



Administrative Rules: How State Agencies Implement Your Bill

Office of Legislative Research and General Counsel
September 16, 2009

Administrative Rules

“The Devil is in the Details”

- ★ 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 Law - Brief History

- ★ 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

From **1973 to 1983**, state agencies filed an average of 632 rules annually (17,400 single-spaced pages)

1983: a Legislature veto override created the Rules Review Committee ("Administrative" added later)

Administrative Rulemaking: Utah's History, cont.

- ★ 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



Rules in Utah: Legislative Authority, cont. (1989 General 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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