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HOUSE BILL 409

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

David L. Doyle

AN ACT

RELATING TO STATE RULES; REQUIRING ECONOMIC IMPACT STATEMENTS
FOR STATE AGENCY RULES; HOLDING A STATE AGENCY RESPONSIBLE FOR
UNDERESTIMATING THE ECONOMIC IMPACT OF RULES.

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;

~~[and]~~

underscored material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 C. "rule" means any rule, regulation, order,
2 standard or statement of policy, including amendments thereto
3 or repeals thereof, issued or promulgated by any agency and
4 purporting to affect one or more agencies besides the agency
5 issuing [~~such~~] the rule or to affect persons not members or
6 employees of [~~such~~] the issuing agency. An order or decision
7 or other document issued or promulgated in connection with the
8 disposition of any case or agency decision upon a particular
9 matter as applied to a specific set of facts shall not be
10 deemed such a rule, nor shall it constitute specific adoption
11 thereof by the agency. [~~Such term shall~~] "Rule" does not
12 include rules relating to:

13 (1) the management, confinement, discipline or
14 release of inmates of any penal or charitable institution [~~the~~
15 ~~Springer boys' school, the girls' welfare home of~~] or any
16 hospital [~~nor to rules made relating to~~];

17 (2) the management of any particular
18 educational institution, whether elementary or otherwise [~~nor~~
19 ~~to rules made relating to~~]; or

20 (3) admissions, discipline, supervision,
21 expulsion or graduation of students [~~therefrom~~] of any
22 educational institution; and

23 D. "rulemaking" means the process for adopting,
24 promulgating, amending or repealing a rule."

25 SECTION 2. Section 14-4-5 NMSA 1978 (being Laws 1967,

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1 Chapter 275, Section 6, as amended) is amended to read:

2 "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

3 A. No rule shall be valid or enforceable until it
4 is filed with the records center and published in the New
5 Mexico register as provided by the State Rules Act. Unless a
6 later date is otherwise provided by law, the effective date of
7 a rule shall be the date of publication in the New Mexico
8 register. Emergency [~~regulations~~] rules may go into effect
9 immediately upon filing with the records center, but shall be
10 effective no more than thirty days unless they are published in
11 the New Mexico register.

12 B. A rule shall not become valid or enforceable
13 unless it is filed with an economic impact statement pursuant
14 to Section 3 of this 2011 act at the records center and is
15 published in the New Mexico register as provided by the State
16 Rules Act."

17 **SECTION 3.** A new section of the State Rules Act is
18 enacted to read:

19 "[NEW MATERIAL] ECONOMIC IMPACT STATEMENT--REQUIRED.--

20 A. At the beginning of rulemaking procedures, an
21 agency shall prepare a draft economic impact statement on a
22 proposed rule and make the document available for public
23 inspection during office hours. At the time that notice of a
24 public hearing on a rule is made, an agency shall include in
25 the notice a public announcement that a draft economic impact

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1 statement is available for inspection and comment. At the end
2 of rulemaking procedures and upon filing a rule, an agency
3 shall prepare a final economic impact statement and file the
4 final economic impact statement with the records center. An
5 agency shall prepare the economic impact statement in the
6 format and style established by the state records
7 administrator.

8 B. An economic impact statement shall contain:

- 9 (1) a summary of the rule;
- 10 (2) a description of any persons, classes of
11 persons, resources and political subdivisions that would be
12 affected by the rule;
- 13 (3) the probable negative and positive
14 economic impacts of the rule on affected persons, classes of
15 persons, resources and political subdivisions;
- 16 (4) a comparison of the costs and benefits of
17 the rule to the costs and benefits of inaction;
- 18 (5) the probable negative or positive impact
19 to the state general fund, the state budget and any state
20 special fund of taking the intended action;
- 21 (6) a statement as to whether there are other
22 means for achieving the purpose of the rule with fewer adverse
23 effects; and
- 24 (7) a summary of public comments or other
25 evidence submitted during rulemaking.

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1 C. If an agency is unable to complete all or part
2 of an economic impact statement due to hardship, including lack
3 of agency resources or unavailable information, the agency
4 shall indicate the reason for the hardship in lieu of
5 completing all or part of the economic impact statement.

6 D. The state records administrator shall maintain
7 and make available to the public a list of all economic impact
8 statements filed with the records center and any notices of
9 exemption. The state records administrator shall also maintain
10 and file the original copy of any economic impact statement as
11 a permanent public record. The state records administrator
12 shall provide the list of all economic impact statements filed
13 with the records center on July 1 of each year to the governor,
14 the president pro tempore of the senate and the speaker of the
15 house of representatives for distribution to the appropriate
16 standing or interim legislative committee.

17 E. Notwithstanding other provisions of the State
18 Rules Act, the public regulation commission is exempt from
19 preparing and filing economic impact statements."

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

22 "[NEW MATERIAL] ASSESSMENT OF THE ECONOMIC IMPACT
23 STATEMENTS FOR CERTAIN RULES.--

24 A. If the department of finance and administration
25 receives a complaint specifying that the final economic impact

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1 statement for a rule underestimates the negative impact of the
2 rule on persons, classes of persons, resources or political
3 subdivisions that would be affected by the rule, the department
4 of finance and administration shall:

5 (1) assess the final economic impact statement
6 for the rule; and

7 (2) determine if the agency underestimated the
8 negative impact of the rule on persons, classes of persons,
9 resources or political subdivisions that would be affected by
10 the rule.

11 B. If the department of finance and administration
12 determines that the agency underestimated the negative impact
13 of the rule on persons, classes of persons, resources or
14 political subdivisions that would be affected by the rule, the
15 department of finance and administration shall:

16 (1) determine the dollar amount by which the
17 agency underestimated the negative impact of the rule on
18 persons, classes of persons, resources or political
19 subdivisions that would be affected by the rule; and

20 (2) subtract the dollar amount by which the
21 agency underestimated the negative impact of the rule on
22 persons, classes of persons, resources or political
23 subdivisions that would be affected by the rule from the
24 agency's budget in the subsequent fiscal year."