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ADMINISTRATIVE RULEMAKING ACT

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Ben C. Ferry

LONG TITLE

Committee Note:

The Administrative Rules Review Committee recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



28 amended by Laws of Utah 2008, Chapter 382

29

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

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

32 **63G-3-301. Rulemaking procedure.**

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

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

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

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

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

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

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

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

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

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

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

- 59 (a) establishing less stringent compliance or reporting requirements for small
60 businesses;
- 61 (b) establishing less stringent schedules or deadlines for compliance or reporting
62 requirements for small businesses;
- 63 (c) consolidating or simplifying compliance or reporting requirements for small
64 businesses;
- 65 (d) establishing performance standards for small businesses to replace design or
66 operational standards required in the proposed rule; and
- 67 (e) exempting small businesses from all or any part of the requirements contained in
68 the proposed rule.
- 69 (7) If during the public comment period an agency receives comment that the proposed
70 rule will cost small business more than one day's annual average gross receipts, and the agency
71 had not previously performed the analysis in Subsection (6), the agency shall perform the
72 analysis described in Subsection (6).
- 73 (8) The rule analysis shall contain:
 - 74 (a) a summary of the rule or change;
 - 75 (b) the purpose of the rule or reason for the change;
 - 76 (c) the statutory authority or federal requirement for the rule;
 - 77 (d) the anticipated cost or savings to:
 - 78 (i) the state budget;
 - 79 (ii) local governments;
 - 80 (iii) small businesses; and
 - 81 (iv) persons other than small businesses, businesses, or local governmental entities;
 - 82 (e) the compliance cost for affected persons;
 - 83 (f) how interested persons may review the full text of the rule;
 - 84 (g) how interested persons may present their views on the rule;
 - 85 (h) the time and place of any scheduled public hearing;
 - 86 (i) the name and telephone number of an agency employee who may be contacted
87 about the rule;
 - 88 (j) the name of the agency head or designee who authorized the rule;
 - 89 (k) the date on which the rule may become effective following the public comment

90 period; and

91 (1) comments by the department head on the fiscal impact the rule may have on
92 businesses.

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

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

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

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

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

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

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

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

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

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

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

120 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is

121 not filed with the division within 120 days of publication.

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

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

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

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

Legislative Review Note
as of 1-9-09 9:41 AM

Office of Legislative Research and General Counsel

S.B. 88 - Administrative Rulemaking Act Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
