

# HB0230S01 compared with HB0230

~~deleted text~~ shows text that was in HB0230 but was deleted in HB0230S01.

inserted text shows text that was not in HB0230 but was inserted into HB0230S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

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### 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

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action; and

- ▶ addresses effect of noncompliance.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

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

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

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

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

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

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

(1) As used in this section:

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

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

(A) a permit;

(B) a plan;

(C) a license;

(D) a registration;

(E) a certificate;

(F) an approval order; or

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

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

(A) responding to a complaint;

(B) issuing a grant or loan;

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

or

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

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

(i) this title;

(ii) Title 16, Corporations;

(iii) Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(iv) Title 57, Real Estate;

(v) Title 58, Occupations and Professions;

(vi) Title 61, Securities Division - Real Estate Division;

(vii) Title 70, Trademarks and Trade Names; or

(viii) another state statute administered by an agency.

(d) "Application" means a request for agency action.

(e) "Complete application" means an application in a form approved by an agency that contains all of the information required by statute or rule for the agency to issue an order.

(f) "Department" means the Department of Commerce.

(g) (i) "Order" means an order or final action issued by an agency under an applicable statute that:

(A) approves an agency action;

(B) renews an agency action;

(C) denies an agency action;

(D) modifies or amends an agency action; or

(E) revokes and reissues an agency action.

(ii) "Order" does not include an order terminating an agency action.

(2) ~~{An}~~ Unless applicable statute provides for a different time period to issue the order, an agency shall issue an order related to agency action by no later than the later of:

(a) ~~{30}~~ 180 days after the day on which the agency receives a complete application seeking agency action; or

(b) if the applicable statute provides for public comment, ~~{30}~~ 180 days after the day

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on which the time period ends for the agency to review public comments.

~~(3) (a) {An agency shall determine by no later than 15 days from the day on which an application is filed with the agency whether the application is complete.~~

~~—— (b) {If a person files an application for agency action that an agency determines is incomplete, the agency shall notify the person { within the 15-day period described in Subsection (3)(a)}:~~

~~(i) that the application is incomplete; and~~

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

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

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

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

~~{ —— (4) (a) Notwithstanding Subsection (2) or (3), if an applicable statute provides:~~

~~—— (i) for a shorter time period for an agency to act than required by this section, the shorter time period applies; or~~

~~—— (ii) greater protections for determining that an application is complete, the greater protections apply.~~

~~—— (b) If the applicable statute provides:~~

~~—— (i) for a longer time period for an agency to act than required by this section, the time period in this section applies; or~~

~~—— (ii) lesser protection for determining that an application is complete, the protections under Subsection (3) apply.~~

{ (5)4} A petition appealing, either administratively or judicially, an order related to an application seeking agency action is not subject to the requirements of this section.

{(6)5} This section shall be interpreted in a manner that provides the greatest

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protection to a person seeking agency action.

(~~f7~~;6) This section does not apply to an agency action if application of this section to the agency action is preempted by federal law.

(~~f8~~;7) An application for agency action is considered approved if an agency fails to comply with this section.

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

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

(1) As used in this section:

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

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

(A) a permit;

(B) a plan;

(C) a license;

(D) a registration;

(E) a certificate;

(F) an approval order; or

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

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

(A) responding to a complaint;

(B) issuing a grant or loan;

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

or

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

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

(i) this title; or

(ii) another state statute administered by an agency.

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(d) "Application" means a request for agency action.

(e) "Complete application" means an application in a form approved by an agency that contains all of the information required by statute or rule for the agency to issue an order.

(f) (i) "Order" means an order or final action issued by an agency under an applicable statute that:

(A) approves an agency action;

(B) renews an agency action;

(C) denies an agency action;

(D) modifies or amends an agency action; or

(E) revokes and reissues an agency action.

(ii) "Order" does not include an order terminating an agency action.

(2) ~~{An}~~ Unless applicable statute provides for a different time period to issue the order, an agency shall issue an order related to agency action by no later than the later of:

(a) ~~{30}~~ 180 days after the day on which the agency receives a complete application seeking agency action; or

(b) if the applicable statute provides for public comment, ~~{30}~~ 180 days after the day on which the time period ends for the agency to review public comments.

(3) (a) ~~{An agency shall determine by no later than 15 days from the day on which an application is filed with the agency whether the application is complete.~~

~~—— (b) }~~ If a person files an application for agency action that an agency determines is incomplete, the agency shall notify the person ~~{ within the 15-day period described in Subsection (3)(a) }~~:

(i) that the application is incomplete; and

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

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

(c) If a person submits an application for a ~~{second}~~ third time to address what the agency ~~{notified}~~ notifies the person ~~{needed}~~ needs to be done under Subsection (3)(~~{b}~~ a)(ii) to complete the application, the agency may not raise ~~{an}~~ any additional issue concerning the completeness of the application unless the agency can demonstrate that the issue is based on

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new information obtained after the agency sent the notice required under Subsection (3)(~~f~~~~b~~~~7~~~~a~~).

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

~~{~~ (4) (a) Notwithstanding Subsection (2) or (3), if an applicable statute provides:

~~——~~ (i) for a shorter time period for an agency to act than required by this section, the shorter time period applies; or

~~——~~ (ii) greater protections for determining that an application is complete, the greater protections apply.

~~——~~ (b) If the applicable statute provides:

~~——~~ (i) for a longer time period for an agency to act than required by this section, the time period in this section applies; or

~~——~~ (ii) lesser protection for determining that an application is complete, the protections under Subsection (3) apply.

~~‡~~ (~~f~~~~5~~~~4~~) A petition appealing, either administratively or judicially, an order related to an application seeking agency action is not subject to the requirements of this section.

(~~f~~~~6~~~~5~~) This section shall be interpreted in a manner that provides the greatest protection to a person seeking agency action.

(~~f~~~~7~~~~6~~) This section does not apply to an agency action if application of this section to the agency action is preempted by federal law.

(~~f~~~~8~~~~7~~) An application for agency action is considered approved if an agency fails to comply with this section.

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

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

(1) As used in this section:

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

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

(A) a permit;

(B) a plan;

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(C) a license;

(D) a registration;

(E) a certificate;

(F) an approval order, including action regarding a notice of intention or surety for a mining operation;

(G) a finding that a notice of intention is complete for a small mining operation;

(H) a water right or action on a change application; or

(I) another administrative authorization made under an applicable statute.

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

(A) responding to a complaint;

(B) issuing a grant or loan;

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

or

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

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

(i) this title;

(ii) Title 23A, Wildlife Resources Act;

(iii) Title 40, Mines and Mining;

(iv) Title 65A, Forestry, Fire, and State Lands;

(v) Title 73, Water and Irrigation; or

(vi) another state statute administered by an agency.

(d) "Application" means a request for agency action.

(e) "Complete application" means an application in a form approved by an agency that contains all of the information required by statute or rule for the agency to issue an order.

(f) (i) "Order" means an order or final action issued by an agency under an applicable statute that:

(A) approves an agency action;

(B) renews an agency action;

(C) denies an agency action;

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(D) modifies or amends an agency action; or

(E) revokes and reissues an agency action.

(ii) "Order" does not include an order terminating an agency action.

(2) ~~{An}~~ Unless applicable statute provides for a different time period to issue the order, an agency shall issue an order related to agency action by no later than the later of:

(a) ~~{30}~~ 180 days after the day on which the agency receives a complete application seeking agency action; or

(b) if the applicable statute provides for public comment, ~~{30}~~ 180 days after the day on which the time period ends for the agency to review public comments.

(3) (a) ~~{An agency shall determine by no later than 15 days from the day on which an application is filed with the agency whether the application is complete.~~

~~—— (b) }~~ If a person files an application for agency action that an agency determines is incomplete, the agency shall notify the person ~~{ within the 15-day period described in Subsection (3)(a)}~~:

(i) that the application is incomplete; and

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

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

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

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

~~{ —— (4) (a) Notwithstanding Subsection (2) or (3), if an applicable statute provides:~~

~~—— (i) for a shorter time period for an agency to act than required by this section, the shorter time period applies; or~~

~~—— (ii) greater protections for determining that an application is complete, the greater protections apply.~~

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~~\_\_\_\_\_ (b) If the applicable statute provides:~~

~~\_\_\_\_\_ (i) for a longer time period for an agency to act than required by this section, the time period in this section applies; or~~

~~\_\_\_\_\_ (ii) lesser protection for determining that an application is complete, the protections under Subsection (3) apply.~~

‡ ~~(5)4~~ A petition appealing, either administratively or judicially, an order related to an application seeking agency action is not subject to the requirements of this section.

~~(6)5~~ This section shall be interpreted in a manner that provides the greatest protection to a person seeking agency action.

~~(7)6~~ This section does not apply to an agency action if application of this section to the agency action is preempted by federal law.

~~(8)7~~ An application for agency action is considered approved if an agency fails to comply with this section.

Section 4. **Effective date.**

This bill takes effect on May 1, 2024.