

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 45

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO STATE RULES; REQUIRING REGULATORY IMPACT STATEMENTS
UNDER CERTAIN CIRCUMSTANCES; REQUIRING CERTAIN NOTICES TO THE
SMALL BUSINESS REGULATORY ADVISORY COMMISSION.

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;

[and]

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underscoring material = new
[bracketed material] = delete

1 C. "regulatory impact statement" means a document,
2 for informational purposes only, that pertains to a rule and
3 contains:

4 (1) a summary of the rule to which it applies;

5 (2) a description of the persons, 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 the rule on affected persons,
11 resources, classes of persons and political subdivisions;

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

14 (5) the probable negative or positive impact
15 of the intended action on the state budget, the state general
16 fund and any state special funds affected by the proposed rule;

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. A new section of the State Rules Act is
 19 enacted to read:

20 "[NEW MATERIAL] RULEMAKING--REGULATORY IMPACT STATEMENTS
 21 REQUIRED--EXCEPTIONS.--

22 A. Except as otherwise provided in this section, at
 23 the beginning of rulemaking, an agency shall prepare a draft
 24 regulatory impact statement on any proposed rule and make the
 25 draft available for public inspection during office hours. A

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1 notice of public hearing on a rule shall include notice that
2 the draft regulatory impact statement is available for
3 inspection and comment.

4 B. Except as otherwise provided in this section, at
5 the end of rulemaking, the agency shall prepare a final
6 regulatory impact statement and file it with the records center
7 when the agency files its rule, including when an emergency
8 rule is made permanent as provided in Section 14-4-5 NMSA 1978.
9 The regulatory impact statement shall be in the format and
10 style established by the state records administrator.

11 C. The state records administrator shall:

12 (1) file and maintain the original copy of
13 each regulatory impact statement as a permanent public record;

14 (2) make available to the public a list of all
15 regulatory impact statements filed with the state records
16 center and any notices of an agency not completing all or part
17 of a regulatory impact statement by reason of hardship as
18 provided in Subsection D of this section; and

19 (3) provide the list of all regulatory impact
20 statements filed with the state records center as of July 1 of
21 each year to the governor and to the president pro tempore of
22 the senate and the speaker of the house of representatives for
23 distribution to the appropriate standing or interim legislative
24 committees.

25 D. If an agency is unable to complete all or part

1 of a regulatory impact statement due to hardship, including
 2 lack of agency resources or unavailable information, the agency
 3 shall notify the state records administrator when filing its
 4 rule and shall indicate the reason for the hardship.

5 E. A regulatory impact statement is not required:

6 (1) for an agency order or statement of
 7 policy; or

8 (2) for any rule required to be adopted by
 9 federal law, in which the agency has little or no discretion.

10 F. The public regulation commission is exempt from
 11 preparing and filing regulatory impact statements.

12 G. An insufficient regulatory impact statement
 13 shall not be used as grounds to appeal a rule."

14 Section 3. Section 14-4A-4 NMSA 1978 (being Laws 2005,
 15 Chapter 244, Section 4) is amended to read:

16 "14-4A-4. RULES AFFECTING SMALL BUSINESS.--

17 A. Prior to the adoption of a proposed rule that
 18 may have an adverse effect on small business, an agency shall
 19 provide a copy of the proposed rule to the commission at the
 20 same time as persons who have requested advance notice of
 21 rulemaking. The rule shall be accompanied by a draft
 22 regulatory impact statement required by the State Rules Act.

23 B. Prior to the adoption of a proposed rule that
 24 the agency deems to have an adverse effect on small business,
 25 the agency shall consider regulatory methods that accomplish

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1 the objectives of the applicable law while minimizing the
2 adverse effects on small business."

3 Section 4. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2009.

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