Senate Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 355

SENATE BILL 1388

AN ACT

AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 6.1; RELATING TO RULEMAKING REVIEW.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 41, Arizona Revised Statutes, is amended by adding chapter 6.1, to read:

CHAPTER 6.1

RULEMAKING REVIEW

ARTICLE 1. GENERAL PROVISIONS

41-1095. Review by agency; definitions

A. FOR AN AGENCY THAT THE LEGISLATURE HAS GRANTED A ONE-TIME RULEMAKING EXEMPTION, WITHIN ONE YEAR AFTER A RULE HAS BEEN ADOPTED THE AGENCY SHALL REVIEW THE RULE ADOPTED UNDER THE RULEMAKING EXEMPTION TO DETERMINE WHETHER ANY RULE ADOPTED UNDER THE RULEMAKING EXEMPTION SHOULD BE AMENDED OR REPEALED. THE AGENCY SHALL PREPARE AND OBTAIN COUNCIL APPROVAL OF A WRITTEN REPORT SUMMARIZING ITS FINDINGS, ITS SUPPORTING REASONS AND ANY PROPOSED COURSE OF ACTION. THE REPORT SHALL CONTAIN A CERTIFICATION THAT THE AGENCY IS IN COMPLIANCE WITH SECTION 41-1091. THE REPORT SHALL INCLUDE A CONCISE ANALYSIS OF ALL OF THE FOLLOWING:

1. THE RULE'S EFFECTIVENESS IN ACHIEVING ITS OBJECTIVES, INCLUDING A SUMMARY OF ANY AVAILABLE DATA SUPPORTING THE CONCLUSIONS REACHED.

2. WRITTEN CRITICISMS OF THE RULE RECEIVED SINCE THE RULE WAS ADOPTED, INCLUDING ANY WRITTEN ANALYSES SUBMITTED TO THE AGENCY QUESTIONING WHETHER THE RULE IS BASED ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES OR METHODS.

3. AUTHORIZATION OF THE RULE BY EXISTING STATUTES.

4. WHETHER THE RULE IS CONSISTENT WITH STATUTES OR OTHER RULES MADE BY THE AGENCY AND CURRENT AGENCY ENFORCEMENT POLICY.

5. THE CLARITY, CONCISENESS AND UNDERSTANDABILITY OF THE RULE.

6. THE ESTIMATED ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT OF THE RULE.

7. ANY ANALYSIS SUBMITTED TO THE AGENCY BY ANOTHER PERSON REGARDING THE RULE'S IMPACT ON THIS STATE'S BUSINESS COMPETITIVENESS AS COMPARED TO THE COMPETITIVENESS OF BUSINESSES IN OTHER STATES.

8. IF APPLICABLE, THAT THE AGENCY COMPLETED ANY ADDITIONAL PROCESS REQUIRED BY LAW, INCLUDING THE REQUIREMENT FOR THE AGENCY TO PUBLISH OTHERWISE EXEMPT RULES OR PROVIDE THE PUBLIC WITH AN OPPORTUNITY TO COMMENT ON THE RULES.

9. A DETERMINATION THAT THE PROBABLE BENEFITS OF THE RULE OUTWEIGH WITHIN THIS STATE THE PROBABLE COSTS OF THE RULE, AND THE RULE IMPOSES THE LEAST BURDEN AND COSTS TO PERSONS REGULATED BY THE RULE, INCLUDING PAPERWORK AND OTHER COMPLIANCE COSTS, NECESSARY TO ACHIEVE THE UNDERLYING REGULATORY OBJECTIVE.

10. A DETERMINATION THAT THE RULE IS NOT MORE STRINGENT THAN A CORRESPONDING FEDERAL LAW UNLESS THERE IS STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF THAT FEDERAL LAW.

11. FOR RULES THAT REQUIRE THE ISSUANCE OF A REGULATORY PERMIT, LICENSE OR AGENCY AUTHORIZATION, WHETHER THE RULE COMPLIES WITH SECTION 41-1037.

B. AN AGENCY MAY ALSO INCLUDE AS PART OF THE REPORT THE TEXT OF A PROPOSED EXPEDITED RULE PURSUANT TO SECTION 41-1027.

C. THE COUNCIL MAY REQUIRE THE AGENCY TO PROPOSE AN AMENDMENT OR REPEAL OF THE RULE BY A DATE NOT EARLIER THAN SIX MONTHS AFTER THE DATE OF THE MEETING AT WHICH THE COUNCIL CONSIDERS THE AGENCY'S REPORT ON ITS RULE IF THE COUNCIL DETERMINES THE AGENCY'S ANALYSIS UNDER SUBSECTION A OF THIS SECTION DEMONSTRATES THAT THE RULE IS MATERIALLY FLAWED, INCLUDING THAT THE RULE:

1. IS NOT AUTHORIZED BY STATUTE.

2. IS INCONSISTENT WITH OTHER STATUTES, RULES OR AGENCY ENFORCEMENT POLICIES AND THE INCONSISTENCY RESULTS IN A SIGNIFICANT BURDEN ON THE REGULATED PUBLIC.

3. IMPOSES PROBABLE COSTS, INCLUDING COSTS TO THE REGULATED PERSON, THAT SIGNIFICANTLY EXCEED THE PROBABLE BENEFITS OF THE RULE WITHIN THIS STATE.

4. IS MORE STRINGENT THAN A CORRESPONDING FEDERAL LAW AND THERE IS NO STATUTORY AUTHORITY TO EXCEED THE REQUIREMENTS OF FEDERAL LAW.

5. IS NOT CLEAR, CONCISE AND UNDERSTANDABLE.

6. DOES NOT USE GENERAL PERMITS IF REQUIRED UNDER SECTION 41-1037.

7. DOES NOT IMPOSE THE LEAST BURDEN TO PERSONS REGULATED BY THE RULE AS NECESSARY TO ACHIEVE THE UNDERLYING REGULATORY OBJECTIVE OF THE RULE.

8. DOES NOT RELY ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES AND METHODS, INCLUDING A STUDY, IF THE RULE RELIES ON SCIENTIFIC PRINCIPLES OR METHODS, AND A PERSON HAS SUBMITTED AN ANALYSIS UNDER SUBSECTION A OF THIS SECTION QUESTIONING WHETHER THE RULE IS BASED ON VALID SCIENTIFIC OR RELIABLE PRINCIPLES OR METHODS. IN MAKING A DETERMINATION OF VALIDITY OR RELIABILITY, THE COUNCIL SHALL CONSIDER THE FACTORS LISTED IN SECTION 41-1052, SUBSECTION G.

D. AN AGENCY MAY REQUEST AN EXTENSION OF NOT LONGER THAN SIX MONTHS FROM THE DATE SPECIFIED BY THE COUNCIL PURSUANT TO SUBSECTION C OF THIS SECTION BY SENDING A WRITTEN REQUEST TO THE COUNCIL THAT:

1. IDENTIFIES THE REASON FOR THE EXTENSION REQUEST.

2. DEMONSTRATES GOOD CAUSE FOR THE EXTENSION.

E. THE AGENCY SHALL NOTIFY THE COUNCIL OF AN AMENDMENT OR REPEAL OF A RULE FOR WHICH THE COUNCIL HAS SET AN EXPIRATION DATE UNDER SUBSECTION C OF THIS SECTION. IF THE AGENCY DOES NOT AMEND OR REPEAL THE RULE BY THE DATE SPECIFIED BY THE COUNCIL UNDER SUBSECTION C OF THIS SECTION OR THE EXTENDED DATE UNDER SUBSECTION D OF THIS SECTION, THE RULE AUTOMATICALLY EXPIRES. THE COUNCIL SHALL FILE A NOTICE OF RULE EXPIRATION WITH THE SECRETARY OF STATE AND NOTIFY THE AGENCY OF THE EXPIRATION OF THE RULE.

F. IF AN AGENCY FINDS THAT IT CANNOT PROVIDE THE WRITTEN REPORT TO THE COUNCIL BY THE DATE IT IS DUE, THE AGENCY MAY FILE AN EXTENSION WITH THE COUNCIL BEFORE THE DUE DATE INDICATING THE REASON FOR THE EXTENSION. THE TIMELY FILING FOR AN EXTENSION PERMITS THE AGENCY TO SUBMIT ITS REPORT ON OR BEFORE THE DATE PRESCRIBED BY THE COUNCIL.

G. IF AN AGENCY FAILS TO SUBMIT ITS REPORT PURSUANT TO SUBSECTION A OF THIS SECTION, OR FILE AN EXTENSION BEFORE THE DUE DATE OF THE REPORT OR IF IT FILES AN EXTENSION AND DOES NOT SUBMIT ITS REPORT WITHIN THE EXTENSION PERIOD, THE RULE EXPIRES AND THE COUNCIL SHALL:

1. CAUSE A NOTICE TO BE PUBLISHED IN THE NEXT REGISTER THAT STATES THE RULE HAS EXPIRED AND IS NO LONGER ENFORCEABLE.

2. NOTIFY THE SECRETARY OF STATE THAT THE RULE HAS EXPIRED AND THAT THE RULE IS TO BE REMOVED FROM THE CODE.

3. NOTIFY THE AGENCY THAT THE RULE HAS EXPIRED AND IS NO LONGER ENFORCEABLE.

H. IF A RULE EXPIRES AS PROVIDED IN SUBSECTION G OF THIS SECTION AND THE AGENCY WISHES TO REESTABLISH THE RULE, THE AGENCY SHALL COMPLY WITH THE REQUIREMENTS OF CHAPTER 6 OF THIS TITLE.

I. AT LEAST NINETY DAYS BEFORE THE DUE DATE OF A REPORT, THE COUNCIL SHALL SEND A WRITTEN NOTICE TO THE HEAD OF THE AGENCY WHOSE REPORT IS DUE. THE NOTICE SHALL LIST THE RULE TO BE REVIEWED AND THE DATE THE REPORT IS DUE.

J. FOR THE PURPOSES OF THIS SECTION, "AGENCY", "COUNCIL" AND "RULE" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 41-1001.

APPROVED BY THE GOVERNOR MAY 19, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2016.

Passed the House May 7, 2016,

by the following vote: 34 Ayes,

20 Nays, 6 Not Voting

Speaker of the House

Jim Drake
Chief Clerk of the House

Passed the Senate February 25, 2016,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

President of the Senate

Susan Roeves
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9th day of May, 2016

at 10:07 o'clock A. M.

Secretary to the Governor

Approved this 19th day of

May, 2016,

at 11:24 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19th day of May, 2016,

at 3:20 o'clock P M.

Michele Reagan
Secretary of State

S.B. 1388