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HOUSE BILL 34

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

INTRODUCED BY

Nate Gentry and Timothy M. Keller

AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,  
ADOPTING, AMENDING OR REPEALING RULES; AMENDING, REPEALING 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 and corporations;

~~[and]~~

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1           C. "proceeding" means a formal or informal agency  
2 process or procedure that is commenced or conducted by an  
3 agency;

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 in ways designed to notify  
9 members of the public of the rulemaking action, particularly  
10 those who may be affected by the subject of the rulemaking;  
11 provided that:

12                   (1) "provide to the public" includes  
13 distribution of rulemaking information by:

14                           (a) posting it on the agency web site,  
15 if any;

16                           (b) posting it on the sunshine portal;

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

19                           (d) sending it by mail or electronic  
20 mail to persons who have made a written request, including  
21 current contact information, for notice from the agency of  
22 announcements addressing the subject of the rulemaking  
23 proceeding; and

24                           (e) providing it to the New Mexico  
25 legislative council for distribution to appropriate interim and

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1 standing legislative committees; and

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

5 (a) in languages other than English;

6 (b) to agencies of local and tribal  
7 governments;

8 (c) to community, interest group and  
9 trade publications;

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

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

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

22 [G.] F. "rule" means any rule, regulation, order or  
23 standard [or statement of policy], including amendments thereto  
24 or repeals thereof, issued or promulgated by any agency and  
25 purporting to affect one or more agencies besides the agency

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

17 G. "rulemaking" means the process for adoption of a  
18 new rule or the amendment or repeal of an existing rule."

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

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

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

25 B. The regulatory agenda shall include:

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

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

5 C. This section does not prohibit an agency from  
6 undertaking a rulemaking even if that rulemaking has not been  
7 included in the agency's regulatory agenda. This section does  
8 not require an agency to undertake a rulemaking listed on the  
9 agency's regulatory agenda.

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

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

17 "[NEW MATERIAL] PRELIMINARY OUTLINE.--

18 A. For the purpose of seeking public input, an  
19 agency is encouraged to gather information relevant to the  
20 subject matter of the rulemaking and solicit comments and  
21 recommendations from the public.

22 B. Prior to publication pursuant to Section 5 of  
23 this 2012 act, the agency proposing the rulemaking shall  
24 include a preliminary outline of the rulemaking on the  
25 regulatory agenda. The preliminary outline shall include:

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

3 (2) the name of the agency that is proposing  
4 the rulemaking and that has the authority to adopt the rule and  
5 the agency's contact for information;

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

8 (4) the agency's contemplated timetable for  
9 the rulemaking; and

10 (5) any other information deemed appropriate  
11 by the agency.

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

14 (1) shall provide the preliminary outline as  
15 soon as is practicable and without requiring a formal  
16 inspection of public records request; and

17 (2) shall provide the preliminary outline  
18 without charge except to cover any actual costs incurred by the  
19 agency.

20 D. Nothing in this section shall be construed to  
21 preclude an agency from:

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

24 (2) not proceeding with a rulemaking that the  
25 agency has considered."

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

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

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

20           B. Pursuant to the Governmental Dispute Prevention  
21 and Resolution Act, an agency or member of the public may seek  
22 alternative dispute resolution during rulemaking. It is at the  
23 discretion of the agency if the rulemaking will proceed during  
24 alternative dispute resolution."

25           SECTION 5. A new section of the State Rules Act is

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1 enacted to read:

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

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

7 (1) a summary of the full text of the proposed  
8 rule;

9 (2) a short explanation of the purpose of the  
10 proposed rule;

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

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

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

18 (6) information on where and when a public  
19 rule hearing will be held and how a person may participate in  
20 the hearing; and

21 (7) a citation to technical information, if  
22 any, that served as a basis for the proposed rule, and  
23 information on how the full text of the technical information  
24 may be obtained.

25 B. An agency may charge a reasonable fee for

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1 providing any written material requested by a person pursuant  
2 to this section.

3 C. An internet link to the notice and an internet  
4 link to the full text of the proposed rule shall be included on  
5 the regulatory agenda.

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

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

12 "[NEW MATERIAL] PUBLIC PARTICIPATION, COMMENTS AND RULE  
13 HEARINGS.--

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

23 B. At a public rule hearing, members of the public  
24 shall be given a reasonable opportunity to submit data, views  
25 or arguments orally or in writing. Except as otherwise

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1 provided by law, an agency representative or hearing officer  
2 shall preside over a public rule hearing.

3 C. The rule hearing shall be open to the public and  
4 be recorded."

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

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

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

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 rule and a concise  
7 explanatory statement filed with the records center; and

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

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

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

15 A. the date the agency adopted the rule;

16 B. a reference to the specific statutory or other  
17 authority authorizing the rule;

18 C. any findings required by a provision of law for  
19 adoption of the rule;

20 D. the agency's reasons for adopting the proposed  
21 rule, including the agency's reasons for not accepting  
22 substantial arguments made in testimony and comments; and

23 E. the reasons for any substantive change between  
24 the text of the proposed rule at the time of the notice of  
25 proposed rulemaking issued pursuant to Section 5 of this 2012

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1 act and the text of the rule as adopted."

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

4 "[NEW MATERIAL] EMERGENCY RULE.--

5 A. An agency shall comply with the rulemaking  
6 procedures of Sections 3 through 8 of this 2012 act unless the  
7 agency finds that the time required to complete the procedures  
8 would:

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

11 (2) cause the loss of funding for an agency  
12 program; or

13 (3) place the agency in violation of federal  
14 or state law.

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

23 C. Emergency rules may take effect immediately upon  
24 filing with the records center. Emergency rules shall be  
25 published in the New Mexico register.

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

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

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

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

19           "[NEW MATERIAL] TIME LIMIT ON ADOPTION OF A PROPOSED  
20 RULE.--

21           A. Except in the case of an emergency rule as  
22 provided in Section 9 of this 2012 act, an agency shall not  
23 adopt a proposed rule until the public comment period has  
24 ended.

25           B. If the agency fails to take action on a proposed

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

10 C. The agency may terminate a rulemaking at any  
11 time by publishing a notice of termination in the New Mexico  
12 register.

13 D. If a rulemaking is terminated pursuant to this  
14 section, the agency shall provide notice to the public and to  
15 each person who has participated in the rulemaking and who has  
16 provided contact information to the agency.

17 E. An agency shall file adopted rules with the  
18 records center and publish the adopted rules in the New Mexico  
19 register not later than one hundred eighty days after the date  
20 of adoption of the proposed rule.

21 F. A proposed rule shall not take effect unless it  
22 is adopted and filed within the time limits set by this  
23 section."

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

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1 "[NEW MATERIAL] DEFAULT PROCEDURAL RULES--RULEMAKING

2 HEARING.--

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

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

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

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

13 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

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

21 B. The records center shall maintain [~~the original~~]  
22 a copy of the rule as a permanent record open to public  
23 inspection during office hours and shall have the rule  
24 published in a timely manner in the New Mexico register and  
25 compiled into the New Mexico Administrative Code.

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

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

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

13           "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--No  
14 rule shall be valid or enforceable until it is filed with the  
15 records center and published in the New Mexico register as  
16 provided by the State Rules Act. Unless a later date is  
17 otherwise provided by law, the effective date of a rule shall  
18 be the date of publication in the New Mexico register.

19 [~~Emergency regulations may go into effect immediately upon~~  
20 ~~filing with the records center, but shall be effective no more~~  
21 ~~than thirty days unless they are published in the New Mexico~~  
22 ~~register.]"~~

23           SECTION 15. REPEAL.--Section 14-4-5.1 NMSA 1978 (being  
24 Laws 1995, Chapter 110, Section 10) is repealed.