduled on November 10, 1998. No member of the
14 public appeared to comment on the Rule, and no written comments concerning the Rule were filed
15 with the Commission.

16 5. The Rule is set forth in Appendix A, attached hereto and incorporated herein by
17 reference.

18 6. The Economic, Small Business, and Consumer Impact Statement is set forth in
19 Appendix B, attached hereto and incorporated herein by reference.

20 7. The Concise Explanatory Statement is set forth in Appendix C, attached hereto and
21 incorporated by reference.

22 CONCLUSIONS OF LAW

23 1. Pursuant to A.R.S. § 10-130 and the Arizona Constitution, Article XV, Sections 5
24 and 6, the Commission has jurisdiction to adopt proposed A.A.C. R14-1-103.

25 2. Notice of the hearing was given in the manner prescribed by law.

26 3. Adoption of the Rule is in the public interest.
27
28

1
2 4. The Economic, Small Business, and Consumer Impact Statement as set forth in
3 Appendix B should be adopted.

4 5. The Concise Explanatory Statement as set forth in Appendix C should be adopted.

5 ORDER

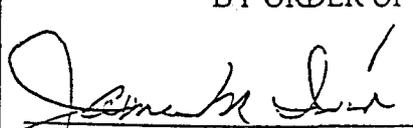
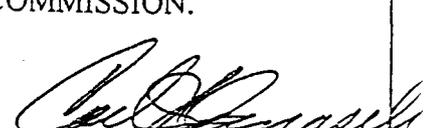
6 IT IS THEREFORE ORDERED that A.A.C. R14-1-103, as set forth in Appendix A: the
7 Economic, Small Business, and Consumer Impact Statement as set forth in Appendix B; and the
8 Concise Explanatory Statement, as set forth in Appendix C are hereby adopted.

9 IT IS FURTHER ORDERED that the Commission's Corporations Division shall submit
10 the adopted Rule, A.A.C. R14-1-105, to the Attorney General's Office for certification.

11 IT IS FURTHER ORDERED that the Commission's Corporations Division is authorized
12 to make changes to the adopted Rule, A.A.C. R14-1-103; and to the adopted Economic, Small
13 Business, and Consumer Impact Statement; and to the Concise Explanatory Statement in response
14 to comments received by the Attorney General's Office during the approval process under A.R.S.
15 § 41-1044 unless, after notification of those changes, the Commission requires otherwise.

16 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

17 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

18   
19 COMMISSIONER-CHAIRMAN COMMISSIONER COMMISSIONER

20
21 IN WITNESS WHEREOF, I, JACK ROSE, Executive
22 Secretary of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
24 Commission to be affixed at the Capitol, in the City of
25 Phoenix, this 10 day of Dec, 1998.

26 
27 JACK ROSE
28 EXECUTIVE SECRETARY

27 DISSENT _____
28 TW:bbs

1 SERVICE LIST FOR: CORPORATIONS DIVISION TIME-FRAME
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