

REFERENCE TITLE: **GRRC: petition to request review**

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2054

Introduced by
Representatives Biasiucci: Bolick

AN ACT

AMENDING SECTION 41-1033, ARIZONA REVISED STATUTES; RELATING TO
ADMINISTRATIVE PROCEDURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1033, Arizona Revised Statutes, is amended to
3 read:
4 41-1033. Petition for a rule or review of an agency practice,
5 substantive policy statement, final rule or unduly
6 burdensome licensing requirement; notice
7 A. Any person may petition an agency to do either of the following:
8 1. Make, amend or repeal a final rule.
9 2. Review an existing agency practice or substantive policy
10 statement that the petitioner alleges to constitute a rule.
11 B. An agency shall prescribe the form of the petition and the
12 procedures for the petition's submission, consideration and disposition.
13 The person shall state on the petition the rulemaking to review or the
14 agency practice or substantive policy statement to consider making into a
15 rule.
16 C. Not later than sixty days after submission of the petition, the
17 agency shall either:
18 1. Reject the petition and state its reasons in writing for ~~denial~~
19 REJECTION to the petitioner.
20 2. Initiate rulemaking proceedings in accordance with this chapter.
21 3. If otherwise lawful, make a rule.
22 D. The agency's response to the petition is open to public
23 inspection.
24 E. If an agency rejects a petition pursuant to subsection C of this
25 section, the petitioner has thirty days to appeal to the council to review
26 whether the existing agency practice or substantive policy statement
27 constitutes a rule. The council chairperson shall place this appeal on
28 the agenda of the council's next meeting if at least three council members
29 make such a request of the council chairperson within two weeks after the
30 filing of the appeal.
31 F. A person may petition the council to request a review of a final
32 rule based on the person's belief that the final rule does not meet the
33 requirements prescribed in section 41-1030.
34 G. A person may petition the council to request a review of an
35 existing agency practice, substantive policy statement, final rule or
36 regulatory licensing requirement that is not specifically authorized by
37 statute pursuant to title 32 based on the person's belief that the
38 existing agency practice, substantive policy statement, final rule or
39 regulatory licensing requirement is unduly burdensome or is not
40 demonstrated to be necessary to specifically fulfill a public health,
41 safety or welfare concern. If the council determines that the existing
42 agency practice, substantive policy statement, final rule or regulatory
43 licensing requirement applies to a profession for which the average wage
44 in that profession in this state does not exceed two hundred percent of
45 the federal poverty guidelines for a family of four, the council shall

1 review the existing agency practice, substantive policy statement, final
2 rule or regulatory licensing requirement as prescribed by this section.
3 This subsection does not apply to an individual or institution that is
4 subject to title 36, chapter 4, article 10 or chapter 20.

5 H. A PERSON MAY PETITION THE COUNCIL TO REQUEST A REVIEW OF AN
6 EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE ADOPTED BY THE
7 AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE OF AN AGENCY
8 ESTABLISHED UNDER TITLE 16, CHAPTER 6 BASED ON THE PERSON'S BELIEF THAT
9 THE EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE ADOPTED BY
10 THE AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE DOES NOT MEET THE
11 REQUIREMENTS OF CHAPTER 6 OF THIS TITLE, EXCEEDS THE AGENCY'S STATUTORY
12 AUTHORITY OR VIOLATES THIS STATE'S CONSTITUTION OR THE UNITED STATES
13 CONSTITUTION.

14 ~~H.~~ I. If the council receives information that indicates an
15 existing agency practice or substantive policy statement may constitute a
16 rule, that a final rule does not meet the requirements prescribed in
17 section 41-1030, ~~or~~ that an existing agency practice, substantive policy
18 statement, final rule or regulatory licensing requirement does not meet
19 the guidelines prescribed in subsection G of this section OR THAT AN
20 EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE ADOPTED BY THE
21 AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE OF AN AGENCY
22 ESTABLISHED UNDER TITLE 16, CHAPTER 6 DOES NOT MEET THE GUIDELINES
23 PRESCRIBED IN SUBSECTION H OF THIS SECTION and at least four council
24 members request of the chairperson that the matter be heard in a public
25 meeting:

26 1. Within ninety days after receipt of the fourth council member's
27 request, the council shall determine whether:

28 (a) The agency practice or substantive policy statement constitutes
29 a rule. ~~, whether~~

30 (b) The final rule meets the requirements prescribed in section
31 41-1030. ~~or whether~~

32 (c) An existing agency practice, substantive policy statement,
33 final rule or regulatory licensing requirement meets the guidelines
34 prescribed in subsection G of this section.

35 (d) AN EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE
36 ADOPTED BY THE AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE OF AN
37 AGENCY ESTABLISHED UNDER TITLE 16, CHAPTER 6 DOES NOT MEET THE GUIDELINES
38 PRESCRIBED IN SUBSECTION H OF THIS SECTION.

39 2. Within ten days after receipt of the fourth council member's
40 request, the council shall notify the agency that the matter has been or
41 will be placed on an agenda.

42 3. Not later than thirty days after receiving notice from the
43 council, the agency shall submit a statement to the council that addresses
44 whether:

1 (a) The existing agency practice, substantive policy statement
2 constitutes a rule. ~~or whether~~

3 (b) The final rule meets the requirements prescribed in section
4 41-1030. ~~or whether~~

5 (c) An existing agency practice, substantive policy statement,
6 final rule or regulatory licensing requirement meets the guidelines
7 prescribed in subsection G of this section.

8 (d) AN EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE
9 ADOPTED BY THE AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE OF AN
10 AGENCY ESTABLISHED UNDER TITLE 16, CHAPTER 6 DOES NOT MEET THE GUIDELINES
11 PRESCRIBED IN SUBSECTION H OF THIS SECTION.

12 ~~J.~~ J. For the purposes of subsection ~~I~~ I of this section, the
13 council meeting shall not be scheduled until the expiration of the agency
14 response period prescribed in subsection ~~I~~ I, paragraph 3 of this
15 section.

16 ~~J.~~ K. An agency practice, substantive policy statement, final rule
17 or regulatory licensing requirement considered by the council pursuant to
18 this section shall remain in effect while under consideration of the
19 council. If the council ultimately decides the agency practice or
20 substantive policy statement constitutes a rule or that the final rule
21 does not meet the requirements prescribed in section 41-1030, the
22 practice, policy statement or rule shall be considered void. If the
23 council determines that the existing agency practice, substantive policy
24 statement, final rule or regulatory licensing requirement is unduly
25 burdensome or is not demonstrated to be necessary to specifically fulfill
26 a public health, safety or welfare concern and meets the requirements of
27 subsection G of this section, the council may modify, revise or declare
28 void any such existing agency practice, substantive policy statement,
29 final rule or regulatory licensing requirement. IF, BASED ON A PERSON'S
30 BELIEF THAT THE EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE
31 ADOPTED BY THE AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE DOES NOT
32 MEET THE REQUIREMENTS OF CHAPTER 6 OF THIS TITLE, EXCEEDS THE AGENCY'S
33 STATUTORY AUTHORITY OR VIOLATES THIS STATE'S CONSTITUTION OR THE UNITED
34 STATES CONSTITUTION, THE COUNCIL DETERMINES THAT THE EXISTING AGENCY
35 PRACTICE THAT INVOLVES INTERPRETING A RULE ADOPTED BY THE AGENCY,
36 SUBSTANTIVE POLICY STATEMENT OR FINAL RULE OF AN AGENCY ESTABLISHED UNDER
37 TITLE 16, CHAPTER 6 DOES NOT MEET THE GUIDELINES PRESCRIBED IN SUBSECTION
38 H OF THIS SECTION, THE COUNCIL MAY MODIFY, REVISE OR DECLARE VOID ANY SUCH
39 EXISTING AGENCY PRACTICE THAT INVOLVES INTERPRETING A RULE ADOPTED BY THE
40 AGENCY, SUBSTANTIVE POLICY STATEMENT OR FINAL RULE.

41 ~~K.~~ L. A council decision pursuant to this section shall include
42 findings of fact and conclusions of law, separately stated. Conclusions
43 of law shall specifically address the agency's authority to act consistent
44 with section 41-1030.

1 ~~L.~~ M. A decision by the agency pursuant to this section is not
2 subject to judicial review, except that, in addition to the procedure
3 prescribed in this section or in lieu of the procedure prescribed in this
4 section, a person may seek declaratory relief pursuant to section 41-1034.

5 ~~M.~~ N. Each agency and the secretary of state shall post
6 prominently on their websites notice of an individual's right to petition
7 the council for review pursuant to this section.