

**ADMINISTRATIVE RULEMAKING AUTHORITY**

**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses the time period within which a state agency is required to initiate administrative rulemaking proceedings.

**Highlighted Provisions:**

This bill:

- ▶ prohibits a state agency from initiating rulemaking proceedings leading up to and during the annual general legislative session;
- ▶ tolls the period within which a state agency is required to initiate rulemaking proceedings during the period within which initiating rulemaking proceedings is prohibited; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-3-301**, as last amended by Laws of Utah 2019, Chapter 454



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

29 Section 1. Section **63G-3-301** is amended to read:

30 **63G-3-301. Rulemaking procedure.**

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

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

- 35 (a) the requirements of this section;
- 36 (b) consistent procedures required by other statutes;
- 37 (c) applicable federal mandates; and
- 38 (d) rules made by the department to implement this chapter.

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

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

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

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

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

50 (iii) If the executive director or the executive director's designee determines that the  
51 rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by  
52 reference to a copy on file with the office.

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

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

- 59 (b) the individual fiscal impact that would incur to a typical business for a one-year
- 60 period;
- 61 (c) the aggregated total fiscal impact that would incur to all businesses within the state
- 62 for a one-year period;
- 63 (d) the total cost that would incur to all impacted entities over a five-year period; and
- 64 (e) the department head's comments on the analysis.
- 65 (6) If the agency reasonably expects that a proposed rule will have a measurable
- 66 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal
- 67 law, each of the following methods of reducing the impact of the rule on small businesses:
- 68 (a) establishing less stringent compliance or reporting requirements for small
- 69 businesses;
- 70 (b) establishing less stringent schedules or deadlines for compliance or reporting
- 71 requirements for small businesses;
- 72 (c) consolidating or simplifying compliance or reporting requirements for small
- 73 businesses;
- 74 (d) establishing performance standards for small businesses to replace design or
- 75 operational standards required in the proposed rule; and
- 76 (e) exempting small businesses from all or any part of the requirements contained in
- 77 the proposed rule.
- 78 (7) If during the public comment period an agency receives comment that the proposed
- 79 rule will cost small business more than one day's annual average gross receipts, and the agency
- 80 had not previously performed the analysis in Subsection (6), the agency shall perform the
- 81 analysis described in Subsection (6).
- 82 (8) The rule analysis shall contain:
- 83 (a) a summary of the rule or change;
- 84 (b) the purpose of the rule or reason for the change;
- 85 (c) the statutory authority or federal requirement for the rule;
- 86 (d) the anticipated cost or savings to:
- 87 (i) the state budget;
- 88 (ii) local governments;
- 89 (iii) small businesses; and

90 (iv) persons other than small businesses, businesses, or local governmental entities;

91 (e) the compliance cost for affected persons;

92 (f) how interested persons may review the full text of the rule;

93 (g) how interested persons may present their views on the rule;

94 (h) the time and place of any scheduled public hearing;

95 (i) the name and telephone number of an agency employee who may be contacted

96 about the rule;

97 (j) the name of the agency head or designee who authorized the rule;

98 (k) the date on which the rule may become effective following the public comment

99 period;

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

101 (5);

102 (m) any additional comments the department head may choose to submit regarding the

103 fiscal impact the rule may have on businesses; and

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

105 Subsection (6).

106 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a

107 summary that generally includes the following:

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

109 the enacted rule; and

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

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

112 used to contest any rule on the ground of noncompliance with the procedural requirements of

113 this chapter.

114 (10) A copy of the rule analysis shall be mailed to all persons who have made timely

115 request of the agency for advance notice of the agency's rulemaking proceedings and to any

116 other person who, by statutory or federal mandate or in the judgment of the agency, should also

117 receive notice.

118 (11) (a) Following the publication date, the agency shall allow at least 30 days for

119 public comment on the rule.

120 (b) The agency shall review and evaluate all public comments submitted in writing

121 within the time period under Subsection (11)(a) or presented at public hearings conducted by  
122 the agency within the time period under Subsection (11)(a).

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

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

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

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

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

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

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

136 (13) (a) Except as provided in Subsection (13)(d), before an agency enacts a rule, the  
137 agency shall submit to the appropriations subcommittee and interim committee with  
138 jurisdiction over the agency the agency's proposed rule for review, if the proposed rule, over a  
139 three-year period, has a fiscal impact of more than:

140 (i) \$250,000 to a single person; or

141 (ii) \$7,500,000 to a group of persons.

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

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

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

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

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

153 (i) the State Tax Commission; or

154 (ii) the State Board of Education.

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

158 (b) ~~(A)~~ (i) Except as provided in Subsection (14)(c), a state agency shall initiate  
159 rulemaking proceedings no later than 180 days after the day on which the statutory provision  
160 that specifically requires the rulemaking takes effect~~[-except under Subsection (14)(c)].~~

161 ~~(c)~~ (ii) When a statute is enacted that requires agency rulemaking and the affected  
162 agency already has rules in place that meet the statutory requirement, the agency shall submit  
163 the rules to the Administrative Rules Review Committee for review within 60 days after the  
164 day on which the statute requiring the rulemaking takes effect.

165 (c) (i) A state agency may not initiate rulemaking proceedings after November 15 and  
166 before the day after the adjournment sine die of the next annual general legislative session  
167 unless the proposed rule is excepted from regular rulemaking procedures under Section  
168 63G-3-304.

169 (ii) The 180-day period described in Subsection (14)(b) is tolled for the period  
170 described in Subsection (14)(c)(i).

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