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**REGULATORY IMPACT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad R. Wilson**

Senate Sponsor: Daniel Hemmert

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**LONG TITLE**

**General Description:**

This bill modifies the Administrative Rules Act and provisions governing the Office of the Legislative Fiscal Analyst.

**Highlighted Provisions:**

This bill:

- ▶ requires the legislative fiscal analyst, when evaluating proposed legislation, to indicate whether the legislation would make changes in the regulatory burden for state residents or businesses;
- ▶ requires agencies to conduct ~~§~~ **[a-quantitative]** an ~~§~~ analysis before submitting new administrative rules in order to show the regulatory impact the rule would have on state residents or businesses;
- ▶ provides requirements for the contents of the analysis; and
- ▶ requires agencies to submit a summary of efforts made to comply with obligations to assure that new administrative rules minimize negative fiscal impacts on small businesses.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



H.B. 272

28 AMENDS:

29 **36-12-13**, as last amended by Laws of Utah 2014, Chapters 344 and 430

30 **63G-3-301**, as last amended by Laws of Utah 2016, Chapter 193

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **36-12-13** is amended to read:

34 **36-12-13. Office of the Legislative Fiscal Analyst established -- Powers, functions,**  
35 **and duties -- Qualifications.**

36 (1) There is established an Office of the Legislative Fiscal Analyst as a permanent staff  
37 office for the Legislature.

38 (2) The powers, functions, and duties of the Office of the Legislative Fiscal Analyst  
39 under the supervision of the fiscal analyst are:

40 (a) to analyze in detail the state budget before the convening of each legislative session  
41 and make recommendations to the Legislature on each item or program appearing in the  
42 budget, including:

43 (i) funding for and performance of programs, acquisitions, and services currently  
44 undertaken by state government to determine whether each department, agency, institution, or  
45 program should:

- 46 (A) continue at its current level of expenditure;
- 47 (B) continue at a different level of expenditure; or
- 48 (C) be terminated; and

49 (ii) increases or decreases to spending authority and other resource allocations for the  
50 current and future fiscal years;

51 (b) to prepare cost estimates on all proposed bills that anticipate state government  
52 expenditures;

53 (c) to prepare cost estimates on all proposed bills that anticipate expenditures by  
54 county, municipal, local district, or special service district governments;

55 (d) to prepare cost estimates on all proposed bills that anticipate direct expenditures by  
56 any Utah resident or business, and the cost to the overall impacted Utah resident or business  
57 population;

58 (e) to indicate whether each proposed bill will impact the regulatory burden for Utah

59 residents or businesses, and if so:

60 (i) whether the impact increases or decreases the regulatory burden; and

61 (ii) whether the change in burden is high, medium, or low;

62 ~~[(e)]~~ (f) to prepare a review and analysis of revenue estimates for existing and proposed  
63 revenue acts, which shall include a comparison of current estimates to 15-year trends by tax  
64 type;

65 ~~[(f)]~~ (g) to report instances in which the administration may be failing to carry out the  
66 expressed intent of the Legislature;

67 ~~[(g)]~~ (h) to propose and analyze statutory changes for more effective operational  
68 economies or more effective administration;

69 ~~[(h)]~~ (i) to prepare, before each annual general session of the Legislature, a summary  
70 showing the current status of the following as compared to the past nine fiscal years:

71 (i) debt;

72 (ii) long-term liabilities;

73 (iii) contingent liabilities;

74 (iv) General Fund borrowing;

75 (v) reserves;

76 (vi) fund and nonlapsing balances; and

77 (vii) cash funded capital investments;

78 ~~[(i)]~~ (j) to make recommendations for addressing the items described in Subsection  
79 (2)(h) in the upcoming annual general session of the Legislature;

80 ~~[(j)]~~ (k) to prepare, after each session of the Legislature, a summary showing the effect  
81 of the final legislative program on the financial condition of the state;

82 ~~[(k)]~~ (l) to conduct organizational and management improvement studies;

83 ~~[(l)]~~ (m) to prepare and deliver upon request of any interim committee or the  
84 Legislative Management Committee, reports on the finances of the state and on anticipated or  
85 proposed requests for appropriations;

86 ~~[(m)]~~ (n) to recommend areas for research studies by the executive department or the  
87 interim committees;

88 ~~[(n)]~~ (o) to appoint and develop a professional staff within budget limitations;

89 ~~[(o)]~~ (p) to prepare and submit the annual budget request for the office;

90           ~~[(p)]~~ (q) to develop a taxpayer receipt:  
91           (i) available to taxpayers through a website; and  
92           (ii) that allows a taxpayer to view on the website an estimate of how the taxpayer's tax  
93 dollars are expended for government purposes; and  
94           ~~[(q)]~~ (r) to publish or provide other information on taxation and government  
95 expenditures that may be accessed by the public.

96           (3) The Office of the Legislative Fiscal Analyst shall report the review and analysis  
97 required under Subsection (2)~~[(e)]~~(f) to the Executive Appropriations Committee of the  
98 Legislature before each upcoming annual general session of the Legislature.

99           (4) The legislative fiscal analyst shall have a master's degree in public administration,  
100 political science, economics, accounting, or the equivalent in academic or practical experience.

101           (5) In carrying out the duties provided for in this section, the legislative fiscal analyst  
102 may obtain access to all records, documents, and reports necessary to the scope of the  
103 legislative fiscal analyst's duties according to the procedures contained in Title 36, Chapter 14,  
104 Legislative Subpoena Powers.

105           Section 2. Section **63G-3-301** is amended to read:

106           **63G-3-301. Rulemaking procedure.**

107           (1) An agency authorized to make rules is also authorized to amend or repeal those  
108 rules.

109           (2) Except as provided in Sections **63G-3-303** and **63G-3-304**, when making,  
110 amending, or repealing a rule agencies shall comply with:

- 111           (a) the requirements of this section;
- 112           (b) consistent procedures required by other statutes;
- 113           (c) applicable federal mandates; and
- 114           (d) rules made by the department to implement this chapter.

115           (3) Subject to the requirements of this chapter, each agency shall develop and use  
116 flexible approaches in drafting rules that meet the needs of the agency and that involve persons  
117 affected by the agency's rules.

118           (4) (a) Each agency shall file its proposed rule and rule analysis with the office.

119           (b) Rule amendments shall be marked with new language underlined and deleted  
120 language struck out.

121 (c) (i) The office shall publish the information required under Subsection (8) on the  
122 rule analysis and the text of the proposed rule in the next issue of the bulletin.

123 (ii) For rule amendments, only the section or subsection of the rule being amended  
124 need be printed.

125 (iii) If the executive director or the executive director's designee determines that the  
126 rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by  
127 reference to a copy on file with the office.

128 (5) [~~Prior to~~] Before filing a rule with the office, the [~~department head shall consider~~  
129 ~~and comment~~] agency shall conduct a ~~quantitative analysis on~~ **thorough analysis, consistent**  
129a **with the criteria established by the Governor's Office of Management and Budget, of** ~~the~~  
129b the fiscal impact a rule may have

130 on businesses[-], which ~~shall~~ **criteria may** ~~include:~~

131 (a) the type of industries that will be impacted by the rule, and for each identified  
132 industry, an estimate of the total number of businesses within the industry, and an estimate of  
133 the number of those businesses that are small businesses;

134 (b) the individual fiscal impact that would incur to a typical business for a one-year  
135 period;

136 (c) the aggregated total fiscal impact that would incur to all businesses within the state  
137 for a one-year period;

138 (d) the total cost that would incur to all impacted entities over a five-year period; and

139 (e) the department head's comments on the analysis.

140 (6) If the agency reasonably expects that a proposed rule will have a measurable  
141 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal  
142 law, each of the following methods of reducing the impact of the rule on small businesses:

143 (a) establishing less stringent compliance or reporting requirements for small  
144 businesses;

145 (b) establishing less stringent schedules or deadlines for compliance or reporting  
146 requirements for small businesses;

147 (c) consolidating or simplifying compliance or reporting requirements for small  
148 businesses;

149 (d) establishing performance standards for small businesses to replace design or  
150 operational standards required in the proposed rule; and

151 (e) exempting small businesses from all or any part of the requirements contained in

152 the proposed rule.

153 (7) If during the public comment period an agency receives comment that the proposed  
154 rule will cost small business more than one day's annual average gross receipts, and the agency  
155 had not previously performed the analysis in Subsection (6), the agency shall perform the  
156 analysis described in Subsection (6).

157 (8) The rule analysis shall contain:  
158 (a) a summary of the rule or change;  
159 (b) the purpose of the rule or reason for the change;  
160 (c) the statutory authority or federal requirement for the rule;  
161 (d) the anticipated cost or savings to:  
162 (i) the state budget;  
163 (ii) local governments;  
164 (iii) small businesses; and  
165 (iv) persons other than small businesses, businesses, or local governmental entities;  
166 (e) the compliance cost for affected persons;  
167 (f) how interested persons may review the full text of the rule;  
168 (g) how interested persons may present their views on the rule;  
169 (h) the time and place of any scheduled public hearing;  
170 (i) the name and telephone number of an agency employee who may be contacted  
171 about the rule;  
172 (j) the name of the agency head or designee who authorized the rule;  
173 (k) the date on which the rule may become effective following the public comment  
174 period; [~~and~~]

175 (l) the agency's ~~S~~→ **quantitative** ←~~S~~ analysis on the fiscal impact of the rule as required  
175a under  
176 Subsection (5);

177 [~~(h)~~] (m) any additional comments [~~by~~] the department head [~~on~~] may choose to submit  
178 regarding the fiscal impact the rule may have on businesses[-]; and  
179 (n) if applicable, a summary of the agency's efforts to comply with the requirements of  
180 Subsection (6).

181 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a  
182 summary that generally includes the following:

183 (i) a summary of substantive provisions in the repealed rule which are eliminated from  
184 the enacted rule; and

185 (ii) a summary of new substantive provisions appearing only in the enacted rule.

186 (b) The summary required under this Subsection (9) is to aid in review and may not be  
187 used to contest any rule on the ground of noncompliance with the procedural requirements of  
188 this chapter.

189 (10) A copy of the rule analysis shall be mailed to all persons who have made timely  
190 request of the agency for advance notice of its rulemaking proceedings and to any other person  
191 who, by statutory or federal mandate or in the judgment of the agency, should also receive  
192 notice.

193 (11) (a) Following the publication date, the agency shall allow at least 30 days for  
194 public comment on the rule.

195 (b) The agency shall review and evaluate all public comments submitted in writing  
196 within the time period under Subsection (11)(a) or presented at public hearings conducted by  
197 the agency within the time period under Subsection (11)(a).

198 (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule  
199 becomes effective on any date specified by the agency that is no fewer than seven calendar days  
200 after the close of the public comment period under Subsection (11), nor more than 120 days  
201 after the publication date.

202 (b) The agency shall provide notice of the rule's effective date to the office in the form  
203 required by the department.

204 (c) The notice of effective date may not provide for an effective date prior to the date it  
205 is received by the office.

206 (d) The office shall publish notice of the effective date of the rule in the next issue of  
207 the bulletin.

208 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is  
209 not filed with the office within 120 days of publication.

210 (13) (a) As used in this Subsection (13), "initiate rulemaking proceedings" means the  
211 filing, for the purposes of publication in accordance with Subsection (4), of an agency's  
212 proposed rule that is required by state statute.

213 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the

214 effective date of the statutory provision that specifically requires the rulemaking, except under  
215 Subsection (13)(c).

216 (c) When a statute is enacted that requires agency rulemaking and the affected agency  
217 already has rules in place that meet the statutory requirement, the agency shall submit the rules  
218 to the Administrative Rules Review Committee for review within 60 days after the statute  
219 requiring the rulemaking takes effect.

220 (d) If a state agency does not initiate rulemaking proceedings in accordance with the  
221 time requirements in Subsection (13)(b), the state agency shall appear before the legislative  
222 Administrative Rules Review Committee and provide the reasons for the delay.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**