Senate Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

CHAPTER 86

SENATE BILL 1298

AN ACT

AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.18; AMENDING SECTIONS 11-1602, 11-1607 AND 11-1608, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3609.02; AMENDING SECTIONS 48-3642, 48-3647 AND 48-3648, ARIZONA REVISED STATUTES; RELATING TO COUNTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-251.18, to read:

11-251.18. Adoption of rules; procedures; exemptions; definitions

A. THE BOARD OF SUPERVISORS SHALL ADOPT PROCEDURES FOR THE ADOPTION, AMENDMENT, REPEAL AND ENFORCEMENT OF RULES.

B. THE PROCEDURES SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS FOR THE COUNTY DEPARTMENT THAT IS PROPOSING THE CHANGE:

1. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE OF THE PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DEPARTMENT SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

2. THE DEPARTMENT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING AT WHICH THE FINAL TEXT OF THE PROPOSED RULE IS CONSIDERED BY THE BOARD OF SUPERVISORS. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE FINAL VERSION OF THE PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. AT LEAST ONE WEEK BEFORE THE MEETING, THE DEPARTMENT SHALL PROVIDE THE PUBLIC WITH THE DEPARTMENT'S WRITTEN RESPONSES TO WRITTEN PUBLIC COMMENTS AND MAY PROVIDE WRITTEN RESPONSES TO VERBAL COMMENTS.

3. THE DEPARTMENT SHALL PROVIDE THE BOARD OF SUPERVISORS WITH COPIES OF THE PUBLIC COMMENTS AND THE DEPARTMENT'S WRITTEN RESPONSES TO THE PUBLIC COMMENTS. IF AS A RESULT OF PUBLIC COMMENTS OR INTERNAL REVIEW, THE BOARD OF SUPERVISORS DETERMINES THAT THE TEXT OF A PROPOSED RULE REQUIRES SUBSTANTIAL CHANGE, THE BOARD OF SUPERVISORS SHALL ISSUE A SUPPLEMENTAL NOTICE CONTAINING THE CHANGES TO THE PROPOSED RULE AND SHALL PROVIDE FOR ADDITIONAL PUBLIC COMMENT BEFORE ADOPTION.

C. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE BOARD MAKES A FINDING THAT AN EMERGENCY EXISTS AND ADOPTION OF THE RULE IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE, TO AVOID AN IMMINENT BUDGET REDUCTION OR TO AVOID SERIOUS PREJUDICE TO THE PUBLIC INTEREST. WITHIN A REASONABLE TIME AFTER ADOPTING AN EMERGENCY RULE, THE BOARD OF SUPERVISORS SHALL REVIEW THE EMERGENCY RULE TO DETERMINE WHETHER THE RULE SHOULD CONTINUE IN EFFECT OR BE TERMINATED.

D. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE RULE IS REQUIRED BY STATE OR FEDERAL LAW OR REGULATION, AND THE BASIS FOR THE REQUIREMENT TO ADOPT THE RULE IS NOT THE RESULT OF DELAY OR INACTION BY THE BOARD OF SUPERVISORS.

E. NOTWITHSTANDING THIS SECTION, THE BOARD OF SUPERVISORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE EXPEDITED ADOPTION, AMENDMENT OR REPEAL OF A RULE IF THE EXPEDITED RULEMAKING DOES NOT INCREASE THE COST OF REGULATORY COMPLIANCE OR REDUCE THE PROCEDURAL RIGHTS OF REGULATED PARTIES.

F. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF SUPERVISORS BEFORE THE EFFECTIVE DATE OF THIS SECTION.

G. THE DEPARTMENT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON THE DEPARTMENT'S WEBSITE.

H. THE DEPARTMENT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR THE PURPOSE OF DISCUSSING ANY PROPOSED RULE.

I. THIS SECTION DOES NOT APPLY TO:

1. ORDINANCES ADOPTED OR AMENDED BY THE BOARD OF SUPERVISORS PURSUANT TO SECTION 11-251.05, CHAPTER 6, ARTICLE 2 OF THIS TITLE, TITLE 42 OR TITLE 43.

2. SUBSTANTIVE POLICY STATEMENTS.

3. PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF THE COUNTY AND THAT DO NOT IMPOSE ADDITIONAL REQUIREMENTS, CONDITIONS OR PENALTIES ON REGULATED PARTIES.

4. USE OR ADOPTION OF ANY FORM WHOSE CONTENTS OR SUBSTANTIVE REQUIREMENTS ARE CONSISTENT WITH AN ORDINANCE OR STATUTE, AND ANY PROCEDURES FOR THE EXECUTION OR USE OF THE FORM.

5. A COUNTY FUNCTION, POWER OR DUTY THAT IS ESTABLISHED PURSUANT TO TITLE 49, CHAPTER 3, ARTICLE 3.

6. COUNTY SUBDIVISION REGULATIONS PURSUANT TO CHAPTER 6, ARTICLE 3 OF THIS TITLE.

J. FOR THE PURPOSES OF THIS SECTION:

1. "DEPARTMENT" MEANS ANY COUNTY DEPARTMENT OR AGENCY OR ANY OTHER UNIT OF COUNTY GOVERNMENT.

2. "RULE" MEANS A COUNTY STATEMENT OF GENERAL APPLICABILITY THAT IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR POLICY, OR DESCRIBES THE PROCEDURE OR PRACTICE REQUIREMENTS OF A COUNTY. RULE INCLUDES PRESCRIBING FEES OR THE AMENDMENT OR REPEAL OF AN EXISTING RULE BUT DOES NOT INCLUDE INTRA-AGENCY MEMORANDA THAT ARE NOT DELEGATION AGREEMENTS.

Sec. 2. Section 11-1602, Arizona Revised Statutes, is amended to read:

11-1602. Regulatory bill of rights

To ensure fair and open regulation by counties, a person:

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

2. Is entitled to receive information and notice regarding inspections as provided in section 11-1603.

3. Is entitled to have a county not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized as provided in section 11-1604.

4. May have a county approve or deny the person's license application within a predetermined period of time as provided in section 11-1605.

5. Is entitled to receive written or electronic notice from a county on denial of a license application that:

(a) Justifies the denial with references to the statute, ordinance, regulation, delegation agreement or authorized substantive policy statements on which the denial is based as provided in section 11-1605.

(b) Explains the applicant's right to appeal the denial as provided in section 11-1605.

6. 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 11-1606.

7. May inspect all ordinances, regulations, RULES and substantive policy statements of a county, including a directory of documents, at the office of the county or on the county's website as provided in section 11-1607.

8. Unless specifically authorized, may expect counties to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the maximum extent practicable as provided in section 11-1604.

9. May file a complaint with the board of supervisors concerning an ordinance, regulation, RULE or substantive policy statement that fails to comply with this section.

10. As provided in section 11-1604, is entitled to have a county not request or initiate discussions about waiving any of the rights prescribed in this section.

11. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN SECTION 11-251.18, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON PROPOSED RULES TO A COUNTY DEPARTMENT OR AGENCY AND HAVING THE AGENCY OR DEPARTMENT ADDRESS COMMENTS AS PROVIDED IN SECTION 11-251.18.

Sec. 3. Section 11-1607, Arizona Revised Statutes, is amended to read:

11-1607. Directory of documents

The county shall publish, or prominently place on the county website, at least annually a directory summarizing the subject matter of all currently applicable ordinances, regulations, RULES, and substantive policy statements. The county shall keep copies of this directory and all substantive policy statements at one location. The directory, ordinances, regulations, RULES, substantive policy statements and any materials incorporated by reference in these documents shall be open to public inspection at the office of the county or the county website.

Sec. 4. Section 11-1608, Arizona Revised Statutes, is amended to read:

11-1608. Complaints; procedures

A. The board of supervisors shall ~~receive~~ ESTABLISH A PROCEDURE FOR RECEIVING complaints FROM AN ADVERSELY AFFECTED PERSON concerning ordinances, RULES, regulations, substantive policy statements or county practices alleged to violate this article OR SECTION 11-251.18. ~~The board of supervisors may review any ordinance, regulation, substantive policy statement or county practice alleged to violate this article and may hold hearings regarding the allegations. The board of supervisors may recommend actions to alleviate the~~

~~aspects of the ordinances, regulations, substantive policy statements or county practices alleged to violate this article.~~

B. THE BOARD OF SUPERVISORS MAY REQUIRE THE COMPLAINT TO BE MADE IN WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:

1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE COMPLAINT.

2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR COUNTY PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 11-251.18.

3. ANY FACTS RELEVANT TO, AND THE LEGAL BASIS FOR, THE COMPLAINT.

C. PROCEDURES ADOPTED BY THE BOARD OF SUPERVISORS PURSUANT TO THIS SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL PROVIDE A PROCESS FOR APPEAL.

Sec. 5. Title 48, chapter 21, article 1, Arizona Revised Statutes, is amended by adding section 48-3609.02, to read:

48-3609.02. <u>Adoption of rules; procedures; exemptions; definition</u>

A. THE BOARD OF DIRECTORS SHALL ADOPT PROCEDURES FOR THE ADOPTION, AMENDMENT, REPEAL AND ENFORCEMENT OF RULES.

B. THE PROCEDURES SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS:

1. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING AT WHICH THE PUBLIC IS ABLE TO PROVIDE COMMENTS ON THE DRAFT LANGUAGE OF THE PROPOSED RULE. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE DRAFT PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. THE DISTRICT SHALL ACCEPT WRITTEN OR VERBAL COMMENTS ON THE DRAFT LANGUAGE.

2. THE DISTRICT SHALL PROVIDE AT LEAST TWO WEEKS' NOTICE OF A MEETING AT WHICH THE FINAL TEXT OF THE PROPOSED RULE IS CONSIDERED BY THE BOARD OF DIRECTORS. THE NOTICE SHALL INCLUDE THE ENTIRE TEXT OF THE FINAL VERSION OF THE PROPOSED RULE AND IT SHALL BE MADE AVAILABLE TO THE PUBLIC. AT LEAST ONE WEEK BEFORE THE MEETING, THE DISTRICT SHALL PROVIDE THE PUBLIC WITH THE DISTRICT'S WRITTEN RESPONSES TO WRITTEN PUBLIC COMMENTS AND MAY PROVIDE WRITTEN RESPONSES TO VERBAL COMMENTS.

3. THE DISTRICT SHALL PROVIDE THE BOARD OF DIRECTORS WITH COPIES OF THE PUBLIC COMMENTS AND THE DISTRICT'S WRITTEN RESPONSES TO THE PUBLIC COMMENTS. IF AS A RESULT OF PUBLIC COMMENTS OR INTERNAL REVIEW, THE BOARD OF DIRECTORS DETERMINES THAT THE TEXT OF A PROPOSED RULE REQUIRES SUBSTANTIAL CHANGE, THE BOARD OF DIRECTORS SHALL ISSUE A SUPPLEMENTAL NOTICE CONTAINING THE CHANGES TO THE PROPOSED RULE AND SHALL PROVIDE FOR ADDITIONAL PUBLIC COMMENT BEFORE ADOPTION.

C. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE BOARD MAKES A FINDING THAT AN EMERGENCY EXISTS AND ADOPTION OF THE RULE IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE, TO AVOID AN IMMINENT BUDGET REDUCTION OR TO AVOID SERIOUS PREJUDICE TO THE PUBLIC INTEREST. WITHIN A REASONABLE TIME AFTER ADOPTING AN EMERGENCY RULE, THE BOARD OF DIRECTORS

SHALL REVIEW THE EMERGENCY RULE TO DETERMINE WHETHER THE RULE SHOULD CONTINUE IN EFFECT OR BE TERMINATED.

D. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE ADOPTION OF A RULE IF THE RULE IS REQUIRED BY STATE OR FEDERAL LAW OR REGULATION, AND THE BASIS FOR THE REQUIREMENT TO ADOPT THE RULE IS NOT THE RESULT OF DELAY OR INACTION BY THE BOARD OF DIRECTORS.

E. NOTWITHSTANDING THIS SECTION, THE BOARD OF DIRECTORS MAY PROVIDE ALTERNATIVE PROCEDURES FOR THE EXPEDITED ADOPTION, AMENDMENT OR REPEAL OF A RULE IF THE EXPEDITED RULEMAKING DOES NOT INCREASE THE COST OF REGULATORY COMPLIANCE OR REDUCE THE PROCEDURAL RIGHTS OF REGULATED PARTIES.

F. A RULE CANNOT BE ENFORCED WITHOUT SUBSTANTIAL COMPLIANCE WITH THIS SECTION, EXCEPT THOSE RULES THAT WERE APPROVED BY THE BOARD OF DIRECTORS BEFORE THE EFFECTIVE DATE OF THIS SECTION.

G. THE DISTRICT MAY PROVIDE THE NOTICES REQUIRED BY THIS SECTION ON THE DISTRICT'S WEBSITE.

H. THE DISTRICT MAY MEET INFORMALLY WITH ANY INTERESTED PARTY FOR THE PURPOSE OF DISCUSSING ANY PROPOSED RULE.

I. THIS SECTION DOES NOT APPLY TO:

1. SUBSTANTIVE POLICY STATEMENTS.

2. PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF THE DISTRICT AND DO NOT IMPOSE ADDITIONAL REQUIREMENTS, CONDITIONS OR PENALTIES ON REGULATED PARTIES.

3. USE OR ADOPTION OF ANY FORM WHOSE CONTENTS OR SUBSTANTIVE REQUIREMENTS ARE CONSISTENT WITH AN ORDINANCE OR STATUTE, AND ANY PROCEDURES FOR THE EXECUTION OR USE OF THE FORM.

J. FOR THE PURPOSES OF THIS SECTION, "RULE" MEANS A DISTRICT STATEMENT OF GENERAL APPLICABILITY THAT IMPLEMENTS, INTERPRETS OR PRESCRIBES LAW OR POLICY, OR DESCRIBES THE PROCEDURE OR PRACTICE REQUIREMENTS OF A DISTRICT. RULE INCLUDES PRESCRIBING FEES OR THE AMENDMENT OR REPEAL OF AN EXISTING RULE BUT DOES NOT INCLUDE INTRA-AGENCY MEMORANDA THAT ARE NOT DELEGATION AGREEMENTS.

Sec. 6. Section 48-3642, Arizona Revised Statutes, is amended to read:

48-3642. <u>Regulatory bill of rights</u>

To ensure fair and open regulation by districts, a person:

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

2. Is entitled to receive information and notice regarding inspections as provided in section 48-3643.

3. Is entitled to have a district not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized as provided in section 48-3644.

4. May have a district approve or deny the person's license application within a predetermined period of time as provided in section 48-3645.

5. Is entitled to receive written or electronic notice from a district on denial of a license application THAT:

(a) ~~That~~ Justifies the denial with references to the statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement on which the denial is based as provided in section 48-3645.

(b) ~~That~~ Explains the applicant's right to appeal the denial as provided in section 48-3645.

6. 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 48-3646.

7. May inspect all ordinances, regulations, RULES and substantive policy statements of a district, including a directory of documents, at the office of the district or a district website as provided in section 48-3647.

8. Unless specifically authorized, may expect districts to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the maximum extent practicable as provided in section 48-3644.

9. May file a complaint with the board of ~~review~~ DIRECTORS concerning an ordinance, RULE, regulation or substantive policy statement that fails to comply with this section.

10. As provided in section 48-3644, is entitled to have a district not request or initiate discussions about waiving any of the rights prescribed in this section.

11. MAY PARTICIPATE IN THE RULE DEVELOPMENT PROCESS AS PROVIDED IN SECTION 48-3609.02, INCLUDING PROVIDING WRITTEN OR VERBAL COMMENTS ON PROPOSED RULES TO THE DISTRICT AND HAVING THE DISTRICT ADDRESS COMMENTS AS PROVIDED IN SECTION 48-3609.02.

Sec. 7. Section 48-3647, Arizona Revised Statutes, is amended to read:

48-3647. Directory of documents

The district shall publish, or prominently place on the district website, at least annually, a directory summarizing the subject matter of all currently applicable ordinances, RULES, regulations and substantive policy statements. The district shall keep copies of this directory and all substantive policy statements at one location. The directory, ordinances, regulations, RULES, substantive policy statements and any materials incorporated by reference in these documents shall be open to public inspection at the office of the district or the district website.

Sec. 8. Section 48-3648, Arizona Revised Statutes, is amended to read:

48-3648. Complaints; procedures

A. The board of ~~review~~ DIRECTORS shall ~~receive~~ ESTABLISH A PROCEDURE TO RECEIVE complaints FROM AN ADVERSELY AFFECTED PERSON concerning

ordinances, RULES, substantive policy statements or district practices alleged to violate this ~~article~~ CHAPTER. ~~The board of review may review any ordinance, regulation, substantive policy statement or district practice alleged to violate this article and may hold hearings regarding the allegations. The board of review may recommend actions to alleviate the aspects of the ordinances, regulations, substantive policy statements or district practices alleged to violate this article.~~

B. THE BOARD OF DIRECTORS MAY REQUIRE THE COMPLAINT TO BE MADE IN WRITING AND TO INCLUDE THE FOLLOWING INFORMATION:

1. THE NAME AND ADDRESS OF THE ADVERSELY AFFECTED PERSON MAKING THE COMPLAINT.

2. THE ORDINANCE, RULE, REGULATION, SUBSTANTIVE POLICY STATEMENT OR DISTRICT PRACTICE ALLEGED TO VIOLATE THIS ARTICLE OR SECTION 48-3609.02.

3. ANY FACTS RELEVANT TO, AND THE LEGAL BASIS FOR, THE COMPLAINT.

C. PROCEDURES ADOPTED BY THE BOARD OF DIRECTORS PURSUANT TO THIS SECTION SHALL INCLUDE REASONABLE TIME FRAMES TO ADDRESS COMPLAINTS AND SHALL PROVIDE A PROCESS FOR APPEAL.

Sec. 9. Applicability; county population

This act applies:

1. For a county with a population of three hundred seventy-five thousand persons or more, from and after December 31, 2015.

2. For a county with a population of less than three hundred seventy-five thousand persons, from and after December 31, 2016.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2015.

Passed the House March 23, 2015,

by the following vote: 32 Ayes,

25 Nays, 3 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

Passed the Senate February 19, 2015,

by the following vote: 16 Ayes,

13 Nays, 1 Not Voting

President of the Senate

Susan Aceves
Assistant

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25th day of March, 2015,

at 2:27 o'clock P. M.

Tristan Bynum

Secretary to the Governor

Approved this 30th day of

March, 2015,

at 1:09 o'clock P. 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 31st day of March, 2015,

at 10:00 o'clock A M.

Michele Reagan

Secretary of State

S.B. 1298