

ADMINISTRATIVE RULES IMPACT COSTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; AMENDING THE RULEMAKING ACT TO REQUIRE AGENCIES TO CONSIDER AND COMMENT ON THE FISCAL IMPACT A RULE MAY HAVE ON BUSINESSES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53C-1-201, as last amended by Chapter 126, Laws of Utah 1997

63-46a-4, as last amended by Chapter 60, Laws of Utah 1996

63-46a-7, as last amended by Chapter 10, Laws of Utah 1997

63-46a-10.5, as last amended by Chapter 60, Laws of Utah 1996

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

Section 1. Section **53C-1-201** is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director.

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Chapter 3 of this title and Section 51-7-12.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as follows:

(i) (A) the director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63-2-304, for as long as is necessary to evaluate the proposals;

(B) the administration shall return the proposal to the party who submitted the proposal,

and incur no further duties under Title 63, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal;

(C) the administration shall classify the proposal pursuant to law if it decides to proceed with the proposal; and

(D) Section 63-2-403 does not apply during the review period;

(ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(A) the changes in business opportunities affecting the assets of the trust;

(B) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(C) the reasons the normal procedures under Section 63-46a-4 cannot be met without causing the loss of the specific opportunity;

(D) approval by at least five board members; and

(E) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4[(4)](7); and

(iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as follows:

(A) the board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the director of the Department of Human Resource Management prior to making such a recommendation. The positions of director, deputy director, assistant director, legal counsel appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1);

(B) salary for exempted positions, except for the director, shall be set by the director, after consultation with the director of the Department of Human Resource Management, within ranges

approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges; and

(C) the board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board; and

(iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption under Section 63-56-3 and simultaneous adoption of policies for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(b) (i) The board and director shall review the exceptions under Subsection (3)(a) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual General Session.

(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Graves Protection and Repatriation Act.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Subsection 53C-1-303(4)(c), the administration may become a member of a limited liability company under Title 48, Chapter 2b, Utah Limited Liability Company Act, and is considered a person under Subsection 48-2b-102(6) for such purposes.

Section 2. Section **63-46a-4** is amended to read:

63-46a-4. Rulemaking procedure.

(1) Except as provided in Sections 63-46a-6 and 63-46a-7, 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 division to implement this chapter.

(2) 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.

~~[(2)]~~ (3) (a) Each agency shall file its proposed rule and rule analysis with the division.

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

(ii) Alternatively, the repeal of an entire rule may be indicated by annotating the rule "repealed in its entirety" prominently on every page.

(c) (i) The division shall publish the information required under Subsection (3) 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 director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(4) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

~~[(3)]~~ (5) 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; and
 - (iii) other persons;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may inspect 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; [and]
 - (k) the date on which the rule may become effective following the public comment period[-];
- and

(l) comments by the department head on the fiscal impact the rule may have on businesses.

~~[(4)]~~ (6) (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 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.

~~[(5)]~~ (7) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

~~[(6)]~~ (8) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

~~[(7)]~~ (9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120 days after the publication date.

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

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

(d) The division 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 division within 120 days of publication.

Section 3. Section **63-46a-7** is amended to read:

63-46a-7. Exceptions to rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4 unless an agency finds that these procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements;

or

- (c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

- (i) a copy of the rule; and
- (ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63-46a-4[(2)](3).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4[(5)](7).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63-46a-4.

Section 4. Section **63-46a-10.5** is amended to read:

63-46a-10.5. Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

- (a) reorganize, reformat, and renumber the code;
- (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6; and
- (c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- (b) eliminating duplication;
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
- (d) eliminating all obsolete or redundant words;
- (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
- (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
- (g) updating or correcting annotations associated with a section, part, rule, or title; and
- (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

- (i) notice of the code reenactment;
- (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;

- (iii) locations where the proposed reenactment of the code may be inspected; and
- (iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

(i) make copies of their reenacted rules available for public inspection during regular business hours; and

(ii) comply with the requirements of Subsection 63-46a-4[(4)](7).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (3)(a).

(6) The division shall distribute complete copies of the proposed code reenactment without charge to:

- (a) state-designated repositories in Utah;
- (b) the Administrative Rules Review Committee; and
- (c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for a review of all agency rules.