

Representative Thomas W. Peterson proposes the following substitute bill:

STATE AGENCY APPLICATION REVIEW REQUIREMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Thomas W. Peterson

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill addresses procedures for a state agency to act on a request for agency action.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires for specified agencies that the agency respond within a specified time period to a request for agency action;
- ▶ addresses for specified agencies the procedures for determining that a request for agency action is complete;
- ▶ clarifies how other statutes apply;
- ▶ addresses federal preemption;
- ▶ provides that sections are to be interpreted to benefit a person seeking agency action; and
- ▶ addresses effect of noncompliance.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **13-1-19**, Utah Code Annotated 1953

29 **19-1-309**, Utah Code Annotated 1953

30 **79-1-105**, Utah Code Annotated 1953

31

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

33 Section 1. Section **13-1-19** is enacted to read:

34 **13-1-19. Timing of department agency action.**

35 (1) As used in this section:

36 (a) "Agency" means the department or an agency, division, board, office, or other
37 subpart of the department.

38 (b) (i) "Agency action" means a paper-based or electronic action that grants authority to
39 engage in a specified activity under an applicable statute or a rule made under an applicable
40 statute, including:

41 (A) a permit;

42 (B) a plan;

43 (C) a license;

44 (D) a registration;

45 (E) a certificate;

46 (F) an approval order; or

47 (G) another administrative authorization made under an applicable statute.

48 (ii) Notwithstanding Subsection (1)(b)(i), "agency action" does not include:

49 (A) responding to a complaint;

50 (B) issuing a grant or loan;

51 (C) investigating a person engaging in a specified activity authorized by agency action;

52 or

53 (D) responding to a request under Title 63G, Chapter 2, Government Records Access
54 and Management Act.

55 (c) "Applicable statute" means the following to the extent that the statute governs
56 agency action:

- 57 (i) this title;
- 58 (ii) Title 16, Corporations;
- 59 (iii) Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
- 60 (iv) Title 57, Real Estate;
- 61 (v) Title 58, Occupations and Professions;
- 62 (vi) Title 61, Securities Division - Real Estate Division;
- 63 (vii) Title 70, Trademarks and Trade Names; or
- 64 (viii) another state statute administered by an agency.
- 65 (d) "Application" means a request for agency action.
- 66 (e) "Complete application" means an application in a form approved by an agency that
- 67 contains all of the information required by statute or rule for the agency to issue an order.
- 68 (f) "Department" means the Department of Commerce.
- 69 (g) (i) "Order" means an order or final action issued by an agency under an applicable
- 70 statute that:
 - 71 (A) approves an agency action;
 - 72 (B) renews an agency action;
 - 73 (C) denies an agency action;
 - 74 (D) modifies or amends an agency action; or
 - 75 (E) revokes and reissues an agency action.
- 76 (ii) "Order" does not include an order terminating an agency action.
- 77 (2) Unless applicable statute provides for a different time period to issue the order, an
- 78 agency shall issue an order related to agency action by no later than the later of:
 - 79 (a) 180 days after the day on which the agency receives a complete application seeking
 - 80 agency action; or
 - 81 (b) if the applicable statute provides for public comment, 180 days after the day on
 - 82 which the time period ends for the agency to review public comments.
- 83 (3) (a) If a person files an application for agency action that an agency determines is
- 84 incomplete, the agency shall notify the person:
 - 85 (i) that the application is incomplete; and
 - 86 (ii) what the person needs to do to complete the application.
- 87 (b) If a person submits an application a second time to address what the agency notifies

88 the person needs to be done under Subsection (3)(a)(ii) to complete the application, the agency
89 may raise additional issues concerning the completeness of the application.

90 (c) If a person submits an application for a third time to address what the agency
91 notifies the person needs to be done under Subsection (3)(a)(ii) to complete the application, the
92 agency may not raise any additional issue concerning the completeness of the application
93 unless the agency can demonstrate that the issue is based on new information obtained after the
94 agency sent the notice required under Subsection (3)(a).

95 (d) An agency shall publish on a public website for each type of agency action the
96 requirements for an application to be considered a complete application.

97 (4) A petition appealing, either administratively or judicially, an order related to an
98 application seeking agency action is not subject to the requirements of this section.

99 (5) This section shall be interpreted in a manner that provides the greatest protection to
100 a person seeking agency action.

101 (6) This section does not apply to an agency action if application of this section to the
102 agency action is preempted by federal law.

103 (7) An application for agency action is considered approved if an agency fails to
104 comply with this section.

105 Section 2. Section **19-1-309** is enacted to read:

106 **19-1-309. Timing of department agency action.**

107 (1) As used in this section:

108 (a) "Agency" means the department or an agency, division, board, office, or other
109 subpart of the department.

110 (b) (i) "Agency action" means a paper-based or electronic action that grants authority to
111 engage in a specified activity under an applicable statute or a rule made under an applicable
112 statute, including:

113 (A) a permit;

114 (B) a plan;

115 (C) a license;

116 (D) a registration;

117 (E) a certificate;

118 (F) an approval order; or

119 (G) another administrative authorization made under an applicable statute.
120 (ii) Notwithstanding Subsection (1)(b)(i), "agency action" does not include:
121 (A) responding to a complaint;
122 (B) issuing a grant or loan;
123 (C) investigating a person engaging in a specified activity authorized by agency action;
124 or
125 (D) responding to a request under Title 63G, Chapter 2, Government Records Access
126 and Management Act.
127 (c) "Applicable statute" means the following to the extent that the statute governs
128 agency action:
129 (i) this title; or
130 (ii) another state statute administered by an agency.
131 (d) "Application" means a request for agency action.
132 (e) "Complete application" means an application in a form approved by an agency that
133 contains all of the information required by statute or rule for the agency to issue an order.
134 (f) (i) "Order" means an order or final action issued by an agency under an applicable
135 statute that:
136 (A) approves an agency action;
137 (B) renews an agency action;
138 (C) denies an agency action;
139 (D) modifies or amends an agency action; or
140 (E) revokes and reissues an agency action.
141 (ii) "Order" does not include an order terminating an agency action.
142 (2) Unless applicable statute provides for a different time period to issue the order, an
143 agency shall issue an order related to agency action by no later than the later of:
144 (a) 180 days after the day on which the agency receives a complete application seeking
145 agency action; or
146 (b) if the applicable statute provides for public comment, 180 days after the day on
147 which the time period ends for the agency to review public comments.
148 (3) (a) If a person files an application for agency action that an agency determines is
149 incomplete, the agency shall notify the person:

150 (i) that the application is incomplete; and

151 (ii) what the person needs to do to complete the application.

152 (b) If a person submits an application a second time to address what the agency notifies
153 the person needs to be done under Subsection (3)(a)(ii) to complete the application, the agency
154 may raise additional issues concerning the completeness of the application.

155 (c) If a person submits an application for a third time to address what the agency
156 notifies the person needs to be done under Subsection (3)(a)(ii) to complete the application, the
157 agency may not raise any additional issue concerning the completeness of the application
158 unless the agency can demonstrate that the issue is based on new information obtained after the
159 agency sent the notice required under Subsection (3)(a).

160 (d) An agency shall publish on a public website for each type of agency action the
161 requirements for an application to be considered a complete application.

162 (4) A petition appealing, either administratively or judicially, an order related to an
163 application seeking agency action is not subject to the requirements of this section.

164 (5) This section shall be interpreted in a manner that provides the greatest protection to
165 a person seeking agency action.

166 (6) This section does not apply to an agency action if application of this section to the
167 agency action is preempted by federal law.

168 (7) An application for agency action is considered approved if an agency fails to
169 comply with this section.

170 Section 3. Section **79-1-105** is enacted to read:

171 **79-1-105. Timing of department agency action.**

172 (1) As used in this section:

173 (a) "Agency" means the department or an agency, division, board, office, or other
174 subpart of the department.

175 (b) (i) "Agency action" means a paper-based or electronic action that grants authority to
176 engage in a specified activity under an applicable statute or a rule made under an applicable
177 statute, including:

178 (A) a permit;

179 (B) a plan;

180 (C) a license;

- 181 (D) a registration;
- 182 (E) a certificate;
- 183 (F) an approval order, including action regarding a notice of intention or surety for a
- 184 mining operation;
- 185 (G) a finding that a notice of intention is complete for a small mining operation;
- 186 (H) a water right or action on a change application; or
- 187 (I) another administrative authorization made under an applicable statute.
- 188 (ii) Notwithstanding Subsection (1)(b)(i), "agency action" does not include:
- 189 (A) responding to a complaint;
- 190 (B) issuing a grant or loan;
- 191 (C) investigating a person engaging in a specified activity authorized by agency action;
- 192 or
- 193 (D) responding to a request under Title 63G, Chapter 2, Government Records Access
- 194 and Management Act.
- 195 (c) "Applicable statute" means the following to the extent that the statute governs
- 196 agency action:
- 197 (i) this title;
- 198 (ii) Title 23A, Wildlife Resources Act;
- 199 (iii) Title 40, Mines and Mining;
- 200 (iv) Title 65A, Forestry, Fire, and State Lands;
- 201 (v) Title 73, Water and Irrigation; or
- 202 (vi) another state statute administered by an agency.
- 203 (d) "Application" means a request for agency action.
- 204 (e) "Complete application" means an application in a form approved by an agency that
- 205 contains all of the information required by statute or rule for the agency to issue an order.
- 206 (f) (i) "Order" means an order or final action issued by an agency under an applicable
- 207 statute that:
- 208 (A) approves an agency action;
- 209 (B) renews an agency action;
- 210 (C) denies an agency action;
- 211 (D) modifies or amends an agency action; or

212 (E) revokes and reissues an agency action.
213 (ii) "Order" does not include an order terminating an agency action.
214 (2) Unless applicable statute provides for a different time period to issue the order, an
215 agency shall issue an order related to agency action by no later than the later of:
216 (a) 180 days after the day on which the agency receives a complete application seeking
217 agency action; or
218 (b) if the applicable statute provides for public comment, 180 days after the day on
219 which the time period ends for the agency to review public comments.
220 (3) (a) If a person files an application for agency action that an agency determines is
221 incomplete, the agency shall notify the person:
222 (i) that the application is incomplete; and
223 (ii) what the person needs to do to complete the application.
224 (b) If a person submits an application a second time to address what the agency notifies
225 the person needs to be done under Subsection (3)(a)(ii) to complete the application, the agency
226 may raise additional issues concerning the completeness of the application.
227 (c) If a person submits an application for a third time to address what the agency
228 notifies the person needs to be done under Subsection (3)(a)(ii) to complete the application, the
229 agency may not raise any additional issue concerning the completeness of the application
230 unless the agency can demonstrate that the issue is based on new information obtained after the
231 agency sent the notice required under Subsection (3)(a).
232 (d) An agency shall publish on a public website for each type of agency action the
233 requirements for an application to be considered a complete application.
234 (4) A petition appealing, either administratively or judicially, an order related to an
235 application seeking agency action is not subject to the requirements of this section.
236 (5) This section shall be interpreted in a manner that provides the greatest protection to
237 a person seeking agency action.
238 (6) This section does not apply to an agency action if application of this section to the
239 agency action is preempted by federal law.
240 (7) An application for agency action is considered approved if an agency fails to
241 comply with this section.
242 **Section 4. Effective date.**

243

This bill takes effect on May 1, 2024.