

ADMINISTRATIVE PROCEDURES ACT

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies the scope and applicability provision of the Administrative Procedures Act.

Highlighted Provisions:

This bill:

- ▶ modifies the exceptions provision to the applicability of the Administrative Procedures Act by including the issuance of a citation or assessment under several chapters of Title 58, Occupations and Professions as new exceptions; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-46b-1, as last amended by Chapters 114 and 245, Laws of Utah 2003

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

Section 1. Section **63-46b-1** is amended to read:

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this

chapter apply to every agency of the state and govern:

(a) ~~[all]~~ state agency ~~[actions]~~ action that ~~[determine]~~ determines the legal rights, duties, privileges, immunities, or other legal interests of ~~[one or more]~~ an identifiable ~~[persons]~~ person, including ~~[all]~~ agency ~~[actions]~~ action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of ~~[these actions]~~ the action.

(2) This chapter does not govern:

(a) the ~~[procedures]~~ procedure for making agency rules, or ~~[the]~~ judicial review of ~~[those procedures]~~ the procedure or rules;

(b) the issuance of ~~[any]~~ a notice of a deficiency in the payment of a tax, the decision to waive ~~[penalties]~~ a penalty or interest on taxes, the imposition of and ~~[penalties]~~ penalty or interest on taxes, or the issuance of ~~[any]~~ a tax assessment, except that this chapter governs ~~[any]~~ an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of ~~[those actions]~~ the action;

(c) state agency ~~[actions]~~ action relating to extradition, to the granting of ~~[pardons]~~ a pardon or parole, ~~[commutations]~~ a commutation or ~~[terminations]~~ termination of ~~[sentences]~~ a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of ~~[grievances]~~ a grievance of, supervision of, confinement of, or the treatment of ~~[inmates or residents of any]~~ an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or ~~[persons]~~ a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or ~~[persons]~~ a person on probation or parole, or judicial review of ~~[those actions]~~ the action;

(d) state agency ~~[actions]~~ action to evaluate, discipline, employ, transfer, reassign, or promote ~~[students]~~ a student or ~~[teachers]~~ teacher in ~~[any]~~ a school or educational institution, or judicial review of ~~[those actions]~~ the action;

(e) ~~[applications]~~ an application for employment and internal personnel ~~[actions]~~ action within an agency concerning its own employees, or judicial review of ~~[those actions]~~ the action;

(f) the issuance of ~~[any]~~ a citation or assessment under Title 34A, Chapter 6, Utah

Occupational Safety and Health Act, and Title 58, Chapter 3a, Architect Licensing Act, Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional Land Surveyor Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55, Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and Chapter 76, Professional Geologist Licensing Act, except that this chapter governs [~~any~~] an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency [~~actions~~] action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of [~~those actions~~] the action;

(h) state agency [~~actions~~] action under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions[; ~~and~~], Title 7, Chapter 2, Possession of Depository Institution by Commissioner[;], Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies[;], and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial review of [~~those actions~~] the action;

(i) the initial determination of [~~any~~] a person's eligibility for unemployment benefits, the initial determination of [~~any~~] a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency [~~actions~~] action relating to the distribution or award of a monetary [~~grants~~] grant to or between governmental units, or for research, development, or the arts, or judicial review of [~~those actions~~] the action;

(k) the issuance of [~~any~~] a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act[;], Title 19, Chapter 2, Air Conservation Act[;], Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act[;], Title 19, Chapter 5, Water Quality Act[;], Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act[;],

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Title 19, Chapter 6, Part 4, Underground Storage Tank Act[;], or Title 19, Chapter 6, Part 7, Used Oil Management Act, except that this chapter governs [any] an agency action commenced by [any] a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency [~~actions~~] action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of [any] a person's eligibility for government or public assistance benefits;

(n) state agency [~~actions~~] action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) [~~licenses~~] a license for use of state recreational facilities;

(p) state agency [~~actions~~] action under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603;

(q) state agency [~~actions~~] action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of [~~those actions~~] the action;

(r) state agency [~~actions~~] action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of [~~those actions~~] the action;

(s) (i) [any] a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) [any] an action taken by the Division of Securities pursuant to a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of [any] an issuance or exchange of securities described in Subsection 61-1-11.1(1); and

(t) state agency [~~actions~~] action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of [~~those actions~~] the action.

(3) This chapter does not affect [any] a legal [~~remedies~~] remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering [~~conferences~~] a conference with parties and interested persons to:

- (i) encourage settlement;
- (ii) clarify the issues;
- (iii) simplify the evidence;
- (iv) facilitate discovery; or
- (v) expedite the [~~proceedings~~] proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56[~~, respectively,~~] of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) [~~Declaratory proceedings~~] A declaratory proceeding authorized by Section 63-46b-21 [~~are~~] is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory [~~proceedings~~] proceeding authorized by Section 63-46b-21 [~~are~~] is governed by this chapter.

(6) This chapter does not preclude an agency from enacting [~~rules~~] a rule affecting or governing an adjudicative [~~proceedings~~] proceeding or from following [~~any of those rules~~] the rule, if the [~~rules are~~] rule is enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the [~~rules conform~~] rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that [~~any~~] a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of [~~those provisions~~] the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

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(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening [~~any~~] a time period prescribed in this chapter, except [~~those~~] the time [~~periods~~] period established for judicial review.