Executive Order 2011-05

State Regulatory Rule Making Review and Moratorium To Promote Job Creation and Retention

WHEREAS, my first official action as Governor was to institute a regulatory rule making review and moratorium process ("regulatory review and moratorium") in order to prevent additional and unnecessary burdens on our private sector employers and political subdivisions; and

WHEREAS, other states have since implemented regulatory reviews and moratoriums; and

WHEREAS, the economic climate in Arizona continues to challenge both those seeking employment and our employers, who are the key to increasing job opportunities in this State; and

WHEREAS, a predictable regulatory climate in this State will promote job creation and retention; and

WHEREAS, the Legislature enacted the regulatory review and moratorium for fiscal year 2009 - 2010 by passing House Bill 2008 in the 2009 Third Special Session; and

WHEREAS, the Legislature continued the regulatory review and moratorium for fiscal year 2010 - 2011 by passing House Bill 2260 in the 2010 Second Regular Session; and

WHEREAS, the current regulatory review and moratorium expires on June 30, 2011; and

WHEREAS, the expiration of the current regulatory review and moratorium could result in a regulatory explosion detrimental to job creation and retention in this State; and

NOW, THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this State, hereby declare that for fiscal year 2011-2012 ending June 30, 2012, the following:

1. A state agency, subject to this Order pursuant to Paragraph 4, shall not conduct any rule making except as permitted by this Order. The objective of this Order is eliminate any unnecessary increased monetary or regulatory costs on employers, persons, individuals, other state agencies, or political subdivisions of this State. This prohibition includes any informal rule making prior to the commencement of the formal rule making process.

2. Paragraph 1 does not apply to state agency rule making for any one or more of the following reasons:
   a. To fulfill an objective related to job creation in this State.
   b. To lessen or ease a regulatory burden while achieving the same regulatory objective.
   c. To prevent a significant threat to the public health, peace or safety.
   d. To avoid a violation of a court order or federal law that would result in sanctions by a court or federal government against an agency for failure to conduct the rule making action.
   e. To comply with a federal statutory or regulatory requirement or a state statutory requirement if the applicable statute or regulation contains a date certain for compliance on or before December 31, 2012 or is necessary under subparagraph (c) of this Paragraph.
   f. To fulfill an obligation related to fees or any other action necessary to implement the state budget that is certified by the Governor's Office of Strategic Planning and Budgeting.

g. To promulgate a rule or other item that is exempt from title 41, chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
h. To address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within a state agency or wasteful, fraudulent or abusive activities perpetrated against a state agency.

3. A state agency, subject to this Order pursuant to Paragraph 4, shall not conduct any informal or formal rule making pursuant to Paragraph 2 or otherwise without the prior written approval of the Office of the Governor.

4. This Order applies to all state agencies, except for: (a) any state agency that is headed by a single elected state official, (b) the corporation commission, or (c) any state agency whose agency head is not appointed by the Governor.

5. All state officials and state agencies that are not subject to this Order pursuant to Paragraph 4 are encouraged to participate voluntarily within the context of their own rule making processes.

6. State agencies may continue a rule making that was authorized by the Office of the Governor on or after January 22, 2009. All state agencies, subject to this Order pursuant to Paragraph 4, shall report to the Office of Governor by July 29, 2011 all pending rule makings and any pending requests to the Office of Governor for rule making.

7. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a state agency.

8. For the purposes of this executive order, "person", "rule" and "rule making" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Janice K. Brewer

GOVERNOR

DONE at the Capitol in Phoenix, Arizona this 30th day of June in the Year Two Thousand and Eleven and of the Independence of the United States of America the Two Hundred and Thirty-Fifth.

ATTEST: Ken Bennett

SECRETARY OF STATE