

Daniel McCay proposes the following substitute bill:

Regulatory Oversight Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill provides additional mechanisms for the oversight of state executive agencies.

Highlighted Provisions:

This bill:

- directs the Office of Professional Licensure Review (office) to create a mechanism to gather feedback regarding existing occupational regulations;
- directs the office to include the feedback regarding existing occupational regulations that the office gathers in the office's written report to the Business and Labor Interim Committee;
- provides a limit on the cost of implementing an agency generated rule; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-1b-203, as enacted by Laws of Utah 2022, Chapter 413

13-1b-302, as enacted by Laws of Utah 2022, Chapter 413

13-1b-304, as enacted by Laws of Utah 2022, Chapter 413

63G-3-102, as last amended by Laws of Utah 2021, Chapter 344

63G-3-301, as last amended by Laws of Utah 2024, Chapter 178

72-16-203, as last amended by Laws of Utah 2021, Chapter 267

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

Section 1. Section **13-1b-203** is amended to read:

13-1b-203 . Duties.

The office shall:

- (1) for each application submitted in accordance with Section 13-1b-301, conduct a sunrise review in accordance with Section 13-1b-302 before November 1:
 - (a) of the year in which the application is submitted, if the application is submitted on or before July 1; or
 - (b) of the subsequent year, if the application is submitted after July 1;
- (2) ~~[beginning in 2023 and in-]~~ in accordance with Section 13-1b-303, conduct a review of each regulated occupation at least once every 10 years;
- (3) review and respond to any legislator inquiry regarding a proposed or existing regulated occupation;~~[-and]~~
- (4) publish on the office's website a submission form where an individual may provide feedback regarding an existing occupational regulation within the office's jurisdiction that the individual requests the office repeal or modify;
- (5) engage in a systematic review of the rules that relate to occupational regulations within the office's jurisdiction in accordance with Section 13-1b-302; and
- ~~[(4)]~~ (6) report to the Business and Labor Interim Committee in accordance with Section 13-1b-304.

Section 2. Section **13-1b-302** is amended to read:

13-1b-302 . Review criteria.

In conducting a sunrise review~~[-or]~~ , a periodic review, or a standalone review, unless otherwise directed in accordance with Subsection 13-1b-203(3), the office shall consider the following criteria:

- (1) whether the regulation of the occupation is necessary to address a present, recognizable, and significant harm to the health, safety, or financial welfare of the public;
- (2) for any harm to the health, safety, or financial welfare of the public, the harm's:
 - (a) severity;
 - (b) probability; and
 - (c) permanence;
- (3) the extent to which the proposed or existing regulation of the occupation protects against or diminishes the harm described in Subsection (1);
- (4) whether the proposed or existing regulation of the occupation:
 - (a) affects the supply of qualified practitioners;

- (b) creates barriers to:
- (i) service that are not in the public financial welfare or interest; or
 - (ii) entry into the occupation or related occupations;
- (c) imposes new costs on existing practitioners;
- (d) affects:
- (i) license reciprocity with other jurisdictions; or
 - (ii) mobility of practitioners; or
- (e) if the occupation involves a health care provider, impacts the health care provider's ability to obtain payment of benefits for the health care provider's treatment of an illness, injury, or health care condition under an insurance contract subject to Section 31A-22-618;
- (5) if the review involves licensing, the potential alternative pathways for a person to obtain a license;
- (6) the costs to the state of regulating the occupation;
- (7) whether the proposed or existing administering agency has sufficient expertise and resources;
- (8) the regulation of the occupation in other jurisdictions;
- (9) the scope of the proposed or existing regulation, including:
- (a) whether the occupation is clearly distinguishable from an already regulated occupation; and
 - (b) potential for regulating only certain occupational activities;
- (10) the potentially less burdensome alternatives to the proposed or existing regulation and the effect of implementing an alternative method of regulation on:
- (a) the health, safety, or financial welfare of the public;
 - (b) the occupation; and
 - (c) practitioners of the occupation; and
- (11) any other criteria the office adopts, including criteria suggested in a stakeholder survey.

Section 3. Section **13-1b-304** is amended to read:

13-1b-304 . Reporting.

- (1) ~~[Beginning in 2024,]~~ On or before October 1, the office shall annually prepare and submit a written report to the Business and Labor Interim Committee that describes the office's work during the prior year.
- (2) In a written report described in Subsection (1), the office shall include:
- (a) a summary of each periodic review, each sunrise review, each rule review, and each

- 97 response to a legislator inquiry; ~~[and]~~
- 98 (b) each recommendation the office made to another state executive branch agency
- 99 regarding a regulated occupation~~[-]~~ ; and
- 100 (c) a summary of information received during the previous year by the office under
- 101 Subsection 13-1b-203(4) including:
- 102 (i) the total number of complaints the office receives;
- 103 (ii) the number of rules that the office modifies or repeals in response to the
- 104 complaints;
- 105 (iii) each rule for which an individual filed a complaint;
- 106 (iv) the rules that the office modified or repealed as a result of a complaint; and
- 107 (v) a description of the modification of a rule as a result of a complaint if the office
- 108 modified the rule.

109 Section 4. Section **63G-3-102** is amended to read:

110 **63G-3-102 . Definitions.**

111 As used in this chapter:

- 112 (1) "Administrative record" means information an agency relies upon when making a rule
- 113 under this chapter including:
- 114 (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- 115 (b) the public comment received and recorded by the agency during the public comment
- 116 period;
- 117 (c) the agency's response to the public comment;
- 118 (d) the agency's analysis of the public comment; and
- 119 (e) the agency's report of [its] the agency's decision-making process.
- 120 (2)(a) "Agency" ~~[means]~~ includes:
- 121 (i) each state board, authority, commission, institution, department, division, or officer~~[-]~~ ;
- 122 or
- 123 (ii) any other state government entity [other than the Legislature, its committees, the
- 124 political subdivisions of the state, or the courts, which] that is authorized or
- 125 required by law to make rules, adjudicate, grant or withhold licenses, grant or
- 126 withhold relief from legal obligations, or perform other similar actions or duties
- 127 delegated by law.
- 128 (b) "Agency" does not include:
- 129 (i) the Legislature;
- 130 (ii) the Legislature's committees;

131 (iii) the political subdivisions of the state; or

132 (iv) the courts.

133 (3) "Bulletin" means the Utah State Bulletin.

134 (4) "Catchline" means a short summary of each section, part, rule, or title of the code that
135 follows the section, part, rule, or title reference placed before the text of the rule and
136 serves the same function as boldface in legislation as described in Section 68-3-13.

137 (5) "Code" means the body of all effective rules as compiled and organized by the office
138 and entitled "Utah Administrative Code."

139 (6) "Department" means the Department of Government Operations created in Section
140 63A-1-104.

141 (7) "Director" means the director of the office.

142 (8) "Effective" means operative and enforceable.

143 (9) "Executive director" means the executive director of the department.

144 (10) "File" means to submit a document to the office as prescribed by the office.

145 (11) "Filing date" means the day and time the document is recorded as received by the
146 office.

147 (12) "Interested person" means any person affected by or interested in a proposed rule,
148 amendment to an existing rule, or a nonsubstantive change made under Section
149 63G-3-402.

150 (13) "Office" means the Office of Administrative Rules created in Section 63G-3-401.

151 (14) "Order" means an agency action that determines the legal rights, duties, privileges,
152 immunities, or other interests of one or more specific persons, but not a class of persons.

153 (15) "Person" means any individual, partnership, corporation, association, governmental
154 entity, or public or private organization of any character other than an agency.

155 (16) "Publication" or "publish" means making a rule available to the public by including the
156 rule or a summary of the rule in the bulletin.

157 (17) "Publication date" means the inscribed date of the bulletin.

158 (18) "Register" may include an electronic database.

159 (19)(a) "Rule" means an agency's written statement that:

160 (i) is explicitly or implicitly required by state or federal statute or other applicable
161 law;

162 (ii) implements or interprets a state or federal legal mandate; and

163 (iii) applies to a class of persons or another agency.

164 (b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

(i) orders;

(ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;

(iii) the governor's executive orders or proclamations;

(iv) opinions issued by the attorney general's office;

(v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;

(vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or

(vii) an agency written statement that is in violation of any state or federal law.

(20) "Rule analysis" means the format prescribed by the office to summarize and analyze rules.

(21) "Small business" means a business employing fewer than 50 persons.

(22) "Substantial fiscal impact" means an anticipated fiscal impact of a proposed rule of at least \$1,000,000 over a five-year period.

~~[(22)]~~ (23) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Section 5. Section **63G-3-301** is amended to read:

63G-3-301 . Rulemaking procedure.

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

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

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the office to implement this chapter.

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

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

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

(c)(i) The office shall publish the information required under Subsection (8) on the

rule analysis and the text of the proposed rule in the next issue of the bulletin.

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

(iii) If the director determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

- (5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Planning and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:
- (a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;
 - (b) the individual fiscal impact that would incur to a ~~typical~~ single business for a one-year period;
 - (c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;
 - (d) the total cost that would incur to all impacted entities over a five-year period; and
 - (e) the department head's comments on the analysis.
- (6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:
- (a) establishing less stringent compliance or reporting requirements for small businesses;
 - (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (c) consolidating or simplifying compliance or reporting requirements for small businesses;
 - (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
 - (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.
- (7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

- (8) The rule analysis shall contain:
- (a) a summary of the rule or change;
 - (b) the purpose of the rule or reason for the change;
 - (c) the statutory authority or federal requirement for the rule;
 - (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may review the full text of the rule;
 - (g) how interested persons may present their views on the rule;
 - (h) the time and place of any scheduled public hearing;
 - (i) the name and telephone number of an agency employee who may be contacted about the rule;
 - (j) the name of the agency head or designee who authorized the rule;
 - (k) the date on which the rule may become effective following the public comment period;
 - (l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);
 - (m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and
 - (n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).
- (9)(a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
- (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.
- (10) ~~[A-]~~ An agency shall mail a copy of the rule analysis ~~[shall be mailed to all persons who have made timely request]~~ to a person that makes a timely request of the agency for advance notice of the agency's rulemaking proceedings and to any other person ~~[who]~~ that,

by statutory or federal mandate or in the judgment of the agency, should also receive notice.

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

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

(12)(a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is:

(i) no fewer than seven calendar days after the day on which the public comment period closes under Subsection (11); and

(ii) no more than 120 days after the day on which the rule is published.

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

(c) The notice of effective date may not provide for an effective date before the day on which the office receives the notice.

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

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days after the day on which the rule is published.

(13)(a)(i) ~~[Except as provided in Subsection (13)(d), before]~~ Before an agency enacts a rule, the agency shall submit to the appropriations subcommittee and interim committee with jurisdiction over the agency the agency's proposed rule for review, if the proposed rule, over a ~~[three-year]~~ five-year period, has a fiscal impact of more than~~[:]~~ \$1,000,000 statewide.

~~[(i) \$250,000 to a single person; or]~~

~~[(ii) \$7,500,000 to a group of persons.]~~

(ii) A proposed rule that is subject to Subsection (13)(e) is exempt from Subsection (13)(a)(i).

(b) An appropriations subcommittee or interim committee that reviews a rule ~~[submitted]~~ an agency submits under Subsection (13)(a) shall:

(i) before the review, directly inform the chairs of the Rules Review and General Oversight Committee of the coming review, including the date, time, and place of the review; and

(ii) after the review, directly inform the chairs of the Rules Review and General Oversight Committee of the outcome of the review, including any recommendation.

(c) An appropriations subcommittee or interim committee that reviews a rule ~~[submitted]~~ an agency submits under Subsection (13)(a) may recommend to the Rules Review and General Oversight Committee that the Rules Review and General Oversight Committee not recommend reauthorization of the rule in the legislation described in Section 63G-3-502.

(d) The agency shall calculate the substantial fiscal impact in accordance with Subsection (5).

(e) Unless an agency cannot implement a statute or execute a federally delegated authority without making a rule that is estimated to have substantial fiscal impact, the agency may not make the rule.

~~[(d)]~~ (f) The requirements described in ~~[Subsection (13)(a) does]~~ Subsections (13)(a) and (13)(b) do not apply to:

(i) the State Tax Commission; or

(ii) the State Board of Education.

(14)(a) As used in this Subsection (14), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.

(b) A state agency shall initiate rulemaking proceedings no later than 180 days after the day on which the statutory provision that specifically requires the rulemaking takes effect, except under Subsection (14)(c).

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

(d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (14)(b), the state agency shall appear before the legislative Rules Review and General Oversight Committee and provide the reasons for the delay.

Section 6. Section **72-16-203** is amended to read:

72-16-203 . Rulemaking.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the

provisions of this chapter the committee may make rules:

(a) establishing:

(i) the form of an application and a renewal application for:

(A) a qualified safety inspector certification;

(B) an annual amusement ride permit; and

(C) a multi-ride annual amusement ride permit;

(ii) the procedure to apply for and renew:

(A) a qualified safety inspector certification;

(B) an annual amusement ride permit; and

(C) a multi-ride annual amusement ride permit;

(iii) standards for a daily inspection under Section 72-16-302;

(iv) the form of a report of a reportable serious injury to the director;

(v) the procedure for reporting a reportable serious injury to the director;

(vi) the procedure to suspend and revoke:

(A) a qualified safety inspector certification;

(B) an annual amusement ride permit; and

(C) a multi-ride annual amusement ride permit;

(vii) a retention schedule that applies to each qualified safety inspector for records

related to a qualified safety inspector's duties under this chapter;

(viii) a retention schedule that applies to each owner-operator for records related to

an owner-operator's duties under this chapter;

(ix) fees;

(x) minimum insurance requirements for certified inspectors; and

(xi) fines or administrative penalties for lack of compliance with this chapter[-] ;

(b) regarding the experience required to obtain a qualified safety inspector certification under Subsection 72-16-303(3)(a); and

(c) adopting nationally recognized:

(i) amusement ride inspection standards; and

(ii) qualified safety inspector qualification standards.

(2) Notwithstanding Subsection [~~63G-3-301(13), no later than December 1, 2020,-]~~

63G-3-301(14), the committee shall initiate rulemaking proceedings, as defined in Section 63G-3-301, to make rules under this section.

Section 7. Effective Date.

This bill takes effect on May 7, 2025.