

House Engrossed

rulemaking; expedited process; rule expiration

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 183

HOUSE BILL 2265

AN ACT

AMENDING SECTION 41-1052, ARIZONA REVISED STATUTES; RELATING TO THE
GOVERNOR'S REGULATORY REVIEW COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1052, Arizona Revised Statutes, is amended to
3 read:

4 41-1052. Council review and approval; rule expiration

5 A. Before filing a final rule subject to this section with the
6 secretary of state, an agency shall prepare, transmit to the council and
7 the committee and obtain the council's approval of the rule and its
8 preamble and economic, small business and consumer impact statement that
9 meets the requirements of section 41-1055. The office of economic
10 opportunity shall prepare the economic, small business and consumer impact
11 statement.

12 B. The council shall accept an early review petition of a proposed
13 rule, in whole or in part, if the proposed rule is alleged to violate any
14 of the criteria prescribed in subsection D of this section and if the
15 early petition is filed by a person who would be adversely impacted by the
16 proposed rule. The council may determine whether the proposed rule, in
17 whole or in part, violates any of the criteria prescribed in subsection D
18 of this section.

19 C. Within one hundred twenty days after receipt of the rule,
20 preamble and economic, small business and consumer impact statement, the
21 council shall review and approve or return, in whole or in part, the rule,
22 preamble or economic, small business and consumer impact statement. An
23 agency may resubmit a rule, preamble or economic, small business and
24 consumer impact statement if the council returns the rule, economic, small
25 business and consumer impact statement or preamble, in whole or in part,
26 to the agency.

27 D. The council shall not approve the rule unless:

28 1. The economic, small business and consumer impact statement
29 contains information from the state, data and analysis prescribed by this
30 article.

31 2. The economic, small business and consumer impact statement is
32 generally accurate.

33 3. The probable benefits of the rule outweigh within this state the
34 probable costs of the rule and the agency has demonstrated that it has
35 selected the alternative that imposes the least burden and costs to
36 persons regulated by the rule, including paperwork and other compliance
37 costs, necessary to achieve the underlying regulatory objective.

38 4. The rule is written in a manner that is clear, concise and
39 understandable to the general public.

40 5. The rule is not illegal, inconsistent with legislative intent or
41 beyond the agency's statutory authority and meets the requirements
42 prescribed in section 41-1030.

43 6. The agency adequately addressed, in writing, the comments on the
44 proposed rule and any supplemental proposals.

1 7. The rule is not a substantial change, considered as a whole,
2 from the proposed rule and any supplemental notices.

3 8. The preamble discloses a reference to any study relevant to the
4 rule that the agency reviewed and either did or did not rely on in the
5 agency's evaluation of or justification for the rule.

6 9. The rule is not more stringent than a corresponding federal law
7 unless there is statutory authority to exceed the requirements of that
8 federal law.

9 10. If a rule requires a permit, the permitting requirement
10 complies with section 41-1037.

11 E. The council shall verify that a rule with new fees does not
12 violate section 41-1008. The council shall not approve a rule that
13 contains a fee increase unless two-thirds of the voting quorum present
14 votes to approve the rule.

15 F. The council shall verify that a rule with an immediate effective
16 date complies with section 41-1032. The council shall not approve a rule
17 with an immediate effective date unless two-thirds of the voting quorum
18 present votes to approve the rule.

19 G. If the rule relies on scientific principles or methods,
20 including a study disclosed pursuant to subsection D, paragraph 8 of this
21 section, and a person submits an analysis to the council questioning
22 whether the rule is based on valid scientific or reliable principles or
23 methods, the council shall not approve the rule unless the council
24 determines that the rule is based on valid scientific or reliable
25 principles or methods that are specific and not of a general nature. In
26 making a determination of reliability or validity, the council shall
27 consider the following factors as applicable to the rule:

28 1. The authors of the study, principle or method have subject
29 matter knowledge, skill, experience, training and expertise.

30 2. The study, principle or method is based on sufficient facts or
31 data.

32 3. The study is the product of reliable principles and methods.

33 4. The study and its conclusions, principles or methods have been
34 tested or subjected to peer reviewed publications.

35 5. The known or potential error rate of the study, principle or
36 method has been identified along with its basis.

37 6. The methodology and approach of the study, principle or method
38 are generally accepted in the scientific community.

39 H. The council may require a representative of an agency whose rule
40 is under examination to attend a council meeting and answer
41 questions. The council may also communicate to the agency its comments on
42 any rule, preamble or economic, small business and consumer impact
43 statement and require the agency to respond to its comments in writing.

44 I. At any time during the thirty days immediately following receipt
45 of the rule, a person may submit written comments to the council that are

1 within the scope of subsection D, E, F or G of this section. The council
2 may ~~permit~~ ALLOW testimony at a council meeting within the scope of
3 subsection D, E, F or G of this section.

4 J. If the agency makes a good faith effort to comply with the
5 requirements prescribed in this article and has explained in writing the
6 methodology used to produce the economic, small business and consumer
7 impact statement, the rule may not be invalidated after it is finalized on
8 the ground that the contents of the economic, small business and consumer
9 impact statement are insufficient or inaccurate or on the ground that the
10 council erroneously approved the rule, except as provided by section
11 41-1056.01.

12 K. The absence of comments pursuant to subsection D, E, F or G of
13 this section or article 4.1 of this chapter does not prevent the council
14 from acting pursuant to this section.

15 L. The council shall review and approve or reject a notice of
16 proposed expedited rulemaking pursuant to section 41-1027.

17 M. AN AGENCY THAT SEEKS TO EXPIRE A RULE OR RULES MAY FILE A NOTICE
18 OF INTENT TO EXPIRE WITH THE COUNCIL. THE NOTICE SHALL DESCRIBE THE RULE
19 OR RULES TO BE EXPIRED AND THE REASONS FOR EXPIRATION. THE COUNCIL SHALL
20 PLACE THE NOTICE ON THE AGENDA FOR THE NEXT SCHEDULED COUNCIL MEETING FOR
21 CONSIDERATION. IF A QUORUM OF THE COUNCIL APPROVES THE NOTICE, THE
22 COUNCIL SHALL CAUSE A NOTICE OF RULE EXPIRATION TO BE PREPARED AND PROVIDE
23 THE NOTICE OF RULE EXPIRATION TO THE AGENCY FOR FILING WITH THE SECRETARY
24 OF STATE.

APPROVED BY THE GOVERNOR APRIL 6, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2021.