

NMDOT BILL ANALYSIS 2024 REGULAR SESSION

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 1/31/2024

Bill No. HB 267

Sponsor: Gail Armstrong; James G. Townsend; T. Ryan Lane

Agency/ Code: NMDOT - 805 - OGC

Short Title Agency Response to Rules Comments

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SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate		State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 267 (HB 267) amends the State Rules Act (Chapter 14, Article 4 NMSA 1978) to require for adoption of a rule, written agency response to each comment received during the public comment period, as well as the requirement that the written agency response to comments, including what is to be included in each response, be published with the final rule in the New Mexico register (register).

FISCAL IMPLICATIONS

HB 267 requires that written agency responses to all comments received during the public comment period be published in the register. Agencies must pay for publication in the register, and the charge is per page. Including written responses to each comment, and the specificity with which each response must be made, significantly increases the number of pages to be published in the register, which will result in a significant increase in the cost of publication for the agency promulgating a rule. Further, as an agency cannot reliably predict the number or complexity of comments it may receive pursuant to a rulemaking, the agency cannot budget for the cost of publication until the written responses to comments is produced.

SIGNIFICANT ISSUES

See above.

PERFORMANCE IMPLICATIONS

None identified.

ADMINISTRATIVE IMPLICATIONS

As part of its rulemaking procedure, the New Mexico Department of Transportation (NMDOT) includes a comment summary and the NMDOT's written response to those comments in its final rulemaking report to the State Transportation Commission (STC). The final rulemaking report, including the comment summary, is published on the NMDOT's website before the relevant STC meeting, and then becomes a part of the record of the STC meeting. This record is then retained by NMDOT as part of its rulemaking record. HB 267 impedes this process. Instead, HB 167 may require additional staff time to format for publication specific written responses to comments in the register, depending on what format is required by New Mexico State Records Center and Archives.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

The State Rules Act already requires an agency to post the final rule on the agency's website as well as on the sunshine portal. The Act could be amended to require an agency to publish a comment summary, with agency responses to the comments, to the agency's website and the sunshine portal without incurring significant additional publication expenses, such as would be the case in publishing possibly a large number of comments and responses to the register.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The NMDOT will continue to include a comment summary and responses to those comments in the final rulemaking report provided to the STC and in its rulemaking record.

AMENDMENTS

Strike in its entirety Section 3 of HB 167 and replace with following:

SECTION 3. Section 14-4-5.4 NMSA 1978 (being Laws 2017, ch. 137, § 6) is amended to
A-1366 NEW: 01/2024 Legislative Liaison

read:

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

B. A rulemaking record shall contain:

(1) a copy of all publications in the New Mexico register relating to the proposed rule;
(2) a copy of any technical information that was relied upon in formulating the final rule;

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

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

(5) written agency responses to comments as provided in Subsection D of Section 14-4-5.3 NMSA 1978;

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

~~[(6)]~~ (7) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.