

REFERENCE TITLE: secretary of state; rulemaking

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2184

Introduced by
Representative Coleman

AN ACT

REPEALING SECTION 23-1326, ARIZONA REVISED STATUTES; AMENDING SECTION 41-124, ARIZONA REVISED STATUTES; REPEALING SECTION 41-131, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 41-131; AMENDING SECTIONS 41-151.14, 41-1001, 41-1005, 41-1012, 41-1022, 41-1026 AND 41-1033, ARIZONA REVISED STATUTES; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 6.2; AMENDING SECTIONS 49-471.04 AND 49-471.08; APPROPRIATING MONIES; RELATING TO THE SECRETARY OF STATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section ~~23-1326~~, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 41-124, Arizona Revised Statutes, is amended to
5 read:

6 ~~41-124.~~ 41-124. Receipt and record of documents received

7 ~~A. All documents when delivered to~~ The secretary of state shall ~~be~~
8 ~~received for by him~~ PROVIDE A RECEIPT OF DELIVERY FOR ANY DOCUMENT THAT
9 IS DELIVERED TO THE SECRETARY OF STATE and ~~when distributed his records~~
10 ~~shall show~~ RECORD the number of documents delivered, to whom delivered and
11 THE date of delivery.

12 ~~B. The secretary of state shall indelibly mark each book delivered~~
13 ~~to officers in this state, with the name of the county and designation of~~
14 ~~the officer. The books shall remain the property of the state.~~

15 Sec. 3. Repeal; transfer of monies

16 A. Section ~~41-131~~, Arizona Revised Statutes, is repealed.

17 B. All unexpended and unencumbered monies remaining in the Arizona
18 blue book revolving fund established by section ~~41-131~~, Arizona Revised
19 Statutes, as repealed by subsection A of this section, are transferred to
20 the state general fund on the effective date of this section.

21 Sec. 4. Title 41, chapter 1, article 2, Arizona Revised Statutes,
22 is amended by adding a new section ~~41-131~~, to read:

23 ~~41-131.~~ 41-131. Certified copies; fee

24 A. ON REQUEST, THE SECRETARY OF STATE OR THE SECRETARY'S DESIGNEE
25 MAY CERTIFY UNDER THE GREAT SEAL OF THE STATE OF ARIZONA ANY PUBLICLY
26 RECORDED DOCUMENT FILED PURSUANT TO THIS ARTICLE.

27 B. THE SECRETARY OF STATE MAY CHARGE A COPY FEE PER PAGE PURSUANT
28 TO SECTION 39-121.01 AND SHALL CHARGE A CERTIFIED COPY FEE PURSUANT TO
29 SECTION 41-126, SUBSECTION A, PARAGRAPH 10.

30 Sec. 5. Section 41-151.14, Arizona Revised Statutes, is amended to
31 read:

32 ~~41-151.14.~~ 41-151.14. State and local public records management;
33 violation; classification; definition

34 A. The head of each state and local agency shall:

35 1. Establish and maintain an active, continuing program for the
36 economical and efficient management of the public records of the agency.

37 2. Make and maintain records containing adequate and proper
38 documentation of the organization, functions, policies, decisions,
39 procedures and essential transactions of the agency designed to furnish
40 information to protect the rights of ~~the~~ THIS state and of persons
41 directly affected by the agency's activities.

42 3. Submit to the director, in accordance with established
43 standards, schedules proposing the length of time each record series
44 warrants retention for administrative, legal or fiscal purposes after it
45 has been received by the agency.

1 ~~4. Submit a list of public records in the agency's custody that are~~
2 ~~not needed in the transaction of current business and that are not~~
3 ~~considered to have sufficient administrative, legal or fiscal value to~~
4 ~~warrant their inclusion in established disposal schedules.~~

5 ~~5.~~ 4. Once every five years submit to the director lists of all
6 essential public records in the custody of the agency.

7 ~~6.~~ 5. Cooperate with the director in the conduct of surveys.

8 ~~7.~~ 6. Designate an individual within the agency to manage the
9 records management program of the agency. The agency shall reconfirm the
10 identity of this individual to the state library every other year. The
11 designated individual:

12 (a) Must be at a level of management sufficient to direct the
13 records management program in an efficient and effective manner.

14 (b) Shall act as coordinator and liaison for the agency with the
15 state library.

16 ~~8.~~ 7. Comply with rules, standards and procedures adopted by the
17 director.

18 B. The governing body of each county, city, town or other political
19 subdivision shall promote the principles of efficient record management
20 for local public records. ~~Such~~ THE governing body, as far as practicable,
21 shall follow the program established for the management of state records.
22 The director, on request of the governing body, shall provide advice and
23 assistance in the establishment of a local public records management
24 program.

25 C. A head of a state or local agency who violates this section is
26 guilty of a class 2 misdemeanor.

27 D. For the purposes of this section, "records management" means the
28 creation and implementation of systematic controls for records and
29 information activities from the point where they are created or received
30 through final disposition or archival retention, including distribution,
31 use, storage, retrieval, protection and preservation.

32 Sec. 6. Section 41-1001, Arizona Revised Statutes, is amended to
33 read:

34 41-1001. Definitions

35 In this chapter, unless the context otherwise requires:

36 1. "Agency" means any board, commission, department, officer or
37 other administrative unit of this state, including the agency head and one
38 or more members of the agency head or agency employees or other persons
39 directly or indirectly purporting to act on behalf or under the authority
40 of the agency head, whether created under the Constitution of Arizona or
41 by enactment of the legislature. Agency does not include the legislature,
42 the courts or the governor. Agency does not include a political
43 subdivision of this state or any of the administrative units of a
44 political subdivision, but does include any board, commission, department,
45 officer or other administrative unit created or appointed by joint or

1 concerted action of an agency and one or more political subdivisions of
2 this state or any of their units. To the extent an administrative unit
3 purports to exercise authority subject to this chapter, an administrative
4 unit otherwise qualifying as an agency must be treated as a separate
5 agency even if the administrative unit is located within or subordinate to
6 another agency.

7 2. "Audit" means an audit, investigation or inspection pursuant to
8 title 23, chapter 2 or 4.

9 3. "Code" means the Arizona administrative code, WHICH IS:

10 (a) THE OFFICIAL CODIFICATION AND COMPILATION OF RULES HAVING THE
11 FORCE OF LAW IN THIS STATE.

12 (b) THE REGULATORY AND ADMINISTRATIVE COROLLARY TO ARIZONA REVISED
13 STATUTES.

14 (c) PUBLISHED PURSUANT TO SECTION 41-1011.

15 4. "Committee" means the administrative rules oversight committee.

16 5. "Contested case" means any proceeding, including rate making,
17 except rate making pursuant to article XV, Constitution of Arizona, price
18 fixing and licensing, in which the legal rights, duties or privileges of a
19 party are required or permitted by law, other than this chapter, to be
20 determined by an agency after an opportunity for an administrative
21 hearing.

22 6. "Council" means the governor's regulatory review council.

23 7. "Delegation agreement" means an agreement between an agency and
24 a political subdivision that authorizes the political subdivision to
25 exercise functions, powers or duties conferred on the delegating agency by
26 a provision of law. Delegation agreement does not include
27 intergovernmental agreements entered into pursuant to title 11, chapter 7,
28 article 3.

29 8. "Emergency rule" means a rule that is made pursuant to section
30 41-1026.

31 9. "Fee" means a charge prescribed by an agency for an inspection
32 or for obtaining a license.

33 10. "Final rule" means any rule filed with the secretary of state
34 and made pursuant to an exemption from this chapter in section 41-1005,
35 made pursuant to section 41-1026, approved by the council pursuant to
36 section 41-1052 or 41-1053 or approved by the attorney general pursuant to
37 section 41-1044. For purposes of judicial review, final rule includes
38 expedited rules pursuant to section 41-1027.

39 11. "General permit" means a regulatory permit, license or agency
40 authorization that is for facilities, activities or practices in a class
41 that are substantially similar in nature and that is issued or granted by
42 an agency to a qualified applicant to conduct identified operations or
43 activities if the applicant meets the applicable requirements of the
44 general permit, that requires less information than an individual or

1 traditional permit, license or authorization and that does not require a
2 public hearing.

3 12. "License" includes the whole or part of any agency permit,
4 certificate, approval, registration, charter or similar form of permission
5 required by law, but does not include a license required solely for
6 revenue purposes.

7 13. "Licensing" includes the agency process respecting the grant,
8 denial, renewal, revocation, suspension, annulment, withdrawal or
9 amendment of a license.

10 14. "Party" means each person or agency named or admitted as a
11 party or properly seeking and entitled as of right to be admitted as a
12 party.

13 15. "Person" means an individual, partnership, corporation,
14 association, governmental subdivision or unit of a governmental
15 subdivision, a public or private organization of any character or another
16 agency.

17 16. "Preamble" means:

18 (a) For any rulemaking subject to this chapter, a statement
19 accompanying the rule that includes:

20 (i) Reference to the specific statutory authority for the rule.

21 (ii) The name and address of agency personnel with whom persons may
22 communicate regarding the rule.

23 (iii) An explanation of the rule, including the agency's reasons
24 for initiating the rulemaking.

25 (iv) A reference to any study relevant to the rule that the agency
26 reviewed and either proposes to rely on in its evaluation of or
27 justification for the rule or proposes not to rely on in its evaluation of
28 or justification for the rule, where the public may obtain or review each
29 study, all data underlying each study and any analysis of each study and
30 other supporting material.

31 (v) The economic, small business and consumer impact summary, or in
32 the case of a proposed rule, a preliminary summary and a solicitation of
33 input on the accuracy of the summary.

34 (vi) A showing of good cause why the rule is necessary to promote a
35 statewide interest if the rule will diminish a previous grant of authority
36 of a political subdivision of this state.

37 (vii) Such other matters as are prescribed by statute and that are
38 applicable to the specific agency or to any specific rule or class of
39 rules.

40 (b) In addition to the information set forth in subdivision (a) of
41 this paragraph, for a proposed rule, the preamble also shall include a
42 list of all previous notices appearing in the register addressing the
43 proposed rule, a statement of the time, place and nature of the
44 proceedings for the making, amendment or repeal of the rule and where,

1 when and how persons may request an oral proceeding on the proposed rule
2 if the notice does not provide for one.

3 (c) In addition to the information set forth in subdivision (a) of
4 this paragraph, for an expedited rule, the preamble also shall include a
5 statement of the time, place and nature of the proceedings for the making,
6 amendment or repeal of the rule and an explanation of why expedited
7 proceedings are justified.

8 (d) For a final rule, except an emergency rule, the preamble also
9 shall include, in addition to the information set forth in subdivision
10 (a), the following information:

11 (i) A list of all previous notices appearing in the register
12 addressing the final rule.

13 (ii) A description of the changes between the proposed rules,
14 including supplemental notices and final rules.

15 (iii) A summary of the comments made regarding the rule and the
16 agency response to them.

17 (iv) A summary of the council's action on the rule.

18 (v) A statement of the rule's effective date.

19 (e) In addition to the information set forth in subdivision (a) of
20 this paragraph, for an emergency rule, the preamble also shall include an
21 explanation of the situation justifying the rule being made as an
22 emergency rule, the date of the attorney general's approval of the rule
23 and a statement of the emergency rule's effective date.

24 17. "Provision of law" means the whole or a part of the federal or
25 state constitution, or of any federal or state statute, rule of court,
26 executive order or rule of an administrative agency.

27 18. "Register" means the Arizona administrative register, WHICH IS:

28 (a) THIS STATE'S OFFICIAL PUBLICATION OF RULEMAKING NOTICES THAT
29 ARE FILED WITH THE OFFICE OF SECRETARY OF STATE.

30 (b) PUBLISHED PURSUANT TO SECTION 41-1011.

31 19. "Rule" means an agency statement of general applicability that
32 implements, interprets or prescribes law or policy, or describes the
33 procedure or practice requirements of an agency. Rule includes
34 prescribing fees or the amendment or repeal of a prior rule but does not
35 include intraagency memoranda that are not delegation agreements.

36 20. "Rulemaking" means the process ~~for formulation and finalization~~
37 ~~of~~ TO MAKE A NEW RULE OR AMEND, REPEAL OR RENUMBER a rule.

38 21. "Small business" means a concern, including its affiliates,
39 which is independently owned and operated, which is not dominant in its
40 field and which employs fewer than one hundred full-time employees or
41 which had gross annual receipts of less than four million dollars in its
42 last fiscal year. For purposes of a specific rule, an agency may define
43 small business to include more persons if it finds that such a definition
44 is necessary to adapt the rule to the needs and problems of small
45 businesses and organizations.

1 22. "Substantive policy statement" means a written expression which
2 informs the general public of an agency's current approach to, or opinion
3 of, the requirements of the federal or state constitution, federal or
4 state statute, administrative rule or regulation, or final judgment of a
5 court of competent jurisdiction, including, where appropriate, the
6 agency's current practice, procedure or method of action based upon that
7 approach or opinion. A substantive policy statement is advisory only. A
8 substantive policy statement does not include internal procedural
9 documents which only affect the internal procedures of the agency and does
10 not impose additional requirements or penalties on regulated parties,
11 confidential information or rules made in accordance with this chapter.

12 Sec. 7. Section 41-1005, Arizona Revised Statutes, is amended to
13 read:

14 41-1005. Exemptions

15 A. This chapter does not apply to any:

16 1. Rule that relates to the use of public works, including streets
17 and highways, under the jurisdiction of an agency if the effect of the
18 order is indicated to the public by means of signs or signals.

19 2. Order or rule of the Arizona game and fish commission that does
20 the following:

21 (a) Opens, closes or alters seasons or establishes bag or
22 possession limits for wildlife.

23 (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

24 (c) Establishes a license classification, fee or application fee
25 pursuant to title 17, chapter 3, article 2.

26 3. Rule relating to section 28-641 or to any rule regulating motor
27 vehicle operation that relates to speed, parking, standing, stopping or
28 passing enacted pursuant to title 28, chapter 3.

29 4. Rule concerning only the internal management of an agency that
30 does not directly and substantially affect the procedural or substantive
31 rights or duties of any segment of the public.

32 5. Rule that only establishes specific prices to be charged for
33 particular goods or services sold by an agency.

34 6. Rule concerning only the physical servicing, maintenance or care
35 of agency owned or operated facilities or property.

36 7. Rule or substantive policy statement concerning inmates or
37 committed youths of a correctional or detention facility in secure custody
38 or patients admitted to a hospital, if made by the state department of
39 corrections, the department of juvenile corrections, the board of
40 executive clemency or the department of health services or a facility or
41 hospital under the jurisdiction of the state department of corrections,
42 the department of juvenile corrections or the department of health
43 services.

44 8. Form whose contents or substantive requirements are prescribed
45 by rule or statute, and instructions for the execution or use of the form.

- 1 9. Capped fee-for-service schedule adopted by the Arizona health
2 care cost containment system administration pursuant to title 36,
3 chapter 29.
- 4 10. Fees prescribed by section 6-125.
- 5 11. Order of the director of water resources adopting or modifying
6 a management plan pursuant to title 45, chapter 2, article 9.
- 7 12. Fees established under section 3-1086.
- 8 13. Fees established under sections 41-4010 and 41-4042.
- 9 14. Rule or other matter relating to agency contracts.
- 10 15. Fees established under section 32-2067 or 32-2132.
- 11 16. Rules made pursuant to section 5-111, subsection A.
- 12 17. Rules made by the Arizona state parks board concerning the
13 operation of the Tonto natural bridge state park, the facilities located
14 in the Tonto natural bridge state park and the entrance fees to the Tonto
15 natural bridge state park.
- 16 18. Fees or charges established under section 41-511.05.
- 17 19. Emergency medical services protocols except as provided in
18 section 36-2205, subsection B.
- 19 20. Fee schedules established pursuant to section 36-3409.
- 20 21. Procedures of the state transportation board as prescribed in
21 section 28-7048.
- 22 22. Rules made by the state department of corrections.
- 23 23. Fees prescribed pursuant to section 32-1527.
- 24 24. Rules made by the department of economic security pursuant to
25 section 46-805.
- 26 25. Schedule of fees prescribed by section 23-908.
- 27 26. Procedure that is established pursuant to title 23, chapter 6,
28 article 6.
- 29 27. Rules, administrative policies, procedures and guidelines
30 adopted for any purpose by the Arizona commerce authority pursuant to
31 chapter 10 of this title if the authority provides, as appropriate under
32 the circumstances, for notice of an opportunity for comment on the
33 proposed rules, administrative policies, procedures and guidelines.
- 34 28. Rules made by a marketing commission or marketing committee
35 pursuant to section 3-414.
- 36 29. Administration of public assistance program monies authorized
37 for liabilities that are incurred for disasters declared pursuant to
38 sections 26-303 and 35-192.
- 39 30. User charges, tolls, fares, rents, advertising and sponsorship
40 charges, services charges or similar charges established pursuant to
41 section 28-7705.
- 42 31. Administration and implementation of the hospital assessment
43 pursuant to section 36-2901.08, except that the Arizona health care cost
44 containment system administration must provide notice and an opportunity

1 for public comment at least thirty days before establishing or
2 implementing the administration of the assessment.

3 32. Rules made by the Arizona department of agriculture to adopt
4 and implement the provisions of the federal milk ordinance as prescribed
5 by section 3-605.

6 B. Notwithstanding subsection A, paragraph 21 of this section, at
7 such time as the federal highway administration authorizes the
8 privatization of rest areas, the state transportation board shall make
9 rules governing the lease or license by the department of transportation
10 to a private entity for the purposes of privatization of a rest area.

11 C. Coincident with the making of a final rule pursuant to an
12 exemption from the applicability of this chapter under this section,
13 another statute or session law, the agency shall:

14 1. PREPARE A NOTICE AND FOLLOW FORMATTING GUIDELINES PRESCRIBED BY
15 THE SECRETARY OF STATE.

16 2. PREPARE THE RULEMAKING EXEMPTION NOTICES PURSUANT TO CHAPTER 6.2
17 OF THIS TITLE.

18 3. File a copy of the rule with the secretary of state for
19 publication pursuant to section 41-1012 and provide a copy to the council.

20 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
21 chapter do not apply to the Arizona board of regents and the institutions
22 under its jurisdiction, except that the Arizona board of regents shall
23 make policies or rules for the board and the institutions under its
24 jurisdiction that provide, as appropriate under the circumstances, for
25 notice of and opportunity for comment on the policies or rules proposed.

26 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
27 chapter do not apply to the Arizona state schools for the deaf and the
28 blind, except that the board of directors of all the state schools for the
29 deaf and the blind shall adopt policies for the board and the schools
30 under its jurisdiction that provide, as appropriate under the
31 circumstances, for notice of and opportunity for comment on the policies
32 proposed for adoption.

33 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
34 chapter do not apply to the state board of education, except that the
35 state board of education shall adopt policies or rules for the board and
36 the institutions under its jurisdiction that provide, as appropriate under
37 the circumstances, for notice of and opportunity for comment on the
38 policies or rules proposed for adoption. In order to implement or change
39 any rule, the state board of education shall provide at least two
40 opportunities for public comment.

41 Sec. 8. Section 41-1012, Arizona Revised Statutes, is amended to
42 read:

43 41-1012. Code: publication of rules; notification

44 A. The code shall contain the full text of each final AND EMERGENCY
45 rule filed with the secretary of state, ~~and~~ each rule made pursuant to a

1 statutory exemption from the applicability of this chapter AND EACH
2 EXPIRED RULE THAT IS REMOVED AS DETERMINED BY THE COUNCIL UNDER SECTION
3 41-1056.

4 B. The secretary of state shall ELECTRONICALLY publish, ~~in~~
5 ~~loose-leaf form,~~ at least once every quarter ~~all final rules and rules~~
6 ~~made pursuant to a statutory exemption from the applicability of this~~
7 ~~chapter~~ A CODE SUPPLEMENT. Publication of a rule by the secretary of
8 state as provided in this section constitutes prima facie evidence of the
9 making, APPROVING and filing of ~~the~~ A FINAL, EMERGENCY OR EXEMPT rule AND
10 CARRIES THE WEIGHT OF LAW pursuant to this chapter or ~~the making of the~~
11 ~~rule pursuant to~~ a statutory exemption from the applicability of this
12 chapter.

13 C. The secretary of state ~~may contract for the printing of the code~~
14 ~~on terms most advantageous to this state~~ SHALL OFFER AN E-MAIL SERVICE FOR
15 PERSONS TO RECEIVE NOTIFICATION WHEN A QUARTERLY SUPPLEMENT HAS BEEN
16 PUBLISHED. THE SERVICE SHALL INCLUDE A LIST OF CHAPTERS PUBLISHED AND
17 WHERE THE CHAPTERS ARE POSTED.

18 ~~D. The code shall be available by subscription and for single copy~~
19 ~~purchase. The charge for each code or periodic subscription shall be a~~
20 ~~reasonable charge, not to exceed all costs of production and distribution~~
21 ~~of the code.~~

22 D. THE SECRETARY OF STATE SHALL PUBLISH THE CODE ELECTRONICALLY FOR
23 FREE. THE SECRETARY OF STATE SHALL ESTABLISH A COMMERCIAL USE FEE
24 PURSUANT TO SECTION 39-121.03. THE SECRETARY OF STATE SHALL HONOR ANY
25 PAPER SUBSCRIPTION IN PLACE BY THE END OF FISCAL YEAR 2017-2018 UNTIL THE
26 SUBSCRIPTION EXPIRES.

27 Sec. 9. Heading change

28 The article heading of title 41, chapter 6, article 3, Arizona
29 Revised Statutes, is changed from "RULE MAKING" to "RULEMAKING".

30 Sec. 10. Section 41-1022, Arizona Revised Statutes, is amended to
31 read:

32 41-1022. Notice of proposed rulemaking; contents of notice

33 A. ~~Before rule making, amendment~~ AN AGENCY SHALL PREPARE A NOTICE
34 OF PROPOSED RULEMAKING TO MAKE, AMEND, RENUMBER or repeal, ~~A~~ RULE. THE
35 AGENCY SHALL FOLLOW FORMATTING GUIDELINES PRESCRIBED BY THE SECRETARY OF
36 STATE IN THE PREPARATION OF THE NOTICE. The agency shall file ~~a~~ THE
37 notice ~~of the proposed action~~ with the secretary of state. The notice
38 shall include ALL OF THE FOLLOWING:

- 39 1. The preamble.
- 40 2. THE CODE CHAPTER AND ARTICLE IN WHICH THE RULE IS BEING
41 PROPOSED.
- 42 3. THE PROPOSED OR CURRENT RULE SECTION NUMBER.
- 43 ~~2.~~ 4. The exact wording of the rule, INCLUDING THE FULL TEXT OF A
44 NEW RULE AND ANY AMENDMENT TO, RENUMBERING OF OR REPEAL OF A CURRENT RULE.

1 B. The secretary of state shall ~~include in the next edition of the~~
2 ~~register the information in the notice under subsection A of this section~~
3 PUBLISH THE NOTICE IN THE REGISTER PURSUANT TO SECTION 41-1013.

4 C. ~~At the same time~~ WHEN the agency files ~~a~~ THE notice ~~of the~~
5 ~~proposed rule making with the secretary of state~~, the agency shall notify
6 by ~~regular~~ FIRST CLASS mail, ~~telefacsimile~~ FAX or ~~electronic mail~~ E-MAIL
7 each person who has ~~made a timely request to the agency for~~ REQUESTED
8 notification of the proposed ~~rule making~~ RULEMAKING and ~~to~~ each person who
9 has requested notification of all proposed ~~rule makings~~ RULEMAKINGS. An
10 agency may provide the notification prescribed in this subsection in a
11 periodic agency newsletter. An agency may purge its list of persons
12 requesting notification of proposed ~~rule makings~~ RULEMAKINGS once each
13 year.

14 ~~D. Before commencing any proceedings for rule making, amendment or~~
15 ~~repeal, an agency shall allow at least thirty days to elapse after the~~
16 ~~publication date of the register in which the notice of the proposed rule~~
17 ~~making, amendment or repeal is contained.~~

18 D. AN AGENCY SHALL ALLOW FOR AND ACCEPT PUBLIC COMMENT ON THE
19 PROPOSED RULEMAKING AS PRESCRIBED IN SECTION 41-1023.

20 E. If, as a result of public comments or internal review, an agency
21 determines that a proposed rule requires A substantial change pursuant to
22 section 41-1025, the agency shall ~~issue~~ PREPARE a NOTICE OF supplemental
23 ~~notice containing~~ RULEMAKING THAT CONTAINS the ~~changes~~ CHANGE in the
24 proposed rule. The agency shall provide for additional public comment
25 pursuant to section 41-1023 AND FILE THE NOTICE WITH THE SECRETARY OF
26 STATE. THE SECRETARY OF STATE SHALL PUBLISH THE NOTICE IN THE REGISTER
27 PURSUANT TO SECTION 41-1013.

28 Sec. 11. Section 41-1026, Arizona Revised Statutes, is amended to
29 read:

30 41-1026. Emergency rulemaking

31 A. If an agency makes a finding that a rule is necessary as an
32 emergency measure, the rule may be made, amended or repealed as an
33 emergency measure, without the notice prescribed by sections 41-1021 and
34 41-1022 and prior review by the council, if the rule is first approved by
35 the attorney general and filed with the secretary of state. The attorney
36 general may not approve the making, amendment or repeal of a rule as an
37 emergency measure if the emergency situation is created due to the
38 agency's delay or inaction and the emergency situation could have been
39 averted by timely compliance with the notice and public participation
40 provisions of this chapter, unless the agency submits substantial evidence
41 that the rule is necessary as an emergency measure to do any of the
42 following:

- 43 1. Protect the public health, safety or welfare.

- 1 2. Comply with deadlines in amendments to an agency's governing law
2 or federal programs.
- 3 3. Avoid violation of federal law or regulation or other state law.
- 4 4. Avoid an imminent budget reduction.
- 5 5. Avoid serious prejudice to the public interest or the interest
6 of the parties concerned.
- 7 B. Within sixty days ~~of~~ AFTER receipt, the attorney general shall
8 review the demonstration of emergency and the rule in accordance with the
9 standards prescribed in section 41-1044.
- 10 C. ~~After the rule is filed~~ IF THE EMERGENCY IS IN ACCORDANCE WITH
11 THE STANDARDS IN SECTION 41-1044, THE ATTORNEY GENERAL SHALL CREATE A
12 CERTIFICATE OF APPROVAL AND FILE THE RULE with the secretary of
13 state. ~~;~~ The secretary of state shall publish the rule in the register
14 as provided in section 41-1013 AND PUBLISH THE RULE IN THE CODE.
- 15 D. A rule made, amended or repealed pursuant to this section is
16 valid for one hundred eighty days after the filing of the rule with the
17 secretary of state. ~~and~~ THE EMERGENCY may be renewed for one more one
18 hundred ~~eighty day~~ EIGHTY-DAY period if all of the following ~~occur~~
19 REQUIREMENTS ARE MET:
- 20 1. The agency determines that the emergency situation still exists.
- 21 2. The agency follows the procedures prescribed in this section.
- 22 3. The ~~rule is approved by~~ AGENCY FILES A NOTICE OF THE RENEWAL OF
23 THE EMERGENCY WITH the attorney general ~~pursuant to this section~~ BEFORE
24 THE EXPIRATION OF THE PRECEDING ONE HUNDRED EIGHTY-DAY PERIOD.
- 25 4. The agency ~~has issued~~ MAKES the rule as a proposed rule or has
26 issued an alternative proposed rule pursuant to section 41-1022.
- 27 5. The agency ~~seeks~~ RECEIVES approval of the renewal from the
28 attorney general before the expiration of the preceding one hundred ~~eighty~~
29 ~~day~~ EIGHTY-DAY period.
- 30 6. The ~~agency files notice of the renewal and any required~~ attorney
31 general ~~approval~~ CREATES A CERTIFICATE OF APPROVAL AND FILES THE RULE with
32 the secretary of state. ~~and notice is published~~ THE SECRETARY OF STATE
33 SHALL PUBLISH THE RENEWAL OF THE EMERGENCY RULE in the register AS
34 PROVIDED IN SECTION 41-1013 AND PUBLISH THE RULE IN THE CODE.
- 35 E. A rule that is made pursuant to this chapter ~~and that replaces a~~
36 SHALL REPEAL AN EMERGENCY rule made, amended or repealed ~~pursuant to this~~
37 ~~section shall expressly repeal the rule replaced if it has not expired~~ IF
38 THE EMERGENCY IS STILL EFFECTIVE WITHIN THE ONE HUNDRED EIGHTY-DAY PERIOD.
- 39 F. ON EXPIRATION OF THE ONE HUNDRED EIGHTY-DAY PERIOD, THE
40 SECRETARY OF STATE SHALL REMOVE THE EMERGENCY RULE FROM THE CODE. IF A
41 RULE HAS NOT BEEN MADE PURSUANT TO SUBSECTION E OF THIS SECTION, THE RULE
42 IN PLACE BEFORE THE EMERGENCY IS RESTORED.

1 B. IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
2 1. "ACT" MEANS THE ARIZONA ADMINISTRATIVE PROCEDURES ACT
3 ESTABLISHED BY CHAPTER 6 OF THIS TITLE.
4 2. "NOTICE OF EXEMPT RULEMAKING" MEANS A NOTICE OF:
5 (a) AN EXEMPTION PURSUANT TO SECTION 41-1005, EXCEPT THOSE
6 EXEMPTIONS THAT REQUIRE NOTICE AND AN OPPORTUNITY FOR PUBLIC COMMENT.
7 (b) AN EXEMPTION PURSUANT TO SECTION 41-1057.
8 (c) A RULE ADOPTED PURSUANT TO AN EXEMPTION, AS PROVIDED
9 EXCLUSIVELY TO AN AGENCY IN STATUTE OR SESSION LAW, FROM ALL REQUIREMENTS
10 OF THE ACT.
11 3. "NOTICE OF FINAL EXEMPT RULEMAKING" MEANS A NOTICE OF EXEMPT
12 RULES THAT WERE ORIGINALLY PUBLISHED AS PROPOSED EXEMPT RULES AND THAT ARE
13 FILED BY AN AGENCY FOR PUBLICATION IN THE REGISTER TO BE CODIFIED IN THE
14 CODE.
15 4. "NOTICE OF PROPOSED EXEMPT RULEMAKING" MEANS A NOTICE OF EXEMPT
16 RULES THAT REQUIRE PUBLISHING OF DRAFT RULES AND AN OPPORTUNITY FOR PUBLIC
17 COMMENT.
18 5. "NOTICE OF SUPPLEMENTAL PROPOSED EXEMPT RULEMAKING" MEANS A
19 NOTICE OF SUBSTANTIVE CHANGES MADE TO A NOTICE OF PROPOSED EXEMPT
20 RULEMAKING AFTER RECEIVING PUBLIC INPUT ON THE RULE.
21 6. "PUBLISHED" MEANS A RULEMAKING THAT HAS BEEN PRINTED AND
22 DISTRIBUTED BY AN AGENCY OR POSTED ON AN AGENCY'S WEBSITE OR FILED BY AN
23 AGENCY AND PUBLISHED IN THE REGISTER OR A COMBINATION OF ANY OF THESE
24 REQUIREMENTS AS PROVIDED IN STATUTE OR SESSION LAW.
25 41-1097.01. Notice of exempt, proposed exempt, supplemental
26 proposed exempt and final exempt rulemaking
27 A. AN AGENCY THAT IS EXEMPT FROM SOME OR ALL OF THE REQUIREMENTS OF
28 THE ACT MUST COMPLY WITH THE SECRETARY OF STATE'S FORMATTING AND FILING
29 REQUIREMENTS FOR PUBLISHING IN THE REGISTER AND CODE.
30 B. IF AN AGENCY IS EXEMPT FROM SOME OR ALL OF THE REQUIREMENTS OF
31 THE ACT, THE AGENCY SHALL DETERMINE WHICH OF THE FOLLOWING TYPES OF
32 NOTICES TO FILE WITH THE SECRETARY OF STATE'S OFFICE:
33 1. A NOTICE OF EXEMPT RULEMAKING.
34 2. A NOTICE OF PROPOSED EXEMPT RULEMAKING. THIS NOTICE MAY BE
35 REQUIRED TO BE PUBLISHED IN THE REGISTER OR PUBLISHED ELSEWHERE, INCLUDING
36 AN ON AN AGENCY'S WEBSITE. THE EXEMPTION MAY REQUIRE NOTICE OF AN ORAL
37 PROCEEDING AND AN OPPORTUNITY FOR PUBLIC COMMENT WITH THE DRAFT RULEMAKING
38 DISTRIBUTED AT THE PROCEEDING.
39 3. A NOTICE OF SUPPLEMENTAL PROPOSED EXEMPT RULEMAKING. THE AGENCY
40 MAY PROVIDE NOTICE OF ADDITIONAL PUBLIC COMMENT, IF REQUIRED, PURSUANT TO
41 STATUTE OR SESSION LAW.
42 4. A NOTICE OF FINAL EXEMPT RULEMAKING.
43 C. AN AGENCY SHALL PREPARE A NOTICE OF EXEMPT, PROPOSED EXEMPT OR
44 FINAL EXEMPT RULEMAKING TO MAKE, AMEND, RENUMBER OR REPEAL A RULE. THE
45 AGENCY SHALL FOLLOW FORMATTING GUIDELINES PRESCRIBED BY THE SECRETARY OF

1 STATE IN PREPARING THE NOTICE. THE AGENCY SHALL FILE THE NOTICE WITH THE
2 SECRETARY OF STATE. THE NOTICE SHALL INCLUDE:

- 3 1. A PREAMBLE, INCLUDING THE CITATION TO THE AGENCY'S EXEMPTION.
- 4 2. THE CODE CHAPTER AND ARTICLE IN WHICH THE RULE IS BEING
5 PROPOSED.
- 6 3. THE PROPOSED OR CURRENT RULE SECTION NUMBER.
- 7 4. THE EXACT WORDING OF THE RULE, INCLUDING THE FULL TEXT OF A NEW
8 RULE AND ANY AMENDMENT TO, RENUMBERING OF OR REPEAL OF A CURRENT RULE.

9 D. THE SECRETARY OF STATE SHALL PUBLISH THE NOTICE IN THE REGISTER
10 PURSUANT TO SECTIONS 41-1005 AND 41-1057 OR PUBLISH UNDER OTHER
11 REQUIREMENTS IN STATUTE OR SESSION LAW AS PROVIDED BY THE AGENCY. THE
12 EXEMPT RULES SHALL BE CODIFIED AND PUBLISHED IN THE CODE.

13 Sec. 15. Section 49-471.04, Arizona Revised Statutes, is amended to
14 read:

15 49-471.04. Notice of proposed rule or ordinance making

16 A. Before a board of supervisors adopts or amends a rule or
17 ordinance that is subject to section 49-112, subsection A or a rule or
18 ordinance that does not otherwise qualify under section ~~41-471.08~~
19 ~~49-471.08~~, subsection A, the control officer shall:

20 1. ~~File~~ PREPARE a notice THAT CONTAINS THE FULL TEXT of a proposed
21 rule or ordinance making ~~with the secretary of state for publication in~~
22 ~~the register. The secretary of state shall publish~~ AND POST the notice ~~in~~
23 ~~the next issue of the register at no cost to the county~~ ON THE COUNTY'S
24 WEBSITE. The notice shall include:

- 25 (a) The preamble as prescribed in section 49-471.05.
- 26 (b) The exact wording of the rule or ordinance.

27 2. At the time the control officer ~~files a~~ POSTS THE notice of the
28 proposed rule or ordinance making ~~with the secretary of state~~ ON THE
29 COUNTY'S WEBSITE, notify by ~~regular~~ FIRST CLASS mail, fax or ~~electronic~~
30 ~~mail~~ E-MAIL each person who has made a timely request to the county for
31 notification of the proposed rule or ordinance making and to each person
32 who has requested notification of all proposed rule or ordinance makings.
33 A county may provide the notification prescribed in this paragraph in a
34 periodic newsletter. The control officer may purge the control officer's
35 list of persons requesting notification of proposed rule or ordinance
36 makings once each year by providing notice of the purge in the manner
37 prescribed in this paragraph.

38 B. Before adopting or amending a rule or ordinance pursuant to
39 section 49-112, subsection B, a control officer and board of supervisors
40 shall follow the procedure established in this section or in section
41 49-471.08.

1 Sec. 16. Section 49-471.08, Arizona Revised Statutes, is amended to
2 read:

3 49-471.08. Expedited rule or ordinance making

4 A. If a rule or ordinance is adopted pursuant to section 49-112,
5 subsection B, ~~and~~ and the proposed rule or ordinance is a conforming change
6 to directly reflect federal or state rule or law, the rule or ordinance
7 making may be declared an expedited rule or ordinance making and is not
8 subject to section 49-471.07, except as otherwise provided in this
9 section, if all of the following apply:

10 1. The rule or ordinance making is substantially identical to the
11 sense, meaning and effect of the federal or state rule or law from which
12 it is derived.

13 2. The control officer makes a written finding setting forth the
14 reasons why the rule or ordinance making is necessary and does not alter
15 the sense, meaning or effect of the federal or state rule or law from
16 which it is derived.

17 3. Fees established in the rule or ordinance do not exceed limits
18 specified in section 49-112.

19 B. For ordinances and rules that meet the requirements of
20 subsection A of this section, the control officer shall ~~file~~ PREPARE a
21 notice ~~with the secretary of state for publication in the register~~ OF THE
22 EXPEDITATED RULE OR ORDINANCE. The notice shall contain the full text of
23 the proposed rule or ordinance, and the written finding required pursuant
24 to subsection A, paragraph 2 of this section. ~~The secretary of state~~
25 ~~shall publish the notice in the next issue of the register at no cost to~~
26 ~~the county.~~ THE CONTROL OFFICER SHALL POST THE NOTICE ON THE COUNTY'S
27 WEBSITE WITH A DATE OF POSTING AND FILE A PAPER NOTICE WITH THE BOARD OF
28 SUPERVISORS.

29 C. For thirty days after the date of ~~publication in the register~~
30 POSTING, the control officer shall accept public comment on the proposed
31 rule or ordinance.

32 D. Subject to section 49-471.07, subsections C and D after
33 consideration of any comments, the control officer shall submit the
34 expedited rule or ordinance to the board of supervisors for adoption. The
35 rule or ordinance is effective on adoption by the board of supervisors.

36 E. After adoption by the board of supervisors, the control officer
37 shall ~~submit a notice to the secretary of state for publication in the~~
38 ~~next issue of the register.~~ The notice shall contain PREPARE A NOTICE
39 THAT CONTAINS the full text of the final rule or ordinance, ~~and~~ the
40 finding required pursuant to subsection A, paragraph 2 of this
41 section. ~~The secretary of state shall publish the notice in the next~~
42 ~~issue of the register at no cost to the county.~~ AND THE MINUTES OF THE
43 MEETING IN WHICH THE BOARD OF SUPERVISORS ADOPTED THE RULE. THE CONTROL
44 OFFICER SHALL POST THE FINAL NOTICE ON THE COUNTY'S WEBSITE.