Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 252

HOUSE BILL 2288

AN ACT

AMENDING SECTIONS 11-424.01 AND 11-445, ARIZONA REVISED STATUTES; AMENDING TITLE 22, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 22-104; AMENDING SECTIONS 22-131, 22-136 AND 22-137, ARIZONA REVISED STATUTES; RELATING TO CONSTABLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 11-424.01, Arizona Revised Statutes, is amended to read:

11-424.01. Salaries of precinct officers other than justices of the peace; definition

A. At the regular June meeting of the several boards of supervisors preceding a general election, the boards shall fix the salaries of all precinct officers, other than justices of the peace, for those officers to be elected for the four-year period commencing on the first day of the following January.

B. In precincts with an average of one hundred or fewer total documents served per year by a constable over the previous four years, a constable is entitled to receive an annual salary of not more than sixteen thousand five hundred dollars.

C. In precincts with an average of more than one hundred total documents served per year by a constable over the previous four years, the constables shall be paid as follows:

1. In precincts with five thousand or fewer registered voters, ~~the constables shall receive~~ annual salaries of not more than sixteen thousand five hundred dollars.

2. In precincts with more than five thousand registered voters but fewer than ten thousand registered voters, annual salaries of not more than twenty-six thousand dollars.

3. In precincts with ten thousand or more registered voters but fewer than twelve thousand registered voters, annual salaries of not less than twenty-nine thousand four hundred thirty-seven nor more than forty thousand dollars.

4. In precincts with twelve thousand or more registered voters but fewer than sixteen thousand registered voters, annual salaries of not less than thirty-six thousand one hundred nor more than fifty thousand dollars.

5. In precincts with sixteen thousand or more registered voters, annual salaries of not less than forty-eight thousand two hundred ninety-four nor more than sixty-seven thousand dollars.

D. The board of supervisors shall determine, subject to subsections B and C of this section, the salary of a constable appointed to fill a vacancy caused otherwise than by expiration of the term. Nothing in this subsection shall be deemed to authorize an increase or decrease in the salary during the term of office of a constable appointed to fill a vacancy.

E. THE BOARD OF SUPERVISORS SHALL WITHHOLD A CONSTABLE'S SALARY DURING THE TIME THAT A CONSTABLE IS SUSPENDED FROM PERFORMING THE CONSTABLE'S DUTIES WITHOUT PAY PURSUANT TO SECTION 22-137.

~~E.~~ F. For the purposes of this section, "registered voter" means a qualified elector of a precinct who is registered on June 1 of each year.

Sec. 2. Section 11-445, Arizona Revised Statutes, is amended to read:

11-445. Fees chargeable in civil actions by sheriffs and constables; constables' standardized daily activity logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.

2. For summoning each witness, sixteen dollars.

3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.

4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.

5. For endorsing the forfeiture of any bond required to be endorsed by the sheriff, twelve dollars.

6. For levying each execution, twenty-four dollars.

7. For returning each execution, sixteen dollars.

8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.

9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.

10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars except that posting for a writ of restitution shall not exceed ten dollars.

11. For executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.

12. For executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.

13. For services in designating a homestead or other exempt property, twelve dollars.

14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.

15. For serving and returning each writ of garnishment and related papers, forty dollars.

16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.

17. For every writ served on behalf of a justice of the peace, a fee established by the board of supervisors not to exceed five dollars per writ. Monies collected from the writ fees shall be deposited in the constable ethics standards and training fund established by section 22-138.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.

2. A reasonable fee for executing a civil arrest warrant ordered pursuant to court rule by a judge or justice of the peace. The fee shall only be charged to the party requesting the issuance of the civil arrest warrant.

3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services on process issued from the superior court.

G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

H. Notwithstanding subsection G of this section, in a county with a population of more than three million persons, if an office of a justice of the peace is located outside of the precinct boundaries, the mileage for a constable shall be calculated pursuant to subsection D of this section, except that the distance between the precinct boundaries and the office of the justice of the peace, as determined by the county and certified by the board of supervisors of that county, shall be subtracted from the mileage

calculation. This certified mileage calculation shall be transmitted to the justice courts and the clerks of those courts shall calculate the mileage between the office of the justice of the peace and the location where the civil process, writ, order, pleading or paper was served and reduce the mileage used to calculate the mileage fee according to the certified mileage calculation for that respective jurisdiction.

I. Constables shall maintain a STANDARDIZED DAILY ACTIVITY log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

J. The STANDARDIZED DAILY ACTIVITY log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. ~~Copies of~~ The STANDARDIZED DAILY log shall be filed monthly ~~with the clerk of the justice court and~~ BY THE TENTH DAY OF THE FOLLOWING MONTH with the clerk of the board of supervisors. THE BOARD OF SUPERVISORS SHALL DETERMINE THE METHOD FOR FILING THE STANDARDIZED DAILY LOG.

Sec. 3. Title 22, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 22-104, to read:

22-104. Presiding constable; selection; duties

A. IN EACH COUNTY IN WHICH THERE ARE FOUR OR MORE CONSTABLES, THE CONSTABLES IN THAT COUNTY SHALL SELECT BY MAJORITY VOTE ONE CONSTABLE TO SERVE AS THE PRESIDING CONSTABLE AND ANOTHER CONSTABLE TO ACT AS THE ASSOCIATE PRESIDING CONSTABLE AND TO PERFORM THE DUTIES AND EXERCISE THE POWERS OF THE PRESIDING CONSTABLE DURING THE ABSENCE OR INABILITY TO ACT AS THE PRESIDING CONSTABLE.

B. THE PRESIDING CONSTABLE AND ASSOCIATE PRESIDING CONSTABLE EACH SERVE FOR A TWO-YEAR TERM.

C. AT ANY TIME DURING THE PRESIDING CONSTABLE'S OR ASSOCIATE PRESIDING CONSTABLE'S TERM, A MAJORITY OF THE CONSTABLES WITHIN THE COUNTY MAY VOTE TO REMOVE THE PRESIDING CONSTABLE OR ASSOCIATE PRESIDING CONSTABLE AND MAY SELECT A NEW PRESIDING CONSTABLE OR ASSOCIATE PRESIDING CONSTABLE TO COMPLETE THE TERM.

D. THE PRESIDING CONSTABLE'S DUTIES INCLUDE:

1. SERVING AS THE LIAISON BETWEEN THE CONSTABLES WITHIN THE COUNTY AND THE COUNTY MANAGER AND OTHER COUNTY DEPARTMENTS.

2. ASSIGNING DEPUTY CONSTABLES WITHIN THE COUNTY.

3. ASSIGNING AND MANAGING CLERICAL STAFF FOR CONSTABLES WITHIN THE COUNTY.

4. IN A CONSTABLE'S ABSENCE, ASSIGNING COURT ORDERS THAT NEED SERVICE TO OTHER CONSTABLES WITHIN THE COUNTY.

E. THIS SECTION DOES NOT REQUIRE THE COUNTY TO PAY ANY COSTS TO SUPPORT A PRESIDING CONSTABLE OR ASSOCIATE PRESIDING CONSTABLE IN PERFORMING THE DUTIES REQUIRED BY THIS SECTION.

Sec. 4. Section 22-131, Arizona Revised Statutes, is amended to read:

22-131. Constables; powers and duties; prohibited acts

A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties SHALL execute, serve and return all processes, warrants and notices directed or delivered to them by a justice of the peace of the county or by competent authority. In addition to any other provision of law these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt.

B. Constables shall attend the training prescribed in section 22-137.

C. Constables, with the consent of and at salaries fixed by the board of supervisors, may appoint deputies who are certified pursuant to section 41-1822, subsection A, paragraph 3, stenographers, clerks and assistants necessary to conduct the affairs of their offices. The appointments shall be in writing.

D. The provisions of law relating to sheriffs, as far as applicable, shall govern the powers, duties and liabilities of constables.

E. A constable who is duly elected or who is appointed by the board of supervisors has the authority of a peace officer only in the performance of the constable's official duties.

F. A constable may execute, serve and return processes and notices as prescribed in subsection A of this section within any precinct in another county if that precinct adjoins the precinct in which the constable was elected or appointed.

G. A constable is prohibited from engaging in any act as a private process server outside of the constable's elected or appointed duties. A constable shall not own an interest in any entity that operates a private process serving business.

Sec. 5. Section 22-136, Arizona Revised Statutes, is amended to read:

22-136. Constable ethics standards and training board

A. A constable ethics standards and training board is established consisting of the following voting members:

1. ~~Two constables from counties~~ ONE CONSTABLE WHO IS FROM A COUNTY with a population of less than one million persons AND who ~~are~~ IS appointed by ~~the Arizona association of counties~~ A STATEWIDE CONSTABLES ASSOCIATION ESTABLISHED PRIOR TO JANUARY 1, 2010.

2. ~~Two constables from counties~~ ONE CONSTABLE WHO IS FROM A COUNTY with a population of one million or more persons AND who ~~are~~ IS appointed by ~~the Arizona association of counties~~ A STATEWIDE CONSTABLES ASSOCIATION ESTABLISHED PRIOR TO JANUARY 1, 2010.

3. One justice of the peace who is appointed by the chief justice of the supreme court.

4. One county administrator or designee who is appointed by the county supervisors association.

~~5. One sheriff who is appointed by the governor.~~

5. THE DIRECTOR OF THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD OR THE DIRECTOR'S DESIGNEE.

6. One member of the public who is appointed by the governor.

7. One member who is a board member of the Arizona multihousing association at the time of appointment and who is appointed by the governor.

B. The board shall annually elect a chairperson, vice-chairperson and secretary from among its members. The chairperson may establish committees to assist and advise the board in carrying out its responsibilities. A majority of the board constitutes a quorum and a majority vote of the quorum is necessary for the board to take any action.

C. Terms of the board members are four years. If a member ceases to hold the position that qualified the member for the appointment, the member's membership terminates and the appointing authority pursuant to subsection A fills the vacancy for the unexpired term.

D. Members of the board are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

Sec. 6. Section 22-137, Arizona Revised Statutes, is amended to read:

22-137. Constable ethics standards and training board; powers and duties; judicial review; constable training; definition

A. The constable ethics standards and training board shall:

1. Adopt rules for the administration and conduct of the board, including meeting times, meeting places and matters to be placed on the agenda of each meeting, and for the distribution of monies in the constable ethics standards and training fund pursuant to section 22-138.

2. Adopt a code of conduct for constables and adopt rules to enforce the code of conduct.

3. Establish procedures for conducting confidential investigations and holding hearings.

4. Hear and investigate written complaints from any person involving a constable's ethical conduct.

5. Remedy a constable's inappropriate behavior by:

(a) Mediating.

(b) Issuing warnings, reprimands or admonishments.

(c) Instructing constables to take a particular action or to take educational classes.

(d) Urging a constable to ~~retire~~ RESIGN from office.

(e) PLACING A CONSTABLE ON PROBATION FOR UP TO THIRTY DAYS, EXCEPT THAT AFTER THE INITIAL THIRTY DAYS OF PROBATION IF THE CONSTABLE IS MAKING PROGRESS ON PROBATION BUT THE CONSTABLE'S BEHAVIOR IS NOT YET COMPLIANT, THE

BOARD MAY EXTEND PROBATION IN ADDITIONAL THIRTY-DAY INCREMENTS UP TO A TOTAL LENGTH OF PROBATION OF ONE HUNDRED EIGHTY DAYS.

(f) RECOMMENDING TO THE BOARD OF SUPERVISORS THAT A CONSTABLE WHO HAS PREVIOUSLY BEEN PLACED ON PROBATION BE SUSPENDED FROM PERFORMING THE CONSTABLE'S DUTIES WITHOUT PAY FOR ANY SPECIFIED LENGTH OF TIME NOT TO EXCEED THE REMAINDER OF THE CONSTABLE'S TERM.

6. ADOPT A STANDARDIZED DAILY ACTIVITY LOG FOR CONSTABLES THAT IS APPROVED BY THE DIRECTOR OF THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD AND THAT COMPLIES WITH SECTION 11-445, SUBSECTIONS I AND J.

B. The board may:

1. Employ an executive director and other staff necessary to fulfill the powers and duties of the board.

2. Enter into contracts and interagency agreements to carry out its powers and duties.

3. Certify organizations to provide training and support programs for constables.

4. Provide support grants to constables for local or statewide training programs.

5. Take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses, INCLUDING CONSTABLES, and the production of books, papers, records, documents and other information relating to any investigation or hearing.

~~C. If the board is not satisfied with the remedies prescribed in subsection A, paragraph 5 of this section, the board shall submit a report to the county attorney's office in the county in which the conduct at issue occurred.~~

C. IF THE BOARD DETERMINES THAT A CONSTABLE HAS COMMITTED A CRIMINAL ACT, THE BOARD SHALL REFER THE INVESTIGATION TO THE COUNTY ATTORNEY'S OFFICE IN THE COUNTY IN WHICH THE CONDUCT AT ISSUE OCCURRED. THE BOARD SHALL SUBMIT THE INVESTIGATION'S FINDINGS TO THE COUNTY ATTORNEY. IF THE COUNTY ATTORNEY DETERMINES THAT A CRIME HAS NOT OCCURRED OR DOES NOT FILE A CRIMINAL COMPLAINT AGAINST THE CONSTABLE, THE BOARD SHALL ADJUDICATE THE COMPLAINT PURSUANT TO SUBSECTION A, PARAGRAPH 5 OF THIS SECTION.

D. A CONSTABLE MAY SEEK JUDICIAL REVIEW OF A FINAL ORDER THAT IS ISSUED BY THE BOARD OF SUPERVISORS SUSPENDING THE CONSTABLE IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE CONSTABLE IS ELECTED OR APPOINTED. JUDICIAL REVIEW SHALL BE CONDUCTED PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JUDICIAL REVIEW MUST BE COMMENCED PURSUANT TO SECTION 12-904.

~~D.~~ E. The Arizona peace officer standards and training board shall approve a mandatory basic training course for newly elected constables covering topics including civil and criminal process, conflict resolution and firearm safety. Constables must attend the mandatory training course within six months after election. In subsequent years, constables must annually attend at least sixteen hours of additional training approved by the Arizona peace officer standards and training board. The constable ethics standards

and training board may approve additional training courses for constables. The constable ethics standards and training fund established by section 22-138 may be used for constable training. Copies of certificates of completion of the constable training shall be forwarded to the constable ethics standards and training board within thirty days after completion.

~~E.~~ F. This section does not:

1. Create a cause of action or a right to bring an action against the board.

2. PRECLUDE A PROSECUTING AGENCY FROM FILING CHARGES AGAINST A CONSTABLE.

G. THE BOARD OF SUPERVISORS MAY ACCEPT OR MODIFY A RECOMMENDATION TO SUSPEND A CONSTABLE FROM PERFORMING THE CONSTABLE'S DUTIES WITHOUT PAY PURSUANT TO SUBSECTION A, PARAGRAPH 5 OF THIS SECTION. THE BOARD OF SUPERVISOR'S DETERMINATION IS FINAL UNLESS A CONSTABLE SEEKS JUDICIAL REVIEW PURSUANT TO SUBSECTION D OF THIS SECTION.

H. FOR THE PURPOSES OF THIS SECTION, "CONSTABLE" INCLUDES A DEPUTY CONSTABLE WHO IS APPOINTED, EMPLOYED OR AUTHORIZED BY THE COUNTY BOARD OF SUPERVISORS.

Sec. 7. Retention of members

Notwithstanding section 22-136, subsection A, Arizona Revised Statutes, as amended by this act, all persons serving as members of the constable ethics standards and training board on the effective date of this act may continue to serve until the expiration of their normal terms. All subsequent appointments or memberships shall be as prescribed by statute.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.

Passed the House February 24, 2016

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate April 14, 2016

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 6, 2016,

by the following vote: 53 Ayes,

2 Nays, 5 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7 day of May, 2016,

at 1:18 o'clock A. M.

Valerie Harmon

Secretary to the Governor

Approved this 17th day of

May, 2016,

at 10:41 o'clock A. M.

Doug Ducey

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 17th day of May, 2016,

at 11:40 o'clock A M.

Michele Reagan

Secretary of State

H.B. 2288