

? Approved for Filing: KMW ?

? 01-02-01 2:08 PM ?

1 **ELECTRONIC GOVERNMENT SERVICES**
2 **AMENDMENTS - ADMINISTRATIVE RULES**
3 **AND PROCEDURES**

4 2001 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Richard M. Siddoway**

7 **This act modifies the Administrative Rulemaking Act and the Administrative Procedures Act**
8 **by amending statutory language to facilitate the electronic delivery of government services**
9 **by governmental agencies. The act provides definitions for purposes of electronic records**
10 **in governmental agencies. The act amends provisions relating to the cost of rulemaking**
11 **publications.**

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

13 AMENDS:

14 **26-1-5**, as enacted by Chapter 126, Laws of Utah 1981

15 **63-46a-2**, as last amended by Chapter 60, Laws of Utah 1996

16 **63-46a-3**, as last amended by Chapter 332, Laws of Utah 1998

17 **63-46a-4**, as last amended by Chapter 219, Laws of Utah 1998

18 **63-46a-6**, as last amended by Chapter 60, Laws of Utah 1996

19 **63-46a-7**, as last amended by Chapter 219, Laws of Utah 1998

20 **63-46a-10**, as last amended by Chapter 60, Laws of Utah 1996

21 **63-46a-10.5**, as last amended by Chapter 219, Laws of Utah 1998

22 **63-46a-11**, as last amended by Chapter 332, Laws of Utah 1998

23 **63-46a-12.1**, as enacted by Chapter 224, Laws of Utah 1990

24 **63-46b-3**, as last amended by Chapter 72, Laws of Utah 1988

25 **63-46b-6**, as last amended by Chapter 72, Laws of Utah 1988

26 **63-46b-9**, as enacted by Chapter 161, Laws of Utah 1987

27 **63-46b-10**, as last amended by Chapter 72, Laws of Utah 1988

HB0027

- 28 **63-46b-12**, as last amended by Chapter 72, Laws of Utah 1988
- 29 **63-46b-13**, as last amended by Chapter 72, Laws of Utah 1988
- 30 **63-46b-15**, as last amended by Chapter 164, Laws of Utah 1999

31 ENACTS:

- 32 **46-4-502**, Utah Code Annotated 1953
- 33 **63-46a-17**, Utah Code Annotated 1953
- 34 **63-46b-23**, Utah Code Annotated 1953

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

36 Section 1. Section **26-1-5** is amended to read:

37 **26-1-5. Rules of department.**

38 (1) Except in areas regulated by statutory committees created by this title, the department
39 shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this
40 title.

41 (2) Rules shall have the force and effect of law and may deal with matters which materially
42 affect the security of health or the preservation and improvement of public health in the state, and
43 any matters as to which jurisdiction is conferred upon the department by this title.

44 (3) Every rule adopted by the department pursuant to this section, or a committee
45 established under Section 26-1-7 or 26-1-7.5, shall be subject to ~~[the]~~ Title 63, Chapter 46a, Utah
46 Administrative Rulemaking Act~~[-]~~ and shall become effective at the time and in the manner
47 provided in ~~[the Utah Administrative Rulemaking Act, and shall be signed by the executive~~
48 ~~director]~~ that act.

49 ~~[(4) At the time a rule adopted by the department or a committee established by Section~~
50 ~~26-1-7 or 26-1-7.5, is filed with the state archivist it shall also be filed with the legislative research~~
51 ~~director.]~~

52 ~~[(5)]~~ (4) If, at the next general session of the legislature following the filing of a rule with
53 the legislative research director, the legislature passes a bill disapproving such rule, the rule shall
54 be null and void.

55 ~~[(6)]~~ (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, shall
56 not adopt a rule identical to a rule disapproved under Subsection ~~[(5)]~~ (4) of this section, before
57 the beginning of the next general session of the legislature following the general session at which
58 the rule was disapproved.

59 Section 2. Section **46-4-502** is enacted to read:

60 **46-4-502. Definitions.**

61 For purposes of this part:

62 (1) "Copy" may include an electronic version of a document.

63 (2) "Mail" may include sending a document electronically, provided that the recipient can
64 accept and process the electronic writing.

65 (3) "Mailing address" may include an electronic mailing address capable of receiving and
66 processing an electronic writing.

67 (4) "Sign" or "signature" may include any form of electronic signature authorized by the
68 governmental agency.

69 (5) "Written" or "writing" means information that is:

70 (a) inscribed on a tangible medium; or

71 (b) stored in an electronic or other medium and is retrievable.

72 Section 3. Section **63-46a-2** is amended to read:

73 **63-46a-2. Definitions.**

74 As used in this chapter:

75 (1) "Administrative record" means information an agency relies upon when making a rule
76 under this chapter including [~~copies of~~]:

77 (a) the proposed rule, change in the proposed rule, and the rule analysis form;

78 (b) the public comment received and recorded by the agency during the public comment
79 period;

80 (c) the agency's response to the public comment;

81 (d) the agency's analysis of the public comment; and

82 (e) the agency's report of its decision-making process.

83 (2) "Agency" means each state board, authority, commission, institution, department,
84 division, officer, or other state government entity other than the Legislature, its committees, the
85 political subdivisions of the state, or the courts, which is authorized or required by law to make
86 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or
87 perform other similar actions or duties delegated by law.

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

89 (4) "Catchline" means a short summary of each section, part, rule, or title of the code that

90 follows the section, part, rule, or title reference placed before the text of the rule and serves the
91 same function as boldface in legislation as described in Section 68-3-13.

92 (5) "Code" means the body of all effective rules as compiled and organized by the division
93 and entitled "Utah Administrative Code."

94 (6) "Director" means the director of the Division of Administrative Rules.

95 (7) "Division" means the Division of Administrative Rules.

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

97 (9) (a) "File" means to submit a document to the division as prescribed by [~~this chapter~~]
98 the division.

99 (b) "Filing date" means the day and time the document is recorded as received by the
100 division.

101 (10) "Interested person" means any person affected by or interested in a proposed rule,
102 amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

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

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

107 (13) (a) "Policy" means a statement applying to persons or agencies that:

- 108 (i) broadly prescribes a future course of action, guidelines, principles, or procedures; or
- 109 (ii) prescribes the internal management of an agency.

110 (b) A policy is a rule if it conforms to the definition of a rule.

111 (14) "Publication" or "publish" means making a rule available to the public by [~~printing~~]
112 including the rule or a summary of the rule in the bulletin.

113 (15) "Publication date" means the inscribed date of the bulletin.

114 (16) "Register" may include an electronic database.

115 [~~(16)~~] (17) (a) "Rule" means an agency's written statement that:

- 116 (i) is explicitly or implicitly required by state or federal statute or other applicable law;
- 117 (ii) has the effect of law;
- 118 (iii) implements or interprets a state or federal legal mandate; and
- 119 (iv) applies to a class of persons or another agency.

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

- 121 (c) "Rule" does not mean:
- 122 (i) orders;
- 123 (ii) unenforceable policies;
- 124 (iii) internal management policies of the agency that do not restrict the legal rights of a
- 125 class of persons or another agency;
- 126 (iv) the governor's executive orders or proclamations;
- 127 (v) opinions issued by the attorney general's office;
- 128 (vi) declaratory rulings issued by the agency according to ~~[the provisions of]~~ Section
- 129 63-46b-21 except as required by Section 63-46a-3; or
- 130 (vii) rulings by an agency in adjudicative proceedings, except as required by Subsection
- 131 63-46a-3(6).
- 132 ~~[(17)]~~ (18) "Rule analysis" means the format prescribed by the division to summarize and
- 133 analyze rules.
- 134 ~~[(18)]~~ (19) "Substantive change" means a change in a rule that affects the application or
- 135 results of agency actions.
- 136 Section 4. Section **63-46a-3** is amended to read:
- 137 **63-46a-3. When rulemaking is required.**
- 138 (1) Each agency shall:
- 139 (a) maintain a ~~[complete copy]~~ current version of its ~~[current]~~ rules; and
- 140 (b) make it available to the public for inspection during its regular business hours.
- 141 (2) In addition to other rulemaking required by law, each agency shall make rules when
- 142 agency action:
- 143 (a) authorizes, requires, or prohibits an action;
- 144 (b) provides or prohibits a material benefit;
- 145 (c) applies to a class of persons or another agency; and
- 146 (d) is explicitly or implicitly authorized by statute.
- 147 (3) Rulemaking is also required when an agency issues a written interpretation of a state
- 148 or federal legal mandate.
- 149 (4) Rulemaking is not required when:
- 150 (a) agency action applies only to internal agency management, inmates or residents of a
- 151 state correctional, diagnostic, or detention facility, persons under state legal custody, patients

152 admitted to a state hospital, members of the state retirement system, or students enrolled in a state
153 education institution;

154 (b) a standardized agency manual applies only to internal fiscal or administrative details
155 of governmental entities supervised under statute;

156 (c) an agency issues policy or other statements that are advisory, informative, or
157 descriptive, and do not conform to the requirements of Subsections (2) and (3); or

158 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all
159 nonsubstantive changes in a rule with the division.

160 (5) A rule shall enumerate any penalty authorized by statute that may result from its
161 violation.

162 (6) Each agency shall enact rules incorporating the principles of law not already in its rules
163 that are established by final adjudicative decisions within 120 days after the decision is announced
164 in its cases.

165 (7) (a) Each agency may enact a rule that incorporates by reference:

166 (i) all or any part of another code, rule, or regulation that has been adopted by a federal
167 agency, an agency or political subdivision of this state, an agency of another state, or by a
168 nationally-recognized organization or association;

169 (ii) state agency implementation plans mandated by the federal government for
170 participation in the federal program;

171 (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully
172 described in the rule, and are available for public inspection; or

173 (iv) lists, tables, illustrations, or similar materials that the director determines are too
174 expensive to reproduce in the administrative code.

175 (b) Rules incorporating materials by reference shall:

176 (i) be enacted according to the procedures outlined in this chapter;

177 (ii) state that the referenced material is incorporated by reference;

178 (iii) state the date, issue, or version of the material being incorporated; and

179 (iv) define specifically what material is incorporated by reference and identify any agency
180 deviations from it.

181 (c) The agency shall identify any substantive changes in the material incorporated by
182 reference by following the rulemaking procedures of this chapter.

183 (d) The agency shall maintain a complete and current copy of the referenced material
184 available for public ~~[inspection]~~ review at the agency and at the division.

185 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the
186 limits prescribed by statute or agency rule.

187 (b) An agency may enact a rule creating a justified exception to a rule.

188 (9) An agency may obtain assistance from the attorney general to ensure that its rules meet
189 legal and constitutional requirements.

190 Section 5. Section **63-46a-4** is amended to read:

191 **63-46a-4. Rulemaking procedure.**

192 (1) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or
193 repealing a rule agencies shall comply with:

194 (a) the requirements of this section;

195 (b) consistent procedures required by other statutes;

196 (c) applicable federal mandates; and

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

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

201 (3) (a) Each agency shall file its proposed rule and rule analysis with the division.

202 (b) ~~[(†)]~~ Rule amendments shall be marked with new language underlined and deleted
203 language struck out.

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

206 (c) (i) The division shall publish the information required under Subsection (3) on the rule
207 analysis and the text of the proposed rule in the next issue of the bulletin.

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

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

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

- 214 (5) The rule analysis shall contain:
- 215 (a) a summary of the rule or change;
- 216 (b) the purpose of the rule or reason for the change;
- 217 (c) the statutory authority or federal requirement for the rule;
- 218 (d) the anticipated cost or savings to:
- 219 (i) the state budget;
- 220 (ii) local governments; and
- 221 (iii) other persons;
- 222 (e) the compliance cost for affected persons;
- 223 (f) how interested persons may [~~inspect~~] review the full text of the rule;
- 224 (g) how interested persons may present their views on the rule;
- 225 (h) the time and place of any scheduled public hearing;
- 226 (i) the name and telephone number of an agency employee who may be contacted about
- 227 the rule;
- 228 (j) the name of the agency head or designee who authorized the rule;
- 229 (k) the date on which the rule may become effective following the public comment period;
- 230 and
- 231 (l) comments by the department head on the fiscal impact the rule may have on businesses.
- 232 (6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary
- 233 that generally includes the following:
- 234 (i) a summary of substantive provisions in the repealed rule which are eliminated from the
- 235 enacted rule; and
- 236 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 237 (b) The summary required under this subsection is to aid in review and may not be used
- 238 to contest any rule on the ground of noncompliance with the procedural requirements of this
- 239 chapter.
- 240 (7) A copy of the rule analysis shall be mailed to all persons who have made timely request
- 241 of the agency for advance notice of its rulemaking proceedings and to any other person who, by
- 242 statutory or federal mandate or in the judgment of the agency, should also receive notice.
- 243 (8) Following the publication date, the agency shall allow at least 30 days for public
- 244 comment on the rule.

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

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

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

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

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

256 Section 6. Section **63-46a-6** is amended to read:

257 **63-46a-6. Changes in rules.**

258 (1) (a) To change a proposed rule already published in the bulletin, an agency shall file
259 with the division:

260 (i) [~~a copy~~] the text of the changed rule; and

261 (ii) a rule analysis containing a description of the change and the information required by
262 Section 63-46a-4.

263 (b) A change to a proposed rule may not be filed more than 120 days after publication of
264 the rule being changed.

265 (c) The division shall publish the rule analysis for the changed rule in the bulletin.

266 (d) The changed proposed rule and its associated proposed rule will become effective on
267 a date specified by the agency, not less than 30 days or more than 120 days after publication of the
268 last change in proposed rule.

269 (e) A changed proposed rule and its associated proposed rule lapse if a notice of effective
270 date or another change to a proposed rule is not filed with the division within 120 days of
271 publication of the last change in proposed rule.

272 (2) If the rule change is nonsubstantive:

273 (a) the agency need not comply with the requirements of Subsection (1); and

274 (b) the agency shall notify the division of the change in writing.

275 (3) If the rule is effective, the agency shall amend the rule according to the procedures

276 specified in Section 63-46a-4.

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

278 **63-46a-7. Exceptions to rulemaking procedure.**

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

281 (a) cause an imminent peril to the public health, safety, or welfare;

282 (b) cause an imminent budget reduction because of budget restraints or federal
283 requirements; or

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

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

287 (i) [~~a copy~~] the text of the rule; and

288 (ii) a rule analysis that includes the specific reasons and justifications for its findings.

289 (b) The division shall publish the rule in the bulletin as provided in Subsection
290 63-46a-4(3).

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

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

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

296 Section 8. Section **63-46a-10** is amended to read:

297 **63-46a-10. Division of Administrative Rules -- Duties generally.**

298 (1) The Division of Administrative Rules shall:

299 (a) establish all filing, publication, and hearing procedures necessary to make rules under
300 this chapter;

301 (b) record in a register the receipt of all agency rules, rule analysis forms, and notices of
302 effective dates;

303 (c) make the register, copies of all proposed rules, and rulemaking documents available
304 for public inspection;

305 (d) publish all proposed rules, rule analyses, notices of effective dates, and review notices
306 in the bulletin at least monthly, except that the division may publish the complete text of any

307 proposed rule that the director determines is too long to print or too expensive to publish by
308 reference to ~~[a copy on file]~~ the text maintained by the division;

309 (e) compile, format, number, and index all effective rules in an administrative code, and
310 periodically publish that code and supplements or revisions to it;

311 (f) publish a digest~~[, at least monthly, summarizing]~~ of all rules and notices ~~[printed]~~
312 contained in the most recent bulletin;

313 (g) publish at least annually an index of all changes to the administrative code and the
314 effective date of each change;

315 (h) print, or contract to print, all rulemaking publications the division determines necessary
316 to implement this chapter;

317 (i) distribute without charge ~~[copies of]~~ the bulletin and administrative code to
318 state-designated repositories, the Administrative Rules Review Committee, the Office of
319 Legislative Research and General Counsel, and the two houses of the Legislature;

320 (j) distribute without charge ~~[copies of]~~ the digest and index to state legislators, agencies,
321 political subdivisions on request, and the Office of Legislative Research and General Counsel;

322 (k) distribute, at prices covering ~~[all]~~ publication costs, all paper rulemaking publications
323 to all other requesting persons and agencies;

324 (l) provide agencies assistance in rulemaking; and

325 (m) administer this chapter and require state agencies to comply with filing, publication,
326 and hearing procedures.

327 (2) The division may after notifying the agency make nonsubstantive changes to rules filed
328 with the division or published in the bulletin or code by:

329 (a) implementing a uniform system of formatting, punctuation, capitalization, organization,
330 numbering, and wording;

331 (b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering,
332 referencing, and wording;

333 (c) changing a catchline to more accurately reflect the substance of each section, part, rule,
334 or title;

335 (d) updating or correcting annotations associated with a section, part, rule, or title; and

336 (e) merging or determining priority of any amendment, enactment, or repeal to the same
337 rule or section made effective by an agency.

338 (3) In addition, the division may make the following nonsubstantive changes with the
339 concurrence of the agency:

- 340 (a) eliminate duplication within rules;
- 341 (b) eliminate obsolete and redundant words; and
- 342 (c) correcting defective or inconsistent section and paragraph structure in arrangement of
343 the subject matter of rules.

344 (4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after
345 publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes
346 in the bulletin. For each nonsubstantive change, the list shall include:

- 347 (a) the affected code citation;
- 348 (b) a brief description of the change; and
- 349 (c) the date the change was made.

350 (5) All funds appropriated or collected for publishing the division's publications shall be
351 nonlapsing.

352 Section 9. Section **63-46a-10.5** is amended to read:

353 **63-46a-10.5. Repeal and reenactment of Utah Administrative Code.**

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

357 (2) The division may:

- 358 (a) reorganize, reformat, and renumber the code;
- 359 (b) require each agency to review its rules and make any organizational or substantive
360 changes according to the requirements of Section 63-46a-6; and

361 (c) require each agency to prepare a brief summary of all substantive changes made by the
362 agency.

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

- 364 (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- 365 (b) eliminating duplication;
- 366 (c) correcting defective or inconsistent section and paragraph structure in arrangement of
367 the subject matter of rules;
- 368 (d) eliminating all obsolete or redundant words;

369 (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering,
370 referencing, and wording;

371 (f) changing a catchline to more accurately reflect the substance of each section, part, rule,
372 or title;

373 (g) updating or correcting annotations associated with a section, part, rule, or title; and

374 (h) merging or determining priority of any amendment, enactment, or repeal to the same
375 rule or section made effective by an agency.

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

378 (i) notice of the code reenactment;

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

381 (iii) locations where the proposed reenactment of the code may be [~~inspected~~] reviewed;
382 and

383 (iv) agency summaries of substantive changes in the reenacted code.

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

386 (i) make [~~copies~~] the text of their reenacted rules available;

387 (A) for public [inspection] review during regular business hours; and

388 (B) in an electronic version; and

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

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

392 (6) The division shall distribute complete [~~copies~~] text of the proposed code reenactment
393 without charge to:

394 (a) state-designated repositories in Utah;

395 (b) the Administrative Rules Review Committee; and

396 (c) the Office of Legislative Research and General Counsel.

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

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

402 Section 10. Section **63-46a-11** is amended to read:

403 **63-46a-11. Administrative Rules Review Committee.**

404 (1) (a) There is created an Administrative Rules Review Committee of ten permanent
405 members and four ex officio members.

406 (b) (i) The committee's permanent members shall be composed of five members of the
407 Senate, appointed by the president of the Senate, and five members of the House, appointed by the
408 speaker of the House, with no more than three senators and three representatives from the same
409 political party.

410 (ii) The permanent members shall convene at least once each month as a committee to
411 review new agency rules, amendments to existing agency rules, and repeals of existing agency
412 rules. Meetings may be suspended at the discretion of the committee chairs.

413 (iii) Members shall serve for two-year terms or until their successors are appointed.

414 (iv) A vacancy exists whenever a committee member ceases to be a member of the
415 Legislature, or when a member resigns from the committee. Vacancies shall be filled by the
416 appointing authority, and the replacement shall serve out the unexpired term.

417 (c) When the committee reviews existing rules, the committee's permanent members shall
418 invite the Senate and House chairmen of the standing committee and the Senate and House
419 chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing
420 rules are being reviewed to participate as nonvoting, ex officio members with the committee.

421 (d) Three representatives and three senators from the permanent members are a quorum for
422 the transaction of business at any meeting.

423 (2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee
424 at the same time public notice is given under Section 63-46a-4.

425 (3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

426 (b) The committee shall examine rules submitted by each agency to determine:

427 (i) whether or not they are authorized by statute;

428 (ii) whether or not they comply with legislative intent;

429 (iii) their impact on the economy and the government operations of the state and local
430 political subdivisions; and

431 (iv) their impact on affected persons.

432 (c) To carry out these duties, the committee may examine any other issues that it considers
433 necessary. The committee may also notify and refer rules to the chairmen of the interim committee
434 which has jurisdiction over a particular agency when the committee determines that an issue
435 involved in an agency's rules may be more appropriately addressed by that committee.

436 (d) In reviewing the rules, the committee shall follow generally accepted principles of
437 statutory construction.

438 (4) The committee may request that the Office of the Legislative Fiscal Analyst prepare
439 a fiscal note on any rule.

440 (5) In order to accomplish its oversight functions, the committee has all the powers granted
441 to legislative interim committees as set forth in Section 36-12-11.

442 (6) (a) The committee may prepare written findings of its review of each rule and may
443 include any recommendations, including legislative action.

444 (b) The committee shall provide to the agency that enacted the rule:

445 (i) ~~a copy of~~ its findings, if any; and

446 (ii) a request that the agency notify the committee of any changes it makes in the rule.

447 (c) The committee shall provide ~~a copy of~~ its findings to any member of the Legislature
448 and to any person affected by the rule who requests ~~a copy~~ the findings.

449 (d) The committee shall provide ~~a copy of~~ its findings to the presiding officers of both
450 the House and the Senate, Senate and House ~~chairmen~~ chair of the standing committee, and the
451 Senate and House chairmen of the Appropriation Subcommittee that have jurisdiction over the
452 agency whose rules are the subject of the findings.

453 (7) (a) The committee may submit a report on its review of state agency rules to each
454 member of the Legislature at each regular session.

455 (b) The report shall include:

456 (i) the findings and recommendations made by the committee under Subsection (6);

457 (ii) any action taken by an agency in response to committee recommendations; and

458 (iii) any recommendations by the committee for legislation.

459 Section 11. Section **63-46a-12.1** is amended to read:

460 **63-46a-12.1. Judicial challenge to administrative rules.**

461 (1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a

462 complaint with the county clerk in the district court where the person resides or in the district court
463 in Salt Lake County.

464 (b) Any person aggrieved by an agency's failure to comply with Section 63-46a-3 may
465 obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the
466 district court where the person resides or in the district court in Salt Lake County.

467 (2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this
468 section shall exhaust ~~[his]~~ that person's administrative remedies by complying with the
469 requirements of Section 63-46a-12 before filing the complaint.

470 (b) When seeking judicial review of a rule, the person need not exhaust ~~[his]~~ that person's
471 administrative remedies if:

472 (i) less than six months has passed since the date that the rule became effective and the
473 person had submitted verbal or written comments on the rule to the agency during the public
474 comment period;

475 (ii) a statute granting rulemaking authority expressly exempts rules made under authority
476 of that statute from compliance with Section 63-46a-12; or

477 (iii) compliance with Section 63-46a-12 would cause the person irreparable harm.

478 (3) (a) ~~[Besides]~~ In addition to the information required by the Utah Rules of Civil
479 Procedure, a complaint filed under this section shall contain:

480 (i) the name and mailing address of the plaintiff;

481 (ii) the name and mailing address of the defendant agency;

482 (iii) the name and mailing address of any other party joined in the action as a defendant;

483 (iv) ~~[a copy]~~ the text of the rule or proposed rule, if any;

484 (v) an allegation that ~~[he]~~ the person filing the complaint has either exhausted the
485 administrative remedies by complying with Section 63-46a-12 or met the requirements for waiver
486 of exhaustion of administrative remedies established by Subsection (2)(b);

487 (vi) the relief sought; and

488 (vii) factual and legal allegations supporting the relief sought.

489 (b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by the
490 Utah Rules of Civil Procedure.

491 (ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil
492 Procedures.

493 (iii) The agency shall file the administrative record of the rule, if any, with its responsive
494 pleading.

495 (4) The district court may grant relief to the petitioner by:

496 (a) declaring the rule invalid, if the court finds that:

497 (i) the rule violates constitutional or statutory law or the agency does not have legal
498 authority to make the rule;

499 (ii) the rule is not supported by substantial evidence when viewed in light of the whole
500 administrative record; or

501 (iii) the agency did not follow proper rulemaking procedure;

502 (b) declaring the rule nonapplicable to the petitioner;

503 (c) remanding the matter to the agency for compliance with proper rulemaking procedures
504 or further fact-finding;

505 (d) ordering the agency to comply with Section 63-46a-3;

506 (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action
507 that would cause irreparable harm to the petitioner; or

508 (f) any combination of Subsections (4)(a) through (e).

509 (5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may
510 review and act on a complaint under this section whether or not the plaintiff has requested the
511 agency review under Section 63-46a-12.

512 Section 12. Section **63-46a-17** is enacted to read:

513 **63-46a-17. Electronic records and conversion of written records by governmental**
514 **agencies.**

515 A governmental agency may make rules regarding electronic records and conversion of
516 written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government
517 Agencies.

518 Section 13. Section **63-46b-3** is amended to read:

519 **63-46b-3. Commencement of adjudicative proceedings.**

520 (1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings shall
521 be commenced by either:

522 (a) a notice of agency action, if proceedings are commenced by the agency; or

523 (b) a request for agency action, if proceedings are commenced by persons other than the

524 agency.

525 (2) A notice of agency action shall be filed and served according to the following
526 requirements:

527 (a) The notice of agency action shall be in writing, signed by a presiding officer, and shall
528 include:

529 (i) the names and mailing addresses of all persons to whom notice is being given by the
530 presiding officer, and the name, title, and mailing address of any attorney or employee who has
531 been designated to appear for the agency;

532 (ii) the agency's file number or other reference number;

533 (iii) the name of the adjudicative proceeding;

534 (iv) the date that the notice of agency action was mailed;

535 (v) a statement of whether the adjudicative proceeding is to be conducted informally
536 according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally
537 according to the provisions of Sections 63-46b-6 to 63-46b-11;

538 (vi) if the adjudicative proceeding is to be formal, a statement that each respondent must
539 file a written response within 30 days of the mailing date of the notice of agency action;

540 (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or
541 rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for
542 which the hearing is to be held, and a statement that a party who fails to attend or participate in the
543 hearing may be held in default;

544 (viii) if the adjudicative proceeding is to be informal and a hearing is required by statute
545 or rule, or if a hearing is permitted by rule and may be requested by a party within the time
546 prescribed by rule, a statement that the parties may request a hearing within the time provided by
547 the agency's rules;

548 (ix) a statement of the legal authority and jurisdiction under which the adjudicative
549 proceeding is to be maintained;

550 (x) the name, title, mailing address, and telephone number of the presiding officer; and

551 (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by
552 the presiding officer, the questions to be decided.

553 (b) When adjudicative proceedings are commenced by the agency, the agency shall:

554 (i) mail the notice of agency action to each party;

555 (ii) publish the notice of agency action, if required by statute; and
556 (iii) mail the notice of agency action to any other person who has a right to notice under
557 statute or rule.

558 (3) (a) Where the law applicable to the agency permits persons other than the agency to
559 initiate adjudicative proceedings, that person's request for agency action shall be in writing and
560 signed by the person invoking the jurisdiction of the agency, or by ~~his~~ that person's
561 representative, and shall include:

562 (i) the names and addresses of all persons to whom a copy of the request for agency action
563 is being sent;

564 (ii) the agency's file number or other reference number, if known;

565 (iii) the date that the request for agency action was mailed;

566 (iv) a statement of the legal authority and jurisdiction under which agency action is
567 requested;

568 (v) a statement of the relief or action sought from the agency; and

569 (vi) a statement of the facts and reasons forming the basis for relief or agency action.

570 (b) The person requesting agency action shall file the request with the agency and shall
571 ~~send~~ mail a copy ~~by mail~~ to each person known to have a direct interest in the requested agency
572 action.

573 (c) An agency may, by rule, prescribe one or more ~~printed~~ forms eliciting the information
574 required by Subsection (3)(a) to serve as the request for agency action when completed and filed
575 by the person requesting agency action.

576 (d) The presiding officer shall promptly review a request for agency action and shall:

577 (i) notify the requesting party in writing that the request is granted and that the adjudicative
578 proceeding is completed;

579 (ii) notify the requesting party in writing that the request is denied and, if the proceeding
580 is a formal adjudicative proceeding, that the party may request a hearing before the agency to
581 challenge the denial; or

582 (iii) notify the requesting party that further proceedings are required to determine the
583 agency's response to the request.

584 (e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required
585 by Subsection 63-46b-5(1)(i) in addition to disclosure required by Subsection (3)(d)(ii) ~~of this~~

586 section].

587 (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except
588 that any notice required by Subsection (3)(d)(iii) may be published when publication is required
589 by statute.

590 (iii) The notice required by Subsection (3)(d)(iii) shall:

591 (A) give the agency's file number or other reference number;

592 (B) give the name of the proceeding;

593 (C) designate whether the proceeding is one of a category to be conducted informally
594 according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with citation
595 to the applicable rule authorizing that designation, or formally according to ~~the provisions of~~
596 Sections 63-46b-6 to 63-46b-11;

597 (D) in the case of a formal adjudicative proceeding, and where respondent parties are
598 known, state that a written response must be filed within 30 days of the date of the agency's notice
599 if mailed, or within 30 days of the last publication date of the agency's notice, if published;

600 (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an
601 informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose
602 for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled
603 and noticed hearing may be held in default;

604 (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or
605 rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed
606 by rule, state the parties' right to request a hearing and the time within which a hearing may be
607 requested under the agency's rules; and

608 (G) give the name, title, mailing address, and telephone number of the presiding officer.

609 (4) When initial agency determinations or actions are not governed by this chapter, but
610 agency and judicial review of those initial determinations or actions are subject to the provisions
611 of this chapter, the request for agency action seeking review must be filed with the agency within
612 the time prescribed by the agency's rules.

613 (5) For designated classes of adjudicative proceedings, an agency may, by rule, provide
614 for a longer response time than allowed by this section, and may provide for a shorter response
615 time if required or permitted by applicable federal law.

616 (6) Unless the agency provides otherwise by rule or order, applications for licenses filed

617 under authority of Title 32A, Chapters 3, Packaging Agencies, 4, Public Liquor License, and 5,
618 Private Club Liquor License are not considered to be a request for agency action under this chapter.

619 (7) If the purpose of the adjudicative proceeding is to award a license or other privilege
620 as to which there are multiple competing applicants, the agency may, by rule or order, conduct a
621 single adjudicative proceeding to determine the award of that license or privilege.

622 Section 14. Section **63-46b-6** is amended to read:

623 **63-46b-6. Procedures for formal adjudicative proceedings -- Responsive pleadings.**

624 (1) In all formal adjudicative proceedings, unless modified by rule according to Subsection
625 63-46b-3(5), the respondent, if any, shall file and serve a written response signed by the respondent
626 or ~~his~~ the respondent's representative within 30 days of the mailing date or last date of
627 publication of the notice of agency action or the notice under Subsection 63-46b-3(3)(d), which
628 shall include:

- 629 (a) the agency's file number or other reference number;
630 (b) the name of the adjudicative proceeding;
631 (c) a statement of the relief that the respondent seeks;
632 (d) a statement of the facts; and
633 (e) a statement summarizing the reasons that the relief requested should be granted.

634 ~~(2) [The response shall be filed with the agency and one copy shall be sent by mail to each~~
635 ~~party] The respondent shall send a copy of the response filed under Subsection (1) to each party.~~

636 (3) The presiding officer, or the agency by rule, may permit or require pleadings in
637 addition to the notice of agency action, the request for agency action, and the response. All
638 ~~[papers]~~ documents permitted or required to be filed shall be filed with the agency and one copy
639 shall be sent ~~[by mail]~~ to each party.

640 Section 15. Section **63-46b-9** is amended to read:

641 **63-46b-9. Procedures for formal adjudicative proceedings -- Intervention.**

642 (1) Any person not a party may file a signed, written petition to intervene in a formal
643 adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy
644 of the petition to each party. The petition shall include:

- 645 (a) the agency's file number or other reference number;
646 (b) the name of the proceeding;
647 (c) a statement of facts demonstrating that the petitioner's legal rights or interests are

648 substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an
649 intervenor under any provision of law; and

650 (d) a statement of the relief that the petitioner seeks from the agency.

651 (2) The presiding officer shall grant a petition for intervention if ~~[he]~~ the presiding officer
652 determines that:

653 (a) the petitioner's legal interests may be substantially affected by the formal adjudicative
654 proceeding; and

655 (b) the interests of justice and the orderly and prompt conduct of the adjudicative
656 proceedings will not be materially impaired by allowing the intervention.

657 (3) (a) Any order granting or denying a petition to intervene shall be in writing and ~~[sent~~
658 ~~by mail]~~ mailed to the petitioner and each party.

659 (b) An order permitting intervention may impose conditions on the intervenor's
660 participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt
661 conduct of the adjudicative proceeding.

662 (c) The presiding officer may impose the conditions at any time after the intervention.

663 Section 16. Section **63-46b-10** is amended to read:

664 **63-46b-10. Procedures for formal adjudicative proceedings -- Orders.**

665 In formal adjudicative proceedings:

666 (1) Within a reasonable time after the hearing, or after the filing of any post-hearing
667 ~~[papers]~~ documents permitted by the presiding officer, or within the time required by any
668 applicable statute or rule of the agency, the presiding officer shall sign and issue an order that
669 includes:

670 (a) a statement of the presiding officer's findings of fact based exclusively on the evidence
671 of record in the adjudicative proceedings or on facts officially noted;

672 (b) a statement of the presiding officer's conclusions of law;

673 (c) a statement of the reasons for the presiding officer's decision;

674 (d) a statement of any relief ordered by the agency;

675 (e) a notice of the right to apply for reconsideration;

676 (f) a notice of any right to administrative or judicial review of the order available to
677 aggrieved parties; and

678 (g) the time limits applicable to any reconsideration or review.

679 (2) The presiding officer may use [~~his~~] the presiding officer's experience, technical
680 competence, and specialized knowledge to evaluate the evidence.

681 (3) [~~No~~] A finding of fact that was contested may not be based solely on hearsay evidence
682 unless that evidence is admissible under the Utah Rules of Evidence.

683 (4) This section does not preclude the presiding officer from issuing interim orders to:

684 (a) notify the parties of further hearings;

685 (b) notify the parties of provisional rulings on a portion of the issues presented; or

686 (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

687 Section 17. Section **63-46b-12** is amended to read:

688 **63-46b-12. Agency review -- Procedure.**

689 (1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to
690 seek review of an order by the agency or by a superior agency, the aggrieved party may file a
691 written request for review within 30 days after the issuance of the order with the person or entity
692 designated for that purpose by the statute or rule.

693 (b) The request shall:

694 (i) be signed by the party seeking review;

695 (ii) state the grounds for review and the relief requested;

696 (iii) state the date upon which it was mailed; and

697 (iv) be [~~sent by mail~~] mailed to the presiding officer and to each party.

698 (2) (a) Within 15 days of the mailing date of the request for review, or within the time
699 period provided by agency rule, whichever is longer, any party may file a response with the person
700 designated by statute or rule to receive the response. [~~One copy of the response shall be sent by~~
701 ~~mail~~]

702 (b) The party who files a response under Subsection (2)(a) shall mail a copy of the
703 response to each of the parties and to the presiding officer.

704 (3) If a statute or the agency's rules require review of an order by the agency or a superior
705 agency, the agency or superior agency shall review the order within a reasonable time or within
706 the time required by statute or the agency's rules.

707 (4) To assist in review, the agency or superior agency may by order or rule permit the
708 parties to file briefs or other [~~papers~~] documents, or to conduct oral argument.

709 (5) Notice of hearings on review shall be mailed to all parties.

710 (6) (a) Within a reasonable time after the filing of any response, other filings, or oral
711 argument, or within the time required by statute or applicable rules, the agency or superior agency
712 shall issue a written order on review.

713 (b) The order on review shall be signed by the agency head or by a person designated by
714 the agency for that purpose and shall be mailed to each party.

715 (c) The order on review shall contain:

716 (i) a designation of the statute or rule permitting or requiring review;

717 (ii) a statement of the issues reviewed;

718 (iii) findings of fact as to each of the issues reviewed;

719 (iv) conclusions of law as to each of the issues reviewed;

720 (v) the reasons for the disposition;

721 (vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or
722 modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

723 (vii) a notice of any right of further administrative reconsideration or judicial review
724 available to aggrieved parties; and

725 (viii) the time limits applicable to any appeal or review.

726 Section 18. Section **63-46b-13** is amended to read:

727 **63-46b-13. Agency review -- Reconsideration.**

728 (1) (a) Within 20 days after the date that an order is issued for which review by the agency
729 or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise
730 constitute final agency action, any party may file a written request for reconsideration with the
731 agency, stating the specific grounds upon which relief is requested.

732 (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for
733 seeking judicial review of the order.

734 (2) The request for reconsideration shall be filed with the agency and one copy shall be
735 ~~[sent by mail]~~ mailed to each party by the person making the request.

736 (3) (a) The agency head, or a person designated for that purpose, shall issue a written order
737 granting the request or denying the request.

738 (b) If the agency head or the person designated for that purpose does not issue an order
739 within 20 days after the filing of the request, the request for reconsideration shall be considered
740 to be denied.

741 Section 19. Section **63-46b-15** is amended to read:

742 **63-46b-15. Judicial review -- Informal adjudicative proceedings.**

743 (1) (a) The district courts have jurisdiction to review by trial de novo all final agency
744 actions resulting from informal adjudicative proceedings, except that the juvenile courts have
745 jurisdiction over all state agency actions relating to:

746 (i) the removal or placement of children in state custody;

747 (ii) the support of children under Subsection (1)(a)(i) as determined administratively under
748 Section 78-3a-906; and

749 (iii) substantiated findings of abuse or neglect pursuant to Section 62A-4a-116.5.

750 (b) Venue for judicial review of informal adjudicative proceedings shall be as provided
751 in the statute governing the agency or, in the absence of such a venue provision, in the county
752 where the petitioner resides or maintains [his] the petitioner's principal place of business.

753 (2) (a) The petition for judicial review of informal adjudicative proceedings shall be a
754 complaint governed by the Utah Rules of Civil Procedure and shall include:

755 (i) the name and mailing address of the party seeking judicial review;

756 (ii) the name and mailing address of the respondent agency;

757 (iii) the title and date of the final agency action to be reviewed, together with a [~~duplicate~~]
758 copy, summary, or brief description of the agency action;

759 (iv) identification of the persons who were parties in the informal adjudicative proceedings
760 that led to the agency action;

761 (v) a copy of the written agency order from the informal proceeding;

762 (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial
763 review;

764 (vii) a request for relief, specifying the type and extent of relief requested; and

765 (viii) a statement of the reasons why the petitioner is entitled to relief.

766 (b) All additional pleadings and proceedings in the district court are governed by the Utah
767 Rules of Civil Procedure.

768 (3) (a) The district court, without a jury, shall determine all questions of fact and law and
769 any constitutional issue presented in the pleadings.

770 (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

771 Section 20. Section **63-46b-23** is enacted to read:

772 **63-46b-23. Electronic records and conversion of written records by governmental**
773 **agencies.**

774 A governmental agency may make rules regarding electronic records and conversion of
775 written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government
776 Agencies.

Legislative Review Note
as of 11-28-00 8:58 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Public Utilities and Technology Interim Committee recommended this bill.