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SENATE BILL 194

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Daniel A. Ivey-Soto

AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,  
ADOPTING, AMENDING OR REPEALING RULES; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE STATE RULES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 14-4-2 NMSA 1978 (being Laws 1967,  
Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission,  
department, institution or officer of the state government  
except the judicial and legislative branches of the state  
government;

B. "person" includes individuals, associations,  
partnerships, companies, business trusts, political  
subdivisions and corporations; [~~and~~]

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1           C. "proceeding" means a formal or informal agency  
2 process or procedure that is commenced or conducted pursuant to  
3 the State Rules Act;

4           D. "proposed rule" means a rule that is provided to  
5 the public by an agency for review and public comment prior to  
6 its adoption, amendment or repeal;

7           E. "provide to the public" means for an agency to  
8 distribute rulemaking information by:

9                   (1) posting it on the agency web site, if any;

10                   (2) posting it on the sunshine portal;

11                   (3) making it available in the agency's  
12 district, field and regional offices, if any;

13                   (4) sending it by electronic mail to persons  
14 who have made a written request for notice from the agency of  
15 announcements addressing the subject of the rulemaking  
16 proceeding and who have provided an electronic mail address to  
17 the agency;

18                   (5) sending it by electronic mail to persons  
19 who have participated in the rulemaking and who have provided  
20 an electronic address to the agency; and

21                   (6) providing it to the New Mexico legislative  
22 council for distribution to appropriate interim and standing  
23 legislative committees;

24           [~~G.~~] F. "rule" means any rule, regulation, order or  
25 standard [statement of policy], including amendments thereto or

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1        repeals thereof, issued or promulgated by any agency and  
2        purporting to affect one or more agencies besides the agency  
3        issuing [~~such~~] the rule or to affect persons not members or  
4        employees of [~~such~~] the issuing agency. An order or decision  
5        or other document issued or promulgated in connection with the  
6        disposition of any case or agency decision upon a particular  
7        matter as applied to a specific set of facts shall not be  
8        deemed such a rule, nor shall it constitute specific adoption  
9        thereof by the agency. [~~Such term shall~~] "Rule" does not  
10       include rules relating to the management, confinement,  
11       discipline or release of inmates of any penal or charitable  
12       institution, the [~~Springer~~] New Mexico boys' school, the girls'  
13       welfare home [~~of~~] or any hospital [~~nor to~~]; rules made relating  
14       to the management of any particular educational institution,  
15       whether elementary or otherwise [~~nor to~~]; or rules made  
16       relating to admissions, discipline, supervision, expulsion or  
17       graduation of students [~~therefrom~~] from any educational  
18       institution; and

19                G. "rulemaking" means the process for adoption of a  
20        new rule or the amendment, readoption or repeal of an existing  
21        rule."

22                SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967,  
23        Chapter 275, Section 3, as amended) is amended to read:

24                "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

25                A. Each agency promulgating any rule shall place

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1 the rule in the format and style required by rule of the  
2 records center and shall deliver [~~one original paper copy and~~  
3 ~~one electronic copy~~] the rule to the records center accompanied  
4 by the concise explanatory statement required by the State  
5 Rules Act. The records center shall note thereon the date and  
6 hour of filing.

7 B. The records center shall maintain [~~the original~~]  
8 a copy of the rule as a permanent record open to public  
9 inspection during office hours, [~~and shall have the rule~~] on  
10 the web site of the records center, published in a timely  
11 manner in the New Mexico register and compiled into the New  
12 Mexico Administrative Code.

13 C. At the time of filing, an agency may submit to  
14 the records center [~~an additional paper~~] a copy, for annotation  
15 with the date and hour of filing, to be returned to the agency.

16 D. The state records administrator, after written  
17 notification to the filing agency, may make minor,  
18 nonsubstantive corrections in spelling, grammar and format in  
19 filed rules. The state records administrator shall make a  
20 record of the correction and shall deliver the record to the  
21 filing agency and issuing authority within ten days of the  
22 change."

23 SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967,  
24 Chapter 275, Section 6, as amended) is amended to read:

25 "14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--

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1 FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

2 A. Except in the case of an emergency rule, no rule  
3 shall be valid or enforceable until it is [filed with the  
4 records center and] published in the New Mexico register as  
5 provided by the State Rules Act.

6 B. An agency shall not adopt a rule until the  
7 public comment period has ended. If the agency fails to take  
8 action on a proposed rule within two years after the notice of  
9 proposed rulemaking is published in the New Mexico register,  
10 the rulemaking is automatically terminated unless the agency  
11 takes action to extend the period. The agency may extend the  
12 period of time for adopting the proposed rule for an additional  
13 period of two years by filing a statement of good cause for the  
14 extension in the rulemaking record, but it shall provide for  
15 additional public participation, comments and rule hearings  
16 prior to adopting the rule.

17 C. An agency may terminate a rulemaking at any time  
18 by publishing a notice of termination in the New Mexico  
19 register. If a rulemaking is terminated pursuant to this  
20 section, the agency shall provide notice to the public.

21 D. Within five days after adoption of a rule, an  
22 agency shall file the adopted rule with the records center and  
23 shall provide notice to the public. The records center shall  
24 publish rules as soon as practicable after filing, but in no  
25 case later than one hundred eighty days after the date of

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1 adoption of the proposed rule. Unless a later date is  
2 otherwise provided by law or in the rule, the effective date of  
3 a rule shall be the date of publication in the New Mexico  
4 register. [~~Emergency regulations may go into effect~~  
5 ~~immediately upon filing with the records center, but shall be~~  
6 ~~effective no more than thirty days unless they are published in~~  
7 ~~the New Mexico register.~~]

8 E. A proposed rule shall not take effect unless it  
9 is adopted and filed within the time limits set by this  
10 section."

11 SECTION 4. A new section of the State Rules Act is  
12 enacted to read:

13 "[NEW MATERIAL] RULE DRAFTING COMMITTEE.--An agency may  
14 appoint a rule drafting committee to comment or make  
15 recommendations on the subject matter of a rulemaking under  
16 active consideration within the agency. The committee, in  
17 consultation with one or more agency representatives, may  
18 attempt to reach a consensus on the terms or substance of a  
19 proposed rule. In making appointments to the committee, the  
20 agency shall seek a balance in representation from among  
21 interested members of the public. Committee meetings shall be  
22 open to the public but shall not be subject to the Open  
23 Meetings Act or the Per Diem and Mileage Act."

24 SECTION 5. A new section of the State Rules Act is  
25 enacted to read:

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1           "[NEW MATERIAL] NOTICE OF PROPOSED RULEMAKING.--

2           A. Not later than thirty days before a public rule  
3 hearing, the agency proposing the rule shall provide to the  
4 public and publish in the New Mexico register a notice of  
5 proposed rulemaking. The notice shall include:

6                     (1) a summary of the full text of the proposed  
7 rule;

8                     (2) a short explanation of the purpose of the  
9 proposed rule;

10                    (3) a citation to the specific legal authority  
11 authorizing the proposed rule and the adoption of the rule;

12                    (4) information on how a copy of the full text  
13 of the proposed rule may be obtained;

14                    (5) information on how a person may comment on  
15 the proposed rule, where comments will be received and when  
16 comments are due;

17                    (6) information on where and when a public  
18 rule hearing will be held and how a person may participate in  
19 the hearing; and

20                    (7) a citation to technical information, if  
21 any, that served as a basis for the proposed rule, and  
22 information on how the full text of the technical information  
23 may be obtained.

24           B. An agency may charge a reasonable fee for  
25 providing any records in nonelectronic form when provided to a

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1 person pursuant to this section. An agency shall not charge a  
2 fee for providing any records in electronic form when provided  
3 to a person pursuant to this section.

4 C. An internet link providing free access to the  
5 full text of the proposed rule shall be included on the notice  
6 of proposed rulemaking.

7 D. If the agency changes the date of the public  
8 rule hearing or the deadline for submitting comments as stated  
9 in the notice, the agency shall provide notice to the public of  
10 the change."

11 SECTION 6. A new section of the State Rules Act is  
12 enacted to read:

13 "[NEW MATERIAL] PUBLIC PARTICIPATION, COMMENTS AND RULE  
14 HEARINGS.--

15 A. The notice of proposed rulemaking shall specify  
16 a public comment period of at least thirty days after  
17 publication in the New Mexico register during which a person  
18 may submit information and comment on the proposed rule. The  
19 information or comment may be submitted in an electronic or  
20 written format or at a public rule hearing, if any, pursuant to  
21 Subsection B of this section. The agency shall consider all  
22 information and comment on a proposed rule that is submitted  
23 within the comment period.

24 B. At a public rule hearing, members of the public  
25 shall be given a reasonable opportunity to submit data, views

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1 or arguments orally or in writing. Except as otherwise  
2 provided by law, an agency representative or hearing officer  
3 shall preside over a public rule hearing.

4 C. The public rule hearing shall be open to the  
5 public and be recorded."

6 SECTION 7. A new section of the State Rules Act is  
7 enacted to read:

8 "[NEW MATERIAL] AGENCY RECORD IN RULEMAKING PROCEEDING.--

9 A. An agency shall maintain a rulemaking record for  
10 each rule it proposes to adopt. The record and materials  
11 incorporated by reference in the proposed rule shall be readily  
12 available for public inspection in the central office of the  
13 agency and available for public display on the state sunshine  
14 portal. If an agency determines that any part of the  
15 rulemaking record cannot be practicably displayed or is  
16 inappropriate for public display on the sunshine portal, the  
17 agency shall describe that part of the record, shall note on  
18 the sunshine portal that the part of the record is not  
19 displayed and shall provide instructions for accessing or  
20 inspecting that part of the record.

21 B. A rulemaking record shall contain:

22 (1) a copy of all publications in the New  
23 Mexico register relating to the proposed rule;

24 (2) a copy of any technical information that  
25 was relied upon in formulating the final rule;

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1 (3) any official transcript of a public rule  
2 hearing or, if not transcribed, any audio recording or verbatim  
3 transcript of the hearing, and any memoranda summarizing the  
4 contents of the hearing prepared by the hearing officer or  
5 agency official who presided over the hearing;

6 (4) a copy of all comments and other material  
7 received by the agency during the public comment period and at  
8 the public hearing;

9 (5) a copy of the full text of the initial  
10 proposed rule and the full text of the final adopted rule and  
11 the concise explanatory statement filed with the records  
12 center; and

13 (6) any corrections made by the state records  
14 administrator pursuant to Section 14-4-3 NMSA 1978."

15 SECTION 8. A new section of the State Rules Act is  
16 enacted to read:

17 "[NEW MATERIAL] CONCISE EXPLANATORY STATEMENT.--At the  
18 time it adopts a rule, an agency shall provide to the public a  
19 concise explanatory statement containing:

20 A. the date the agency adopted the rule;

21 B. a reference to the specific statutory or other  
22 authority authorizing the rule;

23 C. any findings required by a provision of law for  
24 adoption of the rule;

25 D. the agency's reasons for adopting the proposed

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1 rule, including the agency's reasons for not accepting  
2 substantial arguments made in testimony and comments; and

3 E. the reasons for any substantive change between  
4 the text of the proposed rule at the time of the notice of  
5 proposed rulemaking and the text of the rule as adopted."

6 SECTION 9. A new section of the State Rules Act is  
7 enacted to read:

8 "[NEW MATERIAL] EMERGENCY RULE.--

9 A. An agency shall comply with the rulemaking  
10 procedures of the State Rules Act unless the agency finds that  
11 the time required to complete the procedures would:

12 (1) cause an imminent peril to the public  
13 health, safety or welfare;

14 (2) cause the unanticipated loss of funding  
15 for an agency program; or

16 (3) place the agency in violation of federal  
17 law.

18 B. The agency shall provide to the public a record  
19 of any finding pursuant to Subsection A of this section and a  
20 detailed justification for that finding before issuing an  
21 emergency rule. The record shall include a statement that the  
22 emergency rule is temporary. After such record has been  
23 provided to the public, the agency may issue the emergency rule  
24 immediately without a public rule hearing or with any  
25 abbreviated notice and hearing that it finds practicable.

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1           C. When an agency makes a finding pursuant to  
2 Subsection A of this section, the agency shall follow the  
3 provisions of this section in addition to any more specific  
4 requirements in statute that pertain to the agency regarding  
5 promulgating emergency or interim rules.

6           D. Emergency rules may take effect immediately upon  
7 filing with the records center or at a later date specified in  
8 the emergency rule. Emergency rules shall be published in the  
9 New Mexico register.

10           E. No emergency rule shall permanently amend or  
11 repeal an existing rule. An emergency rule shall remain in  
12 effect until a permanent rule takes effect under the normal  
13 rulemaking process. If no permanent rule is adopted within one  
14 hundred eighty days from the effective date of the emergency  
15 rule, the emergency rule shall expire. If an expired emergency  
16 rule temporarily amended or repealed an existing rule, the rule  
17 shall revert to what it would have been had the emergency rule  
18 not been issued."

19           **SECTION 10.** A new section of the State Rules Act is  
20 enacted to read:

21           "[NEW MATERIAL] CONFLICTS BETWEEN RULE AND STATUTE--  
22 VARIANCE BETWEEN PROPOSED AND FINAL ACTION.--

23           A. No rule is valid or enforceable if it conflicts  
24 with statute. A conflict between a rule and a statute is  
25 resolved in favor of the statute.

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1           B. A word or phrase that is defined in an  
2 applicable statute should not be defined in rule. A conflict  
3 between a definition that appears in a rule and in an  
4 applicable statute is resolved in favor of the statute.

5           C. No agency shall take action on a final rule that  
6 differs from the action proposed in the notice of proposed  
7 rulemaking on which the rule is based unless the action is a  
8 logical outgrowth of the action proposed in the notice and a  
9 detailed justification is included in the rulemaking record."

10           SECTION 11. A new section of the State Rules Act is  
11 enacted to read:

12           "[NEW MATERIAL] PROCEDURAL RULES.--No later than January  
13 1, 2016, the attorney general shall adopt default procedural  
14 rules for a public rule hearing for use by agencies which  
15 procedural rules shall be used by an agency that has not  
16 adopted its own procedural rules consistent with this act. An  
17 agency that adopts its own procedural rules shall send a copy  
18 of those procedural rules to the attorney general and shall  
19 maintain those procedural rules on the agency's web site."

20           SECTION 12. A new section of the State Rules Act is  
21 enacted to read:

22           "[NEW MATERIAL] AGENCY RULE REVIEW.--

23           A. The state records administrator may request that  
24 an agency review an agency rule that the state records  
25 administrator finds to conflict with statute.

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B. An agency shall review an agency rule no later than thirty days after a request pursuant to Subsection A of this section."

SECTION 13. REPEAL.--Section 14-4-5.1 NMSA 1978 (being 1995, Chapter 110, Section 10) is repealed.

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.