

HB0357S01 compared with HB0357

~~{deleted text}~~ shows text that was in HB0357 but was deleted in HB0357S01.

inserted text shows text that was not in HB0357 but was inserted into HB0357S01.

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 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 ~~{ procedures }~~.

Highlighted Provisions:

This bill:

▶ defines terms; ~~{ and~~

▶ ~~limits an agency's authority to makes rules that exceed a specified cost to implement unless a bill ratifies the agency's proposed rule}~~

▶ 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

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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

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

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

63G-3-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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(6) "Department" means the Department of Government Operations created in Section 63A-1-104.

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

(8) "Effective" means operative and enforceable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) "Rule" does not mean:

(i) orders;

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

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

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

(v) declaratory rulings issued by the agency according to Section 63G-4-503 except as

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required by Section 63G-3-201;

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

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

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

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

(22) "Substantial fiscal impact rule" means a proposed rule that has an anticipated cost, as described in Subsection 63G-3-301(8)(d), of at least \$500,000 over a three-year period.

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

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

63G-3-301. Rulemaking procedure.

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

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

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

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

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

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

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

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

(ii) For rule amendments, only the section or subsection of the rule being amended

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need be printed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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analysis described in Subsection (6).

(8) The rule analysis shall contain:

- (a) a summary of the rule or change;
- (b) the purpose of the rule or reason for the change;
- (c) the statutory authority or federal requirement for the rule;
- (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
- (e) the compliance cost for affected persons;
- (f) how interested persons may review the full text of the rule;
- (g) how interested persons may present their views on the rule;
- (h) the time and place of any scheduled public hearing;
- (i) the name and telephone number of an agency employee who may be contacted

about the rule;

- (j) the name of the agency head or designee who authorized the rule;
- (k) the date on which the rule may become effective following the public comment

period;

(l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);

(m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and

(n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).

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

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

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

(b) The summary required under this Subsection (9) is to aid in review and may not be

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used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

(13) (a) Except as provided in Subsection (13)(d) ~~{ or for a rule described in Subsection (15)}~~, ~~[before an agency enacts a rule]~~ when an agency proposes a substantial fiscal impact rule in the bulletin, the agency shall submit to the appropriations subcommittee and interim committee with jurisdiction over the agency the agency's proposed rule for review ~~[if the proposed rule, over a three-year period, has a fiscal impact of more than {}:]~~.

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

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

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

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

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

(c) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) may recommend to the Administrative Rules Review and General Oversight Committee that the Administrative Rules Review and General Oversight Committee not recommend reauthorization of the rule in the omnibus legislation described in Section 63G-3-502.

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

(i) the State Tax Commission; ~~or~~

(ii) the State Board of Education~~;~~ or

(iii) the Department of Environmental Quality.

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

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

(c) 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 and General Oversight Committee for review within 60 days after the day on which the statute requiring the rulemaking takes effect.

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

(15) (a) ~~if the rule analysis of a proposed rule indicates the rule is a substantial fiscal~~

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~~impact rule the rule is not effective until a bill that ratifies the rule takes effect.~~

~~— (b) The } When an agency proposes a rule due to a federal requirement under Subsection (8)(c) in the bulletin, the agency shall submit {the proposed substantial fiscal impact rule } to the appropriations subcommittee and interim committee with jurisdiction over the agency the agency's proposed rule for review.~~

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

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

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

(c) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (15)(a) may recommend to the Administrative Rules Review and General Oversight Committee {at least 30 days before the day on which the next annual general session begins.

~~— (c) The } that the Administrative Rules Review and General Oversight Committee {shall submit the proposed substantial fiscal impact rule to each member of the Legislature as soon as practicable.~~

~~— (d) Any member of the Legislature may introduce legislation to ratify the proposed substantial fiscal impact rule.~~

~~— (e) The proposed substantial fiscal impact rule is exempt from Subsections 63G-3-301(12)(a) and 63G-3-301(12)(c).~~

~~— (f) The agency may not file a notice of effective date with the } not recommend reauthorization of the rule in the omnibus legislation described in Section 63G-3-502.~~

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

63G-3-402. Office of Administrative Rules {before a bill ratifying the proposed substantial fiscal impact rule becomes effective.

~~— (g) The proposed substantial fiscal impact rule automatically lapses:~~

~~— (i) the day after the day on which the Legislature adjourns the annual general session described in Subsection (15)(b) if the Legislature fails to pass a bill ratifying the~~

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~~proposed rule; or~~

~~_____ (ii) the day after the last day on which the Legislature could hold a veto override session if the governor vetoes the bill ratifying the substantial fiscal impact bill.~~

~~_____ (h) (i) The proposed substantial fiscal impact rule takes effect on the date the agency specifies in the notice}~~ -- Duties generally.

(1) The office shall:

(a) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective {date.

~~_____ (ii) A date}~~ dates;

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

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

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

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

(f) publish a list of each rule described in {Subsection (15)(h)(i) shall be at least 150 days after the day on which} Subsections 63G-3-301(13) and (15) in the bulletin in which the rule appears;

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

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

[{h}] (i) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review and General Oversight Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature {adjourns the general session sine die.

~~_____ (i) This Subsection (15) does not apply to:~~

~~_____ (i) an emergency rule made under Section 63G-3-304;~~

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~~_____ (ii) a proposed rule that regulates an issue that a provision of Utah's constitution vests the agency with specific constitutional authority to regulate; or~~

~~_____ (iii) a proposed rule an agency makes to implement legislation if the anticipated cost stated in the legislation's fiscal note is greater than or equal to the amount of the anticipated cost of the proposed rule.~~

~~_____ Section 3};~~

~~[(+)] (j) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;~~

~~[(+)] (k) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;~~

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

~~[(+)] (m) if the department operates the office as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:~~

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

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

~~[(m)] (n) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures; and~~

~~[(n)] (o) make technological improvements to the rulemaking process, including improvements to automation and digital accessibility.~~

~~(2) The office shall establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to make rules under this chapter.~~

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

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

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

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

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

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

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

(a) eliminate duplication within rules;

(b) eliminate obsolete and redundant words; and

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

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

(a) the affected code citation;

(b) a brief description of the change; and

(c) the date the change was made.

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

Section 4. Effective date.

This bill takes effect on May 1, 2024.