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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Scott/Townsend/Gallegos/Block</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/20/2025</u>
<b>SHORT TITLE</b> <u>Review and Approval of Rules</u>	<b>BILL NUMBER</b> <u>Senate Bill 423</u>
	<b>ANALYST</b> <u>Fischer</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Choose an item.	<b>\$250.0</b>	<b>\$250.0</b>	<b>\$500.0</b>	Recurring	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 State Ethics Commission  
 New Mexico Compilation Commission (NMCC)

Agency Analysis was Solicited but Not Received From  
 Governor  
 Administrative Office of the Courts (AOC)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from some state agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis of Senate Bill 423

Senate Bill 423 (SB423) requires the Legislative Finance Committee (LFC) to review and conduct impact analyses of “major” administrative rules. Major rules are newly defined as those that will likely have 1) annual effects on the state, individuals, or industries of \$10 million or more, 2) significant adverse effects on competition, employment, investment, productivity, innovation, or individual industries or regions, or 3) significant changes in social or cultural relations among citizens, including significant impact on religions and ethnic, racial, or gender populations.

LFC is directed to provide a publicly-reported rule impact analysis within 15 days to include an analysis of the impact on any grants received from the federal government or outside the state, a statement of need, the authorizing statute for the rule or grants, examinations of alternatives to

the rule, a benefit-cost analysis of the rule, including an analysis of opportunity costs of compliance as a result of any private capital from the market. Section 8 of SB423 additionally requires that all executive agencies submit economic impact findings to the legislature to include an analysis as to whether the agency’s promulgated rule is necessary, is duplicative with other rules, and the overall consideration of whether the agency’s rule causes economic impacts on small businesses.

SB423 states that major rules shall not take effect before the legislature authorizes the major rule by law but that rules not disapproved by the legislature can take effect within 60 days. SB423 also requires the Governor’s approval before any rule promulgated by an agency is adopted or implemented.

Section 7 of SB423 provides for the automatic expiration or “sunset” of all rules promulgated by any executive agency through the State Rules Act unless authorized “by law” by the legislature of the rule’s renewal for an additional five years, to be applied for to the legislature by the agency not less than two years before the rule is set to expire.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The \$250 thousand in annual recurring costs is the estimated amount LFC would need to hire and/or contract with two full-time attorneys to conduct the rule impact analyses of major rules.

## **SIGNIFICANT ISSUES**

In New Mexico the rule review process is almost completely in the hands of agencies promulgating the rules, with provisions in the Administrative Procedures Act for judicial review by the First Judicial District Court if a plaintiff claims the rule interferes with or impairs, or threatens to interfere with or impair, their interests, rights, or privileges. Nebraska and California have similar, executive-centered administrative rule review processes.

According to the National Conference of State Legislatures, 41 state legislatures have some type of authority to review administrative rules, although not all of them have the power to veto rules. In the states that have veto authority, the action is usually required through enactment of a statute (13 states) or passage of a resolution (15 states).

The Levin Center for Legislative Oversight has noted that “administrative rule review is one of the most complex and most contested arenas for legislative oversight [...] state supreme courts have rejected various stronger forms of legislative review of administrative rules.” Along the same lines, the Ethics Commission flagged that SB423 likely violates the separation of powers of the branches of state government and also violates the independent authority vested in independent agencies of the executive branch described in Article V, Section 1 of New Mexico Constitution by requiring independent constitutionally-created executive agencies, such as the State Treasurer and Attorney General, to obtain permission from the legislature before they can implement rules related to the execution of their core functions.

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