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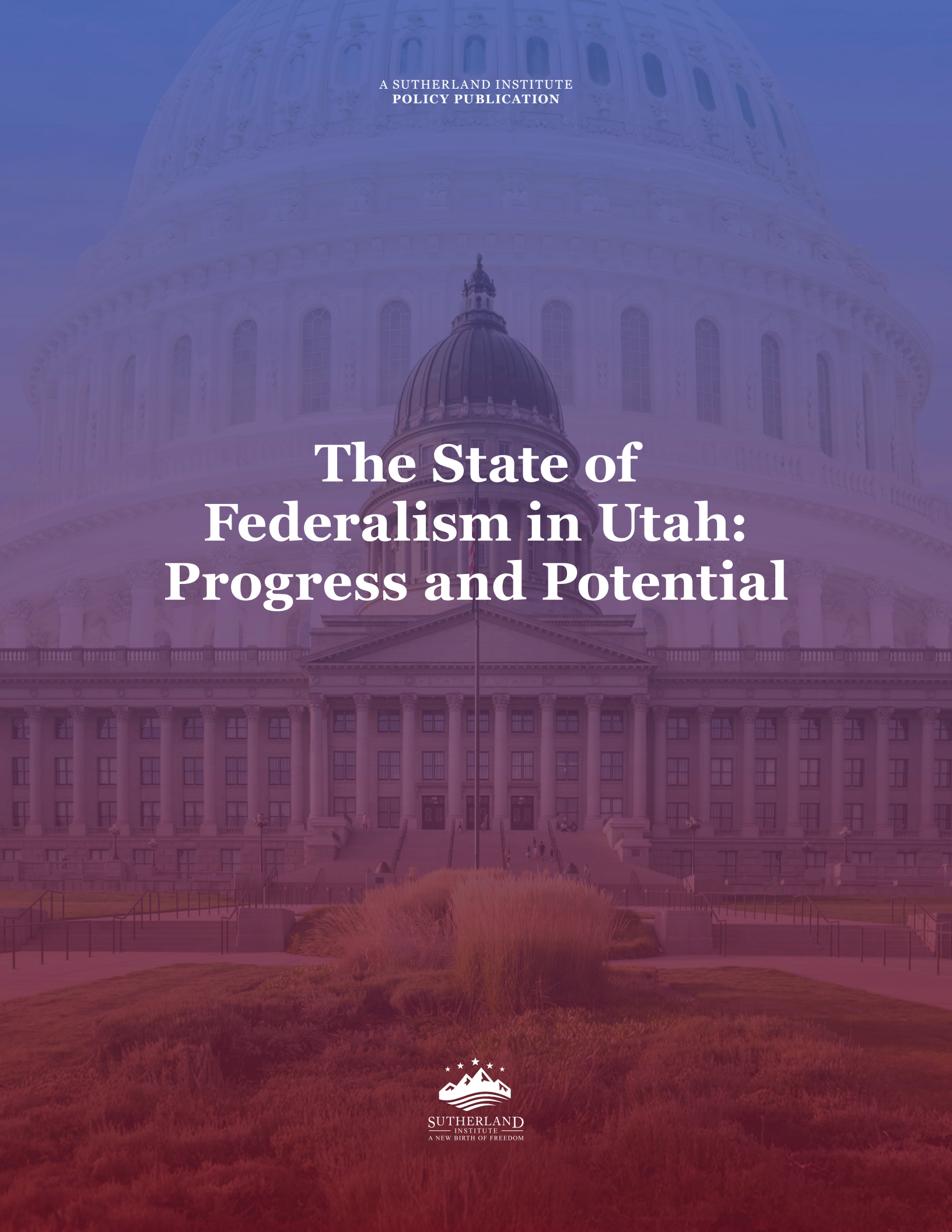

The State of Federalism in Utah: Progress and Potential

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A Sutherland Institute Policy Publication

The State of Federalism in Utah: Progress and Potential

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Introduction

A central feature of the United States Constitution is the principle of federalism, which apportions governing power to both federal and state governments.[1] It constrains national power by specifically spelling out authority of national government and thus ruling out other, unenumerated, powers.[2] This also means that most governmental authority would be exercised by authorities closest to the people being governed or by the people themselves.

Dividing authority in this way allows states to pursue different approaches to different concerns, providing practical knowledge to other states. Ultimately, it gives citizens the freedom to choose a state with policies more amenable to their beliefs by moving or joining with neighbors to effect a change. Divided authority also allows the state and national government to check overreach by the other that would diminish the rights of citizens.

The 2023 Federalism Scorecard, a report by Tony Woodlief and Tenille Martin of the Center for Practical Federalism, makes an invaluable contribution to protecting federalism. It is described as "an index of vulnerability to federal pressure." The report identifies 20 indicators of "the balance of power between a citizenry's elected representative and unelected agency officials."[3]

Utah does very well in the scorecard, ranking first in the nation. Its score is 74.26, about 10 points more than the next state, Wisconsin. That would be a respectable C in an academic context. So clearly, Utah could do more.

This report was envisioned as an audit, providing details about how Utah is doing on the variables examined by the scorecard. Though primarily designed to be descriptive, it also suggests, at some points, comparisons with other states that point to ways in which the state could be better protected against federal overreach and could ensure accountable governance.

We welcome feedback and suggestions, particularly about things this report might have missed. We hope it contributes constructively to an ongoing discussion of how Utah can reflect and benefit from close adherence to federalist principles.

Does Utah Have a Committee Dedicated to Administrative Oversight?

Utah has a legislative Rules Review and General Oversight Committee (formerly the Administrative Rules Review Committee) that meets during the interim between legislative sessions. It has 10 members, half from the Senate and half from the House of Representatives. The committee is bipartisan, and the members, who serve two-year terms, are appointed by the Senate president or speaker of the House.

The committee is intended to meet each month to "review new agency rules and court rules, amendments to existing agency rules and court rules, and repeals of existing agency rules and court rules." The committee chairs can decide not to meet, however.[4]

The committee's statutory grant of authority directs them to:

- "exercise continuous oversight of the administrative rulemaking process,"
- "request legislation that considers legislative reauthorization of agency rules" each legislative session,
- "examine each agency rule" to ensure it is "authorized by statute," "complies with legislative intent," assess its "impact on the economy and the government operations of the state and local political subdivisions" and on others including "entities regulated by the state" and citizens,
- determine "whether adoption of the agency rule requires legislative review or approval."

The committee can also review agency policies.[5]

The committee has broad powers to accomplish its work such as requesting a fiscal note on rules or proposed rules; issuing subpoenas and compelling witnesses, production of evidence and testimony; issuing reports; and recommending legislation.[6] If another committee recommends not reauthorizing an agency rule and the review committee disagrees, the review committee has to explain its decision to all legislators.[7]

A report from Wayne State University in Michigan explains that the committee "does not have any power of its own to block the adoption of new rules or force the repeal of existing ones." This does not mean it is powerless. The report suggests that the entire legislature is likely to concur with the review committee's recommendations."[8]

Another important aspect of the context of the review committee's work is that the state has "stringent sunset and reauthorization procedures." This means that "existing agency rules are often terminated." Administrative rules are "reviewed every five years, and if the agency does not meet the deadlines to get a rule reauthorized, the rule is stricken." This gives the committee leverage to "'encourage' agency compliance." The committee has been in place since 1983 and has had staff assistance since 1988. The Wayne State report

suggests that during its tenure, the review committee has been able to narrow the scope of agency rulemaking authority.

Over the last five years, Utah's review committee has met four times in 2020, three in 2021, three in 2022, seven in 2023, and once so far in 2024.[9]

Other states have comparable committees, such as Iowa's Administrative Rules Review Committee. The Iowa committee is significantly different from Utah's in that a two-thirds vote of committee members can suspend a rule or proposed rule so that the legislature can consider the rule in the relevant standing committee. Rules can be abolished by a joint resolution of both houses of the legislature.[10]

Policy Recommendation

Utah could consider allowing the Rules Review and General Oversight Committee to suspend administrative rules pending review by the full Legislature.

Do Utah Courts Have to Defer to Administrative Agencies' Interpretations of the Law?

During the most recent term of the U.S. Supreme Court, the court reversed a longstanding practice called "Chevron deference."[11] This referred to an approach federal courts had taken when an agency's interpretation of a law was challenged. The practice under the 1984 Chevron decision[12] was for the courts to defer to the agency's interpretation of the statute it was supposed to apply – which meant in practice that a party challenging an agency's decisions began their lawsuit at a disadvantage. This also gave the agencies remarkable power with little court oversight.

Utah does not defer to agency interpretations of the law, clearly rejecting the practice in two unanimous state supreme court decisions in 2014 and 2016.[13]

In the first of these decisions, an employer challenged the Utah Labor Commission's interpretation of a statute on workplace safety. The Utah Supreme Court found the plain language of the statute was at odds with the agency's interpretation. The agency argued that federal courts had accepted its proposed interpretation, which followed the interpretations of federal administrative agencies. The Utah court, however, noted that the federal courts were following Chevron and deferring to the agency interpretation. In contrast, the Utah Supreme Court rejected deference to agency interpretations of statutes: "[W]e have retained for the courts the de novo prerogative of interpreting the law, unencumbered by any standard of agency deference."[14]

Two years later, the Utah Supreme Court "reinforced" this holding and specifically "repudiate[d] our prior decisions calling for deference to an agency's interpretation of its own orders or regulatory enactments."[15]

This is an important protection of statutory law, ensuring that the laws passed by the Legislature cannot be undercut by an agency interpretation inconsistent with the statutory text, since the Utah Supreme Court will be faithfully exercising its duty to provide independent legal judgment as to the meaning of those statutes without deferring to an administrative agency interpretation.

Does Utah Have Limits on Lobbying by State Administrative Agencies?

There are no limitations on Utah agencies or public officials lobbying either the state Legislature or federal legislators or agencies. Utah is not alone in the latter category, since no state currently prohibits state agencies or officials from lobbying federal officials.

Utah does have a prohibition on use of agency funds for contract lobbyists: "An agency to which money is appropriated by the Legislature may not expend any money to pay a contract lobbyist."[16]

Two states prohibit state administrative officials from lobbying state legislators.

Arizona law prohibits "a state agency, office, department, board or commission and any person acting on behalf of a state agency, office, department, board or commission" from contracting with a lobbyist.[17]

Louisiana's statute provides:

> *No state employee in his official capacity or on behalf of his agency shall lobby for or against any matter intended to have the effect of law pending before the legislature or any committee thereof. Nothing in this Subsection shall prohibit the dissemination of factual information relative to any such matter or the use of public meeting rooms or meeting facilities available to all citizens to lobby for or against any such matter.*

The statute also prohibits state employees from contracting with or spending public funds on a lobbyist.[18]

These limitations prevent administrative agencies from pursuing agendas that might be at odds with their constitutionally prescribed role of carrying out legislative direction with an attendant undercutting of separation of powers between the branches of government. This, of course, does not mean that agencies cannot communicate with legislators as necessary, but the nature of their relationship should be carefully circumscribed.

Just as important, Utah should ensure that state agencies cannot lobby federal officials. As the Center for Practical Federalism explains, this restriction should "keep the actions of unelected officials under the control of elected leaders, which is especially important as federal agencies rely increasingly on subregulatory guidance sent directly to state agency officials as a means of attempting to sway state policies."[19]

Policy Recommendation

Utah could adopt a limitation on lobbying by state officials without approval of the Legislature and/or the governor.

Does the Utah Legislature Have a Role in Reviewing Agency Regulations?

The Utah Legislature has a mechanism to exercise general oversight of all administrative regulation. Utah statutes provide that all agency rules "in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature," unless mandated by federal law or enacted by an agency given specific authority by the state constitution. Thus, each year the Rules Review and General Oversight Committee prepares legislation on reauthorization of rules. The template for the legislation is provided in statute: "All rules of Utah state agencies are reauthorized except for the following."

The legislation can recommend either the whole rule or a part be "excepted for reauthorization." If an agency objects to a legislative decision to reject reauthorization or to allow a rule to expire, it can petition to the governor by stating the rule is necessary and citing the authority to make the rule. The standard the governor is to use in extending the rules beyond the expiration date is necessity, and the form of the extension is a declaration in the Administrative Rules Bulletin with an explanation of the necessity for the extension and a citation to the legal authority for the rule. The governor can also publish a declaration extending all rules if the Legislature fails to enact reauthorization legislation.

The Legislature's reauthorization statute "does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent."[20]

This process has serious limitations. As the Cicero Institute explains:

> *Although Utah's state code calls for every regulation to expire one year after going into effect unless reauthorized by the state legislature, the reauthorization process is omnibus. It only requires the legislature to specify which rules will not be reauthorized and subsequently demands a justification for any repeals. This process falls short of a comprehensive review of regulations, perpetuating outdated rules.*[21]

Over the past five years, the annual legislation to reauthorize existing agency rules has resulted in one change to a rule. In 2023, the Legislature voted not to authorize four sections of the rules regulating mental health professionals. These rules were replaced by legislation.[22]

In addition to this general oversight, a proposed rule that would have a fiscal impact of $250,000 to a single person or $7,500,000 to a group of persons over a three-year period has to be submitted for review to the Legislature's appropriations subcommittee and to the legislative interim committee responsible for the subject matter of the proposed rule. These committees report their deliberations and recommendations to the Rules Review and General Oversight Committee and can ask that committee to include in the annual reauthorization legislation that the proposed rule not be reauthorized. There are two agencies who are not subject to this requirement: the State Tax Commission and the State Board of Education.[23]

Policy Recommendations

The state should remove the exemptions to the requirement of review of rules with significant fiscal impact. The Rules Review and General Oversight Committee should also have authority to review all rules, not just those recently proposed, so that outdated rules can be changed.

Are There Other Entities Performing Review of Agency Regulations?

In addition to legislative review, the Governor's Office of Planning and Budget (GOPB, previously the Office of Management and Budget), which has statutory authority to oversee state agencies,[24] has a role to play in reviewing regulations. The Utah Office of Administrative Rules says the GOPB "receives and reviews Proposed and Effective rules for their fiscal impact on entities affected."[25]

The state also, in the past few years, has created an Office of Regulatory Relief (ORR) as part of the Governor's Office of Economic Opportunity. The ORR "may review state laws and regulations that may unnecessarily inhibit the creation and success of new companies or industries and provide recommendations to the governor and the Legislature on modifying such state laws and regulations."[26] The ORR creates an annual report that can include "recommendations regarding any laws or regulations that should be permanently modified."[27] The ORR maintains a website that allows individuals and businesses "to make suggestions regarding laws and regulations that could be modified or eliminated to reduce the regulatory burden of residents and businesses in the state." The office reports to the governor, to the legislative Business and Labor Interim Committee, and to the Economic Development and Workforce Services Interim Committee quarterly on feedback provided through the site.[28]

For comparison, Arizona has a Governor's Regulatory Review Council, which reviews rules and agency impact statements and can hear appeals regarding agency practices or the impact of administrative rules.[29] Similarly, Pennsylvania has an Independent Regulatory Review Commission (IRRC) which

> *review[s] regulations to make certain that the agency has the statutory authority to enact the regulation and determine whether the regulation is consistent with legislative intent. IRRC then considers other criteria, such as economic impact, public health and safety, reasonableness, impact on small businesses and clarity. The Commission also acts as a clearinghouse for complaints, comments, and other input from the General Assembly and the public regarding proposed and final regulations.*[30]

Is Cost-Benefit Analysis of Agency Regulations Required?

A Cicero Institute report evaluates state government use of cost-benefit analysis ("compar[ing] the expected benefits of a regulation against its costs, ensuring that the benefits outweigh the costs") in assessing regulations. The metrics in the report are (1) whether citizens can provide input on the agencies' use of cost-benefit analysis, (2) whether cost-benefit analysis is required before regulations can be implemented, (3) whether the analysis is required for renewal of regulations, and (4) whether agency analysis is "data-driven" and available to the public.

Based on this analysis, the report gives Utah a score of 2.5 out of 3. Utah receives full points on each of the metrics except the second (requiring cost-benefit analysis before implementing regulations), because while Utah considers costs and benefits of regulations, it does not require a standardized procedure.[31]

Utah's Administrative Rulemaking Act requires agencies to "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" and gives discretionary criteria for the agencies to use, including "the individual fiscal impact that would incur to a typical business for a one-year period," "the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period," and "the total cost that would incur to all impacted entities over a five-year period." For rules likely to have "a measurable negative fiscal impact on small businesses," agencies are required to consider "methods of reducing the impact of the rule on small businesses" such as lenient compliance and reporting requirements, schedules and deadlines, and possible exemptions.[32]

During the required period for public comments on proposed rules, if "an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts," the analysis noted above must be performed. The statute also contains the requirements for the analysis:

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) [the requirement to consider ways of ameliorating the effect of the rule on small businesses].[33]

The agency is required to give copies of the analysis to those who request it ahead of time.[34]

When a rule is changed, an agency files the rule analysis described above with the Office of Administrative Rules which will be published in the Utah State Bulletin.[35]

The state also has a "regulatory sandbox," which allows businesses to temporarily "obtain legal protections and limited access to the market in the state to demonstrate an offering without obtaining a license or other authorization that might otherwise be required" so that a business can operate innovatively without prohibitive regulatory hurdles.[36] Applicants are required to include cost-benefit factors such as "how the offering would benefit consumers"; "likely, and significant harm to the health, safety, or financial well-being of consumers"; and risks to consumers.[37]

In responding to the application, the agency responsible issues findings which also include the same type of cost-benefit analysis.[38]

Can Citizens Challenge Regulations That Affect Them?

When a law is made by legislative bodies, those who will be affected by the laws have opportunities to interact with their representatives to express their concerns about how they will be affected by proposed laws. By contrast, administrative rules are not made by elected officials, so typically public input is limited to written submissions in response to proposed regulations.

As a general matter, an individual or group affected by a law can only challenge the law once they have been directly affected. Thus, if an agency creates a regulation imposing a fine, a business would have to actually be fined or face an imminent threat of a fine before it can argue in court that the regulation is illegal.

One state, Tennessee, has devised a way of helping those who might be affected by a regulation so they can get a court hearing to challenge a regulation. The law allows "any affected person" to seek a court order as to whether a rule or order of statute administered by an agency is valid or applicable." When this happens, the agency is required to issue an order (which can in turn be reviewed in court) or refuse to issue an order, which then triggers court review.[39]

Policy Recommendation

Utah should adopt Tennessee's approach of allowing affected people to seek an injunction of a proposed rule that could be harmful to them.

What Resources Are Available to Help the Legislature With Its Oversight of State Agencies?

The Center for Practical Federalism considers Utah vulnerable in the category of assessing resources available to the Legislature to perform research and analyses. The state's Office of Legislative Research and General Counsel provides research assistance to the Legislature and its members but also helps with legislative committee rules, legislative drafting, legal services, committee support, and other administrative policies.[40] The office has 20 policy staff members and 31 in its legal staff.[41] There are 29 senators and 75 representatives in Utah,[42] which is among the states with the smallest legislative staff.[43]

By contrast, Nevada, which is ranked as stronger than average, has a much smaller legislature but a larger research staff.[44]

As the Center for Practical Federalism notes, without robust resources available to legislators, they may be dependent on interest groups and lobbyists for information they need in their work.

Policy Recommendation

Utah could benefit from more research resources to support legislators.

Is Emergency Authority Balanced Between the Executive and Legislative Branches of Government?

Utah law gives the State Department of Health authority to issue an "order of constraint" in the event a public health emergency has been declared. These orders include stay-at-home orders, quarantines, and similar mandates.[45] The law also provides, though, that a "county governing body" by majority vote can terminate an order of constraint by a local department of health, and the Legislature by joint resolution can terminate an order of constraint by the State Department of Health.[46]

When a "public health emergency" last more than 30 days, the department can't issue an order of constraint unless it gives 24-hour notice to the "legislative emergency response committee." A legislative joint resolution can terminate the declaration of a public health emergency or extend one. During an emergency, the Legislature can terminate state or local constraint orders.[47]

The legislative emergency response committee is made up of the Executive Appropriations Committee and bipartisan additional members selected by the speaker of the House and Senate president. The committee holds public meetings to discuss emergency situations, hear testimony, and make recommendations to the Legislature of whether to extend a declaration of emergency.[48]

The state Division of Emergency Management is also subject to both legislative and executive direction.[49] A non-health state of emergency declared by the governor may be terminated by the Legislature, which can also extend the state of emergency and limit the emergency powers granted during an emergency.[50] The same legislative authority is granted at the county and municipal levels.[51] The governor must give 24-hour notice of an emergency executive action to the legislative emergency response committee.[52]

If the governor "issues an executive order declaring a temporary water shortage emergency, the Legislative Management Committee" is to review the order, advise the governor on the declaration, and propose to the Legislature whether it should keep, terminate or extend the order within seven days of the order. The Legislature can extend the declaration of the emergency up to a year after the executive order.[53]

Does the Utah Legislature Have Oversight of Federal Grant Requests?

Utah's Federal Funds Procedure Act includes legislative oversight provisions. It requires the Governor's Office of Planning and Budget to "annually prepare and submit a federal funds request summary for each agency to the Legislative Fiscal Analyst." The analyst in turn submits "a federal funds request summary for each agency to the legislative appropriations subcommittee responsible for that agency's budget for review during each annual general session."[54]

If the governor (or someone designated by the governor) approves a request from a state agency for federal funds, the Governor's Office of Planning and Budget is required to report that request to the Legislature's Executive Appropriations Committee, the Office of the Legislative Financial Analyst, and the Office of Legislative Research and General Counsel.[55] Requests from the state's Judicial Council (which oversees administration of the state's judicial branch)[56] and the elected State Board of Education for federal funds also have to be reported to these entities.[57]

The Legislative Executive Appropriations Committee must review a state administrative agency request for federal funds that could result in $1 million or more in federal funds, require the state to add new public employees, or spend state money as a result of the grant.[58]

The law does make an exception for legislative review when the governor has declared a state of emergency and the federal funds are for emergency victims.[59] Until 2024, a large number of agencies and types of grants were excluded from legislative review and approval, but the exceptions were removed.[60]

A previous requirement that agencies report annually on the amount of federal money received by the agency was repealed in 2024.[61]

Does Utah's Legislature Have a Role in Approving or Rejecting Federal Grant Requests?

Legislative appropriations subcommittees can recommend acceptance or rejection of federal funds. The Legislative Executive Appropriations Committee must "determine whether or not the agency should be authorized to accept the federal funds or participate in the federal program; and direct the Legislative Fiscal Analyst to include or exclude those federal funds and federal programs in an annual appropriations act for approval by the Legislature." The law provides that "[l]egislative approval of an appropriations act containing federal funds constitutes legislative approval of the federal grants or awards associated with the federal funds."[62]

Specifically, the Legislature has a role in two types of state administrative agency requests for federal funds.

The first, "medium impact federal funds requests," are requests that could result in $1 million or more but less than $10 million in federal funds, require the state to add new public employees but not more than 10, or spend up to $1 million in state money as a result of the grant. The Legislative Executive Appropriations Committee can make recommendations for accepting or rejecting federal funds that come in response to these requests. The committee can also recommend to the governor that a special session be called for the Legislature to accept or reject the funds if that has not already been done in the appropriations process described above.

A "high impact federal funds request" could result in $10 million or more in federal funds, require the state to add 11 or more public employees, or require the state to expend more than $1 million in state funds. These requests must be submitted to the Legislature, which must accept or reject the request within three months of submission. Agencies cannot accept funds without the approval of the Legislature.

The governor, Judicial Council, or State Board of Education can require an agency to withdraw a request, refuse to accept, or return federal grants if these procedures are not followed. In this circumstance, the Legislature can opt out or decline to participate in the program or to receive the funds "if federal law allows."[63]

As with legislative review, legislative approval of federal funding is not required for federal funds provided for victims during a state of emergency.[64] Other exceptions were removed in 2024.[65]

Are Elected Executive Officials Empowered to Oversee Federal Grant Requests?

State agencies must "submit a federal funds request summary to the governor or the governor's designee for approval or rejection" within three months of submission of a request for funding to the federal government. This applies to requests when the grant would result in $1 million or less of federal funding, would result in hiring no new public employees, and require no state spending. The governor or a designee has to accept or reject the request. State agencies cannot accept funds if the governor rejects the request. If the agency does not follow the approval procedures, the governor can "require the agency to: (a) withdraw the new federal funds request; (b) return the federal funds; (c) withdraw from the federal program" or some combination of those.[66]

When the State Board of Education seeks federal funding, it must also seek Board Approval in the same way as described above.[67] The board members are elected officials.

The governor and Board of Education members must also approve higher impact requests.[68]

Are Some Agencies Exempt From Oversight of Federal Grant Requests?

Prior to the most recent legislative session, 11 federal grant requests were exempted from oversight by elected officials:

- Medicaid Program
- Children's Health Insurance Program
- Women, Infant, and Children program
- Temporary Assistance for Needy Families program
- Social Security Act money
- Substance Abuse Prevention and Treatment program
- Child Care and Development Block Grant
- SNAP Administration and Training money
- Unemployment Insurance Operations money
- Federal Highway Administration money
- Utah National Guard.

However, these exemptions were all removed in the 2024 session, so there are no longer any exemptions.[69]

Is the State Required to Have a Contingency Plan if Federal Funding is Lost or Diminished?

When the amount of federal grants in a fiscal year are less than "the level estimated in the appropriations acts for that year" state programs depending on those grants "must be reduced commensurate with the amount of the federal reduction unless the Legislature appropriates state funds to offset the loss in federal funding."[70]

In addition, an agency that "in a single fiscal year, has federal receipts composing more than 33% of the agency's total budget"[71] is required to create a "federal funds contingency plan" that identifies:

- "short-term and long-term risks to the agency if there is a reduction in the amount or value of federal funds the agency receives" and
- "identify short-term and long-term strategies the agency may use to respond to the risks."

These plans must be updated at least every other year or when the agency submits a request for more than $10 million. These plans are to be submitted to "the Governor's Office of Planning and Budget, the Executive Appropriations Committee, and the Legislative Fiscal Analyst."[72]

All requests for federal funds, other than for assistance for victims during a declared emergency,[73] must include a "contingency disclosure and plan" which:

1. discloses "the likelihood that the amount or value of the federal funds will be reduced" or unavailable over time;
2. explains "whether accepting the federal funds may create an expectation of ongoing funding" and how "stakeholders" will be notified "that services funded by the federal funds may or will be temporary";
3. includes a plan for how an agency will proceed if federal funds are "unexpectedly reduced in any material degree or amount" or become unavailable, for how an agency will wind down a program or which federal funds are exhausted, and for how to transition beneficiaries to different programs or service providers;
4. designates which federal funds and their purposes are "mandatory under federal or state law" and either high or low priority.[74]

Does the State Account for the Cost of Federal Grants?

The "federal funds request summary" that agencies must provide to the Legislature for review must include:

- "the amount of new state money, if any, that will be required to receive the federal funds or participate in the federal program";
- the number of additional employees "the state estimates are needed in order to receive the federal funds or participate in the federal program";
- any requirements that the state must meet as a condition for receiving the federal funds or participating in the federal program";
- "state jurisdiction evaluation" (described below); and
- "a document detailing federal maintenance of effort requirements" defined as "any matching, level of effort, or earmarking requirements, as defined in Office of Management and Budget requirements, that are imposed on an agency as a condition of receiving federal funds."

Prior exemptions to this requirement have been repealed as previously noted. These summaries must be provided not only for new requests but for reauthorizations each year.[75]

The "state jurisdiction evaluation" is a disclosure of:

(A) whether accepting the federal funds or participating in the federal program will require the use of state funds or increase the administrative costs of the state or agency;

(B) the extent to which accepting the federal funds or participating in the federal program will impair or impact the exclusive police power jurisdiction of the state to protect or provide for the health, safety, welfare, and morals of the state; and

(C) the extent to which accepting the federal funds or participating in the federal program will impair or impact the jurisdiction of the state over federal areas within the state; and

(ii) to the extent that accepting the federal funds or participating in the federal program will impair or impact the state's jurisdiction ..., an identification of the constitutional authority supporting federal assertion of jurisdiction or authority for the funding, program, or an associated regulation or restriction.[76]

What Oversight Does the Utah Legislature Provide for State Implementation Plans Under the Clean Air Act?

The Utah Department of Environmental Quality explains that states are "responsible for developing plans to demonstrate how those standards will be achieved, maintained, and enforced. These plans make up the state implementation plan. The plans and rules associated with them are enforced by the State, and, after federal approval, they are also federally enforceable. These plans are the framework for each state's program to protect the air."[77] Utah does not require legislative oversight or approval of state implementation plans (SIPs) required by the federal Clean Air Act.

Nevada, by contrast, requires approval of SIPs by a legislative commission,[78] made up of 12 legislators, which "takes actions on behalf of the legislative branch of government when the full Legislature is not in session."[79]

Policy Recommendation

As with other state agency rules, Utah should require legislative approval of state implementation plans under the Clean Air Act.

What Oversight Does the Utah Legislature Provide for Medicaid State Plans?

As with the Clean Air Act, Utah does not require legislative approval of changes to the Utah Medicaid State Plan.[80]

New Hampshire law provides a counterexample. Any changes to the plan, including requests for waivers, must be approved by the legislature.[81]

Policy Recommendation

Utah should require legislative approval of the Utah Medicaid State Plan.

How Much Do Public Entities in Utah Spend on Lobbying the Federal Government?

In 2023, Utah administrative agencies spent $264,000 lobbying the federal government. In 2022, the expenditures were the same and a similar amount was spent in 2021. In 2024, so far, Utah agencies have spent $152,000.

Similarly, in 2024, the University of Utah spent $150,000 on lobbying and $210,000 in 2023. Utah State University has spent $140,000 so far in 2024 and $260,000 in 2023. For Utah Valley University, the amounts are $90,000 in 2024 and $10,000 in 2023.

Other public entities in Utah also lobby. The Utah Transit Authority, for instance, spent $210,000 in 2024 and $280,000 in 2023. Herriman City spent $60,000 in 2023. Washington County spent $30,000 in 2024 and $40,000 in 2023. Salt Lake City spent $52,500 in 2024 and $71,043 in 2023.[82]

As the Center for Practical Federalism explains, state agency lobbying "on all manner of legislation, spending, and rules governing the particulars of that spending ... opens the door for unelected state officials to influence federal policy in ways that circumvent the intentions of citizens as expressed through their elected representatives." The center ranks Utah as among the states with the highest levels of per capita spending on state and local expenditures to lobby the federal government.[83]

Policy Recommendation

The state should implement elected official oversight (including approvals) of lobbying by state agencies and make the lobbying process transparent.

What Proportion of Utah's Revenue Comes from Federal Grants?

Utah is one of the states in the lowest tier for the percentage of its revenue that comes from federal grants. According to Pew Trusts, 29.3% of Utah's state revenue comes from federal grants. The 50-state share is 36.4%. As Pew notes, when state and federal budgets are inextricably linked, "any policy changes, major pieces of legislation, or disruptions in federal funding can affect state finances in many ways."[84]

How Involved is the Utah Attorney General's Office in Challenging Federal Agency Overreach?

Utah's Office of the Attorney General has been very active in initiating lawsuits to challenge federal agency actions and in joining similar lawsuits from other states. In 2024, the state launched a major challenge to the federal practice of retaining large amounts of land in Utah without designating it for any specific use, filing a suit in the U.S. Supreme Court.[85] Utah also co-led a challenge to the Biden Administration's attempt to cancel student loan debt contrary to federal law.[86]

The state has joined similar lawsuits brought by other states in their challenges to a mandate for electric vehicles in the trucking industry[87]; nursing home staffing rules[88]; HHS gender transition rules[89]; Department of Education Title IX guidance[90]; EPA electric power regulations[91]; EEOC abortion-related rules[92]; and DOT climate rules.[93]

The state has also joined amicus briefs involving cooperative federalism in environmental regulation[94]; attempted regulation of Idaho's abortion law[95]; the constitutionality of the Consumer Product Safety Commission[96]; ATF regulation of firearms[97]; Department of Education rules on gender identity[98]; immigration regulations[99]; and FDA abortion regulations.[100]

Controlling for partisanship (whether the attorney general challenged federal regulations impinging on state authority from administrations of both parties), the Center for Practical Federalism gave Utah a middle score.[101]

In the 2024 legislative session, the Legislature called for Utah agencies to review any agency rules impacting the state which had been given deference by federal courts under a now-repudiated practice of court deference to federal agency regulations. The state agencies have now reported their findings to the attorney general's office. The attorney general's office will now determine whether to file suit challenging these regulations.[102]

Policy Recommendation

The change in presidential administrations will provide a test to the bipartisan nature of the attorney general office's commitment to challenging federal overreach. The office should carefully implement the recommendations that will arise from the new review process.

Conclusion

As the Center for Practical Federalism found, Utah does well in protecting federalism principles. Since the 2023 report, the Utah Legislature has made some important steps to strengthen those protections. As this audit suggests, however, there is still room for improvement in some areas. Utah can look at what some states have done in these areas and, in turn, provide an example to other states.

Endnotes

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[5] Utah Code §36-35-102(3).

[6] Utah Code §36-35-102(6)-(8); Utah Code §36-12-11.

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[23] Utah Code §63G-3-301.

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[25] Utah Office of Administrative Rules, "About Us," https://adminrules.utah.gov/public/home.

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[65] 2024 Utah House Bill 59.

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[67] Utah Code §63J-5-203.5.

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Federalism splits power between federal and state governments, which allows states to pursue different approaches to different concerns. Each state's actions and subsequent results also provide practical knowledge to other states.

Utah ranks first in the 2023 Federalism Scorecard, which identifies 20 indicators of the balance of power, but falls far short of perfect. This report – an audit of how well Utah measures up on each of those indicators – also points to other states in the areas where Utah could improve.

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