

REFERENCE TITLE: counties; flood control districts; rules

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2013

Introduced by
Representative Ugenti

AN ACT

AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.17; AMENDING SECTIONS 11-1602, 11-1607 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, 48-3647 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 11-251.17, to read:

4 11-251.17. 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 DEPARTMENT MEETING AT WHICH THE DEPARTMENT ANNOUNCES THAT THE COUNTY WILL
12 BEGIN THE PROCESS TO ADOPT, AMEND OR REPEAL A RULE. THE DEPARTMENT MAY
13 ACCEPT PUBLIC COMMENT BEFORE, DURING AND AFTER THIS ANNOUNCEMENT MEETING.

14 2. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A
15 MEETING AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE
16 OF THE PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT
17 PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DEPARTMENT
18 SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

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

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

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

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

1 E. 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 F. THE DEPARTMENT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON
5 THE DEPARTMENT'S WEBSITE.

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

8 H. 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, OR TITLE 42 OR 43.

11 2. SUBSTANTIVE POLICY STATEMENTS.

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

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

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

20 I. FOR THE PURPOSES OF THIS SECTION:

21 1. "DEPARTMENT" MEANS ANY COUNTY DEPARTMENT OR AGENCY OR ANY OTHER
22 UNIT OF COUNTY GOVERNMENT.

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

28 Sec. 2. Section 11-1602, Arizona Revised Statutes, is amended to read:
29 11-1602. Regulatory bill of rights

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

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

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

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

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

41 5. Is entitled to receive written or electronic notice from a county
42 on denial of a license application that:

43 (a) Justifies the denial with references to the statute, ordinance,
44 RULE, regulation, delegation agreement or authorized substantive policy
45 statements on which the denial is based as provided in section 11-1605.

1 (b) Explains the applicant's right to appeal the denial as provided in
2 section 11-1605.

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

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

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

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

17 10. As provided in section 11-1604, is entitled to have a county not
18 request or initiate discussions about waiving any of the rights prescribed in
19 this section.

20 **11. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN**
21 **SECTION 11-251.17, 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 11-251.17.**

24 Sec. 3. Section 11-1607, Arizona Revised Statutes, is amended to read:

25 **11-1607. Directory of documents**

26 The county shall publish, or prominently place on the county website,
27 at least annually a directory summarizing the subject matter of all currently
28 applicable ordinances, **RULES**, regulations and substantive policy statements.
29 The county shall keep copies of this directory and all substantive policy
30 statements at one location. The directory, ordinances, **RULES**, regulations,
31 substantive policy statements and any materials incorporated by reference in
32 these documents shall be open to public inspection at the office of the
33 county or the county website.

34 Sec. 4. Section 11-1608, Arizona Revised Statutes, is amended to read:

35 **11-1608. Complaints; board of supervisors review**

36 **A.** The board of supervisors shall ~~receive~~ **ESTABLISH A PROCEDURE FOR**
37 **RECEIVING** complaints **FROM AN ADVERSELY AFFECTED PERSON** concerning ordinances,
38 **RULES**, regulations, substantive policy statements or county practices alleged
39 to violate this article **OR SECTION 11-251.17.** ~~The board of supervisors may~~
40 ~~review any ordinance, regulation, substantive policy statement or county~~
41 ~~practice alleged to violate this article and may hold hearings regarding the~~
42 ~~allegations. The board of supervisors may recommend actions to alleviate the~~
43 ~~aspects of the ordinances, regulations, substantive policy statements or~~
44 ~~county practices alleged to violate this article.~~

1 B. THE BOARD OF SUPERVISORS MAY REQUIRE THE COMPLAINT TO BE MADE IN
2 WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:

3 1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE
4 COMPLAINT.

5 2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR
6 COUNTY PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 11-251.17.

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

8 C. PROCEDURES ADOPTED BY THE BOARD OF SUPERVISORS PURSUANT TO THIS
9 SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL
10 PROVIDE A PROCESS FOR APPEAL.

11 Sec. 5. Title 48, chapter 21, article 1, Arizona Revised Statutes, is
12 amended by adding section 48-3609.02, to read:

13 48-3609.02. Adoption of rules; procedures; exemptions;
14 definition

15 A. THE BOARD OF DIRECTORS SHALL ADOPT PROCEDURES FOR THE ADOPTION,
16 AMENDMENT, REPEAL AND ENFORCEMENT OF RULES.

17 B. THE PROCEDURES SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS:

18 1. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A DISTRICT
19 MEETING AT WHICH THE DISTRICT ANNOUNCES THAT THE COUNTY WILL BEGIN THE
20 PROCESS TO ADOPT, AMEND OR REPEAL A RULE. THE DISTRICT MAY ACCEPT PUBLIC
21 COMMENT BEFORE, DURING AND AFTER THIS ANNOUNCEMENT MEETING.

22 2. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING
23 AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE OF THE
24 PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT
25 PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DISTRICT
26 SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

27 3. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING
28 AT WHICH THE FINAL TEXT OF THE PROPOSED RULE IS CONSIDERED BY THE BOARD OF
29 DIRECTORS. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE FINAL VERSION OF
30 THE PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. AT LEAST ONE
31 WEEK BEFORE THE MEETING, THE DISTRICT SHALL PROVIDE THE PUBLIC WITH THE
32 DISTRICT'S WRITTEN RESPONSES TO WRITTEN PUBLIC COMMENTS AND MAY PROVIDE
33 WRITTEN RESPONSES TO VERBAL COMMENTS.

34 4. THE DISTRICT SHALL PROVIDE THE BOARD OF DIRECTORS WITH COPIES OF
35 THE PUBLIC COMMENTS AND THE DISTRICT'S WRITTEN RESPONSES TO THE PUBLIC
36 COMMENTS. IF AS A RESULT OF PUBLIC COMMENTS OR INTERNAL REVIEW, THE BOARD OF
37 DIRECTORS DETERMINES THAT THE TEXT OF A PROPOSED RULE REQUIRES SUBSTANTIAL
38 CHANGE, THE BOARD OF DIRECTORS SHALL ISSUE A SUPPLEMENTAL NOTICE CONTAINING
39 THE CHANGES TO THE PROPOSED RULE AND SHALL PROVIDE FOR ADDITIONAL PUBLIC
40 COMMENT BEFORE ADOPTION.

41 C. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE
42 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE BOARD MAKES A
43 FINDING THAT AN EMERGENCY EXISTS AND ADOPTION OF THE RULE IS NECESSARY TO
44 PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE, TO AVOID AN IMMINENT BUDGET
45 REDUCTION OR TO AVOID SERIOUS PREJUDICE TO THE PUBLIC INTEREST. WITHIN A

1 REASONABLE TIME AFTER ADOPTING AN EMERGENCY RULE, THE BOARD OF DIRECTORS
2 SHALL REVIEW THE EMERGENCY RULE TO DETERMINE WHETHER THE RULE SHOULD CONTINUE
3 IN EFFECT OR BE TERMINATED.

4 D. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE
5 ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE RULE IS REQUIRED BY
6 STATE OR FEDERAL LAW OR REGULATION, AND THE BASIS FOR THE REQUIREMENT TO
7 ADOPT THE RULE IS NOT THE RESULT OF DELAY OR INACTION BY THE BOARD OF
8 DIRECTORS.

9 E. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS
10 SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF DIRECTORS
11 BEFORE THE EFFECTIVE DATE OF THIS SECTION.

12 F. THE DISTRICT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON
13 THE DISTRICT'S WEBSITE.

14 G. THE DISTRICT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR THE
15 PURPOSE OF DISCUSSING ANY PROPOSED RULE.

16 H. THIS SECTION DOES NOT APPLY TO:

17 1. SUBSTANTIVE POLICY STATEMENTS.

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

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

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

30 Sec. 6. Section 48-3642, Arizona Revised Statutes, is amended to read:

31 48-3642. Regulatory bill of rights

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

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

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

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

41 4. May have a district approve or deny the person's license
42 application within a predetermined period of time as provided in section
43 48-3645.

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

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

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

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

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

13 8. Unless specifically authorized, may expect districts 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 48-3644.

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

20 10. As provided in section 48-3644, is entitled to have a district not
21 request or initiate discussions about waiving any of the rights prescribed in
22 this section.

23 11. **MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN**
24 **SECTION 48-3609.02, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON**
25 **PROPOSED RULES TO THE DISTRICT AND HAVING THE DISTRICT ADDRESS COMMENTS AS**
26 **PROVIDED IN SECTION 48-3609.02.**

27 Sec. 7. Section 48-3647, Arizona Revised Statutes, is amended to read:
28 **48-3647. Directory of documents**

29 The district shall publish, or prominently place on the district
30 website, at least annually, a directory summarizing the subject matter of all
31 currently applicable ordinances, **RULES**, regulations and substantive policy
32 statements. The district shall keep copies of this directory and all
33 substantive policy statements at one location. The directory, ordinances,
34 **RULES**, regulations, substantive policy statements and any materials
35 incorporated by reference in these documents shall be open to public
36 inspection at the office of the district or the district website.

37 Sec. 8. Section 48-3648, Arizona Revised Statutes, is amended to read:
38 **48-3648. Complaints; board of directors review**

39 **A.** The board of ~~review~~ **DIRECTORS** shall ~~receive~~ **ESTABLISH A PROCEDURE**
40 **TO RECEIVE** complaints **FROM AN ADVERSELY AFFECTED PERSON** concerning
41 ordinances, **RULES**, substantive policy statements or district practices
42 alleged to violate this ~~article~~ **CHAPTER**. ~~The board of review may review any~~
43 ~~ordinance, regulation, substantive policy statement or district practice~~
44 ~~alleged to violate this article and may hold hearings regarding the~~
45 ~~allegations. The board of review may recommend actions to alleviate the~~

~~aspects of the ordinances, regulations, substantive policy statements or district practices alleged to violate this article.~~

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

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

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

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

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

Sec. 9. Effective date; county population

This act is effective:

1. For a county with a population of three hundred seventy-five thousand persons or more, from and after December 31, 2014.

2. For a county with a population of less than three hundred seventy-five thousand persons, from and after December 31, 2015.