



March 4, 2025

The Honorable Bo Biteman
Wyoming Senate President
200 West 24th Street
Cheyenne, Wyoming 82002

Re: Veto of Senate Enrolled Act No. 59/ Senate File 0127 - Administrative Rules-Legislative Review

Dear President Biteman,

My position on Senate File 0127/SEA No. 59 Administrative Rules-Legislative Review remains skeptical. In my mind, it is another solution in search of a problem, meant to check a national political box by second guessing effective local governance. This Act, originally based on an out-of-state template used in places like Florida and Kansas, purports that by further expanding bureaucratic review, the process will be more efficient and fiscally conservative. Instead, this step would introduce an element of uncertainty and delay into a process that is already considered diligent, and at times overly burdensome. Under this Act, carefully crafted and conscientiously formulated rules that have already been thoroughly vetted by the public would then be subjected to additional legislative reconsideration after the fact. Duplicating the thorough work of agency staff that have often sought to protect Wyoming's primacy and values can be counterproductive. This Act accomplishes the opposite of its intent, increasing regulatory burden and unpredictability.

Rules cannot exist unless the Legislature provides for them in the laws it passes. I have already signed multiple Acts this year calling for yet more rules to be promulgated. More bill draft requests were made this year than ever before, which is an uncomfortable trend. If burdensome regulation is a concern, perhaps the Legislature should examine its own motivations. Are all the new laws absolutely necessary? Moreover, if there are questions about implementation, should the Legislature be more specific and thorough? Or conversely should legislation allow more latitude as appropriate in the laws it enacts?

More to the point, the Act implies that the executive branch operates without effective checks and balances, or without ample public and legislative participation. This notion is completely unfounded. As explained repeatedly this session, the legislature delegates rulemaking authority to the executive branch in the first place, and requires compliance with a long, detailed process to approve rules called the Wyoming Administrative Procedures Act ("WAPA") (Wyo. Stat. Ann. §§ 16-3-101 through -115). Under that process, the legislature already (1) receives notice of all proposed agency rules; (2) conducts legal reviews of all rules; (3) provides recommendations to Management Council; and (4) possesses several mechanisms to repeal rules, either through a legislative order or through statutory changes proposed in individual legislators' bills (Wyo. Stat. Ann. §§ 28-9-101 through -108). Further, WAPA mandates robust notice and public comment procedures be followed as part of rulemaking. These requirements must be

taken seriously, as I am legally prohibited from signing a rule unless (1) it is within the scope of the agency's statutory authority, (2) it appears to be within the scope of the statute's legislative purpose, and (3) it has been adopted in compliance with WAPA under Wyo. Stat. Ann. § 16-3-103(d). Failure to meet these requirements can result in the failure of a rule through citizen lawsuits and other legal challenges in court. The redundancy proposed by this Act does not make the process more efficient or likely to result in better rules.

After vigorous debate, the Senate amended the original bill. Those amendments alleviated some of my concerns to the point where I could consider signing this Act, a fact which I communicated to both chambers repeatedly. Unfortunately, amendments adopted after passing the Senate brought these zombie measures back from the dead. These actions demonstrate that the true intent of this bill remains the same: to use the executive branch to do the heavy lifting on rules so that the work can be questioned after the fact as political fodder. Creating uncertainty for Wyoming citizens and businesses to fill a bingo card for some national organization or another is unfortunate. Wyoming is not Florida, thank God, so it is unclear why we have to emulate it.

My message on rulemaking is the same now as when debate on this act began. Rulemaking is a creation of the Legislature, the authority delegated as it is to the Executive branch by the Legislature. Rules are subject to the checks and balances outlined in WAPA, also a creation of the Legislature. If the Legislature wants WAPA to work as it has outlined, the Legislature must let it work. If the Legislature is uncomfortable with that decades-old delegation, then the delegation of rulemaking should be revoked and the Legislature should wrestle itself with implementing complicated law and policy. I would note that the Legislature has not so much as used the process it already has to question rules; rather it has chosen to pile on the hard work of others. Second guessing the fully vetted good work of the public and agencies only adds delay and unpredictability to a state that already has proven its accessibility and responsiveness. I cannot, in good conscience, agree that the best way to curb bureaucracy is to add to it.

Sincerely,



Mark Gordon
Governor

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cc: The Honorable Chip Neiman, Speaker of the House
Chief Clerk, Wyoming House of Representatives
Chief Clerk, Wyoming Senate
The Honorable Chuck Gray, Secretary of State