

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 310

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO STATE RULES; AMENDING AND ENACTING SECTIONS OF THE
STATE RULES ACT TO REQUIRE REGULATORY IMPACT STATEMENTS UNDER
CERTAIN CIRCUMSTANCES; AMENDING THE SMALL BUSINESS REGULATORY
RELIEF ACT; MAKING AN APPROPRIATION.

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;

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underscoring material = new
[bracketed material] = delete

1 [and]

2 C. "regulatory impact statement" means a document,
3 for informational purposes only, containing:

4 (1) a summary of the rule;

5 (2) a description of any person, resources,
6 classes of persons and political subdivisions that would be
7 affected by the rule;

8 (3) the probable negative and positive
9 impacts, including the economic, social, environmental and any
10 other relevant impacts, of a rule on affected persons,
11 resources, classes of persons and political subdivisions;

12 (4) a comparison of the costs and benefits of
13 a rule to the costs and benefits of inaction;

14 (5) the probable negative or positive impact
15 to the state general fund, the state budget and any state
16 special fund of taking the intended action;

17 (6) a statement on whether there are means for
18 achieving the purpose of the rule with fewer adverse effects;

19 and

20 (7) a summary of public comments or other
21 evidence submitted during rulemaking;

22 [~~C.~~] D. "rule" means any rule, regulation, order,
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

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 or the
 11 girls' welfare home [~~of~~] or to any hospital [~~nor to~~] or rules
 12 made relating to the management of any particular educational
 13 institution, whether elementary or otherwise, [~~nor to~~] or rules
 14 made relating to admissions, discipline, supervision, expulsion
 15 or graduation of students therefrom; and

16 E. "rulemaking" means the process for adopting,
 17 promulgating, amending or repealing a rule."

18 Section 2. Section 14-4-3 NMSA 1978 (being Laws 1967,
 19 Chapter 275, Section 3, as amended) is amended to read:

20 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--[~~Each~~]
 21 An agency promulgating [~~any~~] a rule shall place the rule in the
 22 format and style required by [~~rule of~~] the records center and
 23 shall deliver one original paper copy and one electronic copy
 24 to the records center. The records center shall [~~note thereon~~]
 25 record the date and hour of filing. The records center shall

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1 maintain the original copy as a permanent record open to public
2 inspection during office hours and shall have the rule
3 published in a timely manner in the New Mexico register and
4 compiled into the New Mexico administrative code. At the time
5 of filing, an agency may submit to the records center an
6 additional paper copy, for annotation with the date and hour of
7 filing, to be returned to the agency."

8 Section 3. Section 14-4-5 NMSA 1978 (being Laws 1967,
9 Chapter 275, Section 6, as amended) is amended to read:

10 "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

11 A. Unless otherwise provided in the State Rules
12 Act, no rule shall be valid or enforceable until [~~it is~~] the
13 rule and the final regulatory impact statement are filed with
14 the records center, and the rule is published in the New Mexico
15 register as provided by the State Rules Act. Unless a later
16 date is otherwise provided by law, the effective date of a rule
17 shall be the date of publication in the New Mexico register.

18 B. Emergency [~~regulations~~] rules may go into effect
19 immediately upon filing with the records center, but emergency
20 rules shall be effective no more than thirty days unless [~~they~~]
21 emergency rules are published in the New Mexico register and a
22 final regulatory impact statement is filed with the records
23 center.

24 C. Notwithstanding Subsection D of Section 14-4-2
25 NMSA 1978, a regulatory impact statement shall not be required

1 for an order or statement of policy."

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

4 "[NEW MATERIAL] REGULATORY IMPACT STATEMENT--REQUIRED.--

5 A. At the beginning of rulemaking, an agency shall
 6 prepare a draft regulatory impact statement on any proposed
 7 rule and make the document available for public inspection
 8 during office hours. At the time of notice of a public hearing
 9 on a rule, an agency shall include in the notice a public
 10 announcement that a draft regulatory impact statement is
 11 available for inspection and comment. At the end of rulemaking
 12 procedures and upon filing a rule, an agency shall prepare a
 13 final regulatory impact statement and file the final regulatory
 14 impact statement with the records center. An agency shall
 15 prepare the regulatory impact statement in the format and style
 16 established by the state records administrator.

17 B. If an agency is unable to complete all or part
 18 of a regulatory impact statement due to hardship, including
 19 lack of agency resources or unavailable information, the agency
 20 shall indicate the reason for the hardship in lieu of
 21 completing all or part of the regulatory impact statement.

22 C. The state records administrator shall maintain
 23 and make available to the public a list of all regulatory
 24 impact statements filed with the records center and any notices
 25 of exemption. The state records administrator shall also

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 [bracketed material] = delete

1 maintain and file the original copy of any regulatory impact
2 statement as a permanent, public record. The state records
3 administrator shall provide the list of all regulatory impact
4 statements filed with the records center on July 1 of each year
5 to the governor, the president pro tempore of the senate and
6 the speaker of the house for distribution to the appropriate
7 standing or interim legislative committee.

8 D. Notwithstanding other provisions of the State
9 Rules Act, the public regulation commission shall be exempt
10 from preparing and filing regulatory impact statements."

11 Section 5. Section 14-4A-4 NMSA 1978 (being Laws 2005,
12 Chapter 244, Section 4) is amended to read:

13 "14-4A-4. RULES AFFECTING SMALL BUSINESS.--

14 A. Prior to the adoption of a proposed rule that
15 may have an adverse effect on small business, an agency shall
16 provide a copy of the proposed rule and a draft regulatory
17 impact statement pursuant to the State Rules Act to the
18 commission at the same time as persons who have requested
19 advance notice of rulemaking.

20 B. Prior to the adoption of a proposed rule that
21 the agency deems to have an adverse effect on small business,
22 the agency shall consider regulatory methods that accomplish
23 the objectives of the applicable law while minimizing the
24 adverse effects on small business."

25 Section 6. APPROPRIATION.--Ten thousand dollars (\$10,000)

1 is appropriated from the general fund to the state commission
2 of public records for expenditure in fiscal year 2009 to
3 establish a filing system for regulatory impact statements.
4 Any unexpended or unencumbered balance remaining at the end of
5 fiscal year 2009 shall revert to the general fund.

6 Section 7. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2008.

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