House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 27

HOUSE BILL 2045

AN ACT

AMENDING TITLE 33, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 22; AMENDING SECTIONS 37-1131, 41-192, 41-1001.01, 41-1304 AND 41-3010.15, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.15; RELATING TO THE LEGISLATIVE COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 33, Arizona Revised Statutes, is amended by adding chapter 22, to read:

CHAPTER 22

ACCESS TO PRIVATE PROPERTY

ARTICLE 1. GENERAL PROVISIONS

33-2401. Access to private property

NOTWITHSTANDING ANY OTHER LAW, REASONABLE ACCESS TO PRIVATE PROPERTY SHALL NOT BE DENIED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

Sec. 2. Section 37-1131, Arizona Revised Statutes, is amended to read:

37-1131. Notice to landowners; quiet title action

A. If the commission determines a watercourse to be navigable as provided in section 37-1128, the state land department shall do the following before it files any quiet title action regarding public trust property beneath or adjacent to the watercourse:

1. Collect information and perform land surveys that are necessary to determine the boundaries of the bed of the watercourse. The bed of the watercourse to which the state claim applies is the bed of the watercourse existing on the date of the commission's determination, unless the preponderance of the evidence establishes a different location. Before making this determination, the department shall provide public notice and any opportunity for comment by the ~~advocate for private property rights established pursuant to title 41, chapter 8, article 1.1 and any other person~~ PUBLIC.

2. Compile a complete description of each parcel of land lying wholly or partially in the bed of the watercourse, including record title ownership by any person, and a complete title search of each parcel to show how and when the lands were first conveyed in apparent violation of the public trust.

3. If the land was conveyed in apparent violation of the public trust by an agency of the United States, bring an action against the United States for damages and prosecute the action to final judgment. Any damages collected shall be placed in the riparian trust fund established by section 37-1156.

B. At least thirty days before entering onto any lands in or adjacent to the bed of a watercourse as required for purposes of this section, the department shall notify any record title owner of the property by certified mail of the intention to inspect the property. The notice shall:

1. State the period during which the department or the department's consultant intends to inspect the property and that the inspection is required under subsection A of this section.

2. Describe the activities that the department or the department's consultant intends to perform on the property.

C. Within thirty days after compiling the parcel information pursuant to subsection A, paragraph 2 of this section the department shall notify each record owner or lessee of property that is located in the bed of the

navigable watercourse and each person and entity that have an interest of record in the property of the commission's determination and that, by virtue of the determination, all or a portion of the property will be claimed as public trust land of this state in a quiet title action. ~~The notice shall also provide information prepared by the advocate for private property rights explaining the person's rights and any services available from the advocate.~~ The notice shall include:

1. The name of the watercourse and the date of the determination of navigability pursuant to section 37-1128.

2. The legal description and acreage of the parcels that the department has determined to be in the bed of the watercourse.

3. A statement that record title owners, lessees and parties having an interest of record in the parcels have a right to appeal the department's determination of the parcel boundaries within thirty days after receiving the notice as provided by title 41, chapter 6, article 10.

D. The department shall not commence an action to quiet title to land under this article until the commission has issued a final determination regarding the navigability of the watercourse pursuant to section 37-1128 and that determination is subject to no further judicial review pursuant to section 37-1129.

E. Venue for any action to quiet title under this section is proper only in the superior court in the county in which the affected lands are located, but the court may grant or deny requests for change of venue pursuant to title 12, chapter 4, article 1.

F. The department shall join as parties to any action to quiet title under this section each record owner of, and each person or entity that has an interest of record in, any property in the county that may be affected by this state's claim to ownership of the bed of the affected watercourse, but this requirement does not constitute grounds for dismissing the action if the persons or entities not joined are not subject to the jurisdiction of the courts of this state.

Sec. 3. Section 41-192, Arizona Revised Statutes, is amended to read:

41-192. <u>Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions</u>

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.

2. Establish administrative and operational policies and procedures within his department.

3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.

4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.

5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, if the attorney general notifies in writing the political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on its behalf. At any time within thirty days after the notification, the political subdivisions, school districts and municipalities, by formal resolution of its governing body, may withdraw the authority of the attorney general to bring the intended action on its behalf.

6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district in this state or in any other state that has brought or intends to bring a similar action for the recovery of damages or their duly authorized legal representatives in such action.

7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.

4. Compromise or settle any action or claim by or against this state or any department, board or agency of this state. If the compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by the department, board or agency. If no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. Assistants and employees in any legal division subject to a merit system prior to March 6, 1953 shall remain subject thereto.

D. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

E. Notwithstanding any law to the contrary, except as provided in subsections F and G of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.

2. The residential utility consumer office.

3. The industrial commission.

4. The Arizona board of regents.

5. The auditor general.

6. The corporation commissioners and the corporation commission other than the securities division.

~~7. The advocate for private property rights.~~

~~8.~~ 7. The office of the governor.

~~9.~~ 8. The constitutional defense council.

~~10.~~ 9. The office of the state treasurer.

F. If the attorney general determines that he is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the

state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

G. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368, if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

H. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and upon a reimbursable basis for warrants drawn, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

I. Appropriations made pursuant to subsection H of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection G of this section are applicable shall be performed by special or regular assistants to the attorney general.

J. Notwithstanding section 35-148, monies received by the attorney general from charges to state agencies and political subdivisions for legal services relating to interagency service agreements shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney general agency services fund. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

Sec. 4. Section 41-1001.01, Arizona Revised Statutes, is amended to read:

41-1001.01. <u>Regulatory bill of rights</u>

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.

5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written or oral comments on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection C.

(b) Providing written or oral comments on rules to the governor's regulatory review council as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.

9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

10. May file a complaint with the administrative rules oversight committee concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.

13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

14. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 41-1079.

16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

~~18. May file a complaint or inquiry with the advocate for private property rights regarding constitutional taking as provided in chapter 8, article 1.1 of this title.~~

~~19.~~ 18. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

Sec. 5. Section 41-1304, Arizona Revised Statutes, is amended to read:

41-1304. Powers and duties

A. The legislative council shall:

1. Provide bill drafting, research and other services to the legislature deemed necessary or advisable by the council to improve the quality of legislation and to ~~insure~~ ENSURE full participation by the legislative branch in determining and reviewing policy and the administration of state affairs.

2. Adopt rules and formulate policies for the administration of this article and for the conduct of the affairs of the council.

3. Appoint such clerical, stenographic, technical and professional assistants deemed necessary or advisable to carry out the provisions of this article, and fix their compensation and prescribe their powers and duties.

4. Consult with state departments or officers engaged in carrying out construction programs authorized by law, and investigate the conduct of the programs, with particular reference to the plans for and type of construction.

5. Maintain a legislative reference library, containing legal, statistical and descriptive data and authoritative philosophical and scientific treatises on current and potential legislative subjects.

6. Procure information at the request of members of the legislature or state officers on any legislative subject.

7. Prepare or revise bills and other legislative measures for members or committees of the legislature and, on request of a member of the legislature, for state officers and agencies.

8. Prepare and issue styles and forms for drafting bills, amendments and other legislative measures for the use of the legislature, state officers and persons interested in drafting amendments and bills or measures for introduction in the legislature. The styles and forms for drafting amendments shall be developed and adopted in consultation and cooperation with the senate and the house of representatives.

9. Prepare and file with the secretary of state, not later than sixty days preceding the regular primary election, an analysis of the provisions of each ballot proposal of a measure or proposed amendment.

~~10. Provide and maintain an office for the advocate for private property rights pursuant to article 1.1 of this chapter.~~

B. The legislative council may purchase, lease and otherwise acquire land and buildings and make improvements to land and buildings it acquires or uses for the purpose of providing suitable facilities for the use of the legislative department. The council may obtain operational, maintenance and security assistance for any legislative facilities without charge from the department of administration, may employ personnel to discharge such functions or may contract for outside services payable from council appropriations.

Sec. 6. Section 41-3010.15, Arizona Revised Statutes, is amended to read:

41-3010.15. Advocate for private property rights; termination July 1, 2010

A. ~~The legislative council and~~ The ~~ombudsman~~ ADVOCATE for private property rights ~~terminate~~ TERMINATES on July 1, 2010.

B. Title 41, chapter 8, ~~articles 1 and~~ ARTICLE 1.1 ~~are~~ IS repealed on January 1, 2011.

Sec. 7. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3020.15, to read:

41-3020.15. Legislative council; termination July 1, 2020

A. THE LEGISLATIVE COUNCIL TERMINATES ON JULY 1, 2020.

B. TITLE 41, CHAPTER 8, ARTICLE 1 IS REPEALED ON JANUARY 1, 2021.

Sec. 8. Purpose

Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the legislative council to improve the quality of legislation and to ensure full participation by the legislative branch in determining and reviewing policy and the administration of state affairs.

Sec. 9. Retroactivity

Sections 6 and 7 of this act are effective retroactively to July 1, 2010.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.

Passed the House February 23, 2010

by the following vote: 56 Ayes,

1 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 1, 2010

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

President of the Senate

Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

5th day of April, 2010

at 2:36 o'clock P. M.

Secretary to the Governor

Approved this 9th day of

April

at 10:33 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 9th day of April, 2010

at 12:09 o'clock P M.

Secretary of State

H.B. 2045