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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/15

SPONSOR Sanchez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE State Rule Formatting Requirements SB 614

ANALYST A. Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 New Mexico Department of Transportation (NMDOT)  
 Department of Information Technology (DOIT)  
 Commission of Public Records (CPR)  
 Regulation and Licensing Department (RLD)  
 Department of Game and Fish (DGF)  
 Energy, Minerals and Natural Resources Department (EMNRD)  
 Economic Development Department (EDD)  
 State Personnel Office (SPO)  
 Department of Cultural Affairs (DCA)  
 New Mexico Racing Commission (NMRC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 614 proposes to amend the State Rules Act setting out a format for amending text when an agency publishes notice of a proposed rule amendment. The agency must set out in that notice the full text of the section proposed to be amended, and must also provide (1) the text that is proposed to be deleted, with brackets and a line-through; and (2) text proposed to be inserted, with an underscore and directly following the text that it would replace if it would replace deleted text.

## **FISCAL IMPLICATIONS**

If enacted, this bill would result in additional but undetermined costs to NMDOT for the publication of the notices, due to increased publication costs to include the text showing additions and deletions. Such publication in both the New Mexico Register and in general circulation newspapers requires inclusion of significantly more information than is currently required for rule amendments. The increased publication costs to NMDOT would depend on the nature of the changes proposed. Many NMDOT rules amendments are quite extensive, and would involve the publication of numerous pages of text. Each page of text must be converted to column inches, which is the basis for charges to NMDOT from each publication.

NMDOT currently has 35 rules published in the New Mexico Administrative Code. Many of those rules are in excess of one or two pages. NMDOT has a heightened notice requirement, per New Mexico State Transportation Commission Policy No. 4, which adds newspapers to the standard New Mexico Register notice. Thus, NMDOT publishes its notices of proposed rule adoptions and amendments throughout the State in at least three newspapers, if not more. On occasions, NMDOT has published proposed rule amendments in nine newspapers. In addition, NMDOT frequently has several public hearings on a rule amendment. If this bill would require that the text be published for each notice, it would increase costs exponentially.

RLD states that the budgetary impact estimates and assumptions will be difficult to calculate, as this information is based strictly upon the unknown number rule changes each Board or Commission may have or how many pages would be published. Currently the cost of rule filing is \$55.00 per page.

SB 614 would significantly increase EMNRD's costs for publication of rulemaking notices. EMNRD publishes rulemaking notices in the New Mexico Register and in one or more newspapers of general circulation. The cost to publish in the New Mexico Register is \$2.50 per columnar inch. The Albuquerque Journal charges 63 cents per line. Many rule amendments consist of numerous pages. In 2012, EMNRD published approximately 17 and a half pages of the full text of rule amendments in the New Mexico Register at a cost of \$1,072.

## **SIGNIFICANT ISSUES**

According to NMDOT, SB 614 requires publication of significantly more information than is currently necessary for rule amendments. The bill does not specify whether the requirements are applicable only to amendments of only portions of a rule, or whether the requirements are also required for instances where a rule is entirely removed and replaced. If the latter, the publication costs would be increased even more dramatically.

RLD reports that most of its notices are one to two pages costing at least \$110.00 to file. The cost will increase significantly if the full text of the proposed amendments have to be published. SB 614, however, does not require publication of new rules.

DCA states that the cost of publication could increase but does not provide an amount.

According to EMNRD, currently agencies are generally required to publish notices of the proposed rulemaking which describe the subject matter of the proposed rulemaking and provide where the public may obtain copies of the proposed rule. This requirement is found for all

cabinet agencies in the Executive Reorganization Act, Section 9-1-5(E) NMSA 1978. The New Mexico Mining Act and the Surface Mining Act require the Mining Commission and the Coal Surface Mining Commission to do the same. Sections 69-25A-6, 69-36-8 NMSA 1978.

### **ADMINISTRATIVE IMPLICATIONS**

According to SPO, it should be able to incorporate the provisions of this bill into the rulemaking process with minimal administrative impact.

### **COMPANIONSHIP, RELATIONSHIP**

SB 614 relates to SB 219 (Expiration of Rules).

SB 614 is a companion to SB 194 (Amendments to State Rules Act Public Records Act), which adds requirement that text of all proposed amendments to any rule shall be published in the notice of proposed rulemaking.

SB 614 relates to and conflicts with the State Rules Act, NMSA 1978, Section 14-4-7.1 (B) New Mexico Register, which contains language that allows for request of an issuing agency that in lieu of publishing a full text of a rule because it would be "...unduly cumbersome, expensive or otherwise inexpedient...", an agency may publish a synopsis of an adopted rule with a statement that a copy of the rule is available from issuing agency, with permission from the state records administrator.

### **TECHNICAL ISSUES**

NMDOT and EMNRD point out that the bill does not specify whether the requirements are applicable only to amendments of a rule, or whether the requirements are also required for instances where a rule is entirely removed and replaced.

### **OTHER SUBSTANTIVE ISSUES**

EDD points out that existing statute provides that, "the state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section" (Subsection E of Section 14-4-7.1 NMSA 1978). With that authority, the State Records Administrator adopted a rule entitled New Mexico Register ([1.24.15 NMAC](#)) to address specific policies, procedures, and fees associated with the publication. The rule describes how material is to be submitted for publication. Agencies must publish a notice of rulemaking in the *New Mexico Register* and in a newspaper of general publication. The notice explains generally what new rules or amendments to or repeal of existing rules are proposed and provides ways for the public to comment on them. Usually agencies will have a public meeting to discuss the rule. When the public comment period is over, the rule may be revised according to the comments received. Once a rule is finalized by an agency, the rule-issuing authority must approve and sign a transmittal form that must accompany the rule when filed. The rule-issuing authority is the person in an agency, such as the State Records Administrator.

### **ALTERNATIVES**

NMDOT provides in the notice of rules amendments the website link to the proposed rule so that

a member of the public could access the same. Through the link, the interested party can access and compare the proposed rule (changes) to the existing rule. Requiring all public entities provide notice to the location where the public may access proposed amendments, including redline forms would serve the intent of the bill, while not increasing the publication costs associated with rulemaking. In addition, the proposed rule changes are available through the notice published in the New Mexico Register.

NMDOT suggests providing exceptions to the requirements when the rule is being entirely replaced, or when the publication would become unduly lengthy.

EMNRD suggests that instead of relying on newspaper legal ads to publish the full text of the changes, use the Internet and require state agencies to post the full text of the proposed rule amendments or new rules on their websites and include the website address in the public notices. This requirement is contained in SB 194.

DCA proposes striking existing language from the State Rules Act about allowing summaries of rule changes and allowing published statement that the rule is available from the agency and replacing that language with the requirements proposed in this bill.

ABS/bb