Administrative Rules: How State Agencies Implement Your Bill

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Rules have the effect of law -- citizens must obey rules just like statutes

Rules flesh out details not in legislation but needed to administer a program

Authority to make rules is delegated by the legislature to executive branch agencies

Legislature exercises oversight of rulemaking to ensure rules reflect legislative intent

Administrative Rules

“The Devil is in the Details”
Executive Branch executed law with no power to elaborate on statutes

In the 1930's, Congress and state legislatures began delegating more power to make or implement law to the executive branch

Initially, power grants were narrow and broader grants were struck down by courts

Eventually, broader grants became acceptable to the courts
Administrative Rulemaking: Utah’s History

1970's in Utah: concern grew over state agency rule authority -- rulemakers were not directly accountable to the public, who often did not know rules existed.


Committee had no enforcement powers

When it had concerns with a rule, committee could request that Legislative Management assign further study to the appropriate interim committee.
Administrative Rulemaking: Utah’s History, cont.

Law required that state agencies submit their rules to the Committee for review, but the Governor directed agencies to not comply.

Committee sent letters to each state agency informing them of the legal requirement; Governor then directed agencies to submit their rules but also to record the costs of compliance.

No uniform format for state agencies to send rules.
Administrative Rulemaking: Utah’s History, cont.

- **1985**: Legislation established the Office of Administrative Rules (later, “Division”)
- Charged with receiving and publishing each state agency’s rules
When Agencies are Required to Make Rules

★ Agency action:
★ Authorizes, requires, or prohibits an action;
★ Provides or prohibits a material benefit;
★ Affects a class of persons or another agency; and
★ Is explicitly or implicitly authorized by statute
★ When an agency issues a written interpretation of a state or federal legal mandate (Section 63G-3-201(2) and (3))
Agency Rulemaking Process

★ Prepare proposed rule based on legislation

★ Submit proposed rule to the Division of Administrative Rules (becomes public upon submission)

★ 30 day comment period -- begins the date of publication, not submission

★ Agency has 120 days from publication to make the proposed rule effective or start over

★ Agency must review rules every five years
Rules in Utah: Legislative Authority

- **1988**: Committee determined that broad state agency rulemaking grants should be repealed in favor of specific rulemaking grants
- Directed staff to work with agencies to determine what specific grants they needed to fulfill their responsibilities
- Legislation prepared for 1989 Session
Governor vowed to veto broad grant bill
Bill passed both houses
Compromise
 Governor would veto the legislation
 Legislature prepared a new bill requiring rules to be annually reauthorized by the Legislature
 Committee would not prepare a bill eliminating broad rulemaking grants for the 1990 Session
Rules in Utah: Legislative Authority, cont. (Sunset Bill)

- Annual reauthorizing legislation also lists any rules proposed to be repealed.
- Governor, if petitioned by a state agency whose rule was repealed, may reinstate the rule.
- Bill gave committee a means to address concerns with specific rules.
Rules Review

- From 1989-1993: Committee reviewed all agency rules.

- 2001-2002: Determined that a written statement of a state agency presented as a rule must go through the administrative rulemaking process, including public notice and a comment period, to be enforceable. -- Clarified in 2003 legislation.
Rules in Utah
Criminal Penalties

★ 2005
★ Identified numerous rulemaking grants authorizing agencies to impose criminal penalties
★ Determined that authority to subject a citizen to a criminal penalty that can include jail time should reside with the Legislature
★ Multi-year legislative effort removed agency authority to impose criminal penalties
★ Agencies permitted to retain criminal penalty authority if repeal resulted in:
★ loss of primacy over a federal program; or
★ loss of federal funding
My Bill: What do I Delegate to Rulemaking?

★ Can your bill be implemented on its face?
★ How much of your intent do you want to let the agency determine? Are there implementation steps that should/should not be left to the agency’s discretion?
★ Will your intent remain clear with the passage of time/changes in staff?
My Bill Needs a Rule

Avoiding Unintended Consequences

★ The more specific the rulemaking grant, the more clearly defined the rulemaking limits

★ Involvement in the rulewriting process

★ Committee Review

★ Agency must submit a proposed rule within 180 days of your bill’s effective date (Section 63G-3-301(13) -- November 8, 2009 (most))
Questions?

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