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HOUSE BILL 45

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Richard J. Berry

FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE AND THE
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO STATE RULES; AMENDING AND ENACTING SECTIONS OF THE
STATE RULES ACT TO REQUIRE REGULATORY IMPACT STATEMENTS UNDER
CERTAIN CIRCUMSTANCES; AMENDING THE SMALL BUSINESS REGULATORY
RELIEF ACT; MAKING AN APPROPRIATION.

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 and corporations;

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underscored material = new
[bracketed material] = delete

1 [and]

2 C. "regulatory impact statement" means a document,
3 to be used for informational purposes only, that contains the
4 following information pertaining to a rule:

5 (1) a summary of the rule;

6 (2) a description of any person, resources,
7 classes of persons and political subdivisions that would be
8 affected by the rule;

9 (3) the probable negative and positive
10 impacts, including the economic, social, environmental and any
11 other relevant impacts, of the rule on affected persons,
12 resources, classes of persons and political subdivisions;

13 (4) a comparison of the costs and benefits of
14 implementing the rule to the costs and benefits of inaction;

15 (5) the probable negative or positive impact
16 to the state general fund, the state budget and any state
17 special fund of implementing the rule;

18 (6) a statement on whether there are means for
19 achieving the purpose of the rule with fewer adverse effects;

20 and

21 (7) a summary of public comments or other
22 evidence related to the rule submitted during the rulemaking
23 process;

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

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1 or 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 or the
13 girls' welfare home [~~of~~] or to any hospital [~~nor to~~] or rules
14 made relating to the management of any particular educational
15 institution, whether elementary or otherwise, [~~nor to~~] or rules
16 made relating to admissions, discipline, supervision, expulsion
17 or graduation of students therefrom; and

18 E. "rulemaking" means the adopting, promulgating,
19 amending or repealing of a rule."

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

22 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--[~~Each~~]
23 An agency promulgating [~~any~~] a rule shall place the rule in the
24 format and style required by [~~rule of~~] the records center and
25 shall deliver one original paper copy and one electronic copy

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1 to the records center. The records center shall [~~note thereon~~]
2 record the date and hour of filing. The records center shall
3 maintain the original copy as a permanent record open to public
4 inspection during office hours and shall have the rule
5 published in a timely manner in the New Mexico register and
6 compiled into the New Mexico administrative code. At the time
7 of filing, an agency may submit to the records center an
8 additional paper copy, for annotation with the date and hour of
9 filing, to be returned to the agency."

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

12 "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

13 A. Unless otherwise provided in the State Rules
14 Act, no rule shall be valid or enforceable until [~~it is~~] the
15 rule and the final regulatory impact statement are filed with
16 the records center and the rule is published in the New Mexico
17 register as provided by the State Rules Act. Unless a later
18 date is otherwise provided by law, the effective date of a rule
19 shall be the date of publication in the New Mexico register.

20 B. Emergency [~~regulations~~] rules may go into effect
21 immediately upon filing with the records center, but emergency
22 rules shall be effective no more than thirty days unless [~~they~~]
23 the emergency rules are published in the New Mexico register
24 and a final regulatory impact statement is filed with the
25 records center.

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1 C. Notwithstanding Subsection D of Section 14-4-2
2 NMSA 1978, a regulatory impact statement shall not be required
3 for an order or statement of policy."

4 Section 4. A new section of the State Rules Act is
5 enacted to read:

6 "[NEW MATERIAL] REGULATORY IMPACT STATEMENT--REQUIRED.--

7 A. At the beginning of the rulemaking process, an
8 agency shall prepare a draft regulatory impact statement on any
9 proposed rule and make the document available for public
10 inspection during office hours. At the time of notice of a
11 public hearing on a rule, an agency shall include in the notice
12 a public announcement that a draft regulatory impact statement
13 is available for inspection and comment. At the end of the
14 rulemaking process and upon filing a rule, an agency shall
15 prepare a final regulatory impact statement and file the final
16 regulatory impact statement with the records center. An agency
17 shall prepare the regulatory impact statement in the format and
18 style established by the state records administrator.

19 B. If an agency is unable to complete all or part
20 of a regulatory impact statement due to hardship, including
21 lack of agency resources or unavailable information, the agency
22 shall indicate the reason for the hardship in lieu of
23 completing all or part of the regulatory impact statement.

24 C. The state records administrator shall maintain
25 and make available to the public a list of all regulatory

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1 impact statements filed with the records center and any notices
2 of exemption. The state records administrator shall also
3 maintain and file the original copy of any regulatory impact
4 statement as a permanent, public record. The state records
5 administrator shall provide the list of all regulatory impact
6 statements filed with the records center on July 1 of each year
7 to the governor, the president pro tempore of the senate and
8 the speaker of the house of representatives for distribution to
9 the appropriate standing or interim legislative committee.

10 D. Notwithstanding other provisions of the State
11 Rules Act, the public regulation commission shall be exempt
12 from preparing and filing regulatory impact statements."

13 Section 5. Section 14-4A-4 NMSA 1978 (being Laws 2005,
14 Chapter 244, Section 4) is amended to read:

15 "14-4A-4. RULES AFFECTING SMALL BUSINESS.--

16 A. Prior to the adoption of a proposed rule that
17 may have an adverse effect on small business, an agency shall
18 provide a copy of the proposed rule and a draft regulatory
19 impact statement pursuant to the State Rules Act to the
20 commission at the same time as persons who have requested
21 advance notice of rulemaking.

22 B. Prior to the adoption of a proposed rule that
23 the agency deems to have an adverse effect on small business,
24 the agency shall consider regulatory methods that accomplish
25 the objectives of the applicable law while minimizing the

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1 adverse effects on small business."

2 Section 6. APPROPRIATION.--Ten thousand dollars (\$10,000)
3 is appropriated from the general fund to the state commission
4 of public records for expenditure in fiscal year 2010 to
5 establish a filing system for regulatory impact statements.
6 Any unexpended or unencumbered balance remaining at the end of
7 fiscal year 2010 shall revert to the general fund.

8 Section 7. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.

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