GOLDWATER INSTITUTE

Agency Accountability Act

AN ACT relating to agency rulemaking authority and guidance documents.

(A) An agency rule is invalid unless it is specifically authorized by statute.

(B) An agency shall not:

1. Rely on a general grant of rulemaking authority to supplement a specific grant of rulemaking authority; or
2. Rely on a specific grant of rulemaking authority to adopt a rule that exceeds or expands the subject matter expressly authorized in the statute granting such authority.

(C) Definitions.

1. "Rule" means an agency statement, procedure, or practice of general applicability that implements, interprets or prescribes law or policy, or that describes the implementation of such a law or policy. Rule includes prescribing fees or amending or repealing a prior rule.
2. "Guidance document" means a written expression that informs the public of an agency's current interpretation of, or opinion concerning, the requirements of the federal or state constitution, a federal or state statute, an administrative rule or regulation, or a final judgment of a court of competent jurisdiction. The term includes the agency's current practice, procedure, or method of action based on that interpretation or opinion.

(D) Enforcement.

1. Any person may obtain a judicial declaration regarding the validity of a rule and an injunction against a rule by filing an action for declaratory and injunctive relief in a court of competent jurisdiction.
2. Any person who alleges that an agency practice or guidance document constitutes a rule may obtain a judicial declaration to that effect by filing an action for declaratory relief in a court of competent jurisdiction.
3. This section may be enforced in a private civil action and relief may be awarded against the state. The court shall award reasonable attorney fees and costs associated with an action under this section to a party other than the state that prevails in an action against the state for a violation of this section.

(E) Guidance Documents. Directory.

1. An agency shall post all guidance documents on its publicly accessible website and maintain a complete and current record of such statements for public inspection.