

Senate Engrossed House Bill  
rulemaking; petitions; GRRC

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

# 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.