

1 **IMPACT OF ADMINISTRATIVE RULES ON**
2 **SMALL BUSINESSES**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen D. Clark**

6 Senate Sponsor: Mark B. Madsen

8 **LONG TITLE**

9 **Committee Note:**

10 The Business and Labor Interim Committee recommended this bill.

11 **General Description:**

12 This bill modifies the Administrative Rulemaking Act to address the economic impact
13 of state agency rules on small businesses.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ requires a state agency to consider methods to minimize the impact of an agency's
17 proposed administrative rule on small businesses;
- 18 ▶ requires a state agency, as part of a five-year review of its administrative rules, to
19 explain in writing how the economic impact of a rule on small businesses may be
20 minimized by the agency's intent to continue, amend, or repeal the rule;
- 21 ▶ changes the time allowed for a party to challenge an agency rule by judicial review
22 from six months to one year from the date of the final agency rulemaking action;
- 23 and
- 24 ▶ makes technical corrections regarding cross references.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53C-1-201**, as last amended by Laws of Utah 2007, Chapter 306

32 **63-46a-4**, as last amended by Laws of Utah 2007, Chapters 102 and 168

33 **63-46a-7**, as last amended by Laws of Utah 2005, Chapter 48

34 **63-46a-9**, as last amended by Laws of Utah 1998, Chapters 13 and 332

35 **63-46a-10.5**, as last amended by Laws of Utah 2005, Chapter 48

36 **63-46a-12.1**, as last amended by Laws of Utah 2001, Chapter 138



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

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

40 **53C-1-201. Creation of administration -- Purpose -- Director.**

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

43 (b) The administration shall manage all school and institutional trust lands and assets
44 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
45 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

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

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

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

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

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

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

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

63 (i) the changes in business opportunities affecting the assets of the trust;

64 (ii) the specific business opportunity arising out of those changes which may be lost
65 without the rule or changes to the rule;

66 (iii) the reasons the normal procedures under Section 63-46a-4 cannot be met without
67 causing the loss of the specific opportunity;

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

69 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
70 reasons and justifications for its findings, with the Division of Administrative Rules and
71 notified interested parties as provided in Subsection 63-46a-4[~~(8)~~] (9).

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

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

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

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

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

95 (f) (i) The board and director shall review the exceptions under this Subsection (3) 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. The director may make rules in
109 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement
110 policies provided by the board regarding Native American remains.

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

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

116 **63-46a-4. Rulemaking procedure.**

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

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

- 121 (a) the requirements of this section;
- 122 (b) consistent procedures required by other statutes;
- 123 (c) applicable federal mandates; and
- 124 (d) rules made by the division to implement this chapter.
- 125 (3) Subject to the requirements of this chapter, each agency shall develop and use
- 126 flexible approaches in drafting rules that meet the needs of the agency and that involve persons
- 127 affected by the agency's rules.
- 128 (4) (a) Each agency shall file its proposed rule and rule analysis with the division.
- 129 (b) Rule amendments shall be marked with new language underlined and deleted
- 130 language struck out.
- 131 (c) (i) The division shall publish the information required under this Subsection (4) on
- 132 the rule analysis and the text of the proposed rule in the next issue of the bulletin.
- 133 (ii) For rule amendments, only the section or subsection of the rule being amended
- 134 need be printed.
- 135 (iii) If the director determines that the rule is too long to publish, the director shall
- 136 publish the rule analysis and shall publish the rule by reference to a copy on file with the
- 137 division.
- 138 (5) Prior to filing a rule with the division, the department head shall consider and
- 139 comment on the fiscal impact a rule may have on businesses.
- 140 (6) For all proposed rules that may have an impact on small businesses, agencies shall
- 141 consider each of the following methods of reducing the impact of those rules on small
- 142 businesses:
- 143 (a) establishing less stringent compliance or reporting requirements for small
- 144 businesses;
- 145 (b) establishing less stringent schedules or deadlines for compliance or reporting
- 146 requirements for small businesses;
- 147 (c) consolidating or simplifying compliance or reporting requirements for small
- 148 businesses;
- 149 (d) establishing performance standards for small businesses to replace design or
- 150 operational standards required in the proposed rule; and
- 151 (e) exempting small businesses from all or any part of the requirements contained in

152 the proposed rule.

153 [~~(6)~~] (7) The rule analysis shall contain:

- 154 (a) a summary of the rule or change;
- 155 (b) the purpose of the rule or reason for the change;
- 156 (c) the statutory authority or federal requirement for the rule;
- 157 (d) the anticipated cost or savings to:
 - 158 (i) the state budget;
 - 159 (ii) local governments;
 - 160 (iii) small businesses; and
 - 161 (iv) persons other than small businesses, businesses, or local governmental entities;
- 162 (e) the compliance cost for affected persons;
- 163 (f) how interested persons may review the full text of the rule;
- 164 (g) how interested persons may present their views on the rule;
- 165 (h) the time and place of any scheduled public hearing;
- 166 (i) the name and telephone number of an agency employee who may be contacted
- 167 about the rule;
- 168 (j) the name of the agency head or designee who authorized the rule;
- 169 (k) the date on which the rule may become effective following the public comment
- 170 period; and
- 171 (l) comments by the department head on the fiscal impact the rule may have on
- 172 businesses.

173 [~~(7)~~] (8) (a) For a rule being repealed and reenacted, the rule analysis shall contain a

174 summary that generally includes the following:

- 175 (i) a summary of substantive provisions in the repealed rule which are eliminated from
- 176 the enacted rule; and
- 177 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 178 (b) The summary required under this Subsection [~~(7)~~] (8) is to aid in review and may
- 179 not be used to contest any rule on the ground of noncompliance with the procedural
- 180 requirements of this chapter.

181 [~~(8)~~] (9) A copy of the rule analysis shall be mailed to all persons who have made

182 timely request of the agency for advance notice of its rulemaking proceedings and to any other

183 person who, by statutory or federal mandate or in the judgment of the agency, should also
184 receive notice.

185 ~~[(9)]~~ (10) (a) Following the publication date, the agency shall allow at least 30 days for
186 public comment on the rule.

187 (b) The agency shall review and evaluate all public comments submitted in writing
188 within the time period under Subsection ~~[(9)]~~ (10)(a) or presented at public hearings conducted
189 by the agency within the time period under Subsection ~~[(9)]~~ (10)(a).

190 ~~[(10)]~~ (11) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule
191 becomes effective on any date specified by the agency that is no fewer than seven calendar days
192 after the close of the public comment period under Subsection ~~[(9)]~~ (10), nor more than 120
193 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 ~~[(11)]~~ (12) (a) As used in this Subsection ~~[(11)]~~ (12), "initiate rulemaking proceedings"
203 means the filing, for the purposes of publication in accordance with Subsection (4), of an
204 agency's proposed rule that is required by state statute.

205 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
206 effective date of the statutory provision that requires the rulemaking.

207 (c) If a state agency does not initiate rulemaking proceedings in accordance with the
208 time requirements in Subsection ~~[(11)]~~ (12)(b), the state agency shall appear before the
209 legislative Administrative Rules Review Committee and provide the reasons for the delay.

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

211 **63-46a-7. Emergency rulemaking procedure.**

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

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

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

216 requirements; or

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

218 (2) (a) When finding that its rule is excepted from regular rulemaking procedures by

219 this section, the agency shall file with the division:

220 (i) the text of the rule; and

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

222 (b) The division shall publish the rule in the bulletin as provided in Subsection

223 63-46a-4 (4).

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

225 (9).

226 (d) The rule becomes effective for a period not exceeding 120 days on the date of filing

227 or any later date designated in the rule.

228 (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also

229 comply with the procedures of Section 63-46a-4.

230 Section 4. Section **63-46a-9** is amended to read:

231 **63-46a-9. Agency review of rules -- Schedule of filings -- Limited exemption for**

232 **certain rules.**

233 (1) Each agency shall review each of its rules within five years of the rule's original

234 effective date or within five years of the filing of the last five-year review, whichever is later.

235 [~~Rules effective prior to 1992 need not be reviewed until 1997.~~]

236 (2) An agency may consider any substantial review of a rule to be a five-year review.

237 If the agency chooses to consider a review a five-year review, it shall follow the procedures

238 outlined in Subsection (3).

239 (3) At the conclusion of its review, the agency shall file a notice of review on or before

240 the anniversary date indicating its intent to continue, amend, or repeal the rule.

241 (a) The agency shall describe, in its notice of review, any manner in which the

242 economic impact of the rule on small businesses may be minimized by the agency's intent to

243 continue, amend, or repeal the rule.

244 [(a)] (b) If the agency continues the rule, it shall file a statement which includes:

245 (i) a concise explanation of the particular statutory provisions under which the rule is
246 enacted and how these provisions authorize or require the rule;

247 (ii) a summary of written comments received during and since the last five-year review
248 of the rule from interested persons supporting or opposing the rule; and

249 (iii) a reasoned justification for continuation of the rule, including reasons why the
250 agency disagrees with comments in opposition to the rule, if any.

251 [~~(b)~~] (c) If the agency repeals the rule, it shall comply with Section 63-46a-4.

252 [~~(c)~~] (d) If the agency amends and continues the rule, it shall comply with the
253 requirements of Section 63-46a-4 and file the statement required in Subsection (3)[~~(a)~~] (b).

254 (4) (a) The division shall publish the notice and statement in the bulletin.

255 (b) The division may schedule the publication of agency notices and statements,
256 provided that no notice and statement shall be published more than one year after the review
257 deadline established under Subsection (1).

258 (5) The division shall notify an agency of rules due for review at least 180 days prior to
259 the anniversary date.

260 (6) If an agency finds that it will not meet the deadline established in Subsection (1):

261 (a) the agency may file an extension prior to the anniversary date with the division
262 indicating the reason for the extension; and

263 (b) the division shall publish notice of the extension in the next issue of the bulletin.

264 (7) An extension permits the agency to file a notice no more than 120 days after the
265 anniversary date.

266 (8) If an agency fails to file a notice of review or extension on or before the date
267 specified in the notice mandated in Subsection (5), the division shall:

268 (a) publish a notice in the next issue of the bulletin that the rule has expired and is no
269 longer enforceable;

270 (b) remove the rule from the code; and

271 (c) notify the agency that the rule has expired.

272 (9) After a rule expires, an agency must comply with the requirements of Section
273 63-46a-4 to reenact the rule.

274 (10) (a) Rules issued under the following provisions related to the Department of
275 Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to

276 the requirements of this section until July 1, 1998:

- 277 (i) Title 34, Labor in General;
- 278 (ii) Title 34A, Utah Labor Code;
- 279 (iii) Title 35A, Utah Workforce Services Code;
- 280 (iv) Title 40, Chapter 2, Coal Mines; and
- 281 (v) Title 57, Chapter 21, Utah Fair Housing Act.

282 (b) Any rule described in Subsection (10)(a) that would have expired on or after July 1,
283 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of
284 Workforce Services or Labor Commission files:

- 285 (i) the notice of review, described in Subsection (3); or
- 286 (ii) an extension described in Subsection (6).

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

288 **63-46a-10.5. Repeal and reenactment of Utah Administrative Code.**

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

292 (2) The division may:

- 293 (a) reorganize, reformat, and renumber the code;
- 294 (b) require each agency to review its rules and make any organizational or substantive
295 changes according to the requirements of Section 63-46a-6; and
- 296 (c) require each agency to prepare a brief summary of all substantive changes made by
297 the agency.

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

- 299 (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- 300 (b) eliminating duplication;
- 301 (c) correcting defective or inconsistent section and paragraph structure in arrangement
302 of the subject matter of rules;
- 303 (d) eliminating all obsolete or redundant words;
- 304 (e) correcting obvious errors and inconsistencies in punctuation, capitalization,
305 numbering, referencing, and wording;
- 306 (f) changing a catchline to more accurately reflect the substance of each section, part,

307 rule, or title;

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

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

311 (4) (a) To inform the public about the proposed code reenactment, the division shall
312 publish in the bulletin:

313 (i) notice of the code reenactment;

314 (ii) the date, time, and place of a public hearing where members of the public may
315 comment on the proposed reenactment of the code;

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

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

318 (b) To inform the public about substantive changes in agency rules contained in the
319 proposed reenactment, each agency shall:

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

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

322 (B) in an electronic version; and

323 (ii) comply with the requirements of Subsection 63-46a-4~~(8)~~ (9).

324 (5) The division shall hold a public hearing on the proposed code reenactment no fewer
325 than 30 days nor more than 45 days after the publication required by Subsection (4)(a).

326 (6) The division shall distribute complete text of the proposed code reenactment
327 without charge to:

328 (a) state-designated repositories in Utah;

329 (b) the Administrative Rules Review Committee; and

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

331 (7) The former code is repealed and the reenacted code is effective at noon on a date
332 designated by the division that is not fewer than 45 days nor more than 90 days after the
333 publication date required by this section.

334 (8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for
335 a review of all agency rules.

336 Section 6. Section **63-46a-12.1** is amended to read:

337 **63-46a-12.1. Judicial challenge to administrative rules.**

338 (1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a
339 complaint with the county clerk in the district court where the person resides or in the district
340 court in Salt Lake County.

341 (b) Any person aggrieved by an agency's failure to comply with Section 63-46a-3 may
342 obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of
343 the district court where the person resides or in the district court in Salt Lake County.

344 (2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under
345 this section shall exhaust that person's administrative remedies by complying with the
346 requirements of Section 63-46a-12 before filing the complaint.

347 (b) When seeking judicial review of a rule, the person need not exhaust that person's
348 administrative remedies if:

349 (i) less than [~~six~~] 12 months has passed since the date that the rule became effective
350 and the person had submitted verbal or written comments on the rule to the agency during the
351 public comment period;

352 (ii) a statute granting rulemaking authority expressly exempts rules made under
353 authority of that statute from compliance with Section 63-46a-12; or

354 (iii) compliance with Section 63-46a-12 would cause the person irreparable harm.

355 (3) (a) In addition to the information required by the Utah Rules of Civil Procedure, a
356 complaint filed under this section shall contain:

357 (i) the name and mailing address of the plaintiff;

358 (ii) the name and mailing address of the defendant agency;

359 (iii) the name and mailing address of any other party joined in the action as a
360 defendant;

361 (iv) the text of the rule or proposed rule, if any;

362 (v) an allegation that the person filing the complaint has either exhausted the
363 administrative remedies by complying with Section 63-46a-12 or met the requirements for
364 waiver of exhaustion of administrative remedies established by Subsection (2)(b);

365 (vi) the relief sought; and

366 (vii) factual and legal allegations supporting the relief sought.

367 (b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by
368 the Utah Rules of Civil Procedure.

369 (ii) The defendants shall file a responsive pleading as required by the Utah Rules of
370 Civil Procedures.

371 (iii) The agency shall file the administrative record of the rule, if any, with its
372 responsive pleading.

373 (4) The district court may grant relief to the petitioner by:

374 (a) declaring the rule invalid, if the court finds that:

375 (i) the rule violates constitutional or statutory law or the agency does not have legal
376 authority to make the rule;

377 (ii) the rule is not supported by substantial evidence when viewed in light of the whole
378 administrative record; or

379 (iii) the agency did not follow proper rulemaking procedure;

380 (b) declaring the rule nonapplicable to the petitioner;

381 (c) remanding the matter to the agency for compliance with proper rulemaking
382 procedures or further fact-finding;

383 (d) ordering the agency to comply with Section 63-46a-3;

384 (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or
385 action that would cause irreparable harm to the petitioner; or

386 (f) any combination of Subsections (4)(a) through (e).

387 (5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may
388 review and act on a complaint under this section whether or not the plaintiff has requested the
389 agency review under Section 63-46a-12.

Legislative Review Note
as of 11-15-07 9:50 AM

Office of Legislative Research and General Counsel