

Senate Engrossed House Bill

rulemaking; petitions; GRRC

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

CHAPTER 340

HOUSE BILL 2759

AN ACT

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

(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 **REVISING,**
15 **REPEALING OR** making into a 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 **THE PETITIONER ALLEGES** is not
37 specifically authorized by statute, ~~pursuant to title 32 based on the~~
38 ~~person's belief that the existing agency practice, substantive policy~~
39 ~~statement, final rule or regulatory licensing requirement~~ is unduly
40 burdensome or is not demonstrated to be necessary to specifically fulfill
41 a public health, safety or welfare concern. ~~If the council determines~~
42 ~~that the existing agency practice, substantive policy statement, final~~
43 ~~rule or regulatory licensing requirement applies to a profession for which~~
44 ~~the average wage in that profession in this state does not exceed two~~
45 ~~hundred percent of the federal poverty guidelines for a family of four~~ **ON**

1 RECEIPT OF A PROPERLY SUBMITTED PETITION PURSUANT TO THIS SECTION, the
2 council shall review the existing agency practice, substantive policy
3 statement, final rule or regulatory licensing requirement as prescribed by
4 this section. This subsection does not apply to an individual or
5 institution that is subject to title 36, chapter 4, article 10 or
6 chapter 20.

7 H. If the council receives information CONTAINED IN THE PETITION
8 that indicates HOW an existing agency practice or substantive policy
9 statement may constitute a rule, that a final rule does not meet the
10 requirements prescribed in section 41-1030 or that an existing agency
11 practice, substantive policy statement, final rule or regulatory licensing
12 requirement does not meet the guidelines prescribed in subsection G of
13 this section and at least four council members request of the chairperson
14 that the matter be heard in a public meeting:

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

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

19 (b) The final rule meets the requirements prescribed in section
20 41-1030. ~~or whether~~

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

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

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

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

32 (b) The final rule meets the requirements prescribed in section
33 41-1030. ~~or whether~~

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

37 I. For the purposes of subsection H of this section, the council
38 meeting shall not be scheduled until the expiration of the agency response
39 period prescribed in subsection H, paragraph 3 of this section.

40 J. An agency practice, substantive policy statement, final rule or
41 regulatory licensing requirement considered by the council pursuant to
42 this section shall remain in effect while under consideration of the
43 council. If the council ~~ultimately decides~~ DETERMINES THAT the agency
44 practice or substantive policy statement constitutes a rule or that the
45 final rule does not meet the requirements prescribed in section 41-1030,

1 the practice, policy statement, ~~or~~ rule OR REGULATORY LICENSING
2 REQUIREMENT shall be considered void. If the council determines that the
3 existing agency practice, substantive policy statement, final rule or
4 regulatory licensing requirement is unduly burdensome or is not
5 demonstrated to be necessary to specifically fulfill a public health,
6 safety or welfare concern ~~and meets the requirements of subsection G of~~
7 ~~this section~~, the council may modify, revise or declare void any such
8 existing agency practice, substantive policy statement, final rule or
9 regulatory licensing requirement.

10 K. A council decision pursuant to this section shall include
11 findings of fact and conclusions of law, separately stated. Conclusions
12 of law shall specifically address the agency's authority to act consistent
13 with section 41-1030.

14 L. A decision by the ~~agency~~ COUNCIL pursuant to this section is not
15 subject to judicial review, except that, in addition to the procedure
16 prescribed in this section or in lieu of the procedure prescribed in this
17 section, a person may seek declaratory relief pursuant to section 41-1034.

18 M. Each agency and the secretary of state shall post prominently on
19 their websites notice of an individual's right to petition the council for
20 review pursuant to this section.

APPROVED BY THE GOVERNOR MAY 7, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2021.