

UTAH ADMINISTRATIVE RULEMAKING ACT

REVISION

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends rulemaking terms in the Utah Code to conform with the Administrative Rulemaking Act and clarifies state agency authority to amend and repeal rules. This bill also makes technical corrections.

Highlighted Provisions:

This bill:

- ▶ amends the Utah Code by replacing the word "revoke" with "repeal" in the context of a state agency's rulemaking authority; and
- ▶ clarifies that an agency authorized to make administrative rules is also authorized to amend or repeal those rules.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-2-204, as last amended by Chapter 50, Laws of Utah 2000

9-2-1906, as last amended by Chapter 4, Laws of Utah 2003, Second Special Session

9-2-2007, as enacted by Chapter 247, Laws of Utah 2003

9-6-205, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-7-405, as renumbered and amended by Chapter 241, Laws of Utah 1992

53C-1-201, as last amended by Chapters 41 and 63, Laws of Utah 2004

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

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

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

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

Section 1. Section **9-2-204** is amended to read:

9-2-204. Board duties and powers.

(1) The board shall:

(a) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;

(b) do all lawful acts for the development, attraction, and retention of businesses, industries, and commerce within the state;

(c) promote and encourage the expansion and retention of businesses, industries, and commerce located in the state;

(d) support the efforts of local government and regional nonprofit economic development organizations to encourage expansion or retention of businesses, industries, and commerce located in the state;

(e) do other acts not specifically enumerated in this part, if the acts are for the betterment of the economy of the state;

(f) work in conjunction with companies and individuals located or doing business within the state to secure favorable rates, fares, tolls, charges, and classification for transportation of persons or property by:

(i) railroad;

(ii) motor carrier; or

(iii) other common carriers;

(g) recommend policies, priorities, and objectives to the division regarding the assistance, retention, or recruitment of business, industries, and commerce in the state; and

(h) ensure that any money or program administered by the department or its divisions for

the assistance, retention, or recruitment of businesses, industries, and commerce in the state be administered so that the money or program is equitably available to all areas of the state unless federal or state law requires or authorizes the geographic location of a recipient of the money or program be considered in the distribution of the money or administration of the program.

(2) The board may:

(a) in furtherance of the authority granted under Subsection (1)(f), appear as a party litigant on behalf of individuals or companies located or doing business within the state in proceedings before regulatory commissions of the state, other states, or the federal government having jurisdiction over such matters; and

(b) make, amend, or [~~revoke~~] repeal rules for the conduct of its business not inconsistent with this part and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 2. Section **9-2-1906** is amended to read:

9-2-1906. Board duties and powers.

(1) The board shall:

(a) establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors by means of certificates issued by the board, provided that a contingent tax credit may not be issued unless the Utah fund of funds:

(i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from the state to the Utah fund of funds; and

(ii) agrees to repay the loan upon terms and conditions established by the board;

(b) establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors, including:

(i) criteria and procedures for evaluating the value of investments made by the Utah fund of funds; and

(ii) the returns from the Utah fund of funds;

(c) establish criteria and procedures for registering and redeeming contingent tax credits by designated investors holding certificates issued by the board;

(d) establish a target rate of return or range of returns on venture capital investments of the Utah fund of funds;

(e) establish criteria and procedures governing commitments obtained by the board from designated purchasers including:

(i) entering into commitments with designated purchasers; and

(ii) drawing on commitments to redeem certificates from designated investors;

(f) have power to:

(i) expend funds;

(ii) invest funds;

(iii) enter into contracts;

(iv) insure against loss; and

(v) perform any other act necessary to carry out its purpose; and

(g) (i) make, amend, and [~~revoke~~] repeal rules for the conduct of its affairs, consistent with this part and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(ii) all rules made by the board under Subsection (1)(g)(i) are subject to review by the Legislative Management Committee:

(A) whenever made, modified, or revoked; and

(B) in each even-numbered year; and

(iii) Subsection (1)(g)(ii) does not preclude the Legislature's Administrative Rules Review Committee from reviewing and taking appropriate action on any rule made, amended, or revoked by the board.

(2) (a) The criteria and procedures established by the board for the allocation and issuance of contingent tax credits shall:

(i) include the contingencies that must be met for a certificate and its related tax credits to be:

(A) issued by the board;

(B) transferred by a designated investor; and

(C) redeemed by a designated investor in order to receive a contingent tax credit; and
(ii) tie the contingencies for redemption of certificates to the targeted rates of return and scheduled redemptions of equity interests purchased by designated investors in the Utah fund of funds.

(b) The board may not issue contingent tax credits under this part prior to July 1, 2004.

(3) (a) The board may charge a placement fee to the Utah fund of funds for the issuance of a certificate and related contingent tax credit to a designated investor.

(b) The fee shall:

(i) be charged only to pay for reasonable and necessary costs of the board; and

(ii) not exceed .5% of the equity investment of the designated investor.

(4) The board's criteria and procedures for redeeming certificates:

(a) shall give priority to the redemption amount from the available funds in the redemption reserve; and

(b) to the extent there are insufficient funds in the redemption reserve to redeem certificates, shall grant the board the option to redeem certificates:

(i) by certifying a contingent tax credit to the designated investor; or

(ii) by making demand on designated purchasers consistent with the requirements of Section 9-2-1921.

(5) (a) The board shall, in consultation with the corporation, publish an annual report of the activities conducted by the Utah fund of funds, and present the report to the governor and the Executive Appropriations Committee of the Legislature.

(b) The annual report shall:

(i) include a copy of the audit of the Utah fund of funds and a valuation of the assets of the Utah fund of funds;

(ii) review the progress of the investment fund allocation manager in implementing its investment plan; and

(iii) describe any redemption or transfer of a certificate issued under this part.

(c) The annual report may not identify any specific designated investor who has

redeemed or transferred a certificate.

(d) (i) Beginning July 1, 2005, and thereafter every two years, the board shall publish a progress report which shall evaluate the progress of the state in accomplishing the purposes stated in Section 9-2-1902.

(ii) The board shall give a copy of the report to the Legislature.

Section 3. Section **9-2-2007** is amended to read:

9-2-2007. Department's authority.

(1) The department, with approval of the board and within the limitations of this part, may determine:

- (a) the structure and amount of any partial rebates offered under this part;
- (b) the economic impacts and job creation necessary to qualify for the incentive; and
- (c) the other terms and conditions of any agreement entered into under this part.

(2) In reviewing claims for partial rebates of new state revenues, the department may accept:

(a) as the amount of employee income taxes paid, the amount of employee income taxes withheld and transmitted to the Utah State Tax Commission as evidenced by payroll records rather than adjusting for the difference between taxes withheld and taxes actually paid through filing by employees' annual income tax statements; and

(b) as the amount of company income taxes paid, the amount of corporate franchise and income taxes estimated and transmitted to the Utah State Tax Commission as evidenced by quarterly payment records rather than adjusting for the difference between estimated taxes paid quarterly and taxes actually paid through the filing of the corporation's annual income tax statement.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board may make, amend, and ~~revoke~~ repeal rules regarding the development zone and partial rebates offered within it, provided the rules are consistent with state and federal law.

(4) (a) The department shall make a report to the Legislature's Workforce and Community and Economic Development Interim Committee on:

(i) the success of attracting new commercial projects to development zones under this part and the corresponding increase in new, incremental jobs;

(ii) the period of time over which partial rebates of new state revenues shall be granted under this part; and

(iii) the economic impact on the state related to generating new state revenues and rebating a portion of those revenues under this part.

(b) The department shall make the reports prior to the 2005 General Session of the Legislature to enable the committee to determine whether this part should be modified during the 2005 General Session.

Section 4. Section **9-6-205** is amended to read:

9-6-205. Board powers and duties.

(1) The board may:

(a) make, amend, or [~~revoke~~] repeal rules for the conduct of its business in governing the institute and the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) receive gifts, bequests, and property; and

(c) issue certificates and offer and confer prizes, certificates, and awards for works of art and achievement in the arts.

(2) The board shall make policy for the institute and for the division.

Section 5. Section **9-7-405** is amended to read:

9-7-405. Rules -- Use of library.

(1) The library board of directors shall make, amend, and [~~revoke~~] repeal rules, not inconsistent with law, for the governing of the library.

(2) Each library established under this part shall be free to the use of the inhabitants of the city where located, subject to the rules adopted by the board. The board may exclude from the use of the library any person who willfully violates these rules. The board may extend the privileges and use of the library to persons residing outside of the city upon terms and conditions it may prescribe by rule.

Section 6. Section **53C-1-201** is amended to read:

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

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

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

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

(3) (a) It is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

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

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

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63-2-403 does not apply during the review period.

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

- (i) the changes in business opportunities affecting the assets of the trust;
- (ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;
- (iii) the reasons the normal procedures under Section 63-46a-4 cannot be met without

causing the loss of the specific opportunity;

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

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4~~(7)~~(8).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

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

(e) The administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) The board and director shall review the exceptions under this Subsection (3) and

make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual general session.

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

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

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

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63, Chapter 46a, Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Sections 53C-1-303 and 53C-2-401, the administration may become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, and is considered a person under Section 48-2c-102.

Section 7. Section **63-46a-4** is amended to read:

63-46a-4. Rulemaking procedure.

(1) An agency authorized to make rules is also authorized to amend or repeal those rules.

[(+)] (2) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or repealing a rule agencies shall comply with:

- (a) the requirements of this section;
- (b) consistent procedures required by other statutes;
- (c) applicable federal mandates; and

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

~~[(2)]~~ (3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

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

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

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

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

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

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

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

- (a) a summary of the rule or change;
- (b) the purpose of the rule or reason for the change;
- (c) the statutory authority or federal requirement for the rule;
- (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments; and
 - (iii) other persons;
- (e) the compliance cost for affected persons;
- (f) how interested persons may review the full text of the rule;
- (g) how interested persons may present their views on the rule;
- (h) the time and place of any scheduled public hearing;

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

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

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

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

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

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

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

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

~~[(7)]~~ (8) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

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

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

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

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

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

the bulletin.

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

Section 8. Section **63-46a-7** is amended to read:

63-46a-7. Emergency rulemaking procedure.

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

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

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

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

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

(i) the text of the rule; and

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

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

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

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

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

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

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

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

- (2) The division may:
- (a) reorganize, reformat, and renumber the code;
 - (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6; and
 - (c) require each agency to prepare a brief summary of all substantive changes made by the agency.
- (3) The division may make nonsubstantive changes in the code by:
- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
 - (b) eliminating duplication;
 - (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
 - (d) eliminating all obsolete or redundant words;
 - (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
 - (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
 - (g) updating or correcting annotations associated with a section, part, rule, or title; and
 - (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.
- (4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:
- (i) notice of the code reenactment;
 - (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
 - (iii) locations where the proposed reenactment of the code may be reviewed; and
 - (iv) agency summaries of substantive changes in the reenacted code.
- (b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

- (i) make the text of their reenacted rules available:
 - (A) for public review during regular business hours; and
 - (B) in an electronic version; and
- (ii) comply with the requirements of Subsection 63-46a-4~~(7)~~(8).
- (5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection ~~(3)~~ (4)(a).
- (6) The division shall distribute complete text of the proposed code reenactment without charge to:
 - (a) state-designated repositories in Utah;
 - (b) the Administrative Rules Review Committee; and
 - (c) the Office of Legislative Research and General Counsel.
- (7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.
- (8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for a review of all agency rules.