

Attachment A

FIVE YEAR REVIEW – Authorized June 12, 2017
Submitted June 20, 2017
Citizens Clean Elections Commission

This report covers R2-20-109 through 111 in Title 2, Chapter 20. The Citizens Clean Elections Commission (the "Commission") adopted these rules to further the goals of the Citizens Clean Elections Act ("Act"). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and to thereby promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein "participating" candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow additional rules and reporting requirements. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been "pre-cleared" by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

At the express request of Councilmember Ames, the following statements are included:

The Commission reserves its objections respecting the 5-year report process, including any decisions that purport to supervene or eliminate the Commission's rules, and any failure by the Council to adhere to the procedures set forth in statute. Nevertheless, the Commission also recognizes that its view of the Clean Elections Act does not necessarily represent those of the Council or any of its members, nor is the report's approval a representation of any council members substantive views.

That having been said, the Commission's resubmittal of a portion of its report demonstrates at least substantial compliance with any purported decision to eliminate Commission rules. Specifically, the Commission has eliminated substantial portions of R2-20-109, including former R2-20-109(F)(2) and (F)(4)-(11). Other provisions have been added to R2-20-111 to ensure coordination between the Commission and the Secretary of State's office where possible. For these reasons, on behalf of the Commission, I request that the Council approve the remainder of the 5-year report and find that the prior decision relating to the elimination of rules moot.

The Commission reports the following analysis of its rules in the order required by Arizona Administrative Code ("A.A.C.") R1-6-301. Pursuant to A.A.C. R1-6-301(B), Part I includes information pertaining to all, or a great number, of the rules. Part II reports information unique to the listed rules.

This report is made without waiver of any of the Commission's legal positions concerning the Commission's rulemaking authority or the Governor's Regulatory Review Council's authority under A.R.S. § 41-1056.

Part I: Analysis Which Is Identical Within Groups of Rules (Ariz. Admin. Code R2-20-109 to 20-111)

1. General statutes authorizing the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The Commission's general rulemaking authority is found in A.R.S. § 16-956 (C). This statute gives the Commission authority to adopt rules to carry out the purposes of the Article and to govern procedures of the Commission. A.R.S. § 16-956 (C) provides:

The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The Commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty-day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the Secretary of State's Office for publication in the Arizona Administrative Register. Any rules adopted by the Commission shall only be applied prospectively from the date the rule was adopted.

The Commission is governed by the Act codified at Title 16, Chapter 6, Article 2. The Act includes A.R.S. §§ 16-940 through -961. A copy of the Act is attached hereto as **Attachment A**. **Attachment B** is a copy of the rules covered by this report.

The Act sets forth numerous provisions which, by their terms, apply to persons involved in campaigns financially. These include:

- Section 16-941(B) (setting campaign contribution limits)
- Section 16-941(C) (noting that nonparticipating candidates are bound by all
- campaign finance laws save those in direct conflict with those in the Act)

- Section 16-941(D) (imposing reporting obligations on “any person” who makes independent expenditures in excess of \$500)
- Section 16-942(B) (establishing penalties for all candidates and independent spenders who violate reporting requirements of Chapter 6)
- Section 16-942(C) (creating penalty of disqualification for certain violations of campaign contribution limits, including both participating and non-participating candidates)
- Section 16-943 (establishing criminal liability for knowing violations of statutes relating to contribution limits)
- Section 16-956(A)(7) (noting the Commission’s mandatory obligation to enforce the Act and to monitor candidate reports filed under Chapter 6)
- Section 16-957(A) (setting fourteen day requirement for Commission to serve any person who violates the Act an order regarding the violation).

The plain language of these statutes demonstrates the law applies to both participating candidates and non-participating candidates. Thus, for example, A.R.S. § 16-941(A) expressly applies to participating candidates, as does § 16-942(A). However, the Commission’s responsibilities to enforce the provisions of the Act that “do not relate to the public financing of political campaigns.” *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244 ¶ 13, 99 P.3d 570, 574 (2004), *abrogated on other grounds by Save Our Vote Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 291 P.3d 242 (2013) (recognizing duties are independent of any public financing program and involve nonparticipating candidates and independent expenditures.); *accord Home v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014) (dismissing case challenging the Commission’s jurisdiction to resolve complaints against a non-participating candidate). Similarly, the plain language applies to “any person who makes independent expenditures related to a particular office cumulatively exceeding [a threshold set by formula].” A.R.S. § 16-941(D). Thus, the Arizona Secretary of State applies the Clean Elections Act to reduce contribution limits to non-participating candidates, and to determine the threshold for filing by persons subject to § 16-941(D). See Ariz. Sec’y of State, *Contribution Limits*, available at <https://www.azsos.gov/elections/campaign-finance-reporting/contribution-limits>; see also Ariz. Sec’y of State, *Arizona Citizens Clean Elections Act 2017-2018 Participating Candidate Expenditure & Contribution Limits*, available at <http://www.azcleelections.gov/CmsItem/File/338> (setting amount of 16-941(D) reporting threshold).

Substantial portions of what had been R2-20-109(F)-(G) have been amended and repealed. Although the Commission’s views in this report do not purport to represent the views of any council member of the Governor’s Regulatory Review Council, in the Commission’s view, R2-20-109 to -111 are consistent with the law. The Clean Elections Act establishes penalties for those who violate reporting requirements of Chapter 6 of Title 16 (A.R.S. § 16-901 to -961) and requires the Commission to enforce the Act. A.R.S. § 16-942(B) (providing for penalties); A.R.S. § 16-956(A)(7) (enforcement authority). Campaign finance reporting

requirements exist in the Clean Elections Act itself and elsewhere in Chapter 6 of Title 16. See A.R.S. § 16-926 (reporting requirements); A.R.S. § 16-941(D) (Clean Elections Act requiring any person who makes independent expenditures over a certain dollar threshold to submit a report regarding the expenditure).

As noted, the Commission has taken significant steps to alter these rules during these proceedings. Following the passage of legislation in 2016, the Commission deleted rules including: former R2-20-109(F)(2) and 109(F)(4) through (F)(11) and reorganized new R2-20-109 (F)(2) and (F)(3). Additionally, the Commission avoided Voter Protection Act issues by expressly adopting new provisions into R-20-111 relating to campaign finance limits for state and legislative candidates, which reflect the Secretary of State's published limits. See Ariz. Sec'y of State, *Campaign Contribution Limits* (January 2017), available at <https://www.azsos.gov/elections/campaign-finance-reporting/contribution-limits>.

R2-20-109 provides rules for the method of reporting independent expenditures (R2-20-109(A)) and for the consequences of a failure to file a required report, including the possibility of penalties (R2-20-109(B)). This rule provision ensures consistency with recent legislative amendments to Title 16. R2-20-110 provides rules for the reporting requirements applicable to candidates participating in the clean elections funding system. R2-20-111 provides rules regarding the reporting requirements, contribution limits, and potential penalties applicable to non-participating candidates.

2. The objective of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The objective of each rule is to further the objective of the Act, which as stated in A.R.S. § 16-940 (A) is:

to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. R2-20-109 provides the requirements for the submission of independent expenditure reports. R2-20-110 provides rules for the reporting requirements of participating candidates. R2-20-111 provides rules for the reporting and contribution limits requirements of non-participating candidates. Each rule also includes requirements for the imposition of penalties for the failure to timely file a campaign finance report under Chapter 6 of Title 16 (A.R.S. § 16-901 to -961) and other penalties provided by law.

In summary, the Act does not limit the Commission's authority to elections involving "participating" candidates. Arizona voters adopted the Clean Elections Act to "improve the integrity of Arizona state government by diminishing the

influence of special-interest money, [] encourage citizen participation in the political process, and [] promote freedom of speech under the U.S. and Arizona Constitutions.” A.R.S. § 16-940(A).

To achieve these ambitious goals, the Act gives the Commission express jurisdiction over campaign finance reports relating to “candidates,” without regard to whether the candidate participates in clean funding. With respect to reporting obligations, the relevant provisions of the Act use the term “candidate,” without distinguishing between “participating” and “non-participating.” See A.R.S. § 16-941(D) (independent expenditure reports should “identify the office and the candidate or group of candidates”); § 16-942(B) (prescribing penalties for violations “by or on behalf of any candidate of any reporting requirement”). At the same time, the Act uses the term “participating” or “nonparticipating” when it means for a provision to apply only to one or the other category of candidates. See, e.g., A.R.S. § 16-941(A) (regulating contributions and expenditures for “a participating candidate”); § 16-941(B) (prohibiting “nonparticipating candidates” from accepting contributions in excess of specified amounts); § 16-942(A) (prescribing enhanced penalties for “a violation . . . by or on behalf of a participating candidate”). The Act’s language thus clearly shows that the drafters knew how to indicate if a provision of the Act was intended to apply only to a participating candidate.

3. **Effectiveness of the rule in achieving the objective**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule is effective in achieving the above-stated objective. R2-20-109 is effective in achieving its objective. The rule implements the independent expenditure reporting requirements and related penalties under the of the Act. R2-20-110 provides for reporting by participating candidates. R2-20-111 provides for reporting and limits applicable to non-participating candidates. The Commission has determined that each rule is tailored to the specific statutory provisions that support them and have been effective.

4. **Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The Commission adopted a number of rule amendments on December 15, 2016. The 2016 rule amendments can be found in **Attachment C**. The Commission adopted the rule amendments to harmonize the Commission’s rules with recent legislative amendments to Title 16, avoid confusion within the regulated community, and promote consistency between the Commission’s rules and the policies of other election-related offices. The rule amendments are primarily the result of Senate Bill 1516 (2016), legislation that substantially altered Arizona

campaign finance law in some respects. Certain provisions in SB1516 raise substantial questions under the Arizona and United States Constitutions. The Commission made rule amendments without waiving any legal objection, and without any waiver of its full authority to enforce Article 2 of Chapter 6 of Title 16.

The rules are consistent with state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent. **Substantial portions of what had been R2-20-109(F)-(G) have been amended and repealed.**

Although the Commission's views in this report do not purport to represent the views of any council member of the Governor's Regulatory Review Council, in the Commission's view, R2-20-109 to -111 are consistent with the law. The Clean Elections Act establishes penalties for those who violate reporting requirements of Chapter 6 of Title 16 (A.R.S. § 16-901 to -961) and requires the Commission to enforce the Act. A.R.S. § 16-942(B) (providing for penalties); A.R.S. § 16-956(A)(7) (enforcement authority). Campaign finance reporting requirements exist in the Clean Elections Act itself and elsewhere in Chapter 6 of Title 16. See A.R.S. § 16-926 (reporting requirements); A.R.S. § 16-941(D) (Clean Elections Act requiring any person who makes independent expenditures over a certain dollar threshold to submit a report regarding the expenditure).

As noted, the Commission has taken significant steps to alter these rules during these proceedings. Following the passage of legislation in 2016, the Commission repealed or amended rules including: former R2-20-109(F)(2) and 109(F)(4) through (F)(11) and reorganized new R2-20-109 (F)(2) and (F)(3). Additionally, the Commission avoided Voter Protection Act issues by expressly adopting new provisions into R-20-111 relating to campaign finance limits for state and legislative candidates, which reflect the Secretary of State's published limits. See Ariz. Sec'y of State, *Campaign Contribution Limits*, available at <https://www.azsos.gov/elections/campaign-finance-reporting/contribution-limits>.

R2-20-109 provides rules for the method of reporting independent expenditures (R2-20-109(A)) and for the consequences of a failure to file a required report, including the possibility of penalties (R2-20-109(B)). This rule provision ensures consistency with recent legislative amendments to Title 16. R2-20-110 provides rules for the reporting requirements applicable to candidates participating in the clean elections funding system. R2-20-111 provides rules regarding the reporting requirements, contribution limits, and potential penalties applicable to non-participating candidates.

The Act does not limit the Commission's authority to elections involving "participating" candidates. Arizona voters adopted the Clean Elections Act to "improve the integrity of Arizona state government by diminishing the influence of special-interest money, [] encourage citizen participation in the political process,

and [] promote freedom of speech under the U.S. and Arizona Constitutions.” A.R.S. § 16-940(A).

The Act recognizes that all legislative and statewide elections potentially involve concerns of special-interest money, citizen participation and free speech. The Act addresses various obligations of nonparticipating candidates, including:

- Section 16-941(B) (setting campaign contribution limits)
- Section 16-941(C) (noting that nonparticipating candidates are bound by all campaign finance laws save those in direct conflict with those in the Act)
- Section 16-941(D) (imposing reporting obligations on “any person” who makes independent expenditures in excess of \$500)
- Section 16-942(B) (establishing penalties for those who violate reporting requirements of Chapter 6, which includes non-participating candidate races)
- Section 16-942(C) (creating penalty of disqualification for certain violations of campaign contribution limits)
- Section 16-943 (establishing criminal liability for knowing violations of statutes relating to contribution limits)
- Section 16-956(A)(7) (noting the Commission’s mandatory obligation to enforce the Act and to monitor candidate reports filed under Chapter 6)
- Section 16-957(A) (setting fourteen day requirement for Commission to serve any person who violates the Act an order regarding the violation)

The arguments that have been raised to contend that the Commission’s authority is restricted to participating candidates are flawed.

First, the fact that other governmental entities (such as the Secretary of State’s office) may have some parallel enforcement authority over certain campaign-finance reports does not diminish the Commission’s authority. The Commission’s enforcement authority—adopted by voters concerned with the influence of special-interest money on elected offices—is a “paramount” duty of the Commission. *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244 ¶ 13, 99 P.3d 570, 574 (2004). As the Court recognized, these duties are independent of any public financing program and involve non-participating candidates and independent expenditures. *Id.* The contrary claim was recently rejected in *Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014), when the trial court dismissed a case challenging the Commission’s jurisdiction to resolve complaints against a non-participating candidate.

Second, for the same reasons, the United States Supreme Court’s 2011 decision in *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011), does not affect the Commission’s enforcement authority. That decision strikes down the “matching fund” provisions of the Act and has nothing to do with the subject matter covered in R2-20-109 to -111, just as it has nothing to do with

other parts of the Act that regulate nonparticipating candidates (such as the campaign contribution limits in § 16-941(B)).

Third, A.R.S. § 16-942(B)'s provision that "the candidate and the candidate's campaign's account shall be jointly and severally liable for any penalty imposed pursuant to this subsection" does not limit that section's application to participating candidates. If this sentence was intended to be limited to participating candidates, the drafters would have included the word "participating," just as they did in other sections. The reference to a candidate's campaign account logically refers to any candidate's campaign account. All candidates who establish political committees have bank accounts for their campaigns. A.R.S. § 16-902(C). This provision of § 942(B) is intended to provide notice to candidates of their potential, individual exposure to civil fines. Reading A.R.S. § 16-942(B) to implicitly restrict the Commission's authority to races involving participating candidates would illogically require ignoring the explicit grant of jurisdiction over "any person" in A.R.S. § 16-941(D) ("any person who makes independent expenditures related to a particular office . . .") and A.R.S. § 16-958 ("any person who has previously reached the dollar amount specified in § 16-941 . . .") and would contradict the Commission's express jurisdiction over "any reporting requirement imposed by this chapter" in the same section.

Finally, there is no conflict between A A.R.S. § 16-942(B) and other enforcement provisions in Title 16. A.R.S. § 16-942(B) makes it clear that its penalties are "in addition to any other penalties imposed by law."

For example, R2-20-109(B)(4) sets forth terms under which the Commission will determine whether an entity is a political committee under A.R.S. § 16-901(20) subject to the reporting requirements in A.R.S. § 16-926. As stated previously, A.R.S. § 16-942(B) gives the Commission the legal authority to impose civil fines for any violation "by or on behalf of any candidate of any reporting requirement imposed by [Title 16, Chapter 6]." If a complaint is filed alleging a reporting violation of A.R.S. § 16-926, these rules will help the Commission determine whether a violation occurred, as those reporting requirements apply only to political committees. This rule addresses complaints alleging that a "dark money" group was obligated to disclosed its contributors under A.R.S. § 16-926 but failed to do so. The history of this new rule is included in the materials provided to GRRC staff; it was fully vetted over several months with broad public input. For all of the reasons previously explained concerning the Commission's jurisdiction over reports required under this "chapter," it is a legitimate exercise of the Commission's regulatory authority.

Moreover, the rule was adopted in compliance with the Commission's rules, which require a 60-day comment period prior to adoption.

Similarly, Rule R2-20-111 sets forth rules applicable to enforcement actions against non-participating candidates for their violation of both reporting

requirements and contribution limits. The Clean Elections Act gives the Commission express authority over nonparticipating candidates' contribution limits (A.R.S. § 16-941(B); A.R.S. § 16-942(C)) and reporting requirements (A.R.S. §§ 16-942(B)). Additionally, in 2016, the Commission added new subsections to ensure consistency with Secretary of State practices.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

All rules are fairly and consistently enforced by the Commission.

6. **Clarity, conciseness, and understandability of the rule**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The Commission finds each of its rules to be clear, concise, and understandable.

7. **Summary of the written criticisms of the rule received by the agency within five years**

7. **Written Criticism**

Prior to the September 27, 2013 Commission meeting, Sam Wercinski of Arizona Advocacy Network submitted written public comment in support of the Commission proposed rule changes. Mr. Wercinski proposed a change to subsection (B)(3)(d) to clarify that the joint expenditure should fairly allocated to the "obligated candidate" rather than "candidate."

Prior to the May 22, 2014 Commission meeting, the Commission received public comment regarding the rule. Senator Steve Pierce and the Elect Steve Pierce Committees, through their legal counsel, Michael Liburdi, submitted a petition for a rule change proposing the Commission repeal R2-20-109(G). Mr. Liburdi stated the rule "is an extra-legal exercise of the Commission's rulemaking power and established bad public policy for regulators and non-participating candidates." The Citizens Clean Elections staff recommended the Commission not repeal the provision. Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided written public comment supporting the Commission staff's position to R2-20-109 stating the rule changes aligned with the League's position on full disclosure. Sam Wercinski of the Arizona Advocacy Network also submitted written public comment in support of the staff recommendation of amendments to R2-20-109(G) and in opposition to the petition for a rule change submitted by Senator Pierce. Finally, Tim Hogan from the Arizona Center for Law in the Public Interest submitted written public comment in opposition to Senator Pierce's petition

for a rule change for the fact that “the plain language of the Clean Elections Act does not support Pierce’s interpretation.”

On July 23, 2015, the Commission considered discussion and possible action on proposed amendments to the rule that were presented at the Commission’s May 14, 2015 public meeting. Prior to the meeting the Commission received numerous written public comments with 152 individuals supporting the Commission proposed rule changes. The Commission received 6 public comments submitted from individuals and/or on behalf of numerous organizations that were in opposition to the proposed rule changes including Eric Wang, Senior Fellow at the Center for Competitive Politics, Americans for Prosperity, Secretary of State Michele Reagan, State Election Director, Eric Spencer, and Connie Wilhelm Garcia, President and Executive Director of the Home Builders Association of Central Arizona. Louis Hoffman, a former Commissioner, provided substantial written public comment in regard to the rule revisions. Mr. Hoffman proposed removing the A.R.S. § 16-913 citation from subsection (F)(6) and adding clarifying language regarding independent expenditures to subsection (F)(3). Mr. Hoffman’s proposal also clarifies that the Commission may audit exempt entities in subsection (F)(8). He also adds additional detailed language regarding civil penalties in a new subsection (F)(12).

On August 19, 2015, the Secretary of State submitted a petition for a rule change proposing the Commission removes from R2-20-109(F)(3) entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

Prior to the August 20, 2015 Commission meeting, the Commission received public comment from 33 individuals. Substantive written public comments were received from the Center for Competitive Politics and their counsel, Kory Langhofer, Eric Spencer, Louis Hoffman, the Arizona Chamber of Commerce and Industry (which submitted its’ comment on behalf of the the following organizations: Arizona Chamber of Commerce and Industry, Greater Phoenix Chamber of Commerce, Greater Phoenix Leadership, Arizona Small Business Association, The Realtors of Arizona Political Action Committee, Arizona Cattlemen’s Association, Arizona Hospital and Healthcare Association, Arizona Chapter Associated General Contractors, Arizona Tax Research Association, Arizona Business Coalition and Valley Partnership, Greater Flagstaff Chamber of Commerce, Tucson Chamber of Commerce, Mesa Chamber of Commerce, Tempe Chamber of Commerce, Chandler Chamber of Commerce, Green Yuma County Chamber of Commerce, Buckeye Chamber of Commerce, Prescott Valley Chamber of Commerce, Green Valley Sahuarita Chamber of Commerce, and Oro Valley Chamber of Commerce), and Saman Golestan. The Commission considered all public comment and proposed revisions to the rules.

Prior to the October 29 and 30, 2015 meetings, the Commission received public comment from 19 individuals or groups including: Glenn Hammer, President of the

Arizona Chamber of Commerce, former Clean Elections Commissioners, Timothy Reckart and Louis Hoffman, Morgan Dial of Southern Arizona Sports Marketing, and Shirley Sandelands, President of the Arizona League of Women Voters. The Commission considered all public comment prior to voting on the rule. Due to the volume of the public comments submitted, the Council is encouraged to review all the public comments submitted with in report and contained in the Appendix as the individuals and organizations listed here are not an exhaustive list.

Prior to the September 15, 2016, and December 15, 2016 meetings, the Commission received public comment from Shirley Sandelands, President of the Arizona League of Women Voters; Rivko Knox; Eric Spencer, the State Elections Director for the Secretary of State; Constantin Querard of Grassroot Partners; Dr. Doris Provine, board president of the Arizona Advocacy Network; and James Barton of the Torres Law Group. The Commission considered all public comment prior to voting on the rule. The Council is urged to review the public comment received, which is contained on the enclosed CD. Prior Comments are on file with the Council and the Commission.

8. Estimated economic, small business, and consumer impact

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Economic, small business and consumer impact statement

The rules proposed and adopted by the Commission between January 2010 and January 17, 2017 create no discernible economic impact for small businesses or consumers provided. For small businesses or consumers who make expenditures subject to the rules' reporting requirements, compliance with the rules imposes zero economic impact because the reporting requirement is simple and may be filed without any filing fee. To the extent that the obligation to file a report itself imposes an economic impact, that impact comes from the statutory reporting requirement and not from the rules. A failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The Commission receives funds from the following sources.

- A 10 percent surcharge imposed on all civil and criminal fines and penalties collected pursuant to A.R.S. § 12-116.01;
- A \$5 voluntary contribution per taxpayer (\$10 when married and filing jointly) who files an Arizona state income tax return and marks an optional check-off box on the first page of the form. A taxpayer who checks this box receives a \$5 reduction in tax liability and \$5 goes to the Clean Elections Fund (NOTE: As of August 2, 2012, the Commission only receives \$5 voluntary taxpayer contributions from individuals filing tax returns for tax years 2012 and earlier.);

- A voluntary donation to the Clean Elections Fund by designating the Fund on an income tax return form filed by the individual or business entity, or by making a payment directly to the Fund. Any taxpayer making a donation shall receive a dollar-for-dollar tax credit not to exceed 20 percent of the tax amount on the return or \$680 per taxpayer, whichever is higher (NOTE: As of August 2, 2012, the Commission no longer accepts donations for the dollar-for-dollar tax credit.);
- Qualifying contributions received by participating candidates;
- Civil penalties assessed against violators of the Citizens Clean Elections Act.

9. Analysis submitted by another person on the rules' impact on competitiveness

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

No such analysis has been submitted to the Commission for any of its rules.

10. Course of Action from Last Review

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

All action described from the 5-year review report submitted on June 30, 2016 was completed at the Commission meeting in December 2016 and reported to the Council in February 2017.

11. Least Burden and Costs

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs.

12. Determination to corresponding federal law

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The rules are consistent with federal law.

13. A.R.S. § 41-1037

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Commission rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Course of action the agency proposes to take regarding each rule

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (A) of the rule clarifying campaign finance reports will be filed electronically with the Secretary of State's office and that participating candidates must have sufficient funds in their campaign accounts to pay for the total amount of the expenditure at the time it is made. The Commission also eliminated subsections (B-D), which pertained to equalizing funding and independent expenditures (subsections (E-F) were re-codified). Subsection (E) was added to clarify reporting requirements for participating candidates. (19 A.A.R. 2923)

On July 25, 2013, the Commission considered rule amendments to subsections (A) – (G) of the rule in order to clarify that the rule applies to all persons who are obligated to file the Commission's campaign finance reports and clarify the reporting requirements under the statute. The Commission approved the rule for publication for a 60-day public comment period in which to solicit feed back from the public.

On August 29, 2013, the Commission adopted final amendments to subsection (A) of the rule clarifying that participating candidate must make reimbursements to authorized agents within seven calendar days of the expenditure is deemed an in-kind contribution. In addition, the Commission added language to subsection (C) requiring candidates to maintain a travel log and reimburse mileage or air travel within seven calendar days. (19 A.A.R. 2923)

On September 27, 2013, the Commission adopted final amendments to the rule. The final adopted rule includes the following amendments:

Subsection (A) – amended to make clear the section applies to all persons obligated to file any campaign finance report subject to the Act and Rules.

Eliminates R2-20-109(A)(3)

Re-codified R2-20-109(A)(1-6) as R2-20-109(B)(1-5)

Subsection (B) - amended to further define joint expenditures and the allocation and reimbursement for joint expenditures.

Re-codified subsection(B) as subsection (C).

Subsection (C) - amended to clarify the timing of reporting expenditures for participating candidates.

Re-codified R2-20-109(C) as R2-20-109(D).

Subsection (D) - amended to clarify the transportation requirements for participating candidates.

Re-codified R2-20-109(D) as R2-20-109(E).

Subsection (E) – amended to clarify participating candidates’ reports and refunds of excess monies.

Subsection (F) – added to clarify reporting requirements for independent expenditures.

Subsection (G) – added to clarify reporting requirements and campaign finance limits applicable to non-participating candidates. (19 A.A.R. 3519)

On March 20, 2014, the Commission considered a petition for a rule change submitted by Michael Liburdi on behalf of Senator Steve Pierce. The Commission discussed and proposed changes to subsection (G) of the rule to clarify contribution limits and civil penalties as applied to non-participating candidates. The Commission approved the proposed rule amendments for publication for a 60-day public comment period in which to solicit feed back from the public.

On May 22, 2014, the Commission adopted final amendments to subsection (G) of the rule to clarify the Commission’s enforcement of contribution limits and reporting requirements related to non-participating candidates under the Citizens Clean Elections Act, rules, and related penalties. (20 A.A.R. 1329)

On September 11, 2014, the Commission adopted final emergency amendments to the rule. Subsection (F) was amended to clarify language related to the Commission’s enforcement of reporting requirements and exceptions under the Clean Elections Act, rules and related penalties. Subsection (F)(3)(c) was amended to clarify the penalties for amounts not reported during the election. Subsection (F)(3)(d) was added to clarify that the amounts in (a), (b), and (c) are subject to adjustment of A.R.S. § 16-959. Language was added to subsection (F)(4) to clarify that any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance or intends to comply with A.R.S. §§ 16-920 and -914.02 may seek an exemption from the reporting requirements of the Act. Subsection (F)(5) was amended by removing subsections (a) and (b) in regards to an organization’s primary purpose and certification that the organization does not intend to accept donations or contributions for the purpose of influencing elections. Subsection (F)(6) was amended to clarify that organizations that do not receive an exemption from the Commission are required to file independent expenditure reports as specified in A.R.S. § 16-958. (20 A.A.R. 2804)

On May 14, 2015, the Commission approved proposed rule amendments to subsections (D) and (F) for publication with the Arizona Administrative Register a 60-day public comment period in which to solicit feed back from the public.

On July 23, 2015, the Commission considered public comment received during the 60-day public comment period for the proposed rule amendments. The Commission considered over 150 written public comments and live public comments from individuals attending the public meeting. The Commission ultimately decided to re-open the public comment period for an additional 30-day period in order to give the public additional time to review and comment on the proposed rule changes.

On August 20 and 21, 2015, the Commission approved rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the revised rule proposals which included the Secretary of State's petition for a rule change and Mr. Langhofer's rule amendment proposal. The Secretary of State proposed removing a reference to A.R.S. § 16-913 from the existing rule.

The Commission sought public comment on the following proposed rule amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate's automobile only and require documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of "political committee" in response to HB 2649 redefining the term.

R2-20-109(F)(3) – removes entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements.

R2-20-109 (F)(8) – clarifies Commission’s auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission’s rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 1977, 2043)

On September 24, 2015, the Commission provided another opportunity for the public to address this issue and placed the rule matter on the agenda for the purpose of discussion and solicitation of public comment. The agenda clearly identified the item as a discussion item and indicated that no action would be taken on the rules during the meeting. No person or group filed any public comment or took the opportunity to appear at the discussion session.

On October 28, 2015, the Commission submitted to the Governor’s Regulatory Review Council the agency’s 5-year review report detailing all Commission rule changes over the last five years. The Commission included possible proposed actions regarding the rule because the public comment period for the rule had not yet concluded.

On October 29, 2015, during an open and public meeting, the Commission received public comment on the rule, rule amendments, and Secretary of State’s petition for a rule change.

On October 30, 2015, after more than 160 days of public comment solicitation, the Commission unanimously adopted final amendments to the rule. The final adopted rule includes the following amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate’s automobile only and require documentation such as a travel log to be kept regarding a candidate’s direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of “political committee” in response to HB 2649 redefining the term.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).

R2-20-109 (F)(8) – clarifies Commission’s auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission’s rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 3168)

The Commission did not adopt Secretary of State Reagan’s petition to remove A.R.S. § 16-913 from the rule. The Secretary’s Office provided no comment either during the comment period or at the hearing for the proposal it introduced.

On November 20, 2015, the Commission was notified that the 5-year review report would be considered at the Council’s December 29, 2015 study session and at the January 5, 2016 Council meeting.

On December 2, 2015, the Council’s staff attorney requested copies of the written criticisms and comments that were received for the rules covered in the report. The next day Commission staff provided copies of all public comments as requested.

On December 17, 2015, the Commission staff confirmed with the Council’s staff attorney that the law did not support the Council staff’s request that Commission amend the 5-year report to include rule amendments adopted after submission of the report. Commission staff nevertheless confirmed to the staff attorney that the amendments he had previously received information on had been adopted. Commission staff also advised the staff attorney on the limitations imposed by the law on Council. The Council staff attorney acknowledged the email and indicated that “[i]f any questions arise out [a review with the Chairwoman Nicole Ong] I will let you know.”

On December 29, 2015, Commission staff attending the study session regarding the 5-year review Report. Commission staff learned that confirming the adoption of the rules was insufficient to satisfy the Council staff’s request, despite the assurance on December 17, 2015, and the absence of any dispute the Council had all information related to each and every rule amendment considered and adopted during the 5-year period and afterward. The Council requested that the 5-year review report be revised to include the actions take by the Commission on October 30, 2015 in regards to the rule. Commission staff provided the Council a revised 5-year review report on December 29, 2015 along with additional information regarding the rule and any analysis provided to the Commission during the rulemaking process.

The Council did not take any action on the 5-year review report at the January 5, 2016 meeting. Instead the Council decided to move the agenda item to the Council's next meeting on February 2, 2016.

On February 2, 2016, the Council voted to return the 5-year review report to the Commission. The Council also voted to repeal subsections (F) and (G) of the rule. No reason for these actions was provided by the Council, according to Clean Elections Staff Members who witnessed the meeting, while the Council's own minutes confirm that no reason for the repeal and only one council member identified his reason for desiring the return of the report in whole. No audio recording of the meeting exists. The Council's minutes state the Member Sundt alone provide a basis for his belief the five-year report should be returned in whole. No council member made any statement noted in the minutes indicating the reasons for the repeal. **Attachment D.**

On June 6, 2017, Councilmember Frank Thorwald stated he did not agree with the Commission staff's description, although he was not a member of GRRC at the time. Chairwoman Nicole Ong Colyer indicated her belief that the Council had made its reasons clear "ad nauseum."

The staff attorney subsequently informed the Commission that the new 5-year review report would be due May 30, 2016. At the May 5, 2016 meeting the Council granted an extension to for the submission of the revised 5-year review report.

On September 15, 2016, the Commission adopted final rule amendments to Rule R2-20-109. The amendments were intended to provide clarity during the 2016 cycle, and to reorganize the rule to be more logically organized and easier to understand by moving issues related to separate categories of regulated entities into separate rules. The amendments did the following:

- R2-20-109(B), (C), and (E), relating to participating candidates, were removed from the rule and renumbered as R2-20-110. R2-20-110 is renumbered as new section R2-20-114.
- R2-20-109(D), relating to transportation expenses, was removed from the rule and moved to R2-20-702(G).
- R2-20-109(F) was renumbered as R2-20-109(B).
- R2-20-109(F)(2) was deleted because the underlying statute, A.R.S. § 16-917, was repealed.
- R2-20-109(F)(3) was restructured in R2-20-109(B)(2)-(3).
- R2-20-109(F)(11) was deleted.
- R2-20-109(G) was removed from the rule and renumbered as R2-20-111.
- R2-20-110 was renumbered as R2-20-114.
- R2-20-111 was renumbered as R2-20-115.

On December 15, 2016, the Commission adopted several amendments to R2-20-109, 110, and 111. The rule amendments were made primarily to harmonize the Commission's rules with SB1516, and are made without waiver of any objections

to the legal validity of SB1516 under the Arizona and United States Constitutions. The amendments did the following:

- R2-20-109:
 - Provides for the Executive Director to take steps to implement a substitute reporting process for independent expenditures when the system provided by the Secretary of State is totally or partially unavailable. R2-20-109(A)(1)-(2).
 - Provides that campaign finance reports under A.R.S. §§ 16-941(D) and 16-958 shall be filed by all persons who make independent expenditures and details statutory penalties for failure to file such reports. R2-20-109(B)(2).
 - Clarifies that entities required to file campaign finance reports under Chapter 6 of Title 16 are subject to the Clean Elections Act unless the report is required of political committees and the entity is not a political committee. R2-20-109(B)(3)-(4).
 - Deletes R2-20-109(B)(4)-(11) related to exemptions from A.R.S. §§ 16-941 and 16-958 because the basis for those exemptions (former A.R.S. § 16-914.02) has been repealed.
- R2-20-110:
 - Updates rule to remove outdated cross-references. R2-20-110(C).
 - Reorganizes section on certain expenses into this section, moved from R2-20-703. R2-20-110(A)(4)(e).
 - Provides for a post-general election report for participating candidates to ensure monies owed to the Clean Elections Fund are returned and properly used. R2-20-110(C)(2)(b).
- R2-20-111:
 - Provides that the twenty percent reduction of contribution limits for nonparticipating candidates found in A.R.S. § 16-941(B) applies to all campaign contribution limits on contributions that the law permits candidates to accept. R2-20-111(E). The Commission finds this rule is consistent with the practice of the Secretary of State's office approach pursuant to SB1516.
 - Provides that the contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction under A.R.S. § 16-941(B). R2-20-111(F). The Commission finds this rule is consistent with the practice of the Secretary of State's office approach pursuant to SB1516.

b. Action Proposed

None.

Attachments

- A. Arizona Citizens Clean Elections Act
- B. Current Commission Rules, Ariz. R2-20-109 to 20-111
- C. Arizona Administrative Register Entries for 2016 Amendments.
- D. Council Minutes February 2016.