

Representative Cheryl K. Acton proposes the following substitute bill:

ADMINISTRATIVE RULES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill enacts provisions related to administrative rulemaking.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires agencies to inform legislative committees of certain rules; and
- ▶ requires the Office of Administrative Rules to create a list of certain rules in the

Utah State Bulletin.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-3-102, as last amended by Laws of Utah 2021, Chapter 344

63G-3-301, as last amended by Laws of Utah 2022, Chapter 443

63G-3-402, as last amended by Laws of Utah 2022, Chapter 443



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

27 Section 1. Section **63G-3-102** is amended to read:

28 **63G-3-102. Definitions.**

29 As used in this chapter:

30 (1) "Administrative record" means information an agency relies upon when making a
31 rule under this chapter including:

32 (a) the proposed rule, change in the proposed rule, and the rule analysis form;

33 (b) the public comment received and recorded by the agency during the public

34 comment period;

35 (c) the agency's response to the public comment;

36 (d) the agency's analysis of the public comment; and

37 (e) the agency's report of its decision-making process.

38 (2) "Agency" means each state board, authority, commission, institution, department,
39 division, officer, or other state government entity other than the Legislature, its committees, the
40 political subdivisions of the state, or the courts, which is authorized or required by law to make
41 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or
42 perform other similar actions or duties delegated by law.

43 (3) "Bulletin" means the Utah State Bulletin.

44 (4) "Catchline" means a short summary of each section, part, rule, or title of the code
45 that follows the section, part, rule, or title reference placed before the text of the rule and serves
46 the same function as boldface in legislation as described in Section [68-3-13](#).

47 (5) "Code" means the body of all effective rules as compiled and organized by the
48 office and entitled "Utah Administrative Code."

49 (6) "Department" means the Department of Government Operations created in Section
50 [63A-1-104](#).

51 (7) "Director" means the director of the office.

52 (8) "Effective" means operative and enforceable.

53 (9) "Executive director" means the executive director of the department.

54 (10) "File" means to submit a document to the office as prescribed by the office.

55 (11) "Filing date" means the day and time the document is recorded as received by the
56 office.

57 (12) "Interested person" means any person affected by or interested in a proposed rule,
58 amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.

59 (13) "Office" means the Office of Administrative Rules created in Section 63G-3-401.

60 (14) "Order" means an agency action that determines the legal rights, duties, privileges,
61 immunities, or other interests of one or more specific persons, but not a class of persons.

62 (15) "Person" means any individual, partnership, corporation, association,
63 governmental entity, or public or private organization of any character other than an agency.

64 (16) "Publication" or "publish" means making a rule available to the public by
65 including the rule or a summary of the rule in the bulletin.

66 (17) "Publication date" means the inscribed date of the bulletin.

67 (18) "Register" may include an electronic database.

68 (19) (a) "Rule" means an agency's written statement that:

69 (i) is explicitly or implicitly required by state or federal statute or other applicable law;

70 (ii) implements or interprets a state or federal legal mandate; and

71 (iii) applies to a class of persons or another agency.

72 (b) "Rule" includes the amendment or repeal of an existing rule.

73 (c) "Rule" does not mean:

74 (i) orders;

75 (ii) an agency's written statement that applies only to internal management and that
76 does not restrict the legal rights of a public class of persons or another agency;

77 (iii) the governor's executive orders or proclamations;

78 (iv) opinions issued by the attorney general's office;

79 (v) declaratory rulings issued by the agency according to Section 63G-4-503 except as
80 required by Section 63G-3-201;

81 (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection
82 63G-3-201(6); or

83 (vii) an agency written statement that is in violation of any state or federal law.

84 (20) "Rule analysis" means the format prescribed by the office to summarize and
85 analyze rules.

86 (21) "Small business" means a business employing fewer than 50 persons.

87 (22) "Substantial fiscal impact rule" means a proposed rule that has an anticipated cost,

88 as described in Subsection [63G-3-301\(8\)\(d\)](#), of at least \$500,000 over a three-year period.

89 ~~[(22)]~~ (23) "Substantive change" means a change in a rule that affects the application
90 or results of agency actions.

91 Section 2. Section **63G-3-301** is amended to read:

92 **63G-3-301. Rulemaking procedure.**

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

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

97 (a) the requirements of this section;

98 (b) consistent procedures required by other statutes;

99 (c) applicable federal mandates; and

100 (d) rules made by the office to implement this chapter.

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

104 (4) (a) Each agency shall file the agency's proposed rule and rule analysis with the
105 office.

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

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

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

112 (iii) If the director determines that the rule is too long to publish, the office shall
113 publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

114 (5) Before filing a rule with the office, the agency shall conduct a thorough analysis,
115 consistent with the criteria established by the Governor's Office of Planning and Budget, of the
116 fiscal impact a rule may have on businesses, which criteria may include:

117 (a) the type of industries that will be impacted by the rule, and for each identified
118 industry, an estimate of the total number of businesses within the industry, and an estimate of

119 the number of those businesses that are small businesses;

120 (b) the individual fiscal impact that would incur to a typical business for a one-year
121 period;

122 (c) the aggregated total fiscal impact that would incur to all businesses within the state
123 for a one-year period;

124 (d) the total cost that would incur to all impacted entities over a five-year period; and

125 (e) the department head's comments on the analysis.

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

129 (a) establishing less stringent compliance or reporting requirements for small
130 businesses;

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

133 (c) consolidating or simplifying compliance or reporting requirements for small
134 businesses;

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

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

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

143 (8) The rule analysis shall contain:

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

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

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

147 (d) the anticipated cost or savings to:

148 (i) the state budget;

149 (ii) local governments;

- 150 (iii) small businesses; and
- 151 (iv) persons other than small businesses, businesses, or local governmental entities;
- 152 (e) the compliance cost for affected persons;
- 153 (f) how interested persons may review the full text of the rule;
- 154 (g) how interested persons may present their views on the rule;
- 155 (h) the time and place of any scheduled public hearing;
- 156 (i) the name and telephone number of an agency employee who may be contacted
- 157 about the rule;
- 158 (j) the name of the agency head or designee who authorized the rule;
- 159 (k) the date on which the rule may become effective following the public comment
- 160 period;
- 161 (l) the agency's analysis on the fiscal impact of the rule as required under Subsection
- 162 (5);
- 163 (m) any additional comments the department head may choose to submit regarding the
- 164 fiscal impact the rule may have on businesses; and
- 165 (n) if applicable, a summary of the agency's efforts to comply with the requirements of
- 166 Subsection (6).
- 167 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
- 168 summary that generally includes the following:
- 169 (i) a summary of substantive provisions in the repealed rule which are eliminated from
- 170 the enacted rule; and
- 171 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 172 (b) The summary required under this Subsection (9) is to aid in review and may not be
- 173 used to contest any rule on the ground of noncompliance with the procedural requirements of
- 174 this chapter.
- 175 (10) A copy of the rule analysis shall be mailed to all persons who have made timely
- 176 request of the agency for advance notice of the agency's rulemaking proceedings and to any
- 177 other person who, by statutory or federal mandate or in the judgment of the agency, should also
- 178 receive notice.
- 179 (11) (a) Following the publication date, the agency shall allow at least 30 days for
- 180 public comment on the rule.

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

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

186 (i) no fewer than seven calendar days after the day on which the public comment
187 period closes under Subsection (11); and

188 (ii) no more than 120 days after the day on which the rule is published.

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

191 (c) The notice of effective date may not provide for an effective date before the day on
192 which the office receives the notice.

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

195 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
196 not filed with the office within 120 days after the day on which the rule is published.

197 (13) (a) Except as provided in Subsection (13)(d), ~~[before an agency enacts a rule]~~
198 when an agency proposes a substantial fiscal impact rule in the bulletin, the agency shall
199 submit to the appropriations subcommittee and interim committee with jurisdiction over the
200 agency the agency's proposed rule for review~~[- if the proposed rule, over a three-year period,~~
201 ~~has a fiscal impact of more than:]~~.

202 ~~[(i) \$250,000 to a single person; or]~~

203 ~~[(ii) \$7,500,000 to a group of persons.]~~

204 (b) An appropriations subcommittee or interim committee that reviews a rule
205 submitted under Subsection (13)(a) shall:

206 (i) before the review, directly inform the chairs of the Administrative Rules Review
207 and General Oversight Committee of the coming review, including the date, time, and place of
208 the review; and

209 (ii) after the review, directly inform the chairs of the Administrative Rules Review and
210 General Oversight Committee of the outcome of the review, including any recommendation.

211 (c) An appropriations subcommittee or interim committee that reviews a rule submitted

212 under Subsection (13)(a) may recommend to the Administrative Rules Review and General
213 Oversight Committee that the Administrative Rules Review and General Oversight Committee
214 not recommend reauthorization of the rule in the omnibus legislation described in Section
215 [63G-3-502](#).

216 (d) The requirement described in Subsection (13)(a) does not apply to:

217 (i) the State Tax Commission; ~~[or]~~

218 (ii) the State Board of Education~~[-]; or~~

219 (iii) the Department of Environmental Quality.

220 (14) (a) As used in this Subsection (14), "initiate rulemaking proceedings" means the
221 filing, for the purposes of publication in accordance with Subsection (4), of an agency's
222 proposed rule that is required by state statute.

223 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
224 day on which the statutory provision that specifically requires the rulemaking takes effect,
225 except under Subsection (14)(c).

226 (c) When a statute is enacted that requires agency rulemaking and the affected agency
227 already has rules in place that meet the statutory requirement, the agency shall submit the rules
228 to the Administrative Rules Review and General Oversight Committee for review within 60
229 days after the day on which the statute requiring the rulemaking takes effect.

230 (d) If a state agency does not initiate rulemaking proceedings in accordance with the
231 time requirements in Subsection (14)(b), the state agency shall appear before the legislative
232 Administrative Rules Review and General Oversight Committee and provide the reasons for
233 the delay.

234 (15) (a) When an agency proposes a rule due to a federal requirement under Subsection
235 (8)(c) in the bulletin, the agency shall submit to the appropriations subcommittee and interim
236 committee with jurisdiction over the agency the agency's proposed rule for review.

237 (b) An appropriations subcommittee or interim committee that reviews a rule
238 submitted under Subsection (15)(a) shall:

239 (i) before the review, directly inform the chairs of the Administrative Rules Review
240 and General Oversight Committee of the coming review, including the date, time, and place of
241 the review; and

242 (ii) after the review, directly inform the chairs of the Administrative Rules Review and

243 General Oversight Committee of the outcome of the review, including any recommendation.

244 (c) An appropriations subcommittee or interim committee that reviews a rule submitted
245 under Subsection (15)(a) may recommend to the Administrative Rules Review and General
246 Oversight Committee that the Administrative Rules Review and General Oversight Committee
247 not recommend reauthorization of the rule in the omnibus legislation described in Section
248 63G-3-502.

249 Section 3. Section **63G-3-402** is amended to read:

250 **63G-3-402. Office of Administrative Rules -- Duties generally.**

251 (1) The office shall:

252 (a) record in a register the receipt of all agency rules, rule analysis forms, and notices
253 of effective dates;

254 (b) make the register, copies of all proposed rules, and rulemaking documents available
255 for public inspection;

256 (c) publish all proposed rules, rule analyses, notices of effective dates, and review
257 notices in the bulletin at least monthly, except that the office may publish the complete text of
258 any proposed rule that the director determines is too long to print or too expensive to publish
259 by reference to the text maintained by the office;

260 (d) compile, format, number, and index all effective rules in an administrative code,
261 and periodically publish that code and supplements or revisions to it;

262 (e) publish a digest of all rules and notices contained in the most recent bulletin;

263 (f) publish a list of each rule described in Subsections 63G-3-301(13) and (15) in the
264 bulletin in which the rule appears;

265 [~~(f)~~] (g) publish at least annually an index of all changes to the administrative code and
266 the effective date of each change;

267 [~~(g)~~] (h) print, or contract to print, all rulemaking publications the director determines
268 necessary to implement this chapter;

269 [~~(h)~~] (i) distribute without charge the bulletin and administrative code to
270 state-designated repositories, the Administrative Rules Review and General Oversight
271 Committee, the Office of Legislative Research and General Counsel, and the two houses of the
272 Legislature;

273 [~~(i)~~] (j) distribute without charge the digest and index to state legislators, agencies,

274 political subdivisions on request, and the Office of Legislative Research and General Counsel;

275 ~~[(j)]~~ (k) distribute, at prices covering publication costs, all paper rulemaking

276 publications to all other requesting persons and agencies;

277 ~~[(k)]~~ (l) provide agencies assistance in rulemaking;

278 ~~[(l)]~~ (m) if the department operates the office as an internal service fund agency in

279 accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section

280 63A-1-114:

281 (i) the proposed rate and fee schedule as required by Section 63A-1-114; and

282 (ii) other information or analysis requested by the Rate Committee;

283 ~~[(m)]~~ (n) administer this chapter and require state agencies to comply with filing,

284 publication, and hearing procedures; and

285 ~~[(n)]~~ (o) make technological improvements to the rulemaking process, including

286 improvements to automation and digital accessibility.

287 (2) The office shall establish by rule in accordance with Title 63G, Chapter 3, Utah

288 Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to

289 make rules under this chapter.

290 (3) The office may after notifying the agency make nonsubstantive changes to rules
291 filed with the office or published in the bulletin or code by:

292 (a) implementing a uniform system of formatting, punctuation, capitalization,
293 organization, numbering, and wording;

294 (b) correcting obvious errors and inconsistencies in punctuation, capitalization,
295 numbering, referencing, and wording;

296 (c) changing a catchline to more accurately reflect the substance of each section, part,
297 rule, or title;

298 (d) updating or correcting annotations associated with a section, part, rule, or title; and

299 (e) merging or determining priority of any amendment, enactment, or repeal to the
300 same rule or section made effective by an agency.

301 (4) In addition, the office may make the following nonsubstantive changes with the
302 concurrence of the agency:

303 (a) eliminate duplication within rules;

304 (b) eliminate obsolete and redundant words; and

305 (c) correct defective or inconsistent section and paragraph structure in arrangement of
306 the subject matter of rules.

307 (5) For nonsubstantive changes made in accordance with Subsection (3) or (4) after
308 publication of the rule in the bulletin, the office shall publish a list of nonsubstantive changes
309 in the bulletin. For each nonsubstantive change, the list shall include:

310 (a) the affected code citation;

311 (b) a brief description of the change; and

312 (c) the date the change was made.

313 (6) All funds appropriated or collected for publishing the office's publications shall be
314 nonlapsing.

315 Section 4. **Effective date.**

316 This bill takes effect on May 1, 2024.