

1 **UTAH ADMINISTRATIVE RULEMAKING ACT AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian M. Greene**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Administrative Rulemaking Act to remove from the list of
10 administrative rulemaking exemptions those agency actions that apply only to students
11 enrolled in a state education institution.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ removes from the list of administrative rulemaking exemptions in the Utah
15 Administrative Rulemaking Act those agency actions that apply only to students
16 enrolled in a state education institution; and
17 ▶ makes technical corrections.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63G-3-201**, as last amended by Laws of Utah 2016, Chapter 193

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

27 Section 1. Section **63G-3-201** is amended to read:



28 **63G-3-201. When rulemaking is required.**

29 (1) Each agency shall:

30 (a) maintain a current version of its rules; and

31 (b) make it available to the public for inspection during its regular business hours.

32 (2) In addition to other rulemaking required by law, each agency shall make rules when
33 agency action:

34 (a) authorizes, requires, or prohibits an action;

35 (b) provides or prohibits a material benefit;

36 (c) applies to a class of persons or another agency; and

37 (d) is explicitly or implicitly authorized by statute.

38 (3) Rulemaking is also required when an agency issues a written interpretation of a
39 state or federal legal mandate.

40 (4) Rulemaking is not required when:

41 (a) agency action applies only to internal agency management, inmates or residents of a
42 state correctional, diagnostic, or detention facility, persons under state legal custody, patients
43 admitted to a state hospital, or members of the state retirement system~~[, or students enrolled in~~
44 ~~a state education institution]~~;

45 (b) a standardized agency manual applies only to internal fiscal or administrative
46 details of governmental entities supervised under statute;

47 (c) an agency issues policy or other statements that are advisory, informative, or
48 descriptive, and do not conform to the requirements of Subsections (2) and (3); or

49 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file
50 all nonsubstantive changes in a rule with the office.

51 (5) (a) A rule shall enumerate any penalty authorized by statute that may result from its
52 violation, subject to Subsections (5)(b) and (c).

53 (b) A violation of a rule may not be subject to the criminal penalty of a class C
54 misdemeanor or greater offense, except as provided under Subsection (5)(c).

55 (c) A violation of a rule may be subject to a class C or greater criminal penalty under
56 Subsection (5)(a) when:

57 (i) authorized by a specific state statute;

58 (ii) a state law and programs under that law are established in order for the state to

59 obtain or maintain primacy over a federal program; or

60 (iii) state civil or criminal penalties established by state statute regarding the program
61 are equivalent to or less than corresponding federal civil or criminal penalties.

62 (6) Each agency shall enact rules incorporating the principles of law not already in its
63 rules that are established by final adjudicative decisions within 120 days after the decision is
64 announced in its cases.

65 (7) (a) Each agency may enact a rule that incorporates by reference:

66 (i) all or any part of another code, rule, or regulation that has been adopted by a federal
67 agency, an agency or political subdivision of this state, an agency of another state, or by a
68 nationally recognized organization or association;

69 (ii) state agency implementation plans mandated by the federal government for
70 participation in the federal program;

71 (iii) lists, tables, illustrations, or similar materials that are subject to frequent change,
72 fully described in the rule, and are available for public inspection; or

73 (iv) lists, tables, illustrations, or similar materials that the executive director or the
74 executive director's designee determines are too expensive to reproduce in the administrative
75 code.

76 (b) Rules incorporating materials by reference shall:

77 (i) be enacted according to the procedures outlined in this chapter;

78 (ii) state that the referenced material is incorporated by reference;

79 (iii) state the date, issue, or version of the material being incorporated; and

80 (iv) define specifically what material is incorporated by reference and identify any
81 agency deviations from it.

82 (c) The agency shall identify any substantive changes in the material incorporated by
83 reference by following the rulemaking procedures of this chapter.

84 (d) The agency shall maintain a complete and current copy of the referenced material
85 available for public review at the agency and at the office.

86 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within
87 the limits prescribed by statute or agency rule.

88 (b) An agency may enact a rule creating a justified exception to a rule.

89 (9) An agency may obtain assistance from the attorney general to ensure that its rules

90 meet legal and constitutional requirements.

Legislative Review Note
Office of Legislative Research and General Counsel