



28 registration described in Subsection (1); and

29 (b) all persons to whom it is proposed to issue a security in a registration described in  
30 Subsection (1) may appear.

31 (3) After conducting a hearing under this section, the division may approve or  
32 disapprove the terms and conditions of a registration described in Subsection (1).

33 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
34 division may establish rules to govern the conduct of a hearing permitted by this section.

35 Section 2. Section **63-46b-1** is amended to read:

36 **63-46b-1. Scope and applicability of chapter.**

37 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute  
38 superseding provisions of this chapter by explicit reference to this chapter, the provisions of  
39 this chapter apply to every agency of the state and govern:

40 (a) all state agency actions that determine the legal rights, duties, privileges,  
41 immunities, or other legal interests of one or more identifiable persons, including all agency  
42 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,  
43 or license; and

44 (b) judicial review of these actions.

45 (2) This chapter does not govern:

46 (a) the procedures for making agency rules, or the judicial review of those procedures  
47 or rules;

48 (b) the issuance of any notice of a deficiency in the payment of a tax, the decision to  
49 waive penalties or interest on taxes, the imposition of and penalties or interest on taxes, or the  
50 issuance of any tax assessment, except that this chapter governs any agency action commenced  
51 by a taxpayer or by another person authorized by law to contest the validity or correctness of  
52 those actions;

53 (c) state agency actions relating to extradition, to the granting of pardons or parole,  
54 commutations or terminations of sentences, or to the rescission, termination, or revocation of  
55 parole or probation, to the discipline of, resolution of grievances of, supervision of,  
56 confinement of, or the treatment of inmates or residents of any correctional facility, the Utah  
57 State Hospital, the Utah State Developmental Center, or persons in the custody or jurisdiction  
58 of the Division of Substance Abuse and Mental Health, or persons on probation or parole, or

59 judicial review of those actions;

60 (d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote  
61 students or teachers in any school or educational institution, or judicial review of those actions;

62 (e) applications for employment and internal personnel actions within an agency  
63 concerning its own employees, or judicial review of those actions;

64 (f) the issuance of any citation or assessment under Title 34A, Chapter 6, Utah  
65 Occupational Safety and Health Act, and Title 58, Chapter 55, Utah Construction Trades  
66 Licensing Act, except that this chapter governs any agency action commenced by the employer,  
67 licensee, or other person authorized by law to contest the validity or correctness of the citation  
68 or assessment;

69 (g) state agency actions relating to management of state funds, the management and  
70 disposal of school and institutional trust land assets, and contracts for the purchase or sale of  
71 products, real property, supplies, goods, or services by or for the state, or by or for an agency of  
72 the state, except as provided in those contracts, or judicial review of those actions;

73 (h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of  
74 Commissioner of Financial Institutions; and Title 7, Chapter 2, Possession of Depository  
75 Institution by Commissioner; Title 7, Chapter 19, Acquisition of Failing Depository Institutions  
76 or Holding Companies; and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial  
77 review of those actions;

78 (i) the initial determination of any person's eligibility for unemployment benefits, the  
79 initial determination of any person's eligibility for benefits under Title 34A, Chapter 2,  
80 Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the  
81 initial determination of a person's unemployment tax liability;

82 (j) state agency actions relating to the distribution or award of monetary grants to or  
83 between governmental units, or for research, development, or the arts, or judicial review of  
84 those actions;

85 (k) the issuance of any notice of violation or order under Title 26, Chapter 8a, Utah  
86 Emergency Medical Services System Act; Title 19, Chapter 2, Air Conservation Act; Title 19,  
87 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act; Title 19,  
88 Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;  
89 Title 19, Chapter 6, Part 4, Underground Storage Tank Act; or Title 19, Chapter 6, Part 7, Used

90 Oil Management Act, except that this chapter governs any agency action commenced by any  
91 person authorized by law to contest the validity or correctness of the notice or order;

92 (l) state agency actions, to the extent required by federal statute or regulation to be  
93 conducted according to federal procedures;

94 (m) the initial determination of any person's eligibility for government or public  
95 assistance benefits;

96 (n) state agency actions relating to wildlife licenses, permits, tags, and certificates of  
97 registration;

98 (o) licenses for use of state recreational facilities;

99 (p) state agency actions under Title 63, Chapter 2, Government Records Access and  
100 Management Act, except as provided in Section 63-2-603;

101 (q) state agency actions relating to the collection of water commissioner fees and  
102 delinquency penalties, or judicial review of those actions; ~~and~~

103 (r) state agency actions relating to the installation, maintenance, and repair of  
104 headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other  
105 water measuring devices, or judicial review of those actions~~[-]; and~~

106 (s) (i) any hearing conducted by the Division of Securities under Section 61-1-19.1;  
107 and

108 (ii) any action taken by the Division of Securities pursuant to a hearing conducted  
109 under Section 61-1-19.1, including a determination regarding the fairness of a registration  
110 described in Subsection 61-1-19.1(1).

111 (3) This chapter does not affect any legal remedies otherwise available to:

112 (a) compel an agency to take action; or

113 (b) challenge an agency's rule.

114 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative  
115 proceeding, or the presiding officer during an adjudicative proceeding from:

116 (a) requesting or ordering conferences with parties and interested persons to:

117 (i) encourage settlement;

118 (ii) clarify the issues;

119 (iii) simplify the evidence;

120 (iv) facilitate discovery; or

121 (v) expedite the proceedings; or  
 122 (b) granting a timely motion to dismiss or for summary judgment if the requirements of  
 123 Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the  
 124 moving party, except to the extent that the requirements of those rules are modified by this  
 125 chapter.

126 (5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by  
 127 this chapter, except as explicitly provided in that section.

128 (b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are  
 129 governed by this chapter.

130 (6) This chapter does not preclude an agency from enacting rules affecting or  
 131 governing adjudicative proceedings or from following any of those rules, if the rules are  
 132 enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative  
 133 Rulemaking Act, and if the rules conform to the requirements of this chapter.

134 (7) (a) If the attorney general issues a written determination that any provision of this  
 135 chapter would result in the denial of funds or services to an agency of the state from the federal  
 136 government, the applicability of those provisions to that agency shall be suspended to the  
 137 extent necessary to prevent the denial.

138 (b) The attorney general shall report the suspension to the Legislature at its next  
 139 session.

140 (8) Nothing in this chapter may be interpreted to provide an independent basis for  
 141 jurisdiction to review final agency action.

142 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good  
 143 cause shown, from lengthening or shortening any time period prescribed in this chapter, except  
 144 those time periods established for judicial review.

**Legislative Review Note**  
**as of 2-5-03 10:15 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note****Exemptions Related to Exchange of Securities***12-Feb-03***Bill Number HB0290***11:34 AM*

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**State Impact**

Can be handled within existing budgets.

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**Individual and Business Impact**

Businesses will save about \$20,000 per hearing for an estimated annual savings of \$240,000.

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**Office of the Legislative Fiscal Analyst**