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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Dow/Armstrong/Parajón **ORIGINAL DATE** 2/28/25

**BILL**

**SHORT TITLE** Rulemaking Agency Response to Public Comment **NUMBER** House Bill 425

**ANALYST** Hilla

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
State agencies	No fiscal impact	\$67.1 to \$200.0	\$67.1 to \$200.0	\$134.2 to \$400.0	Recurring	General Fund
Publication Fees	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Regulation and Licensing Department (RLD)

Public Regulation Commission (PRC)

Energy, Minerals, and Natural Resources Department (EMNRD)

Health Care Authority (HCA)

Department of Health (DOH)

Department of Public Safety (DPS)

#### Agency Analysis was Solicited but Not Received From

Commission of Public Records (CPR)

New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of House Bill 425

House Bill 425 (HB425) amends 14-4-5 NMSA 1978, the time limit on adoption of a proposed rule. HB425 requires agencies to provide responses to each public comment on a proposed rule.

An agency response to a public comment on a proposed rule shall:

- Be unique and specific to the public comment;
- Be fact-specific to the concerns of the comment; and
- Address the impact of the comment on the proposed rule.

An agency's response to public comments shall be in writing and published with the rule in the New Mexico Register.

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 Regulation and Licensing Department (RLD) and the Energy, Minerals and Natural Resources Department (EMNRD) anticipate an increase in recurring operating budgets to address public comments. This analysis assumes that various state agencies may need to increase their operating budgets within the range of \$67.1 thousand to \$200 thousand to support additional legal staff or manage increased workloads without expanding personnel. However, costs may vary by division based on the volume of rulemaking undertaken by each agency.

Agencies pay for the publication in the New Mexico Register at a range of \$75 to \$85 per page. The Commission of Public Records' guidelines recommend agencies to procure a purchase order for no less than \$320 for rulemakings with four pages notices. Depending on how often agencies are updating rules, this cost is indeterminate but minimal for publication expenses to the state's Register.

## **SIGNIFICANT ISSUES**

All agency analyses concern increases in administrative workload from HB425. The Department of Health (DOH) and Department of Public Safety (DPS) note potential legal challenges the bill poses on agencies. DOH states "if the agency response was deemed to have not sufficiently addressed the impact of the comment on the rule, this might be considered a sufficient basis for a court to invalidate the rule." DPS add that "courts may be called upon to interpret whether response to comments were sufficiently fact-based or adequately addressed concerns. This could open agencies to legal battles over technicalities rather than the substance of the rules themselves."

The Health Care Authority (HCA) notes that public comments can be made orally at public hearings, which HB425 would require written response to oral comments and "increases the chances that a regulation will be challenged post promulgation, thereby costing the state time and resources." EMNRD adds that HB425 may lead to accommodations of public comment that do not align with the agency's core mission.

EMNRD and DOH are concerned that the bill would impede the executive branch from making its rule making processes. DOH notes that the legislature grants rule-making authority to agencies and "in doing so acknowledges a level of agency expertise in interpreting the implementation of statutes that pertain to that agency's programs and structure."

## **PERFORMANCE IMPLICATIONS**

This bill is likely to result in delays in the implementation of rulemaking. DOH notes that delays in public rulemaking may lead to a loss in federal funding due to rules not being adopted in a timely manner.

## ADMINISTRATIVE IMPLICATIONS

It is likely that this bill will increase the administrative workload on agencies that make frequent rulemaking updates.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

RLD notes duplication of existing law, stating:

Rule 1.24.25 of the New Mexico Administrative Code requires an agency’s “concise explanatory statement” must include “reasons for not accepting substantive arguments made through public comment” *See* Rule 1.24.25.14(F)(7). Additionally, pursuant to the State Rules Act, NMSA 1978, §14-4-1 et. al. and specifically pursuant to NMSA 1978, §14-4-3, indicating that “each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator...accompanied by the concise explanatory statement required by the State Rules Act.” The concise explanatory statement must include reasons for not adopting substantive arguments made through public comment. The concise explanatory statement is a public record and made part of the rule hearing record and is therefore subject to the New Mexico Inspection of Public Records Act (IPRA), §14-2-1 NMSA 1978 *et seq.* Anyone wishing to review an agency’s reasoning regarding public comments received on proposed rulemaking actions may already do so pursuant to an IPRA request.

## TECHNICAL ISSUES

RLD states HB425 is unclear as to whether an agency must publish both the agency’s response and the public comment, or just the agency’s response, noting if both are required to be published, the “cost of such publication could be effectively doubled.”

## ALTERNATIVES

RLD notes that agencies could publish responses to public comment on their official websites or the Sunshine Portal, as opposed to publishing them in the New Mexico Register, suggesting that this would be more cost-effective and in a timelier manner.

EH/hj/SL2