

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 157

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Jacob Candelaria

AN ACT

RELATING TO RULES; AMENDING THE PUBLIC EDUCATION DEPARTMENT ACT
TO CREATE NOTICE AND HEARING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-24-3 NMSA 1978 (being Laws 2004,
Chapter 27, Section 3) is amended to read:

"9-24-3. DEFINITIONS.--As used in the Public Education
Department Act:

A. "commission" means the public education
commission;

B. "department" means the public education
department; ~~and~~

C. "proceeding" means a formal or informal
department process or procedure that is commenced or conducted

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 by the department;

2 D. "provide to the public" means for the department
3 to distribute rulemaking information in ways designed to notify
4 members of the public of the rulemaking action, particularly
5 those who may be affected by the subject of the rulemaking;
6 provided that:

7 (1) "provide to the public" includes
8 distribution of rulemaking information in English and Spanish
9 by:

10 (a) posting it on the department web
11 site, if any;

12 (b) posting it on the sunshine portal;

13 (c) posting it in a conspicuous location
14 in every public school with accompanying text in Spanish and
15 English requesting student comments and input;

16 (d) making it available in the
17 department's district, field and regional offices and in
18 government offices of Indian nations, tribes or pueblos;

19 (e) sending it by mail or electronic
20 mail to persons who have made a written request, including
21 current contact information, for notice from the department of
22 announcements addressing the subject of the rulemaking
23 proceeding; and

24 (f) providing it to the New Mexico
25 legislative council for distribution to appropriate interim and

.190718.4

underscoring material = new
[bracketed material] = delete

1 standing legislative committees; and

2 (2) where appropriate, feasible or required by
3 law, "provide to the public" may include distribution of
4 rulemaking information:

5 (a) in languages other than English and
6 Spanish;

7 (b) to agencies of local governments;

8 (c) to community, interest group and
9 trade publications;

10 (d) to public facilities, such as
11 community centers and libraries, for display in each county in
12 which the subject of the announcement will have significant
13 impacts and in which there is not a department office;

14 (e) to radio and television outlets for
15 use in public service announcements, particularly in areas in
16 which there are no printed media and in which the language or
17 languages used by a significant percentage of the population
18 are not written; and

19 (f) for publication in a newspaper of
20 general circulation, if any, in each county in which the
21 subject of the announcement will have significant impacts;

22 E. "rulemaking" means the process for adoption of a
23 new rule or the amendment or repeal of an existing rule; and

24 [G.] F. "secretary" means the secretary of public
25 education."

.190718.4

underscored material = new
[bracketed material] = delete

1 SECTION 2. Section 9-24-8 NMSA 1978 (being Laws 2004,
2 Chapter 27, Section 8) is amended to read:

3 "9-24-8. SECRETARY--DUTIES AND GENERAL POWERS.--

4 A. The secretary is responsible to the governor for
5 the operation of the department. It is the secretary's duty to
6 manage all operations of the department and to administer and
7 enforce the laws with which [~~he~~] the secretary or the
8 department is charged.

9 B. To perform [~~his~~] the secretary's duties, the
10 secretary has every power expressly enumerated in the law,
11 whether granted to the secretary, the department or any
12 division of the department, except when any division is
13 explicitly exempted from the secretary's power by statute. In
14 accordance with these provisions, the secretary shall:

15 (1) except as otherwise provided in the Public
16 Education Department Act or the Public School Code, exercise
17 general supervisory and appointing power over all department
18 employees, subject to applicable personnel laws and rules;

19 (2) delegate power to subordinates as [~~he~~] the
20 secretary deems necessary and appropriate, clearly delineating
21 such delegated power and the limitations to that power;

22 (3) organize the department into
23 organizational units as necessary to enable it to function most
24 efficiently, subject to any provisions of law requiring or
25 establishing specific organizational units;

.190718.4

underscored material = new
[bracketed material] = delete

1 (4) within the limitations of available
2 appropriations and applicable laws, employ and fix the
3 compensation of those persons necessary to discharge [~~his~~] the
4 secretary's duties;

5 (5) take administrative action by issuing
6 orders and instructions, not inconsistent with law, to ensure
7 implementation of and compliance with the provisions of law for
8 which administration or execution [~~he~~] the secretary is
9 responsible and to enforce those orders and instructions by
10 appropriate administrative action in the courts;

11 (6) conduct research and studies that will
12 improve the operation of the department and the provision of
13 services to the [~~citizens~~] residents of the state;

14 (7) provide courses of instruction and
15 practical training for employees of the department and other
16 persons involved in the administration of programs with the
17 objectives of improving the operations and efficiency of
18 administration and of promoting comprehensive, coordinated and
19 culturally sensitive services that address the education of the
20 whole child;

21 (8) prepare an annual budget for the
22 department; and

23 (9) provide cooperation, at the request of
24 administratively attached agencies and adjunct agencies, in
25 order to:

.190718.4

underscored material = new
[bracketed material] = delete

1 (a) minimize or eliminate duplication of
2 services and jurisdictional conflicts;

3 (b) coordinate activities and resolve
4 problems of mutual concern; and

5 (c) resolve by agreement the manner and
6 extent to which the department shall provide budgeting,
7 recordkeeping and related clerical assistance to
8 administratively attached agencies.

9 C. The secretary may apply for and receive, with
10 the governor's approval, in the name of the department, any
11 public or private funds, including United States government
12 funds, available to the department to carry out its programs,
13 duties or services.

14 D. The secretary may make and adopt such reasonable
15 and procedural rules as may be necessary to carry out the
16 duties of the department and its divisions. No rule
17 promulgated by the director of any division in carrying out the
18 functions and duties of the division shall be effective until
19 approved by the secretary. [~~Unless otherwise provided by~~
20 ~~statute, no rule affecting any person or agency outside the~~
21 ~~department shall be adopted, amended or repealed without a~~
22 ~~public hearing on the proposed action before the secretary or a~~
23 ~~hearing officer designated by the secretary. The final public~~
24 ~~hearing on adoption, amendment or repeal of a rule shall be~~
25 ~~held in Santa Fe unless otherwise permitted by statute. Notice~~

.190718.4

underscoring material = new
[bracketed material] = delete

1 ~~of the subject matter of the rule, the action proposed to be~~
2 ~~taken, the time and place of the hearing, the manner in which~~
3 ~~interested persons may present their views and the method by~~
4 ~~which copies of the proposed rule or proposed amendment or~~
5 ~~repeal of an existing rule may be obtained shall be published~~
6 ~~once at least thirty days prior to the hearing date in a~~
7 ~~newspaper of general circulation and mailed at least thirty~~
8 ~~days prior to the hearing date to all persons who have made a~~
9 ~~written request for advance notice of hearing.] All rules shall~~
10 be filed in accordance with the State Rules Act."

11 SECTION 3. A new section of the Public Education
12 Department Act is enacted to read:

13 "[NEW MATERIAL] NOTICE OF PROPOSED RULEMAKING.--

14 A. Unless otherwise provided by statute, no rule
15 affecting any person or agency outside the department shall be
16 adopted, amended or repealed without:

17 (1) providing to the public notice of the
18 proposed adoption, amendment or repeal of the rule; and

19 (2) holding three public rule hearings in
20 geographically dispersed areas of the state.

21 B. Not later than thirty days before the first
22 public rule hearing, the department shall provide to the public
23 and publish in the New Mexico register a notice of the proposed
24 rulemaking. The notice shall include:

25 (1) a summary of the full text of the proposed

.190718.4

1 rule;

2 (2) a short explanation of the purpose of the
3 proposed rule;

4 (3) a citation to the specific legal authority
5 authorizing the proposed rule and the adoption of the rule;

6 (4) information on how a copy of the full text
7 of the proposed rule may be obtained;

8 (5) information on how a person may comment on
9 the proposed rule, where comments will be received and when
10 comments are due;

11 (6) information on where and when the public
12 rule hearings will be held and how a person may participate in
13 the hearings;

14 (7) an internet link to the notice and an
15 internet link to the full text of the proposed rule; and

16 (8) a citation to technical information, if
17 any, that served as a basis for the proposed rule and
18 information on how the full text of the technical information
19 may be obtained.

20 C. The department may charge a reasonable fee for
21 providing any written material requested by a person pursuant
22 to this section.

23 D. If the department changes the date of the public
24 rule hearing or the deadline for submitting comments as stated
25 in the notice, the department shall provide notice to the

.190718.4

underscored material = new
[bracketed material] = delete

1 public of the change."

2 SECTION 4. A new section of the Public Education
3 Department Act is enacted to read:

4 "[NEW MATERIAL] PUBLIC PARTICIPATION, COMMENTS AND RULE
5 HEARINGS.--

6 A. The notice required pursuant to Section 3 of
7 this 2013 act shall specify a public comment period of at least
8 thirty days after publication in the New Mexico register during
9 which a person may submit information and comment on the
10 proposed rule. The information or comment may be submitted in
11 an electronic or written format or at a public rule hearing
12 pursuant to Subsection B of this section. The department shall
13 consider all information and comments on a proposed rule that
14 are submitted within the comment period.

15 B. At each public rule hearing, members of the
16 public shall be given a reasonable opportunity to submit data,
17 views or arguments orally or in writing. Except as otherwise
18 provided by law, a department representative or hearing officer
19 shall preside over a public rule hearing.

20 C. Each public rule hearing shall be open to the
21 public and shall be recorded."

22 SECTION 5. A new section of the Public Education
23 Department Act is enacted to read:

24 "[NEW MATERIAL] VARIANCE BETWEEN PROPOSED AND FINAL
25 ACTION.--The department shall not take action on a proposed

.190718.4

underscoring material = new
~~[bracketed material] = delete~~

1 rule that differs from the action proposed in the notice of
2 proposed rulemaking on which the rule is based unless the
3 action is a logical outgrowth of the action proposed in the
4 notice."

5 - 10 -
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25