

1977

STATE OF WYOMING

77LSO-147.01

SENATE FILE NO. 19

Filing of administrative rules.

Sponsored by: Senator JOHNSON



A BILL

for

1 AN ACT to amend W.S. 9-276.19 through 9-276.23 relating to
 2 the Wyoming Administrative Procedure Act; standardizing
 3 the format; restating and adding definitions; restating
 4 rulemaking prerequisites, adoption procedures and regis-
 5 tration requirements; providing for registration of local
 6 agency rules with county clerks; requiring official publi-
 7 cation and distribution of state agency rules by the
 8 secretary of state every two years and of local agency
 9 rules annually by local agencies, jointly or severally;
 10 requiring publication of a list of registered agency rules
 11 with the Wyoming statutes; appropriating \$50,000.00 for
 12 1977 publication of state agency rules by the secretary of
 13 state; and providing for an effective date.

14 Be It Enacted by the Legislature of the State of Wyoming:

15 Section 1. W.S. 9-276.19 through 9-276.23 are
 16 amended to read:

SF 19

1 9-276.19. Citation of act; definitions.

2 (a) ~~Citation.~~ This act may be cited as the Wyoming
3 Administrative Procedure Act.

4 (b) ~~Definitions.~~ As used in this act:

5 ~~(i)~~ (i) "Agency" means any authority, bureau,
6 board, commission, department, division, officer or
7 employee of the state, INCLUDING THE UNIVERSITY OF
8 WYOMING, a county, a municipality or other political sub-
9 division of the state, except the state legislature and
10 the judiciary;

11 (ii) "STATE AGENCY" MEANS EACH AGENCY ESTAB-
12 LISHED BY STATE CONSTITUTION OR STATUTE, ITS GOVERNING
13 BODY, OR ANY OF ITS OFFICERS, AGENTS OR AGENCIES;

14 (iii) "LOCAL AGENCY" MEANS EACH COUNTY,
15 MUNICIPALITY OR OTHER POLITICAL SUBDIVISION OF THE STATE
16 AUTHORIZED BY STATE CONSTITUTION OR STATUTE, ITS GOVERNING
17 BODY, OR ANY OF ITS OFFICERS, AGENTS OR AGENCIES, EXCEPT
18 THE OFFICES OF COUNTY SHERIFF, COUNTY ATTORNEY AND COUNTY
19 CORDNER ARE NOT LOCAL AGENCIES FOR THE PURPOSE OF THIS
20 ACT, AND THIS ACT DOES NOT APPLY TO DELIBERATIONS OF A
21 CITY COUNCIL OR TOWN COUNCIL FUNCTIONING IN ITS LEGIS-
22 LATIVE CAPACITY.

1 ~~(2)~~ (iv) "Contested case" means a proceeding
2 including but not restricted to ~~rate-making~~ RATEMAKING,
3 price fixing and licensing, in which legal rights, duties
4 or privileges of a party are required by law to be deter-
5 mined by an agency after an opportunity for A TRIAL TYPE
6 hearing;

7 (v) "FILE" MEANS TO SUBMIT AN ADOPTED RULE TO
8 THE LEGISLATIVE SERVICE OFFICE AND TO THE PROPER REGISTRAR
9 OF RULES;

10 ~~(3)~~ (vi) "License" includes the whole or part of
11 any agency permit, certificate, approval, registration,
12 charter or similar form of permission required by law, but
13 ~~it~~ does not include a license required solely for revenue
14 purposes;

15 ~~(4)~~ (vii) "Licensing" includes the agency process
16 respecting the grant, denial, renewal, revocation, suspen-
17 sion, annulment, withdrawal or amendment of a license;

18 (viii) "OFFICIAL PUBLICATION" MEANS MAKING THE
19 TEXT AND EFFECTIVE DATES OF REGISTERED RULES AVAILABLE IN
20 A COMPILED, INDEXED AND PRINTED FORM FOR DISTRIBUTION OR
21 SALE AT FIXED COST BY THE STATE OR ANY POLITICAL SUBDIVI-
22 SION OF THE STATE;

1 ~~(5)~~ (ix) "Party" means each person or agency named
2 or admitted as a party, or properly seeking and entitled
3 as of right to be admitted as a party; ▀

4 ~~(6)~~ (x) "Person" means any individual, partner-
5 ship, corporation, association, municipality, governmental
6 subdivision or public or private organization of any char-
7 acter other than an THE RULING OR DECIDING agency; ▀

8 (xi) "PREFILE" MEANS TO SUBMIT THE WRITTEN
9 TEXT OF A PROPOSED RULE FOR LEGISLATIVE REVIEW AND RECOM-
10 MENDATIONS PRIOR TO ADOPTING THE RULE;

11 (xii) "REGISTRAR" FOR STATE AGENCY RULES MEANS
12 THE SECRETARY OF STATE; FOR LOCAL AGENCY RULES MEANS THE
13 COUNTY CLERK IN EACH COUNTY WHERE THE RULE IS TO BE
14 EFFECTIVE;

15 (xiii) "REGISTRATION" IS EVIDENCED BY THE FILE
16 STAMP OF THE PROPER REGISTRAR OF RULES, DATED AND SIGNED,
17 ON AN ORIGINAL OF A RULE AND MEANS THAT THE RULE HAS BEEN
18 ACCEPTED FOR PERMANENT REGISTRY IN THE OFFICE OF THE
19 REGISTRAR WHERE IT IS AVAILABLE FOR OFFICIAL PUBLICATION
20 AND PUBLIC INSPECTION UNTIL BECOMING EFFECTIVE AND UNTIL
21 LAWFULLY REPLACED OR REPEALED;

22 ~~(7)~~ (xiv) "Rule" means each A SPECIFICATION

1 ADOPTED BY AN agency ~~statement-of-general-applicability~~
2 ~~that-implements,interprets-and-prescribes-law-or-policy,~~
3 ~~or-describes-the~~ OF ITS organization, procedures, or prac-
4 tice requirements ~~of-any-agency~~ OR OF INTERPRETATIONS,
5 STANDARDS, PROHIBITIONS AND SANCTIONS TO BE APPLIED WHEN
6 AND AS AUTHORIZED BY STATUTE. The term includes BUT IS
7 NOT LIMITED TO BYLAWS, REGULATIONS, RESOLUTIONS OR POLI-
8 CIES IN ANY FORM WHICH AFFECT THE RIGHTS, PRIVILEGES OR
9 DUTIES OF ANY PERSON AFFECTED BY THE AGENCY IN ITS OFFI-
10 CIAL ADMINISTRATIVE CAPACITY, AND the amendment or repeal
11 of a prior rule, but does not include:

12 (A) Statements concerning only the internal
13 management of an agency and not affecting private rights
14 or procedures available to the public;~~or~~

15 (B) ~~ruling~~ DECISIONS issued pursuant to
16 ~~Section-6-of-this-Act-or~~ W.S. 9-276,24;

17 (C) Intra-agency memoranda;~~or~~

18 (D) Agency decisions and findings in contested
19 cases;~~or~~

20 (E) ~~rules~~ DIRECTIVES OR ORDERS concerning the
21 MANNER OF use of public roads or facilities which are
22 indicated to the public by ~~means-of~~ signs and signals;~~or~~

1 (E) FORMULATIONS AND PROPOSALS FOR SUBMISSION
 2 TO ANOTHER AGENCY FOR RULEMAKING PROCEDURES OR FOR
 3 PREFILING FOR LEGISLATIVE REVIEW.

4 (xy) "THIS ACT" MEANS W.S. 9-276.19 THROUGH
 5 9-276.33 AND MAY BE CITED AS THE WYOMING ADMINISTRATIVE
 6 PROCEDURE ACT.

7 9-276.20. Additional requirements to enable agency
 8 to adopt or invoke rules; assistance of attorney general.

9 (a) NO AGENCY MAY EXERCISE RULEMAKING POWER UNLESS,
 10 in addition to other ~~rule-making~~ RULEMAKING requirements
 11 imposed by law; ~~each agency shall~~

12 ~~(1)~~(i) Adopt IT HAS ADOPTED AND FILED rules of
 13 practice setting forth the nature and requirements of all
 14 formal and informal procedures available in connection
 15 with contested cases;

16 ~~(2)~~(ii) Make IT MAKES available for public
 17 inspection all rules and all other written statements of
 18 policy or interpretations formulated, adopted or used by
 19 the agency in the discharge of its functions;

20 ~~(3)~~(iii) Make IT MAKES available for public
 21 inspection all final orders, decisions, and opinions.

1 (b) No agency rule, order or decision ~~is valid or~~
2 ~~effective against any person or party, nor~~ may it be
3 invoked by the agency for any purpose, until it has been
4 FILED AND made available for public inspection as herein
5 required. ~~This provision is not applicable in favor of~~
6 ~~any person or party who has actual knowledge thereof~~
7 HEREIN, EXCEPT THAT AN AGENCY ORDER OR DECISION IS BINDING
8 UPON PERSONS HAVING ACTUAL KNOWLEDGE THEREOF, FROM THE
9 DATE OF ADOPTION OF SUCH ORDER OR DECISION.

10 (c) ~~In formulating rules of practice as required by~~
11 ~~this section, each agency may request the assistance of~~
12 ~~the attorney general and upon such request the attorney~~
13 ~~general shall assist such agency or agencies in the pre-~~
14 ~~paration of rules of practice~~ UPON REQUEST OF ANY STATE
15 AGENCY OR THE GOVERNING BODY OF ANY POLITICAL SUBDIVISION
16 OF THE STATE THE ATTORNEY GENERAL SHALL PROVIDE LEGAL
17 ASSISTANCE IN FORMULATING AND PREPARING THE REQUIRED RULES
18 OF PRACTICE GOVERNING CONTEST PROCEEDINGS.

19 9-276.21. Adoption procedures require notice, hear-
20 ing and consideration; emergency adoption; effect of non-
21 compliance.

22 (a) Prior to an agency's adoption, amendment, or
23 repeal of ~~all~~ ANY rules ~~other than interpretative rules or~~

1 ~~statements-of-general-policy~~ the agency shall:

2 ~~11~~(i) Give at least TWENTY (20) days notice
3 of its intended action. The notice shall include a state-
4 ment of either the terms or substance of the proposed rule
5 or a description of the subjects and issues involved, and
6 of the time when, the place where, and the manner in
7 which, interested persons may present their views thereon.
8 The notices shall be mailed to the attorney general, THE
9 LEGISLATIVE SERVICE OFFICE and to all persons who have
10 made timely requests of the agency for advanced notice of
11 its ~~rule-making~~ RULEMAKING proceedings.

12 ~~22~~(ii) Afford all interested persons reason-
13 able opportunity to submit data, views or arguments,
14 orally or in writing. In the case of substantive rules,
15 opportunity for oral hearing must be granted if requested
16 by TWENTY-FIVE (25) persons, or by a governmental subdivi-
17 sion, or by an association having not less than
18 TWENTY-FIVE (25) members. The agency shall consider fully
19 all written and oral submissions respecting the proposed
20 rule.

21 (iii) ~~Upon--adoption--of--the--rule--the--agency~~
22 ~~if--requested--to--do--so--by--an~~ ON WRITTEN REQUEST OF ANY
23 interested person, RECEIVED either prior to adoption or

1 within THIRTY (30) days thereafter, shall issue a concise
2 statement of the principal reasons for overruling the con-
3 sideration urged against its adoption.

4 ~~(b) If an agency finds that an emergency exists, and~~
5 ~~such a finding is concurred in by the governor by written~~
6 ~~endorsement on the original copy of a proposed regulation,~~
7 ~~the regulation may be adopted and become effective immedi-~~
8 ~~ately upon its being filed in the office of the secretary~~
9 ~~of state. The regulation so adopted may be effective for~~
10 ~~a period no longer than 120 days, but the adoption of an~~
11 ~~identical regulation under subsection (1) of this section~~
12 ~~is not precluded.~~ WHEN AN AGENCY FINDS THAT AN EMERGENCY
13 THREATENING LOSS OF LIFE, SAFETY, PROPERTY OR ESSENTIAL
14 LEGAL REMEDY REQUIRES THE AGENCY TO PROCEED TO DELIBER-
15 ATION WITHOUT THE NOTICE OR OPPORTUNITY FOR HEARING NOR-
16 MALLY REQUIRED, IT SHALL DETERMINE AND USE THE BEST NOTICE
17 AND OPEN PROCEDURE PRACTICABLE, TO ANY RULE ADOPTED USING
18 EMERGENCY PROCEDURES A CONCISE WRITTEN STATEMENT OF THE
19 FACTS SHOWING EMERGENCY AND THE PROCEDURES ACTUALLY USED
20 SHALL BE ATTACHED. A STATE AGENCY EMERGENCY RULE SHALL
21 BEAR THE ENDORSEMENT OF THE GOVERNOR'S CONCURRENCE IN THE
22 FINDING OF EMERGENCY. A LOCAL AGENCY RULE SHALL BE SUB-
23 MITTED TO THE DISTRICT COURT HAVING JURISDICTION WHERE THE
24 RULE WAS ADOPTED FOR ENDORSEMENT OF CONCURRENCE IN THE

1 FINDING THAT AN EMERGENCY EXISTS AND THAT THE PROCEDURES
 2 USED WERE NOT CLEARLY IMPROPER, A RULE CONTAINING THE
 3 CONCURRENCE OF THE GOVERNOR OR OF THE DISTRICT JUDGE MAY
 4 BECOME EFFECTIVE WHEN FILED FOR REGISTRATION, AND MAY CON-
 5 TINUE IN EFFECT FOR NO MORE THAN ONE HUNDRED TWENTY (120)
 6 DAYS DURING WHICH THE AGENCY MAY CONFIRM, REPEAL OR
 7 REPLACE THE RULE USING NORMAL PROCEDURES.

8 (c) No rule is valid unless adopted in substantial
 9 compliance with this section. A proceeding to contest any
 10 rule on the ground of ~~non-compliance~~ NONCOMPLIANCE with
 11 the procedural requirements of this section must be com-
 12 menced within TWO (2) years from the effective date of the
 13 rule.

14 9-276.22. Filing rules with registrar; effective
 15 date of rules; permanent register of rules; form of rules.

16 (a) Each agency shall file forthwith in the office
 17 of the ~~secretary-of-state~~ REGISTRAR OF RULES a certified
 18 copy of each rule adopted by it, ~~v-including-all-rules~~
 19 ~~existing-on-the-effective-date-of-the-act~~. There shall be
 20 noted upon such THE certificate a citation of the ~~author-~~
 21 ~~ity-to-which-it-or-any-part-of-it-was-adopted~~. ~~The secre-~~
 22 ~~tary--of--state~~ STATUTORY AUTHORIZATION FOR ADOPTING EACH
 23 PART OF THE RULE. EACH REGISTRAR OF RULES shall keep a

1 permanent register of the rules open to public inspection.

2 (b) Each rule~~y-any-amendment-or-repeat-thereof-here-~~
3 ~~after--adopted~~ is effective twenty (20) days after ~~fiting~~
4 REGISTRATION in accordance with subsection (a) of this
5 section, except:

6 ~~(1)(i)~~ (i) If a later date is required by statute
7 or specified in the rule, the later date is the effective
8 date;

9 ~~(2)(ii)~~ (ii) where IF the agency finds that an
10 emergency exists, and such finding is concurred in by the
11 governor~~---in--case--of--such--emergency~~ OR THE DISTRICT
12 COURT, such a rule~~y--amendment--or--repeat--thereof~~~~y--may~~
13 ~~become~~ BECOMES effective immediately upon being filed with
14 the ~~secretary--of--states---Provided~~~~y--that~~ REGISTRAR OF
15 RULES;

16 (iii) Presently existing REGISTERED rules OF
17 LOCAL AGENCIES are and remain in effect~~y-unless-amended~~
18 ~~and-repeated~~~~y-subject-to-the-provisions-of--this--section~~
19 WHEN FILED IN THE OFFICE OF THE COUNTY CLERK;

20 (iv) UNREGISTERED RULES PROPERLY ADOPTED PRIOR
21 TO JANUARY 1, 1977, FILED FOR REGISTRATION PRIOR TO JULY
22 1, 1977 SHALL BE EFFECTIVE WHEN FILED.

1 (c) The secretary of state shall prescribe rules
2 governing the manner and form in which rules shall be pre-
3 pared to the end that all rules shall be prepared in a
4 uniform manner. ~~The secretary of state~~ EACH REGISTRAR OF
5 RULES may refuse to accept for filing any rule that does
6 not conform ~~to such rules.~~

7 (d) The attorney general shall furnish advice and
8 assistance to all state agencies AND POLITICAL
9 SUBDIVISIONS in ~~the preparation of their regulations, and~~
10 in PREPARING, revising, codifying and editing ~~existing or~~
11 ~~new regulations~~ RULES.

12 9-276.23. Compilation and publication of rules;
13 supplementation; charges for publications; presumption as
14 to proper adoption and filing.

15 (a) The ~~secretary of state~~ REGISTRAR OF STATE AGENCY
16 RULES shall compile, index, SUPPLEMENT OR RECOMPILER and
17 publish ~~the~~ UNDER OFFICIAL SEAL IN PRINTED BOOK, BOOKLET,
18 PAMPHLET OR LOOSE LEAF FORM ALL rules adopted FILED FOR
19 REGISTRATION by ~~each agency and remaining in~~ JUNE 30 FOR
20 effect. ~~The compilation shall be supplemented or revised~~
21 ~~as often as necessary and at least once every two years.~~
22 ON OR AFTER JULY 1 OF THE YEAR OF PUBLICATION:

SF 19

1 (i) STATE AGENCY RULES SHALL BE PUBLISHED FOR
2 DISTRIBUTION BY AUGUST 15 IN EVEN NUMBERED YEARS;

3 (ii) STATE AGENCY PUBLICATION EXPENSES SHALL
4 BE BUDGETED FROM THE GENERAL FUND BY THE SECRETARY OF
5 STATE. LOCAL AGENCY PUBLICATION EXPENSES SHALL BE PAID
6 FROM THE GENERAL FUND OF THE POLITICAL SUBDIVISION;

7 (iii) LOCAL AGENCIES SHALL COMPLETE AND PRINT
8 THEIR RULES ANNUALLY AS OF JUNE 30 FOR DISTRIBUTION BY
9 AUGUST 15 AND SHALL GIVE PUBLIC NOTICE OF SUCH COMPILA-
10 TION. LOCAL AGENCIES MAY JOINTLY PUBLISH THEIR RULES.

11 ~~(b) The secretary of state is empowered to make a~~
12 ~~reasonable charge for any rules published in booky pam-~~
13 ~~phlety leaflet or booklet form except~~ COPIES OF THE CUR-
14 RENT PUBLICATION OF RULES AND OF UNPUBLISHED RULES FILED
15 FOR REGISTRATION SHALL BE FURNISHED AS SOON AS AVAILABLE,
16 WITHOUT CHARGE, to ~~state officers, agencies, members of~~
17 ~~the legislature and others in the employment of the State~~
18 ~~of Wyoming and its political subdivisions~~ requiring the
19 same THEM in the performance of their duties, • TO EACH
20 LEGISLATOR AND TO THE LEGISLATIVE SERVICE OFFICE, COPIES
21 SHALL BE SOLD TO ANY OTHER PERSON ADVANCING THE COSTS,
22 ALL PROCEEDS OF SALE SHALL BE CREDITED TO THE GENERAL
23 FUND.

SF19

1 (c) The ~~secretary's~~ REGISTRAR'S authenticated file
2 stamp on a rule or OFFICIAL publication of rule shall
3 raise a rebuttable presumption that the rule was adopted
4 and filed in compliance with all requirements necessary to
5 make it effective.

6 (d) TO FACILITATE DISTRIBUTION A SUPPLEMENTAL LIST
7 OF ALL AGENCY RULES REGISTERED IN THE OFFICE OF THE SECRE-
8 TARY OF STATE ON JANUARY 1 OF EACH YEAR, CONCISELY IDENTI-
9 FIED AS TO CONTENT AND EFFECTIVE DATES, SHALL BE REGULARLY
10 PUBLISHED BY THE SECRETARY OF STATE WITH THE WYOMING STAT-
11 UTES.

12 Section 2. There is hereby appropriated from the
13 general fund of the state of Wyoming to the office of the
14 secretary of state the sum of fifty thousand dollars
15 (\$50,000.00) or so much thereof as may be necessary to pay
16 the costs and expenses of compiling, indexing, printing
17 and distributing the official publication of rules of
18 state agencies in the year 1977.

SF 19

FISCAL NOTE

Fiscal Note No. 105
 Requester Senator Johnson

L.S.O.	Draft
147	L2
Bill No.	Jt. Res. No.

Part I. Fiscal Data:

SHORT TITLE OF BILL: Filing of administrative rules	STATUTORY REFERENCE Nos. W.S. 9-276.19 thru 9-276.23	NAME OF FUND General Fund Local Funds
AGENCY TITLE:		
SOURCE OF APPROPRIATION/REVENUE General Fund and Local Funds	New Program <input type="checkbox"/> Change in Existing Program <input checked="" type="checkbox"/> Local Government Impact <input checked="" type="checkbox"/>	

If more than one appropriation is involved, show overall effect below, but show breakdown by appropriation and fiscal year on a separate page. Round to nearest hundred dollars.

EFFECT OF PROPOSAL	FISCAL PERIODS		
	First Biennial	Second Biennial	Third Biennial
Salaries & Number of Personnel	\$		
Supporting Expenses			
Permanent Property			
Aids to Localities			
Other	50,000	50,000	50,000
ESTIMATED TOTAL COST	\$ align="center">50,000	50,000	50,000
GENERAL FUND	50,000	50,000	50,000
FEDERAL FUND			
OTHER			
ESTIMATED TOTAL REVENUE	\$		

Part II. Explain in a clear and concise manner what effect this measure will have on the costs and revenues of state government. Specify the source of funds for appropriations. Include effect on the current biennium and also the long-range fiscal effect, if any. Show how you arrived at the estimate. Use attached sheet and any additional sheets which you may need.

The estimated cost is based on the appropriation which is provided for within this bill. No estimate has been made for the cost to local government. Some of the cost of publication would be recouped through sales, however, no estimate can be made as to the amount of this revenue.

Date 12/6/56	Agency <i>Johnson</i>	Authorized Representative
Date	Legislative Auditor Clearance	SF 19