

1 SENATE BILL 257

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Mark Boitano

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10 AN ACT

11 RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
12 ADOPTING, AMENDING OR REPEALING RULES IN A UNIFORM MANNER
13 ACROSS ALL STATE AGENCIES; AMENDING AND ENACTING SECTIONS OF
14 THE STATE RULES ACT TO REQUIRE REGULATORY IMPACT STATEMENTS
15 UNDER CERTAIN CIRCUMSTANCES; AMENDING THE SMALL BUSINESS
16 REGULATORY RELIEF ACT; REPEALING CERTAIN SECTIONS OF THE STATE
17 RULES ACT.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "14-4-2. DEFINITIONS.--As used in the State Rules Act:

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

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1 government;

2 B. "person" includes individuals, associations,
3 partnerships, companies, business trusts and corporations;
4 [~~and~~]

5 C. "proceeding" means a formal or informal agency
6 process or procedure that is commenced or conducted by an
7 agency;

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

11 E. "provide to the public" means for an agency to
12 distribute rulemaking information in ways designed to notify
13 members of the public of the rulemaking action, particularly
14 those who may be affected by the subject of the rulemaking;
15 provided that:

16 (1) "provide to the public" includes
17 distribution of rulemaking information by:

18 (a) posting it on the agency web site,
19 if any;

20 (b) posting it on the sunshine portal;

21 (c) making it available in the agency's
22 district, field and regional offices, if any;

23 (d) sending it by mail or electronic
24 mail to persons who have made a written request, including
25 current contact information, for notice from the agency of

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1 announcements addressing the subject of the rulemaking
2 proceeding; and

3 (e) providing it to the New Mexico
4 legislative council for distribution to appropriate interim and
5 standing legislative committees; and

6 (2) where appropriate, feasible or required by
7 law, "provide to the public" may include distribution of
8 rulemaking information:

9 (a) in languages other than English;

10 (b) to agencies of local and tribal
11 governments;

12 (c) to community, interest group and
13 trade publications;

14 (d) to public facilities, such as
15 community centers and libraries, for display in each county in
16 which the subject of the announcement will have significant
17 impacts and in which there is not an agency office;

18 (e) to radio and television outlets for
19 use in public service announcements, particularly in areas in
20 which there are no printed media and in which the language or
21 languages used by a significant percentage of the population
22 are not written; and

23 (f) for publication in a newspaper of
24 general circulation, if any, in each county in which the
25 subject of the announcement will have significant impacts;

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1 F. "regulatory impact statement" means a document,
2 for informational purposes only, that pertains to a rule or
3 proposed rule and that contains:

4 (1) a summary of the rule or proposed rule;

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

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

13 (4) a comparison of the costs and benefits of
14 the rule or proposed rule to the costs and benefits of
15 inaction, including determining whether the cost in time, money
16 and resources costs at least fifty thousand dollars (\$50,000)
17 to a business;

18 (5) the probable negative or positive impact
19 to the general fund, the state budget or a special fund of the
20 rule or proposed rule;

21 (6) a statement on whether there are means for
22 achieving the purpose of the rule or proposed rule with fewer
23 adverse effects; and

24 (7) a summary of public comments or other
25 evidence submitted during the rulemaking;

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1 [~~G.~~] G. "rule" means any rule, regulation, order or
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 the management, confinement,
13 discipline or release of inmates of any penal or charitable
14 institution, the [~~Springer~~] New Mexico boys' school, the girls'
15 welfare home [~~of~~] or any hospital [~~nor to~~]; rules made relating
16 to the management of any particular educational institution,
17 whether elementary or otherwise [~~nor to~~]; or rules made
18 relating to admissions, discipline, supervision, expulsion or
19 graduation of students [~~therefrom~~] from any educational
20 institution; and

21 H. "rulemaking" means the process for adoption of a
22 new rule or the amendment or repeal of an existing rule."

23 SECTION 2. A new section of the State Rules Act is
24 enacted to read:

25 "[NEW MATERIAL] AGENCY ANNUAL REGULATORY AGENDA.--

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1 A. On or before June 30 of each year, each agency
2 expecting to engage in a rulemaking shall prepare and provide
3 to the public a regulatory agenda.

4 B. The regulatory agenda shall include:

5 (1) a list of pending rulemakings and the
6 current status of each rulemaking; and

7 (2) a list of any rulemakings expected to be
8 proposed for the next fiscal year.

9 C. This section does not prohibit an agency from
10 undertaking a rulemaking even if that rulemaking has not been
11 included in the agency's regulatory agenda. This section does
12 not require an agency to undertake a rulemaking listed on the
13 agency's regulatory agenda.

14 D. The regulatory agenda shall be updated on a
15 timely basis by the agency to indicate a change to the status
16 of a rulemaking proceeding, including the preliminary outline,
17 notice, public comment, public hearing and final agency
18 action."

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

21 "[NEW MATERIAL] PRELIMINARY OUTLINE.--

22 A. For the purpose of seeking public input, an
23 agency is encouraged to gather information relevant to the
24 subject matter of the rulemaking and solicit comments and
25 recommendations from the public.

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1 B. Prior to publication pursuant to Section 5 of
2 this 2012 act, the agency proposing the rulemaking shall
3 include a preliminary outline of the rulemaking on the
4 regulatory agenda. The preliminary outline shall include:

5 (1) the subject matter, statutory authority
6 and purpose of the rulemaking being considered;

7 (2) the name of the agency that is proposing
8 the rulemaking and that has the authority to adopt the rule and
9 the agency's contact for information;

10 (3) the procedure and deadlines for providing
11 input to the agency on the drafting of the preliminary rule;

12 (4) the agency's contemplated timetable for
13 the rulemaking; and

14 (5) any other information deemed appropriate
15 by the agency.

16 C. In response to a request from a member of the
17 public for a copy of the preliminary outline, the agency:

18 (1) shall provide the preliminary outline as
19 soon as is practicable and without requiring a formal
20 inspection of public records request; and

21 (2) shall provide the preliminary outline
22 without charge except to cover any actual costs incurred by the
23 agency.

24 D. Nothing in this section shall be construed to
25 preclude an agency from:

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1 (1) changing a rulemaking that the agency is
2 considering; or

3 (2) not proceeding with a rulemaking that the
4 agency has considered."

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

7 "[NEW MATERIAL] RULE DRAFTING COMMITTEE.--

8 A. An agency may appoint a rule drafting committee
9 to comment or make recommendations on the subject matter of a
10 rulemaking under active consideration within the agency. The
11 committee, in consultation with one or more agency
12 representatives, may attempt to reach a consensus on the terms
13 or substance of a proposed rule. In making appointments to the
14 committee, the agency shall make reasonable efforts to inform
15 the public of the formation of the committee and to seek a
16 balance in representation from among interested members of the
17 public. The formation of the committee, the agency contact,
18 the process by which interested members of the public may
19 request to be a member of the committee and a notice of
20 scheduled meetings shall be included on the regulatory agenda.
21 Committee meetings shall be open to the public but shall not be
22 subject to the Open Meetings Act or the Per Diem and Mileage
23 Act.

24 B. Pursuant to the Governmental Dispute Prevention
25 and Resolution Act, an agency or member of the public may seek

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1 alternative dispute resolution during rulemaking. It is at the
2 discretion of the agency if the rulemaking will proceed during
3 alternative dispute resolution."

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

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

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

11 (1) a summary of the full text of the proposed
12 rule;

13 (2) a short explanation of the purpose of the
14 proposed rule;

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

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

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

22 (6) information on where and when a public
23 rule hearing will be held and how a person may participate in
24 the hearing; and

25 (7) a citation to technical information, if

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1 any, that served as a basis for the proposed rule, and
2 information on how the full text of the technical information
3 may be obtained.

4 B. An agency may charge a reasonable fee for
5 providing any written material requested by a person pursuant
6 to this section.

7 C. An internet link to the notice and an internet
8 link to the full text of the proposed rule shall be included on
9 the regulatory agenda.

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

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

16 "[NEW MATERIAL] PUBLIC PARTICIPATION, COMMENTS AND RULE
17 HEARINGS.--

18 A. The notice required pursuant to Section 5 of
19 this 2012 act shall specify a public comment period of at least
20 thirty days after publication in the New Mexico register during
21 which a person may submit information and comment on the
22 proposed rule. The information or comment may be submitted in
23 an electronic or written format or at a public rule hearing, if
24 any, pursuant to Subsection B of this section. The agency
25 shall consider all information and comment on a proposed rule

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1 that is submitted within the comment period.

2 B. At a public rule hearing, members of the public
3 shall be given a reasonable opportunity to submit data, views
4 or arguments orally or in writing. Except as otherwise
5 provided by law, an agency representative or hearing officer
6 shall preside over a public rule hearing.

7 C. The rule hearing shall be open to the public and
8 be recorded."

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

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

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

22 B. A rulemaking record shall contain:

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

25 (2) a copy of any technical information that

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1 was relied upon in formulating the final rule;

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

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

10 (5) a copy of the rule and a concise
11 explanatory statement filed with the records center; and

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

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

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

- 19 A. the date the agency adopted the rule;
- 20 B. a reference to the specific statutory or other
21 authority authorizing the rule;
- 22 C. any findings required by a provision of law for
23 adoption of the rule;
- 24 D. the agency's reasons for adopting the proposed
25 rule, including the agency's reasons for not accepting

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1 substantial arguments made in testimony and comments; and

2 E. the reasons for any substantive change between
3 the text of the proposed rule at the time of the notice of
4 proposed rulemaking issued pursuant to Section 5 of this 2012
5 act 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 Sections 3 through 8 of this 2012 act unless the
11 agency finds that the time required to complete the procedures
12 would:

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

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

17 (3) place the agency in violation of federal
18 or state law.

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

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1 practicable.

2 C. Emergency rules may take effect immediately upon
3 filing with the records center. Emergency rules shall be
4 published in the New Mexico register.

5 D. No emergency rule shall permanently amend or
6 repeal an existing rule. An emergency rule shall remain in
7 effect until a permanent rule takes effect under the normal
8 rulemaking process. If no permanent rule is adopted within one
9 hundred eighty days from the effective date of the emergency
10 rule, the emergency rule shall expire. If an expired emergency
11 rule temporarily amended or repealed an existing rule, the rule
12 shall revert to what it was immediately before the emergency
13 rule took effect."

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

16 "[NEW MATERIAL] VARIANCE BETWEEN PROPOSED AND FINAL
17 ACTION.--An agency shall not take action on a proposed rule
18 that differs from the action proposed in the notice of proposed
19 rulemaking on which the rule is based unless the action is a
20 logical outgrowth of the action proposed in the notice."

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

23 "[NEW MATERIAL] TIME LIMIT ON ADOPTION OF A PROPOSED
24 RULE.--

25 A. Except in the case of an emergency rule as

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1 provided in Section 9 of this 2012 act, an agency shall not
2 adopt a proposed rule until the public comment period has
3 ended.

4 B. If the agency fails to take action on a proposed
5 rule within two years after the notice of proposed rulemaking
6 is published in the New Mexico register, the rulemaking is
7 automatically terminated unless the agency takes action to
8 extend the period. The agency may extend the period of time
9 for adopting the proposed rule for an additional period of two
10 years by filing a statement of good cause for the extension in
11 the rulemaking record, but shall provide for additional public
12 participation as provided in Section 6 of this 2012 act prior
13 to adopting the proposed rule.

14 C. The agency may terminate a rulemaking at any
15 time by publishing a notice of termination in the New Mexico
16 register.

17 D. If a rulemaking is terminated pursuant to this
18 section, the agency shall provide notice to the public and to
19 each person who has participated in the rulemaking and who has
20 provided contact information to the agency.

21 E. An agency shall file adopted rules with the
22 records center and publish the adopted rules in the New Mexico
23 register not later than one hundred eighty days after the date
24 of adoption of the proposed rule.

25 F. A proposed rule shall not take effect unless it

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1 is adopted and filed within the time limits set by this
2 section."

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

5 "[NEW MATERIAL] DEFAULT PROCEDURAL RULES--RULEMAKING
6 HEARING.--

7 A. The attorney general shall adopt default
8 procedural rules for a public rule hearing for use by agencies.

9 B. Except as otherwise provided in Subsection C of
10 this section, an agency shall use the default procedural rules
11 published under Subsection A of this section.

12 C. An agency may adopt a rule of procedure that
13 differs from the default procedural rules adopted under
14 Subsection A of this section."

15 SECTION 13. Section 14-4-3 NMSA 1978 (being Laws 1967,
16 Chapter 275, Section 3, as amended) is amended to read:

17 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

18 A. Each agency promulgating any rule shall place
19 the rule in the format and style required by rule of the
20 records center and shall deliver [~~one original paper copy and~~
21 ~~one electronic copy~~] the rule to the records center accompanied
22 by the concise explanatory statement required by Section 8 of
23 this 2012 act. The records center shall note thereon the date
24 and hour of filing.

25 B. The records center shall maintain [~~the original~~]

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1 a copy of the rule as a permanent record open to public
2 inspection during office hours and shall have the rule
3 published in a timely manner in the New Mexico register and
4 compiled into the New Mexico Administrative Code.

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

8 D. The state records administrator, after written
9 notification to the filing agency, may make minor,
10 nonsubstantive corrections in spelling, grammar and format in
11 filed rules. The state records administrator shall make a
12 record of the correction and shall deliver the record to the
13 filing agency and issuing authority within ten days of the
14 change."

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

17 "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--No
18 rule shall be valid or enforceable until it is filed with the
19 records center and published in the New Mexico register as
20 provided by the State Rules Act. Unless a later date is
21 otherwise provided by law, the effective date of a rule shall
22 be the date of publication in the New Mexico register.

23 [~~Emergency regulations may go into effect immediately upon~~
24 ~~filing with the records center, but shall be effective no more~~
25 ~~than thirty days unless they are published in the New Mexico~~

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1 ~~register.]"~~

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

4 "[NEW MATERIAL] REGULATORY IMPACT STATEMENT.--

5 A. If information or a comment submitted in an
6 electronic or written format or at a public rule hearing
7 pursuant to Section 6 of this 2012 act indicates that the cost
8 of a rule or proposed rule to a business in time, money or
9 resources will be at least fifty thousand dollars (\$50,000),
10 the agency shall perform a regulatory impact statement
11 regarding the rule or proposed rule. The agency shall make the
12 regulatory impact statement available for public inspection
13 during office hours. At the time of notice of a public hearing
14 on a rule or proposed rule about which a regulatory impact
15 statement has been completed, the agency shall include in the
16 notice a public announcement that the regulatory impact
17 statement is available for inspection and comment.

18 B. If a regulatory impact statement regarding a
19 rule or proposed rule has been completed, the agency shall file
20 the regulatory impact statement and the rule or proposed rule
21 with the records center in the format and style established by
22 the state records administrator.

23 C. If an agency is unable to complete all or part
24 of a regulatory impact statement due to hardship when a
25 regulatory impact statement is required, including lack of

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1 agency resources or unavailable information, the agency shall
2 document the reason for the hardship in lieu of completing all
3 or part of the regulatory impact statement and file that
4 document with the portion of the regulatory impact statement
5 that is completed and the rule or proposed rule with the
6 records center in the format and style established by the state
7 records administrator.

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

19 E. Notwithstanding other provisions of the State
20 Rules Act, the public regulation commission shall not be exempt
21 from preparing and filing regulatory impact statements."

22 SECTION 16. REPEAL.--Section 14-4-5.1 NMSA 1978 (being
23 Laws 1995, Chapter 110, Section 10) is repealed.

24 SECTION 17. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2012.

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