

REFERENCE TITLE: **proper venue; challenges; policy statements**

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2490

Introduced by
Representative Bliss

AN ACT

AMENDING SECTION 41-1001, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1010.01; RELATING TO ADMINISTRATIVE PROCEDURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1001, Arizona Revised Statutes, is amended to
3 read:

4 **41-1001. Definitions**

5 In this chapter, unless the context otherwise requires:

6 1. "Agency" means any board, commission, department, officer or
7 other administrative unit of this state, including the agency head and one
8 or more members of the agency head or agency employees or other persons
9 directly or indirectly purporting to act on behalf or under the authority
10 of the agency head, whether created under the Constitution of Arizona or
11 by enactment of the legislature. Agency does not include the legislature,
12 the courts or the governor. Agency does not include a political
13 subdivision of this state or any of the administrative units of a
14 political subdivision, but does include any board, commission, department,
15 officer or other administrative unit created or appointed by joint or
16 concerted action of an agency and one or more political subdivisions of
17 this state or any of their units. To the extent an administrative unit
18 purports to exercise authority subject to this chapter, an administrative
19 unit otherwise qualifying as an agency must be treated as a separate
20 agency even if the administrative unit is located within or subordinate to
21 another agency.

22 2. "Appealable agency action" has the same meaning prescribed in
23 section 41-1092.

24 3. "Audit" means an audit, investigation or inspection pursuant to
25 title 23, chapter 2 or 4.

26 4. "Code" means the Arizona administrative code, which is published
27 pursuant to section 41-1011.

28 5. "Committee" means the administrative rules oversight committee.

29 6. "Contested case" means any proceeding, including rate making,
30 except rate making pursuant to article XV, Constitution of Arizona, price
31 fixing and licensing, in which the legal rights, duties or privileges of a
32 party are required or permitted by law, other than this chapter, to be
33 determined by an agency after an opportunity for an administrative
34 hearing.

35 7. "Council" means the governor's regulatory review council.

36 8. "Delegation agreement" means an agreement between an agency and
37 a political subdivision that authorizes the political subdivision to
38 exercise functions, powers or duties conferred on the delegating agency by
39 a provision of law. Delegation agreement does not include
40 intergovernmental agreements entered into pursuant to title 11, chapter 7,
41 article 3.

42 9. "Emergency rule" means a rule that is made pursuant to section
43 41-1026.

44 10. "Fee" means a charge prescribed by an agency for an inspection
45 or for obtaining a license.

1 11. "Final rule" means any rule filed with the secretary of state
2 and made pursuant to an exemption from this chapter in section 41-1005,
3 made pursuant to section 41-1026, approved by the council pursuant to
4 section 41-1052 or 41-1053 or approved by the attorney general pursuant to
5 section 41-1044. For purposes of judicial review, final rule includes
6 expedited rules pursuant to section 41-1027.

7 12. "General permit" means a regulatory permit, license or agency
8 authorization that is for facilities, activities or practices in a class
9 that are substantially similar in nature and that is issued or granted by
10 an agency to a qualified applicant to conduct identified operations or
11 activities if the applicant meets the applicable requirements of the
12 general permit, that requires less information than an individual or
13 traditional permit, license or authorization and that does not require a
14 public hearing.

15 13. "License" includes the whole or part of any agency permit,
16 certificate, approval, registration, charter or similar form of permission
17 required by law, but does not include a license required solely for
18 revenue purposes.

19 14. "Licensing" includes the agency process respecting the grant,
20 denial, renewal, revocation, suspension, annulment, withdrawal, change,
21 reduction, modification or amendment of a license, including an existing
22 permit, certificate, approval, registration, charter or similar form of
23 permission, approval or authorization obtained from an agency by the
24 holder of a license.

25 15. "Licensing decision" means any action by an agency to grant or
26 deny any request for permission, approval or authorization issued in
27 response to any request from an applicant for a license or to the holder
28 of a license to exercise authority within the scope of the license.

29 16. "Party" means each person or agency named or admitted as a
30 party or properly seeking and entitled as of right to be admitted as a
31 party.

32 17. "Person" means an individual, partnership, corporation,
33 association, governmental subdivision or unit of a governmental
34 subdivision, a public or private organization of any character or another
35 agency.

36 18. "Preamble" means:

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

39 (i) Reference to the specific statutory authority for the rule.
40 (ii) The name and address of agency personnel with whom persons may
41 communicate regarding the rule.

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

44 (iv) A reference to any study relevant to the rule that the agency
45 reviewed and either proposes to rely on in its evaluation of or

1 justification for the rule or proposes not to rely on in its evaluation of
2 or justification for the rule, where the public may obtain or review each
3 study, all data underlying each study and any analysis of each study and
4 other supporting material.

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

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

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

14 (b) In addition to the information set forth in subdivision (a) of
15 this paragraph, for a proposed rule, the preamble also shall include a
16 list of all previous notices appearing in the register addressing the
17 proposed rule, a statement of the time, place and nature of the
18 proceedings for the making, amendment or repeal of the rule and where,
19 when and how persons may request an oral proceeding on the proposed rule
20 if the notice does not provide for one.

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

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

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

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

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

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

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

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

42 19. "Provision of law" means the whole or a part of the federal or
43 state constitution, or of any federal or state statute, rule of court,
44 executive order or rule of an administrative agency.

1 20. "Register" means the Arizona administrative register, which is:
2 (a) This state's official publication of rulemaking notices that
3 are filed with the office of secretary of state.

4 (b) Published pursuant to section 41-1011.

5 21. "Rule" means an agency statement of general applicability that
6 implements, interprets or prescribes law or policy, or describes the
7 procedure or practice requirements of an agency. Rule includes
8 prescribing fees or the amendment or repeal of a prior rule but does not
9 include intraagency memoranda that are not delegation agreements.

10 22. "Rulemaking" means the process to make a new rule or amend,
11 repeal or renumber a rule.

12 23. "Small business" means a concern, including its affiliates,
13 which is independently owned and operated, which is not dominant in its
14 field and which employs fewer than one hundred full-time employees or
15 which had gross annual receipts of less than four million dollars in its
16 last fiscal year. For purposes of a specific rule, an agency may define
17 small business to include more persons if it finds that such a definition
18 is necessary to adapt the rule to the needs and problems of small
19 businesses and organizations.

20 24. "Substantive policy statement":

21 (a) Means a written expression ~~which~~ THAT informs the general
22 public of an agency's current approach to, or opinion of, the requirements
23 of the federal or state constitution, A federal or state statute, AN
24 administrative rule or regulation, or A final judgment of a court of
25 competent jurisdiction, including, ~~where~~ IF appropriate, the agency's
26 current practice, procedure or method of action based ~~upon~~ ON that
27 approach or opinion. A substantive policy statement is advisory only.
28 ~~A substantive policy statement does not include~~

29 (b) INCLUDES internal procedural documents ~~which only~~ THAT affect
30 the internal procedures of the agency and ~~does~~ THAT DO not impose
31 additional requirements or penalties on regulated parties, confidential
32 information or rules made in accordance with this chapter.

33 Sec. 2. Title 41, chapter 6, article 1, Arizona Revised Statutes,
34 is amended by adding section 41-1010.01, to read:

35 41-1010.01. Proper venue; appeals of final administrative
36 decisions

37 A. A PARTY THAT APPEALS A FINAL ADMINISTRATIVE DECISION TO THE
38 SUPERIOR COURT MAY BRING THE ACTION IN ANY PROPER VENUE.

39 B. THE PROPER VENUE INCLUDES:

40 1. THE COUNTY WHERE THE PLAINTIFF RESIDES.

41 2. THE COUNTY WHERE THE PLAINTIFF'S PRINCIPAL PLACE OF BUSINESS IS
42 LOCATED.

43 3. THE COUNTY WHERE THE AGENCY IS HEADQUARTERED.

44 4. MARICOPA COUNTY.

1 C. AN AGENCY MAY NOT DO EITHER OF THE FOLLOWING:
2 1. RESTRICT THE PROPER VENUE FOR ANY APPEAL OF A FINAL
3 ADMINISTRATIVE DECISION.
4 2. REQUIRE A PARTY TO TRAVEL TO THE AGENCY'S COUNTY, VENUE OR
5 HEADQUARTERS TO SUBMIT OR RECEIVE DOCUMENTATION THAT SUPPORTS THE ANALYSIS
6 USED TO PROPOSE OR FINALIZE A FINAL ADMINISTRATIVE DECISION.