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HOUSE BILL 58

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Nate Gentry and Linda M. Trujillo and
Tomás E. Salazar and Daniel A. Ivey-Soto

AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES; AMENDING 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 agency process or
2 procedure that is commenced or conducted pursuant to the State
3 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's website, if
10 any;

11 (2) posting it on the sunshine portal;

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

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

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

22 (6) sending a postcard notice with an internet
23 and street address where the information may be found to
24 persons who provide a postal address; and

25 (7) providing it to the New Mexico legislative

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1 council for distribution to appropriate interim and standing
2 legislative committees;

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

23 G. "rulemaking" means the process for adoption of a
24 new rule or the amendment, readoption or repeal of an existing
25 rule."

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

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

4 A. Each agency promulgating any rule shall place
5 the rule in the format and style required by rule of the
6 [~~records center~~] state records administrator and shall deliver
7 [~~one original paper copy and one electronic copy~~] the rule to
8 the [~~records center~~] state records administrator or the
9 administrator's designee accompanied by the concise explanatory
10 statement required by the State Rules Act. The [~~records~~
11 ~~center~~] state records administrator or the administrator's
12 designee shall note thereon the date and hour of filing.

13 B. The [~~records center~~] state records administrator
14 or the administrator's designee shall maintain [~~the original~~] a
15 copy of the rule as a permanent record open to public
16 inspection during office hours, [~~and shall have the rule~~] on
17 the website of the records center, published in a timely manner
18 in the New Mexico register and compiled into the New Mexico
19 Administrative Code.

20 C. At the time of filing, an agency may submit to
21 the [~~records center an additional paper~~] state records
22 administrator or the administrator's designee a copy, for
23 annotation with the date and hour of filing, to be returned to
24 the agency.

25 D. The state records administrator, after written

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1 notification to the filing agency, may make minor,
2 nonsubstantive corrections in spelling, grammar and format in
3 filed rules. The state records administrator shall make a
4 record of a correction and shall deliver the record to the
5 filing agency and issuing authority within ten days of the
6 change."

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

9 "14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--
10 FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

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

15 B. An agency shall not adopt a rule until the
16 public comment period has ended. If the agency fails to take
17 action on a proposed rule within two years after the notice of
18 proposed rulemaking is published in the New Mexico register,
19 the rulemaking is automatically terminated unless the agency
20 takes action to extend the period. The agency may extend the
21 period of time for adopting the proposed rule for an additional
22 period of two years by filing a statement of good cause for the
23 extension in the rulemaking record, but it shall provide for
24 additional public participation, comments and rule hearings
25 prior to adopting the rule.

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

5 D. Within fifteen days after adoption of a rule, an
6 agency shall file the adopted rule with the state records
7 administrator or the administrator's designee and shall provide
8 notice to the public. The state records administrator or the
9 administrator's designee shall publish rules as soon as
10 practicable after filing, but in no case later than one hundred
11 eighty days after the date of adoption of the proposed rule.

12 Unless a later date is otherwise provided by law or in the
13 rule, the effective date of a rule shall be the date of
14 publication in the New Mexico register. [~~Emergency regulations~~
15 ~~may go into effect immediately upon filing with the records~~
16 ~~center, but shall be effective no more than thirty days unless~~
17 ~~they are published in the New Mexico register.~~]

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

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

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

24 A. Not later than thirty days before a public rule
25 hearing, the agency proposing the rule shall provide to the

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1 public and publish in the New Mexico register a notice of
2 proposed rulemaking. The notice shall include:

3 (1) a summary of the full text of the proposed
4 rule;

5 (2) a short explanation of the purpose of the
6 proposed rule;

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

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

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

14 (6) information on where and when a public
15 rule hearing will be held and how a person may participate in
16 the hearing; and

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

21 B. An agency may charge a reasonable fee for
22 providing any records in nonelectronic form when provided to a
23 person pursuant to this section. An agency shall not charge a
24 fee for providing any records in electronic form when provided
25 to a person pursuant to this section.

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1 C. An internet link providing free access to the
2 full text of the proposed rule shall be included on the notice
3 of proposed rulemaking.

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

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

10 "[NEW MATERIAL] PUBLIC PARTICIPATION, COMMENTS AND RULE
11 HEARINGS.--

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

21 B. At the public rule hearing, members of the
22 public shall be given a reasonable opportunity to submit data,
23 views or arguments orally or in writing. Except as otherwise
24 provided by law, an agency representative or hearing officer
25 shall preside over a public rule hearing.

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1 C. The public rule hearing shall be open to the
2 public and be recorded."

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

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

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

18 B. A rulemaking record shall contain:

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

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

23 (3) any official transcript of a public rule
24 hearing or, if not transcribed, any audio recording or verbatim
25 transcript of the hearing, and any memoranda summarizing the

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1 contents of the hearing prepared by the hearing officer or
2 agency official who presided over the hearing;

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

6 (5) a copy of the full text of the initial
7 proposed rule and the full text of the final adopted rule and
8 the concise explanatory statement filed with the state records
9 administrator or the administrator's designee; and

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

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

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

- 17 A. the date the agency adopted the rule;
- 18 B. a reference to the specific statutory or other
19 authority authorizing the rule;
- 20 C. any findings required by a provision of law for
21 adoption of the rule;
- 22 D. the agency's reasons for adopting the proposed
23 rule, including the agency's reasons for not accepting
24 substantial arguments made in testimony and comments; and
- 25 E. the reasons for any substantive change between

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1 the text of the proposed rule at the time of the notice of
2 proposed rulemaking and the text of the rule as adopted."

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

5 "[NEW MATERIAL] EMERGENCY RULE.--

6 A. An agency shall comply with the rulemaking
7 procedures of the State Rules Act unless the agency finds that
8 the time required to complete the procedures would:

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

11 (2) place the agency in violation of federal
12 law.

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

21 C. When an agency makes a finding pursuant to
22 Subsection A of this section, the agency shall follow the
23 provisions of this section in addition to any more specific
24 requirements in statute that pertain to the agency regarding
25 promulgating emergency or interim rules.

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1 D. Emergency rules may take effect immediately upon
2 filing with the state records administrator or the
3 administrator's designee or at a later date specified in the
4 emergency rule. Emergency rules shall be published in the New
5 Mexico register.

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

16 **SECTION 9.** A new section of the State Rules Act is
17 enacted to read:

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

20 A. No rule is valid or enforceable if it conflicts
21 with statute. A conflict between a rule and a statute is
22 resolved in favor of the statute.

23 B. A word or phrase that is defined in an
24 applicable statute should not be defined in rule. A conflict
25 between a definition that appears in a rule and in an

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1 applicable statute is resolved in favor of the statute.

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

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

9 "[NEW MATERIAL] PROCEDURAL RULES.--No later than January
10 1, 2018, the attorney general shall adopt default procedural
11 rules for a public rule hearing for use by agencies which
12 procedural rules shall be used by an agency that has not
13 adopted its own procedural rules consistent with this act. An
14 agency that adopts its own procedural rules shall send a copy
15 of those procedural rules to the attorney general and shall
16 maintain those procedural rules on the agency's website."

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

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

20 A. The state records administrator may request that
21 an agency review an agency rule that the state records
22 administrator finds to conflict with statute.

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

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SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.