

1 **ADMINISTRATIVE RULES PROCEDURE**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Ure**

6 Senate Sponsor: Howard A. Stephenson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Administrative Rulemaking Act regarding agency action on
11 petitions for rule changes.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ changes the earliest date when a state agency may make a proposed rule effective;
- 15 ▶ defines "initiate rulemaking proceedings" for purposes of agency action on a
16 petition to make, amend, or repeal an administrative rule;
- 17 ▶ modifies the time limit for an agency to either deny a petition to make, amend, or
18 repeal a rule or to initiate rulemaking proceedings based on the petition; and
- 19 ▶ authorizes a petitioner to appeal an agency's failure to act on or deny a petition.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **63-46a-4**, as last amended by Chapter 48, Laws of Utah 2005

27 **63-46a-12**, as last amended by Chapter 241, Laws of Utah 1987



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

Section 1. 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.

(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.

(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 (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.

(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.

(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;

- 59 (d) the anticipated cost or savings to:
- 60 (i) the state budget;
- 61 (ii) local governments; and
- 62 (iii) other persons;
- 63 (e) the compliance cost for affected persons;
- 64 (f) how interested persons may review the full text of the rule;
- 65 (g) how interested persons may present their views on the rule;
- 66 (h) the time and place of any scheduled public hearing;
- 67 (i) the name and telephone number of an agency employee who may be contacted
- 68 about the rule;
- 69 (j) the name of the agency head or designee who authorized the rule;
- 70 (k) the date on which the rule may become effective following the public comment
- 71 period; and
- 72 (l) comments by the department head on the fiscal impact the rule may have on
- 73 businesses.
- 74 (7) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
- 75 summary that generally includes the following:
- 76 (i) a summary of substantive provisions in the repealed rule which are eliminated from
- 77 the enacted rule; and
- 78 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 79 (b) The summary required under this Subsection (7) is to aid in review and may not be
- 80 used to contest any rule on the ground of noncompliance with the procedural requirements of
- 81 this chapter.
- 82 (8) A copy of the rule analysis shall be mailed to all persons who have made timely
- 83 request of the agency for advance notice of its rulemaking proceedings and to any other person
- 84 who, by statutory or federal mandate or in the judgment of the agency, should also receive
- 85 notice.
- 86 (9) (a) Following the publication date, the agency shall allow at least 30 days for public
- 87 comment on the rule.
- 88 (b) The agency shall review and evaluate all public comments submitted in writing
- 89 within the time period under Subsection (9)(a) or presented at public hearings conducted by the

90 agency within the time period under Subsection (9)(a).

91 (10) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule
92 becomes effective on any date specified by the agency that is no fewer than [30] five business
93 days after the close of the public comment period under Subsection (9), nor more than 120 days
94 after the publication date.

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

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

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

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

103 Section 2. Section **63-46a-12** is amended to read:

104 **63-46a-12. Interested parties -- Petition for agency action.**

105 (1) As used in this section, "initiate rulemaking proceedings" means the filing, for the
106 purposes of publication in accordance with Subsection 63-46a-4(4), of an agency's proposed
107 rule to implement a petition for the making, amendment, or repeal of a rule as provided in this
108 section.

109 [~~1~~] (2) An interested person may petition an agency [~~requesting~~] to request the
110 making, amendment, or repeal of a rule.

111 [~~2~~] (3) The division shall prescribe by rule the form for petitions and the procedure
112 for their submission, consideration, and disposition.

113 [~~3~~] (4) A statement shall accompany the proposed rule, or proposed amendment or
114 repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency
115 and appropriate to the powers of the agency.

116 [~~4~~] (5) Within [~~30~~] 60 days after submission of a petition, the agency shall either
117 deny the petition in [~~a~~] writing, stating its reasons for the denial, or initiate rulemaking
118 proceedings [~~in accordance with Section 63-46a-4~~].

119 (6) (a) If the petition is submitted to a board that has been granted rulemaking authority
120 by the Legislature, the board shall, within 45 days of the submission of the petition, place the

121 petition on its agenda for review.
122 (b) Within 80 days of the submission of the petition, the board shall either:
123 (i) deny the petition in writing stating its reasons for denial; or
124 (ii) initiate rulemaking proceedings.
125 (7) If the agency or board has not provided the petitioner written notice that the agency
126 has denied the petition or initiated rulemaking proceedings within the time limitations specified
127 in Subsection (5) or (6) respectively, the petition is considered denied and the petitioner may
128 seek a writ of mandamus in state district court.

Legislative Review Note
as of 1-17-06 3:03 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 01-24-06 10:32 AM

The Administrative Rules Review Committee recommended this bill.