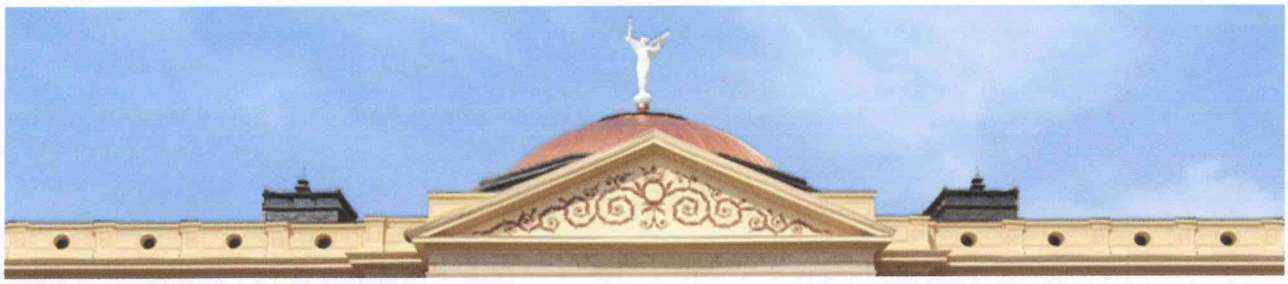

41-1081. Standards for delegation

A. No agency may enter into or amend any delegation agreement unless the delegation agreement clearly sets forth all of the following:

1. Each function, power or duty being delegated by the agency, the term of the agreement and the procedures for terminating the agreement.
2. The standards of performance required to fulfill the agreement.
3. The types of fees that will be imposed on regulated parties and the legal authority for imposing any such fees.
4. The qualifications of the personnel of the political subdivision responsible for exercising the delegated functions, powers or duties.
5. Record keeping and reporting requirements.
6. Auditing requirements if the delegation agreement includes the transfer of funds from the delegating agency to the political subdivision.
7. A definition of the enforcement role if enforcement authority is being delegated.
8. Procedures for resolving conflicts between the parties to the delegation agreement.
9. Procedures for amending the delegation agreement.
10. The names and addresses of primary contact persons at both the delegating agency and the political subdivision.

B. An agency that seeks to delegate functions, powers or duties shall file with the secretary of state a summary of the proposed delegation agreement. The summary shall provide the name of a person to contact in the agency with questions or comments and shall state that a copy of the proposed delegation agreement may be obtained upon request from the agency. The secretary of state shall publish the summary in the next register.

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.
E. After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.
F. A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives written notice to enter into the delegation agreement pursuant to subsection E. The council shall place the appeal of the delegation agreement on its next meeting agenda if at least three council members make such a request of the council chairman within two weeks of the filing of the appeal.
G. Delegation agreements that are appealed to and considered by the council shall become effective upon council approval of the delegation agreement. Delegation agreements that are appealed to the council and not considered by the council are effective either thirty days after written notice of the agency's final decision is given pursuant to subsection E, or two weeks after an appeal is filed if at least three council members do not request council consideration of the delegation agreement pursuant to subsection F, whichever date is later.
H. The council shall not approve the delegation agreement if it does not meet the provisions set forth in subsection A or if the agency has not provided adequate notice and an opportunity for comment to the public.

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