

RULEMAKING FISCAL ACCOUNTABILITY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Keith Grover

LONG TITLE

Committee Note:

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

General Description:

This bill amends provisions relating to the Water Quality Board, rulemaking procedure, and the Administrative Rules Review Committee.

Highlighted Provisions:

This bill:

- ▶ provides for review and Legislative approval of certain Water Quality Board rules or standards;
- ▶ requires an agency to submit certain proposed rules to an appropriations subcommittee and interim committee for review before the agency enacts the rules;

H→ ▶ requires certain notification to the Administrative Rules Review Committee regarding the review of a rule in certain circumstances; ←H

- ▶ amends the duties of the Administrative Rules Review Committee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **19-5-104.5**, as enacted by Laws of Utah 2011, Chapter 304
- 29 **53C-1-201**, as last amended by Laws of Utah 2018, Chapters 13 and 469
- 30 **63G-3-301**, as last amended by Laws of Utah 2017, Chapter 255
- 31 **63G-3-501**, as last amended by Laws of Utah 2016, Chapter 193
- 32 **63G-6a-204**, as last amended by Laws of Utah 2015, Chapter 218

33

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

35 Section 1. Section **19-5-104.5** is amended to read:

36 **19-5-104.5. Legislative approval.**

37 (1) Before sending a board-approved report, strategy, or recommendation that will
38 recommend a total maximum daily load end point and implementation strategy to the EPA for
39 review and approval, the Water Quality Board shall submit the report, strategy, or
40 recommendation:

41 (a) for review to the Natural Resources, Agriculture, and Environment Interim
42 Committee if the report, strategy, or recommendation will require a public or private
43 expenditure in excess of \$10,000,000 but less than \$100,000,000 for compliance; or

44 (b) for approval to the Legislature if the strategy will require a public or private
45 expenditure of \$100,000,000 or more.

46 (2) (a) As used in this Subsection (2):

47 (i) "Expenditure" means the act of expending funds:

48 (A) by an individual public facility with a Utah Pollutant Discharge Elimination
49 System permit, or by a group of private agricultural facilities; and

50 (B) through an initial capital investment, or through operational costs over a 20-year
51 period.

52 (ii) "Utah Pollutant Discharge Elimination System" means the state permit system
53 created in accordance with 33 U.S.C. Sec. 1342.

54 (b) Before the board adopts a nitrogen ~~H~~→ [;] or ←~~H~~ phosphorus ~~H~~→ [; or ammonia] ←~~H~~
54a rule or standard, the

55 board shall submit the rule or standard as directed in Subsections (2)(c) and (d).

56 (c) (i) If compliance with the rule or standard requires an expenditure in excess of
57 \$2,000,000, but less than \$10,000,000, the board shall submit the rule or standard for review to
58 the Natural Resources, Agriculture, and Environment Interim Committee.

90 (ii) re-evaluation followed by further review by the committee.

90a **H→ (4) When the Natural Resources, Agriculture, and Environment Interim Committee**
 90b **sets the review of a rule submitted under Subsection (2)(c)(i) as an agenda item, the committee**
 90c **shall:**

90d **(a) before the review, directly inform the chairs of the Administrative Rules Review**
 90e **Committee of the coming review, including the date, time, and place of the review; and**

90f **(b) after the review, directly inform the chairs of the Administrative Rules Review**
 90g **Committee of the outcome of the review, including any recommendation.** ←H

91 Section 2. Section 53C-1-201 is amended to read:

92 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**
 93 **Risk Management Fund.**

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

96 (b) The administration shall manage all school and institutional trust lands and assets
 97 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
 98 of Revenue from Trust Lands, and Title 53D, Chapter 1, School and Institutional Trust Fund
 99 Management Act.

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

102 (3) (a) [H] The administration is subject to the usual legislative and executive
 103 department controls except as provided in this Subsection (3).

104 (b) (i) The director may make rules as approved by the board that allow the
 105 administration to classify a business proposal submitted to the administration as protected
 106 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

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

110 (iii) The administration shall classify the proposal pursuant to law if [H] the
 111 administration decides to proceed with the proposal.

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

113 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
 114 Administrative Rulemaking Act, except that the administration is not subject to Subsections
 115 63G-3-301(5), (6), [and] (7), and (13) and Section 63G-3-601, and the director, with the
 116 board's approval, may establish a procedure for the expedited approval of rules, based on ☼

- 117 ✪written findings by the director showing:
- 118 (i) the changes in business opportunities affecting the assets of the trust;
- 119 (ii) the specific business opportunity arising out of those changes which may be lost
- 120 without the rule or changes to the rule;

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

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

281 (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule
282 becomes effective on any date specified by the agency that is:

283 (i) no fewer than seven calendar days after the ~~[close of]~~ day on which the public
284 comment period closes under Subsection (11)~~[-nor]~~; and

285 (ii) no more than 120 days after the ~~[publication date]~~ day on which the rule is
286 published.

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

289 (c) The notice of effective date may not provide for an effective date ~~[prior to]~~ before
290 the ~~[date it is received by the office]~~ day on which the office receives the notice.

291 (d) The office shall publish notice of the effective date of the rule in the next issue of
292 the bulletin.

293 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
294 not filed with the office within 120 days ~~[of publication]~~ after the day on which the rule is
295 published.

296 (13) (a) ~~§~~ **→ [Before]** Except as provided in Subsection (13)(d), before ~~←§~~ an agency
296a enacts a rule, the agency shall submit to the appropriations
297 subcommittee and interim committee with jurisdiction over the agency the agency's proposed
298 rule ~~←§~~ **→ for review** ~~←§~~ , if the proposed rule, over a 20-year period, has a fiscal impact of more
298a than:

299 (i) \$2,000,000 to a single person; or

300 (ii) \$50,000,000 to a group of persons.

300a ~~§~~ **→ (b)** An appropriations subcommittee or interim committee that reviews a rule
300b submitted under Subsection (13)(a) shall:

300c (i) before the review, directly inform the chairs of the Administrative Rules
300d Review Committee of the coming review, including the date, time, and place of the review; and

300e (ii) after the review, directly inform the chairs of the Administrative Rules
300f Review Committee of the outcome of the review, including any recommendation. ~~←§~~

301 ~~§~~ **→ (b)** (c) ~~←§~~ An appropriations subcommittee or interim committee that reviews a rule
302 submitted under Subsection (13)(a) may recommend to the Administrative Rules Review ~~⊗~~

303 ~~Committee~~ that the Administrative Rules Review Committee not ~~H~~→ [reauthorize] recommend
303a reauthorization of ~~H~~ the rule in the
304 omnibus legislation described in Section [63G-3-502](#).
304a ~~S~~→ **(d) The requirement described in Subsection (13)(a) does not apply to:**
304b **(i) the State Tax Commission; or**
304c **(ii) the State Board of Education.** ~~S~~
305 [~~13~~] (14) (a) As used in this Subsection [~~13~~] (14), "initiate rulemaking proceedings"
306 means the filing, for the purposes of publication in accordance with Subsection (4), of an