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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Pettigrew **ORIGINAL DATE** 2/26/2025

BILL

SHORT TITLE Interim Admin. Rules Oversight Committee **NUMBER** House Bill 358

ANALYST Leger

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$2,000.0	Nonrecurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Executive Agencies		\$60.0 to \$300.0	\$60.0 to \$300.0	\$120.0 to \$600.0	Recurring	General Fund

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

Relates to Senate Bill 423 and House Joint Memorial 12

Sources of Information

LFC Files

Agency Analysis Received From
 Office of the Attorney General (OAG)
 Office of the State Auditor (OSA)
 New Mexico Public School Insurance Authority (PSIA)
 Retiree Health Care Authority (RHCA)
 New Mexico Sentencing Commission (SC)
 Department of Information Technology (DOIT)
 Office of Broadband Access and Expansion (OBAE)
 Public Employees Retirement Authority (PERA)
 Commission of Public Records (CPR)
 State Personnel Office (SPO)
 Public Employee Labor Relations Board (PELRB)
 New Mexico Border Authority (NMBA)
 Tourism Department (TD)
 Regulations and Licensing Department (RLD)
 Public Regulations Commission (PRC)
 Gaming Control Board (GCB)
 Racing Commission

Spaceport Authority
Livestock Board
Energy, Minerals and Natural Resources Department (EMNRD)
State Land Office (SLO)
Office of the State Engineer (OSE)
Commission for Deaf and Hard of Hearing (CDHH)
Indian Affairs Department (IAD)
Early Childhood Education & Care Department (ECECD)
Aging and Long-Term Services Department (ALTSD)
Health Care Authority (HCA)
Department of Workforce Solutions (DWS)
Department of Health (DOH)
Environment Department (ED)
Department of Veterans' Services (DVS)
Office of Family Representation and Advocacy (OFRA)
Children, Youth & Families Department (CYFD)
State Parole Board
Department of Public Safety (DPS)
Department of Homeland Security and Emergency Management (DHSEM)
Department of Transportation (DOT)

SUMMARY

Synopsis of House Bill 358

House Bill 358 (HB358) appropriates \$2 million from the general fund to the Legislative Council Service (LCS) for staff for the interim Administrative Rule Oversight Committee and other costs for establishing the committee.

The bill creates the interim Administrative Rule Oversight Committee of the Legislature consisting of 12 members who are to meet one time per month during the interim and suspend meetings during the legislative session. Three members are appointed by the majority and minority of the two chambers for two-year terms expiring on the first day of each odd-numbered year.

The committee is tasked to review rules proposed by an executive agency and review committee staff analysis of rules and fiscal impact statements two weeks prior to public hearing of rule. The committee can make recommendations on the rules to the executive agency and recommend changes to authorizing statutes of a rule to clarify legislative intent.

The LCS is directed to hire no more than four staff members to staff the committee.

The committee and staff shall develop a written analysis of proposed rulemaking, including relation to the scope of the statute, necessity, fiscal impact on stakeholders, legal implications, and proposing agency's compliance.

HB358 amends Section 14-4-5.2 NMSA 1978, adding a section stating a proposed rule is to include an estimate of the cost of implementing the proposed rule; provided that the agency shall include a fiscal impact statement if the cost of implementing is estimated to be greater than \$1 million and outlines the requirements of the fiscal impact statement.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The appropriation of \$2 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund. The appropriation is a one-time appropriation; however, recurring funds would be needed for the staffing and cost of the committee for the duration of its existence.

Several agencies providing analysis indicate the bill may cause an adverse administrative fiscal impact on agencies. Increased agency costs include additional staff with specific expertise (such as economists and legal counsel) or contractors to complete fiscal impact statements, increased cost to conduct a rule hearing, and increased publishing costs. Agencies are unable to calculate an exact cost because the number of rule changes vary year to year. The State Ethics Commission reports that agencies in New Mexico propose many rules. Based on the New Mexico Record's Center cumulative index, in 2024, agencies published 101 notices to either promulgate entirely new rules or amend existing rules. *See* New Mexico Commission of Public Records, New Mexico Register, Cumulative Index, Volume XXXV, Issues 1–24. (2024) <https://www.srca.nm.gov/nmac/nmregister/pdf/2024%20index%201-24.pdf>.

The Public Regulation Commission says that, based on the definition provided in Section 6(A), the cost of implementing the proposed rule will be difficult to estimate with any precision. Specifically, fiscal impacts on *other* entities will be difficult, if not impossible, to estimate. If this is the intent of the legislation, it should provide specific instructions and criteria for how to calculate these costs.

The State Land Office points out the general requirement that an agency estimate “the cost of implementing the proposed rule” is vague, and it is not clear how that estimate differs from the fiscal impact statement required only in certain circumstances.

SIGNIFICANT ISSUES

According to the Office of the Attorney General (OAG), HB358 may violate the principle of separation of powers incorporated into the New Mexico Constitution. Article III, Section 1 of the New Mexico Constitution states that “[t]he powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.”

Office of the State Engineer reports the State Rules Act already requires providing the proposed rule to the LCS (amendment made in 2017) and addresses the statutory adherence of proposed rules and notice requirements. Nothing in current law prevents legislative committees, or

individual legislators, from commenting on proposed executive agency rules. Further, the Small Business Regulatory Relief Act (NMSA 1978, Sections 14-4A-1 to -5) already requires agencies to submit proposed rules that may have an effect on small businesses to the Small Business Regulatory Advisory Commission for review and determination whether such proposed rules are fair, effective, and not overly burdensome.

The Retiree Health Care Authority reports HB358 conflicts with the authority granted to its board of directors under Sections 10-7C-5 and 10-7C-6 Board NMSA 1978. The Department of Transportation (NMDOT) also points out conflict and that the bill would require the State Transportation Commission to update its Commission Policy 4, which governs NMDOT's rulemaking process, as well as require NMDOT to amend its rulemaking administrative directive and rulemaking handbook. The Indian Affairs Department reports its enabling statute sets forth how its secretary may make and adopt rules.

The Department of Workforce Solutions says the bill would create considerably delays in implementation of programs, especially those that require rulemaking to initiate spending of non-recurring funds.

The Children, Youth & Families Department raises the concern of potential differences of opinion between legislators and agency leadership would set up a conflict regarding legislative intervention and executive authority and responsibility for the rulemaking process. This could potentially violate the separation of powers as written in the New Mexico Constitution. The comment period for any rule making is open to the public and legislators.

In New Mexico the rule review process is almost completely in the hands of the agencies promulgating the rules, with provisions in the Administrative Procedures Act for judicial review by the 1st 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 State 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.

According to State Auditor's Office and the Mercatus Center at George Mason University, 40 states have legislative review processes where the legislature or a legislative committee reviews administrative rules (<https://www.mercatus.org/research/working-papers/50-state-review-regulatory-procedures>). This can include the power to approve, reject, or modify proposed rules.

New Mexico is one of the ten states without this function. Generally, legislative reviews of administrative rules are necessary to ensure proper separations of powers, and that legislative intent is maintained when implementing state law – in essence this government function prevents a conflict between administrative rule and statute. In New Mexico, the only remedy when an executive branch agency’s rules exceed the authority granted in state law is by challenging the agency’s rule through the judicial process and the courts.

During the 2024 legislative interim there were 24 interim committees.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 423 requires the Legislative Finance Committee 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.

House Joint Memorial 2 requests the Legislative Council convene an 11-member task force to study combining standing interim committee into committees that function during the legislative session and the interim.

TECHNICAL ISSUES

The Attorney General’s Office highlights the following issues:

- Sections 1-4 appear to not only create new Sections of Chapter 2, but also create a new article, and it should be specified that they are all within this article.
- The term “interim” should be defined for that article.
- Section 1B could be somewhat clearer.
- Section 2(A)(1) requires the review of the rules “two weeks prior to the public rules hearing.” This implies that the review is to be conducted exactly two weeks prior, which would require a different meeting for every rule, rather than once a month. Perhaps the drafter meant to say “at least two weeks prior...”
- Section 4(A) states that “the legislative council services shall distribute a notice of proposed rulemaking received by an executive agency pursuant to Section 14-4-5.2 NMSA 1978.” The executive agencies do not receive the notices, they distribute them. Perhaps the drafter meant to say “received from an executive agency...”

The State Ethics Commission and Sentencing Commission reports the new sections of law in HB358 refer throughout to “executive agency”; the problem, however, is that “executive agency” is not defined in the State Rules Act (which is presumably where these new sections of law would be placed). The State Rules Act does define “agency”, as “any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government.” As no definition is provided in HB358 for “executive agency”, it is unclear to which entities these new sections would apply.

The Livestock Board requests clarification of the emergency rule making process.

The Office of the State Engineer question whether the \$1 million threshold for a fiscal impact statement is on an annual basis or over the expected life of the rule.

The Health Care Authority states Section 2 (A)(3) is confusing as to whom recommendations should be made as the Legislature is the only political body that can make such changes.

According to the Office of Family Representation and Advocacy, the bill erodes the power and authority of Cabinet Secretaries to promulgate rules within their purview and potentially conflicts with NMSA 9-2A-7.

According to the Department of Transportation, HB358 does not define what costs should be included in the estimate, or whether such costs are to the agency during the rulemaking process or a projection of costs to the agency in administering a rule once it is promulgated.

OTHER SUBSTANTIVE ISSUES

HB358 recommends the hiring of up to four staff members. There is currently inadequate space for current year-round full-time staff housed within the state capitol and Capitol North. Office sharing, creating landing spots, and occupying committee rooms during the interim have allowed for temporary relief. Should the Secretary of State vacate the Capitol, the space will likely accommodate only the current staff and not any new staff.

A number of agencies indicate rulemaking is done throughout the year and can be needed on an emergency basis. The limited availability of the committee will add additional delay to the already prolonged rule-making process. Section 1(D) requires the Interim Committee to meet at least once per month, but rulemaking often operates under strict timelines. Requiring agencies to wait for monthly meetings—without assurance that their rule proposals will be heard in a timely manner—creates unnecessary hurdles. Furthermore, Section 2(A)(1) prevents the Committee from meeting during the legislative session, leaving agencies without a clear process for advancing necessary rules while the Legislature is in session. This could delay critical regulatory updates that affect public safety, economic development, and other essential services.

Several of the agencies providing analysis point out the requirements of Section 4 are already included in the Rules Act requirements.

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