

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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:

Date Prepared: 2/5/2024

Original x **Amendment** _____
Correction _____ **Substitute** _____

Bill No: HJR 15

Sponsor: Rep. R. Pettigrew, Rep. J. Townsend

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: INTERIM ADMIN RULE COMMITTEE, CA

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year	Recurring	Fund

				Total Cost	or Nonrecurring	Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HJR 15 proposes to amend Article 4 of the New Mexico Constitution to create a permanent interim administrative rule oversight committee (Committee) which would make recommendations on proposed rules, and would have the power to overturn executive agency rules. The Committee would be composed of twelve members appointed by the two floor leaders of each house of the legislature appointed for two-year terms. The Committee would meet at least once per month to review rules proposed by executive agencies, make recommendations on the rules to the proposing agency, recommend changes to the authorizing statutes of a rule to clarify legislative intent, and direct the work of committee staff. The Committee would have authority to overturn existing agency rules if the Committee deems it necessary. Committee staff would prepare analyses and fiscal impact statements on any proposed rules for consideration by the Committee. The Committee would review the proposed rule and approve recommendations to the proposing agency, office of the attorney general, and the governor.

The proposed amendment would be submitted for approval or rejection at the next general election or any special election called to vote on the amendment.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

This resolution would have an enormous impact on New Mexico’s administrative code. Most of HJR 15 is fairly innocuous, creating a committee to analyze and make recommendations regarding proposed rules, and submitting those recommendations during the public comment period. The process for review of new rules is clearly outlined. This would likely require a change to NMSA 1978 § 14-4-3 (2017), or addition of another section, but has no apparent conflict with existing law.

However, the true purpose of this resolution is contained in its long title – “A Joint

Resolution Proposing to Amend Article 4 of the Constitution of New Mexico to Create a Permanent Interim Administrative Rule Oversight Committee and Allow that Committee to Overturn Executive Agency Rules.” Despite its appearance in the title of the resolution, the proposed amendment provides very little information about the Committee’s ability to overturn existing rules: “The [Committee] shall have the authority to overturn existing agency rules when the committee determines that doing so is necessary.” HJR 15, §1(G).

Forming a 12-person committee with the authority to unilaterally overturn agency rules would seem to necessitate clear boundaries, a clear process for review of existing law, and whether the Committee’s decision to overturn a rule can be overridden by the Legislature as a whole and/or the Governor. And yet, only a sentence is devoted to the ability to unilaterally overturn existing rules.

HJR 15 is not consistent with how the U.S. federal government handles review of agency rules. The Congressional Review Act, 5 U.S.C. § 801, allows Congress to overturn newly proposed rules issued by federal agencies. There is a detailed process – agencies must submit a report to each house of Congress on any proposed rule, and Congress holds the power to introduce and vote on a joint resolution of disapproval that can overturn the rule, and is subject to presidential veto, and procedure to override such veto. HJR 15 does the opposite – the Committee has no power to overturn a newly proposed rule, only an existing rule. Moreover, unlike the Congressional Review Act, the New Mexico Legislature as a whole has no say in the decision to overturn a rule, nor does the Governor have the ability to veto the decision. All such power is vested with the Committee.

PERFORMANCE IMPLICATIONS

See above.

ADMINISTRATIVE IMPLICATIONS

None for this agency. The same cannot be said of any agency which promulgates rules.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There is no corresponding resolution pending before the Senate.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.