

1 **ADMINISTRATIVE RULEMAKING ACT**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Howard A. Stephenson**

6 House Sponsor: Ben C. Ferry

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Administrative Rulemaking Act to require agencies to
11 notify the Administrative Rules Review Committee if the agencies already have a rule
12 in place that meets the requirements of new legislation.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ requires that, when a statute is enacted that requires agency rulemaking and the
16 affected agency already has rules in place that meet the statutory requirement, the
17 agency shall submit the rules to the Administrative Rules Review Committee
18 within 60 days after the statute takes effect.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63G-3-301**, as last amended by Laws of Utah 2008, Chapter 300 and renumbered and
26 amended by Laws of Utah 2008, Chapter 382

27

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

29 Section 1. Section **63G-3-301** is amended to read:

30 **63G-3-301. Rulemaking procedure.**

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

33 (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making,
34 amending, or repealing a rule agencies shall comply with:

- 35 (a) the requirements of this section;
- 36 (b) consistent procedures required by other statutes;
- 37 (c) applicable federal mandates; and
- 38 (d) rules made by the division to implement this chapter.

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

42 (4) (a) Each agency shall file its proposed rule and rule analysis with the division.

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

45 (c) (i) The division shall publish the information required under Subsection (8) on the
46 rule analysis and the text of the proposed rule in the next issue of the bulletin.

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

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

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

54 (6) If the agency reasonably expects that a proposed rule will have a measurable
55 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal
56 law, each of the following methods of reducing the impact of the rule on small businesses:

57 (a) establishing less stringent compliance or reporting requirements for small

58 businesses;

59 (b) establishing less stringent schedules or deadlines for compliance or reporting
60 requirements for small businesses;

61 (c) consolidating or simplifying compliance or reporting requirements for small
62 businesses;

63 (d) establishing performance standards for small businesses to replace design or
64 operational standards required in the proposed rule; and

65 (e) exempting small businesses from all or any part of the requirements contained in
66 the proposed rule.

67 (7) If during the public comment period an agency receives comment that the
68 proposed rule will cost small business more than one day's annual average gross receipts, and
69 the agency had not previously performed the analysis in Subsection (6), the agency shall
70 perform the analysis described in Subsection (6).

71 (8) The rule analysis shall contain:

72 (a) a summary of the rule or change;

73 (b) the purpose of the rule or reason for the change;

74 (c) the statutory authority or federal requirement for the rule;

75 (d) the anticipated cost or savings to:

76 (i) the state budget;

77 (ii) local governments;

78 (iii) small businesses; and

79 (iv) persons other than small businesses, businesses, or local governmental entities;

80 (e) the compliance cost for affected persons;

81 (f) how interested persons may review the full text of the rule;

82 (g) how interested persons may present their views on the rule;

83 (h) the time and place of any scheduled public hearing;

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

86 (j) the name of the agency head or designee who authorized the rule;
87 (k) the date on which the rule may become effective following the public comment
88 period; and

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

91 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
92 summary that generally includes the following:

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

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

96 (b) The summary required under this Subsection (9) is to aid in review and may not be
97 used to contest any rule on the ground of noncompliance with the procedural requirements of
98 this chapter.

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

103 (11) (a) Following the publication date, the agency shall allow at least 30 days for
104 public comment on the rule.

105 (b) The agency shall review and evaluate all public comments submitted in writing
106 within the time period under Subsection (11)(a) or presented at public hearings conducted by
107 the agency within the time period under Subsection (11)(a).

108 (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule
109 becomes effective on any date specified by the agency that is no fewer than seven calendar
110 days after the close of the public comment period under Subsection (11), nor more than 120
111 days after the publication date.

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

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

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

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

120 (13) (a) As used in this Subsection (13), "initiate rulemaking proceedings" means the
121 filing, for the purposes of publication in accordance with Subsection (4), of an agency's
122 proposed rule that is required by state statute.

123 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after
124 the effective date of the statutory provision that specifically requires the rulemaking, except
125 under Subsection (13)(c).

126 (c) When a statute is enacted that requires agency rulemaking and the affected agency
127 already has rules in place that meet the statutory requirement, the agency shall submit the rules
128 to the Administrative Rules Review Committee for review within 60 days after the statute
129 requiring the rulemaking takes effect.

130 [~~(c)~~] (d) If a state agency does not initiate rulemaking proceedings in accordance with
131 the time requirements in Subsection (13)(b), the state agency shall appear before the legislative
132 Administrative Rules Review Committee and provide the reasons for the delay.