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HOUSE BILL 310

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Richard J. Berry

AN ACT

RELATING TO STATE REGULATIONS; REQUIRING REGULATORY IMPACT  
STATEMENTS UNDER CERTAIN CIRCUMSTANCES; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

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

1                   C. "regulatory impact statement" means a report  
2 containing:

3                   (1) a description of any person or classes of  
4 persons that would be affected by a proposed rule;

5                   (2) an estimate of the negative and positive  
6 impacts, economic or otherwise, of a proposed rule on affected  
7 persons, classes of persons or the state budget;

8                   (3) a comparison of the costs and benefits of  
9 a proposed rule to the costs and benefits of inaction;

10                   (4) a determination of whether there are less  
11 costly or intrusive methods for achieving the purpose of the  
12 proposed rule; and

13                   (5) a summary of public comments or other  
14 evidence submitted during rulemaking where a person disputes  
15 any portion of the agency's analysis in the regulatory impact  
16 statement;

17                   [~~G.~~] D. "rule" means any rule, regulation, order,  
18 standard or statement of policy, including amendments thereto  
19 or repeals thereof, issued or promulgated by any agency and  
20 purporting to affect one or more agencies besides the agency  
21 issuing [~~such~~] the rule or to affect persons not members or  
22 employees of [~~such~~] the issuing agency. An order or decision  
23 or other document issued or promulgated in connection with the  
24 disposition of any case or agency decision upon a particular  
25 matter as applied to a specific set of facts shall not be

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1 deemed such a rule, nor shall it constitute specific adoption  
2 thereof by the agency. [~~Such term shall~~] "Rule" does not  
3 include rules relating to the management, confinement,  
4 discipline or release of inmates of any penal or charitable  
5 institution, the [~~Springer~~] New Mexico boys' school or the  
6 girls' welfare home [~~of~~] or to any hospital [~~nor to~~] or rules  
7 made relating to the management of any particular educational  
8 institution, whether elementary or otherwise, [~~nor to~~] or rules  
9 made relating to admissions, discipline, supervision, expulsion  
10 or graduation of students therefrom; and

11 E. "rulemaking" means the process for adopting,  
12 promulgating, amending or repealing a rule."

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

15 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--[~~Each~~]  
16 An agency promulgating [~~any~~] a rule shall place the rule in the  
17 format and style required by [~~rule of~~] the records center and  
18 shall deliver one original paper copy and one electronic copy  
19 to the records center. The records center shall [~~note thereon~~]  
20 record the date and hour of filing. The records center shall  
21 maintain the original copy as a permanent record open to public  
22 inspection during office hours and shall have the rule  
23 published in a timely manner in the New Mexico register and  
24 compiled into the New Mexico Administrative Code. At the time  
25 of filing, an agency may submit to the records center an

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1 additional paper copy, for annotation with the date and hour of  
2 filing, to be returned to the agency."

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

5 "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--No  
6 rule shall be valid or enforceable until ~~[it is]~~ the rule and  
7 any required regulatory impact statement are filed with the  
8 records center and published in the New Mexico register as  
9 provided by the State Rules Act. Unless a later date is  
10 otherwise provided by law, the effective date of a rule shall  
11 be the date of publication in the New Mexico register.  
12 Emergency regulations may go into effect immediately upon  
13 filing with the records center, but shall be effective no more  
14 than thirty days unless they are published in the New Mexico  
15 register."

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

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

19 A. Before an agency promulgates a rule, the agency  
20 shall prepare a regulatory impact statement if the proposed  
21 rule has an economic impact of more than twenty-five thousand  
22 dollars (\$25,000) on affected persons, classes of persons or  
23 the state budget.

24 B. If the economic impact of the proposed rule is  
25 twenty-five thousand dollars (\$25,000) or less, the agency

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1 shall not be required to prepare a regulatory impact statement  
2 unless, at any time during rulemaking, a person files a written  
3 request for a regulatory impact statement with the agency  
4 promulgating the proposed rule.

5 C. If an agency is unable to complete all or part  
6 of the regulatory impact statement due to hardship, including  
7 lack of agency resources or unavailable data, the agency shall  
8 indicate the reason for the hardship in lieu of all or part of  
9 the regulatory impact statement. An agency required to submit  
10 a regulatory impact statement shall prepare the regulatory  
11 impact statement in the format and style required by the  
12 records center. The agency shall deliver one original paper  
13 copy and one electronic copy to the records center. The  
14 records center shall note the date and hour of filing.

15 D. The records center shall maintain the original  
16 copy as a permanent record open to public inspection during  
17 office hours and shall have the regulatory impact statement  
18 published to accompany the proposed rule in the New Mexico  
19 register. However, the regulatory impact statement shall not  
20 be compiled into the New Mexico Administrative Code.

21 E. By December 31 of each year, the state records  
22 administrator shall provide an annual cumulative summary of  
23 regulatory impact statements filed with the records center to  
24 the governor, president pro tempore of the senate and the  
25 speaker of the house of representatives for distribution to the

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1 appropriate standing or interim legislative committees."

2 Section 5. APPROPRIATION.--One hundred thousand dollars  
3 (\$100,000) is appropriated from the general fund to the records  
4 center for expenditure in fiscal year 2009 for costs related to  
5 maintaining, publishing and distributing the regulatory impact  
6 statements of each agency. Any unexpended or unencumbered  
7 balance remaining at the end of fiscal year 2009 shall revert  
8 to the general fund.

9 Section 6. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect immediately.