

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2463

AN ACT

AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.16; AMENDING SECTIONS 11-1602 AND 11-1608, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3609.02; AMENDING SECTIONS 48-3642 AND 48-3648, ARIZONA REVISED STATUTES; RELATING TO COUNTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 11, chapter 2, article 4, Arizona Revised Statutes,
3 is amended by adding section 11-251.16, to read:

4 11-251.16. Adoption of rules; procedures; exemptions;
5 definitions

6 A. THE BOARD OF SUPERVISORS SHALL ADOPT PROCEDURES FOR THE ADOPTION,
7 AMENDMENT, REPEAL AND ENFORCEMENT OF RULES.

8 B. THE PROCEDURES SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS FOR
9 THE COUNTY DEPARTMENT THAT IS PROPOSING THE CHANGE:

10 1. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A
11 MEETING AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE
12 OF THE PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT
13 PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DEPARTMENT
14 SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

15 2. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A
16 MEETING AT WHICH THE FINAL TEXT OF THE PROPOSED RULE IS CONSIDERED BY THE
17 BOARD OF SUPERVISORS. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE FINAL
18 VERSION OF THE PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE
19 PUBLIC. AT LEAST ONE WEEK BEFORE THE MEETING, THE DEPARTMENT SHALL PROVIDE
20 THE PUBLIC WITH THE DEPARTMENT'S WRITTEN RESPONSES TO WRITTEN PUBLIC COMMENTS
21 AND MAY PROVIDE WRITTEN RESPONSES TO VERBAL COMMENTS.

22 3. THE DEPARTMENT SHALL PROVIDE THE BOARD OF SUPERVISORS WITH COPIES
23 OF THE PUBLIC COMMENTS AND THE DEPARTMENT'S WRITTEN RESPONSES TO THE PUBLIC
24 COMMENTS. IF AS A RESULT OF PUBLIC COMMENTS OR INTERNAL REVIEW, THE BOARD OF
25 SUPERVISORS DETERMINES THAT THE TEXT OF A PROPOSED RULE REQUIRES SUBSTANTIAL
26 CHANGE, THE BOARD OF SUPERVISORS SHALL ISSUE A SUPPLEMENTAL NOTICE CONTAINING
27 THE CHANGES TO THE PROPOSED RULE AND SHALL PROVIDE FOR ADDITIONAL PUBLIC
28 COMMENT BEFORE ADOPTION.

29 C. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE
30 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE BOARD MAKES A
31 FINDING THAT AN EMERGENCY EXISTS AND ADOPTION OF THE RULE IS NECESSARY TO
32 PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE, TO AVOID AN IMMINENT BUDGET
33 REDUCTION OR TO AVOID SERIOUS PREJUDICE TO THE PUBLIC INTEREST. WITHIN A
34 REASONABLE TIME AFTER ADOPTING AN EMERGENCY RULE, THE BOARD OF SUPERVISORS
35 SHALL REVIEW THE EMERGENCY RULE TO DETERMINE WHETHER THE RULE SHOULD CONTINUE
36 IN EFFECT OR BE TERMINATED.

37 D. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE
38 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE RULE IS REQUIRED BY
39 STATE OR FEDERAL LAW OR REGULATION, AND THE BASIS FOR THE REQUIREMENT TO
40 ADOPT THE RULE IS NOT THE RESULT OF DELAY OR INACTION BY THE BOARD OF
41 SUPERVISORS.

42 E. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE
43 ALTERNATIVE PROCEDURES FOR THE EXPEDITED ADOPTION, AMENDMENT OR REPEAL OF A
44 RULE IF THE EXPEDITED RULE MAKING DOES NOT INCREASE THE COST OF REGULATORY
45 COMPLIANCE OR REDUCE THE PROCEDURAL RIGHTS OF REGULATED PARTIES.

1 F. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS
2 SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF SUPERVISORS
3 BEFORE THE EFFECTIVE DATE OF THIS SECTION.

4 G. THE DEPARTMENT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON
5 THE DEPARTMENT'S WEBSITE.

6 H. THE DEPARTMENT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR
7 THE PURPOSE OF DISCUSSING ANY PROPOSED RULE.

8 I. THIS SECTION DOES NOT APPLY TO:

9 1. ORDINANCES ADOPTED OR AMENDED BY THE BOARD OF SUPERVISORS PURSUANT
10 TO SECTION 11-251.05, CHAPTER 6, ARTICLE 2 OF THIS TITLE, TITLE 42 OR
11 TITLE 43.

12 2. SUBSTANTIVE POLICY STATEMENTS.

13 3. PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF
14 THE COUNTY AND THAT DO NOT IMPOSE ADDITIONAL REQUIREMENTS, CONDITIONS OR
15 PENALTIES ON REGULATED PARTIES.

16 4. USE OR ADOPTION OF ANY FORM WHOSE CONTENTS OR SUBSTANTIVE
17 REQUIREMENTS ARE CONSISTENT WITH AN ORDINANCE OR STATUTE, AND ANY PROCEDURES
18 FOR THE EXECUTION OR USE OF THE FORM.

19 5. A COUNTY FUNCTION, POWER OR DUTY THAT IS ESTABLISHED PURSUANT TO
20 TITLE 49, CHAPTER 3, ARTICLE 3.

21 6. COUNTY SUBDIVISION REGULATIONS PURSUANT TO CHAPTER 6, ARTICLE 3 OF
22 THIS TITLE.

23 J. FOR THE PURPOSES OF THIS SECTION:

24 1. "DEPARTMENT" MEANS ANY COUNTY DEPARTMENT OR AGENCY OR ANY OTHER
25 UNIT OF COUNTY GOVERNMENT.

26 2. "RULE" MEANS A COUNTY STATEMENT OF GENERAL APPLICABILITY THAT
27 IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR POLICY, OR DESCRIBES THE
28 PROCEDURE OR PRACTICE REQUIREMENTS OF A COUNTY. RULE INCLUDES PRESCRIBING
29 FEES OR THE AMENDMENT OR REPEAL OF AN EXISTING RULE BUT DOES NOT INCLUDE
30 INTRA-AGENCY MEMORANDA THAT ARE NOT DELEGATION AGREEMENTS.

31 Sec. 2. Section 11-1602, Arizona Revised Statutes, is amended to read:

32 11-1602. Regulatory bill of rights

33 To ensure fair and open regulation by counties, a person:

34 1. Is eligible for reimbursement of fees and other expenses if the
35 person prevails by adjudication on the merits against a county in a court
36 proceeding regarding a county decision as provided in section 12-348.

37 2. Is entitled to receive information and notice regarding inspections
38 as provided in section 11-1603.

39 3. Is entitled to have a county not base a licensing decision in whole
40 or in part on licensing conditions or requirements that are not specifically
41 authorized as provided in section 11-1604.

42 4. May have a county approve or deny the person's license application
43 within a predetermined period of time as provided in section 11-1605.

44 5. Is entitled to receive written or electronic notice from a county
45 on denial of a license application:

1 (a) That justifies the denial with references to the statute,
2 ordinance, regulation, delegation agreement or authorized substantive policy
3 statements on which the denial is based as provided in section 11-1605.

4 (b) That explains the applicant's right to appeal the denial as
5 provided in section 11-1605.

6 6. Is entitled to receive information regarding the license
7 application process at the time the person obtains an application for a
8 license as provided in section 11-1606.

9 7. May inspect all ordinances, **RULES**, regulations and substantive
10 policy statements of a county, including a directory of documents, at the
11 office of the county or on the county's website as provided in section
12 11-1607.

13 8. Unless specifically authorized, may expect counties to avoid
14 duplication of other laws that do not enhance regulatory clarity and to avoid
15 dual permitting to the maximum extent practicable as provided in section
16 11-1604.

17 9. May file a complaint with the board of supervisors concerning an
18 ordinance, **RULE**, regulation or substantive policy statement that fails to
19 comply with this section.

20 **10. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN**
21 **SECTION 11-251.16, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON PROPOSED**
22 **RULES TO A COUNTY DEPARTMENT OR AGENCY AND HAVING THE AGENCY OR DEPARTMENT**
23 **ADDRESS COMMENTS AS PROVIDED IN SECTION 11-251.16.**

24 Sec. 3. Section 11-1608, Arizona Revised Statutes, is amended to read:
25 **11-1608. Complaints; board of supervisors review**

26 **A. The board of supervisors shall ~~receive~~ ESTABLISH A PROCEDURE FOR**
27 **RECEIVING complaints FROM AN ADVERSELY AFFECTED PERSON concerning ordinances,**
28 ****RULES**, regulations, substantive policy statements or county practices alleged**
29 **to violate this article OR SECTION 11-251.16. ~~The board of supervisors may~~**
30 **~~review any ordinance, regulation, substantive policy statement or county~~**
31 **~~practice alleged to violate this article and may hold hearings regarding the~~**
32 **~~allegations. The board of supervisors may recommend actions to alleviate the~~**
33 **~~aspects of the ordinances, regulations, substantive policy statements or~~**
34 **~~county practices alleged to violate this article.~~**

35 **B. THE BOARD OF SUPERVISORS MAY REQUIRE THE COMPLAINT TO BE MADE IN**
36 **WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:**

37 **1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE**
38 **COMPLAINT.**

39 **2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR**
40 **COUNTY PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 11-251.16.**

41 **3. ANY FACTS RELEVANT TO, AND THE LEGAL BASIS FOR, THE COMPLAINT.**

42 **C. PROCEDURES ADOPTED BY THE BOARD OF SUPERVISORS PURSUANT TO THIS**
43 **SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL**
44 **PROVIDE A PROCESS FOR APPEAL.**

1 F. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS
2 SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF DIRECTORS
3 BEFORE THE EFFECTIVE DATE OF THIS SECTION.

4 G. THE DISTRICT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON
5 THE DISTRICT'S WEBSITE.

6 H. THE DISTRICT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR THE
7 PURPOSE OF DISCUSSING ANY PROPOSED RULE.

8 I. THIS SECTION DOES NOT APPLY TO:

9 1. SUBSTANTIVE POLICY STATEMENTS.

10 2. PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF
11 THE DISTRICT AND DO NOT IMPOSE ADDITIONAL REQUIREMENTS, CONDITIONS OR
12 PENALTIES ON REGULATED PARTIES.

13 3. USE OR ADOPTION OF ANY FORM WHOSE CONTENTS OR SUBSTANTIVE
14 REQUIREMENTS ARE CONSISTENT WITH AN ORDINANCE OR STATUTE, AND ANY PROCEDURES
15 FOR THE EXECUTION OR USE OF THE FORM.

16 J. FOR THE PURPOSES OF THIS SECTION, "RULE" MEANS A DISTRICT STATEMENT
17 OF GENERAL APPLICABILITY THAT IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR
18 POLICY, OR DESCRIBES THE PROCEDURE OR PRACTICE REQUIREMENTS OF A DISTRICT.
19 RULE INCLUDES PRESCRIBING FEES OR THE AMENDMENT OR REPEAL OF AN EXISTING RULE
20 BUT DOES NOT INCLUDE INTRA-AGENCY MEMORANDA THAT ARE NOT DELEGATION
21 AGREEMENTS.

22 Sec. 5. Section 48-3642, Arizona Revised Statutes, is amended to read:
23 48-3642. Regulatory bill of rights

24 To ensure fair and open regulation by districts, a person:

25 1. Is eligible for reimbursement of fees and other expenses if the
26 person prevails by adjudication on the merits against a district in a court
27 proceeding regarding a district decision as provided in section 12-348.

28 2. Is entitled to receive information and notice regarding inspections
29 as provided in section 48-3643.

30 3. Is entitled to have a district not base a licensing decision in
31 whole or in part on licensing conditions or requirements that are not
32 specifically authorized as provided in section 48-3644.

33 4. May have a district approve or deny the person's license
34 application within a predetermined period of time as provided in section
35 48-3645.

36 5. Is entitled to receive written or electronic notice from a district
37 on denial of a license application:

38 (a) That justifies the denial with references to the statute,
39 ordinance, regulation, executive order, delegation agreement or authorized
40 substantive policy statement on which the denial is based as provided in
41 section 48-3645.

42 (b) That explains the applicant's right to appeal the denial as
43 provided in section 48-3645.

1 6. Is entitled to receive information regarding the license
2 application process at the time the person obtains an application for a
3 license as provided in section 48-3646.

4 7. May inspect all ordinances, **RULES**, regulations and substantive
5 policy statements of a district, including a directory of documents, at the
6 office of the district or a district website as provided in section 48-3647.

7 8. Unless specifically authorized, may expect districts to avoid
8 duplication of other laws that do not enhance regulatory clarity and to avoid
9 dual permitting to the maximum extent practicable as provided in section
10 48-3644.

11 9. May file a complaint with the board of ~~review~~ **DIRECTORS** concerning
12 an ordinance, **RULE**, regulation or substantive policy statement that fails to
13 comply with this section.

14 **10. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN**
15 **SECTION 48-3609.02, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON**
16 **PROPOSED RULES TO THE DISTRICT AND HAVING THE DISTRICT ADDRESS COMMENTS AS**
17 **PROVIDED IN SECTION 48-3609.02.**

18 Sec. 6. Section 48-3648, Arizona Revised Statutes, is amended to read:
19 **48-3648. Complaints; board of directors review**

20 **A. The board of ~~review~~ DIRECTORS shall ~~receive~~ ESTABLISH A PROCEDURE**
21 **TO RECEIVE complaints FROM AN ADVERSELY AFFECTED PERSON concerning**
22 **ordinances, RULES, substantive policy statements or district practices**
23 **alleged to violate this article CHAPTER. ~~The board of review may review any~~**
24 **~~ordinance, regulation, substantive policy statement or district practice~~**
25 **~~alleged to violate this article and may hold hearings regarding the~~**
26 **~~allegations. The board of review may recommend actions to alleviate the~~**
27 **~~aspects of the ordinances, regulations, substantive policy statements or~~**
28 **~~district practices alleged to violate this article.~~**

29 **B. THE BOARD OF DIRECTORS MAY REQUIRE THE COMPLAINT TO BE MADE IN**
30 **WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:**

31 **1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE**
32 **COMPLAINT.**

33 **2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR**
34 **DISTRICT PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 48-3609.02.**

35 **3. ANY FACTS RELEVANT TO, AND THE LEGAL BASIS FOR, THE COMPLAINT.**

36 **C. PROCEDURES ADOPTED BY THE BOARD OF DIRECTORS PURSUANT TO THIS**
37 **SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL**
38 **PROVIDE A PROCESS FOR APPEAL.**

39 Sec. 7. **Applicability; county population**

40 This act applies:

41 1. For a county with a population of three hundred seventy-five
42 thousand persons or more, from and after December 31, 2013.

43 2. For a county with a population of less than three hundred
44 seventy-five thousand persons, from and after December 31, 2014.