

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.



28 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
29 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
30 this chapter apply to every agency of the state and govern:

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

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

36 (2) This chapter does not govern:

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

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

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

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

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

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

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

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

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

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

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

84 (k) the issuance of [any] a notice of violation or order under Title 26, Chapter 8a, Utah
85 Emergency Medical Services System Act[;], Title 19, Chapter 2, Air Conservation Act[;], Title
86 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act[;], Title 19,
87 Chapter 5, Water Quality Act[;], Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act[;],
88 Title 19, Chapter 6, Part 4, Underground Storage Tank Act[;], or Title 19, Chapter 6, Part 7,
89 Used Oil Management Act, except that this chapter governs [any] an agency action commenced

90 by ~~[any]~~ a person authorized by law to contest the validity or correctness of the notice or order;

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

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

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

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

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

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

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

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

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

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

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

114 (a) compel an agency to take action; or

115 (b) challenge an agency's rule.

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

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

120 (i) encourage settlement;

- 121 (ii) clarify the issues;
- 122 (iii) simplify the evidence;
- 123 (iv) facilitate discovery; or
- 124 (v) expedite the ~~[proceedings]~~ proceeding; or
- 125 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
- 126 Rule 12(b) or Rule 56~~[, respectively,]~~ of the Utah Rules of Civil Procedure are met by the
- 127 moving party, except to the extent that the requirements of those rules are modified by this
- 128 chapter.
- 129 (5) (a) ~~[Declaratory proceedings]~~ A declaratory proceeding authorized by Section
- 130 63-46b-21 ~~[are]~~ is not governed by this chapter, except as explicitly provided in that section.
- 131 (b) Judicial review of a declaratory ~~[proceedings]~~ proceeding authorized by Section
- 132 63-46b-21 ~~[are]~~ is governed by this chapter.
- 133 (6) This chapter does not preclude an agency from enacting ~~[rules]~~ a rule affecting or
- 134 governing an adjudicative ~~[proceedings]~~ proceeding or from following ~~[any of those rules]~~ the
- 135 rule, if the ~~[rules are]~~ rule is enacted according to the procedures outlined in Title 63, Chapter
- 136 46a, Utah Administrative Rulemaking Act, and if the ~~[rules conform]~~ rule conforms to the
- 137 requirements of this chapter.
- 138 (7) (a) If the attorney general issues a written determination that ~~[any]~~ a provision of
- 139 this chapter would result in the denial of funds or services to an agency of the state from the
- 140 federal government, the applicability of ~~[those provisions]~~ the provision to that agency shall be
- 141 suspended to the extent necessary to prevent the denial.
- 142 (b) The attorney general shall report the suspension to the Legislature at its next
- 143 session.
- 144 (8) Nothing in this chapter may be interpreted to provide an independent basis for
- 145 jurisdiction to review final agency action.
- 146 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
- 147 cause shown, from lengthening or shortening ~~[any]~~ a time period prescribed in this chapter,
- 148 except ~~[those]~~ the time ~~[periods]~~ period established for judicial review.

Legislative Review Note

as of 1-8-04 11:54 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 SB0113

Administrative Procedures Act Amendments

23-Jan-04

1:13 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst