

1 **UTAH ADMINISTRATIVE RULEMAKING ACT**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Wayne A. Harper**

6

7 **LONG TITLE**

8 **General Description:**

9 This bill requires state agencies to provide an electronic copy of a proposed rule to the
10 sponsor of the bill that provided the authorization for the proposed rule.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires state agencies that file a proposed rule with the Division of Administrative
14 Rules to send an electronic copy to the sponsor of the legislation that established the
15 requirement and that is cited by the agency as authority for the rule;

16 ▶ requires that the agency send the electronic copy of the proposed rule to the bill
17 sponsor on the same day as the filing of the proposed rule with the Division of
18 Administrative Rules and provides an alternative regarding emergency rules;

19 ▶ requires that the electronic copy of the rule be sent only if the legislation creates an
20 express, implied, or perceived obligation on the part of an agency to draft a rule, is
21 cited by the agency as authority for the rule, and is enacted no more than two years
22 prior to the date that the rule was submitted to the division; and

23 ▶ clarifies that members of the Legislature that are concerned with the manner in
24 which a bill is being implemented may express those concerns to the agency that
25 made the rule and request a hearing before the Legislature's Administrative Rules
26 Review Committee.

27 **Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53C-1-201**, as last amended by Chapter 192, Laws of Utah 2003

34 **63-46a-4**, as last amended by Chapter 138, Laws of Utah 2001

35 **63-46a-7**, as last amended by Chapter 138, Laws of Utah 2001

36 **63-46a-10**, as last amended by Chapter 138, Laws of Utah 2001

37 **63-46a-10.5**, as last amended by Chapter 138, Laws of Utah 2001



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

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

41 **53C-1-201. Creation of administration -- Purpose -- Director.**

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

44 (b) The administration shall manage all school and institutional trust lands and assets
45 within the state, except as otherwise provided in Title 53C, Chapter 3 [of this title], Deposit
46 and Allocation of Revenue from Trust Lands, and Section 51-7-12.

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

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

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

54 (B) the administration shall return the proposal to the party who submitted the
55 proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access
56 and Management Act, if the administration determines not to proceed with the proposal;

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

- 59 (D) Section 63-2-403 does not apply during the review period;
- 60 (ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah
61 Administrative Rulemaking Act, except that the director, with the board's approval, may
62 establish a procedure for the expedited approval of rules, based on written findings by the
63 director showing:
- 64 (A) the changes in business opportunities affecting the assets of the trust;
- 65 (B) the specific business opportunity arising out of those changes which may be lost
66 without the rule or changes to the rule;
- 67 (C) the reasons the normal procedures under Section 63-46a-4 cannot be met without
68 causing the loss of the specific opportunity;
- 69 (D) approval by at least five board members; and
- 70 (E) that the director has filed a copy of the rule and a rule analysis, stating the specific
71 reasons and justifications for its findings, with the Division of Administrative Rules and
72 notified legislators and interested parties as provided in [~~Subsection~~] Subsections
73 63-46a-4[~~(7)~~](3) and (8); and
- 74 (iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel
75 Management Act, except as follows:
- 76 (A) the board may approve, upon recommendation of the director, that exemption for
77 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
78 the administration to efficiently fulfill its responsibilities under the law. The director shall
79 consult with the director of the Department of Human Resource Management prior to making
80 such a recommendation. The positions of director, deputy director, assistant director, legal
81 counsel appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs
82 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1);
- 83 (B) salary for exempted positions, except for the director, shall be set by the director,
84 after consultation with the director of the Department of Human Resource Management, within
85 ranges approved by the board. The board and director shall consider salaries for similar
86 positions in private enterprise and other public employment when setting salary ranges; and
- 87 (C) the board may create an annual incentive and bonus plan for the director and other
88 administration employees designated by the board, based upon the attainment of financial
89 performance goals and other measurable criteria defined and budgeted in advance by the board;

90 and

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

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

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

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

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

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

109 (6) In connection with joint ventures for the development of trust lands and minerals
110 approved by the board under Subsections 53C-1-303(4)(c) and 53C-2-401(1)(d), the
111 administration may become a member of a limited liability company under Title 48, Chapter
112 2c, Utah Revised Limited Liability Company Act, and is considered a person under Section
113 48-2c-102 for [~~such~~] these purposes.

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

115 **63-46a-4. Rulemaking procedure.**

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

118 (a) the requirements of this section;

119 (b) consistent procedures required by other statutes;

120 (c) applicable federal mandates; and

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

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

125 (3) (a) (i) On the same day the agency files a proposed rule with the division, the
126 agency shall provide an electronic copy of the proposed rule and the rule analysis required
127 under this section to the sponsor of the legislation that the agency cites as the statutory
128 authority for the proposed rule, as required in Subsection (3)(b), except under Subsection
129 63-46a-7(2)(b).

130 (ii) If the sponsor of the legislation determines that the proposed rule, in whole or in
131 part, does not comply with the intent of the legislation, the legislator may meet with or provide
132 oral or written comment to the agency that filed the proposed rule.

133 (iii) The sponsor may, at any time, contact the Administrative Rules Review
134 Committee of the Legislature and request a hearing before that committee to address the
135 sponsor's concerns regarding the rule.

136 (b) The proposed rule shall be sent to the sponsor of cited legislation if the legislation:

137 (i) creates an express, implied, or perceived obligation on the part of any agency to
138 draft a rule;

139 (ii) is cited by the agency as authority for the rule; and

140 (iii) was enacted no more than two years prior to the date that the rule is submitted to
141 the division.

142 [~~3~~] (4) (a) Each agency shall file its proposed rule and rule analysis with the division.

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

145 (c) (i) The division shall publish the information required under this Subsection [~~3~~]
146 (4) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

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

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

152 [~~(4)~~] (5) Prior to filing a rule with the division, the department head shall consider and
153 comment on the fiscal impact a rule may have on businesses.

154 [~~(5)~~] (6) The rule analysis shall contain:

155 (a) a summary of the rule or change;

156 (b) the purpose of the rule or reason for the change, including the bill number of the
157 legislation the rule is intended to implement;

158 (c) the statutory authority or federal requirement for the rule;

159 (d) the anticipated cost or savings to:

160 (i) the state budget;

161 (ii) local governments; and

162 (iii) other persons;

163 (e) the compliance cost for affected persons;

164 (f) how interested persons may review the full text of the rule;

165 (g) how interested persons may present their views on the rule;

166 (h) the time and place of any scheduled public hearing;

167 (i) the name and telephone number of an agency employee who may be contacted
168 about the rule;

169 (j) the name of the agency head or designee who authorized the rule;

170 (k) the date on which the rule may become effective following the public comment
171 period; and

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

174 [~~(6)~~] (7) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
175 summary that generally includes the following:

176 (i) a summary of substantive provisions in the repealed rule which are eliminated from
177 the enacted rule; and

178 (ii) a summary of new substantive provisions appearing only in the enacted rule.

179 (b) The summary required under this Subsection [~~(6)~~] (7) is to aid in review and may
180 not be used to contest any rule on the ground of noncompliance with the procedural
181 requirements of this chapter.

182 [~~(7)~~] (8) [~~A~~] The agency shall mail a copy of the rule analysis [~~shall be mailed~~] to:

183 (a) all persons who have made timely request of the agency for advance notice of its
184 rulemaking proceedings [~~and to~~];

185 (b) any other person who, by statutory or federal mandate or in the judgment of the
186 agency, should also receive notice[-]; and

187 the sponsor of legislation the rule is intended to implement, provided that the
188 legislation was passed within the past two years.

189 [~~(8)~~] (9) Following the publication date, the agency shall allow at least 30 days for
190 public comment on the rule.

191 [~~(9)~~] (10) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule
192 becomes effective on any date specified by the agency that is no fewer than 30 nor more than
193 120 days after the publication date.

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

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

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

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

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

203 **63-46a-7. Emergency rulemaking procedure.**

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

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

207 (b) cause an imminent budget reduction because of budget restraints or federal
208 requirements; or

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

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

212 (i) the text of the rule; and

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

214 (b) The agency shall provide an electronic copy of an emergency rule filed with the
215 division in accordance with this section to the sponsor of legislation identified in Subsection
216 63-46a-4(3)(a)(i) at the time the emergency rule is filed with the division.

217 ~~(b)~~ (c) The division shall publish the rule in the bulletin as provided in Subsection
218 63-46a-4~~(3)~~(4).

219 ~~(c)~~ (d) The agency shall notify interested persons as provided in Subsection
220 63-46a-4~~(7)~~(8).

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

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

225 Section 4. Section **63-46a-10** is amended to read:

226 **63-46a-10. Division of Administrative Rules -- Duties generally.**

227 (1) The Division of Administrative Rules shall:

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

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

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

234 (d) publish all proposed rules, rule analyses, notices of effective dates, and review
235 notices in the bulletin at least monthly, except that the division may publish the complete text
236 of any proposed rule that the director determines is too long to print or too expensive to publish
237 by reference to the text maintained by the division;

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

240 (f) publish a digest of all rules and notices contained in the most recent bulletin;

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

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

245 (i) distribute without charge the bulletin and administrative code to state-designated
246 repositories, the Administrative Rules Review Committee, the Office of Legislative Research
247 and General Counsel, and the two houses of the Legislature;

248 (j) distribute without charge the digest and index to state legislators, agencies, political
249 subdivisions on request, and the Office of Legislative Research and General Counsel;

250 (k) distribute, at prices covering publication costs, all paper rulemaking publications to
251 all other requesting persons and agencies;

252 (l) after every general election, notify legislators of the division's publications and how
253 they may obtain a copy of each;

254 ~~(l)~~ (m) provide agencies assistance in rulemaking; and

255 ~~(m)~~ (n) administer this chapter and require state agencies to comply with filing,
256 publication, and hearing procedures.

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

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

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

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

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

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

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

270 (a) eliminate duplication within rules;

271 (b) eliminate obsolete and redundant words; and

272 (c) correcting defective or inconsistent section and paragraph structure in arrangement
273 of the subject matter of rules.

274 (4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after
275 publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes

276 in the bulletin. For each nonsubstantive change, the list shall include:

- 277 (a) the affected code citation;
- 278 (b) a brief description of the change; and
- 279 (c) the date the change was made.

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

282 Section 5. Section **63-46a-10.5** is amended to read:

283 **63-46a-10.5. Repeal and reenactment of Utah Administrative Code.**

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

287 (2) The division may:

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

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

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

- 294 (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- 295 (b) eliminating duplication;
- 296 (c) correcting defective or inconsistent section and paragraph structure in arrangement

297 of the subject matter of rules;

298 (d) eliminating all obsolete or redundant words;

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

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

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

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

306 (4) (a) To inform the public about the proposed code reenactment, the division shall

307 publish in the bulletin:

308 (i) notice of the code reenactment;

309 (ii) the date, time, and place of a public hearing where members of the public may

310 comment on the proposed reenactment of the code;

311 (iii) locations where the proposed reenactment of the code may be reviewed; and

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

313 (b) To inform the public about substantive changes in agency rules contained in the

314 proposed reenactment, each agency shall:

315 (i) make the text of their reenacted rules available:

316 (A) for public review during regular business hours; and

317 (B) in an electronic version; and

318 (ii) comply with the requirements of Subsection 63-46a-4~~(7)~~(8).

319 (5) The division shall hold a public hearing on the proposed code reenactment no fewer

320 than 30 days nor more than 45 days after the publication required by Subsection ~~(3)~~ (4)(a).

321 (6) The division shall distribute complete text of the proposed code reenactment

322 without charge to:

323 (a) state-designated repositories in Utah;

324 (b) the Administrative Rules Review Committee; and

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

326 (7) The former code is repealed and the reenacted code is effective at noon on a date

327 designated by the division that is not fewer than 45 days nor more than 90 days after the

328 publication date required by this section.

329 (8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for

330 a review of all agency rules.

Legislative Review Note
as of 1-16-04 10:38 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0091

Utah Administrative Rulemaking Act Amendments

23-Jan-04

3:06 PM

State Impact

Can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst