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SENATE BILL 621

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Daniel A. Ivey-Soto

AN ACT

RELATING TO RULES; AMENDING THE DEFINITION OF "RULE";
STAGGERING AUTOMATIC EXPIRATION OF RULES; CREATING A PROCESS
FOR A MEMBER OF THE PUBLIC TO REQUEST THE PROMULGATION OF A
RULE.

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, political

1 subdivisions and corporations;

2 C. "proceeding" means a formal agency process or
3 procedure that is commenced or conducted pursuant to the State
4 Rules Act;

5 D. "proposed rule" means a rule that is provided to
6 the public by an agency for review and public comment prior to
7 its adoption, amendment or repeal, and for which there is
8 specific legal authority authorizing the proposed rule;

9 E. "provide to the public" means for an agency to
10 distribute rulemaking information by:

11 (1) posting it on the agency website, if any;

12 (2) posting it on the sunshine portal;

13 (3) making it available in the agency's
14 district, field and regional offices, if any;

15 (4) sending it by electronic mail to persons
16 who have made a written request for notice from the agency of
17 announcements addressing the subject of the rulemaking
18 proceeding and who have provided an electronic mail address to
19 the agency;

20 (5) sending it by electronic mail to persons
21 who have participated in the rulemaking and who have provided
22 an electronic mail address to the agency;

23 (6) sending written notice that includes, at a
24 minimum, an internet and street address where the information
25 may be found to persons who provide a postal address; and

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1 (7) providing it to the New Mexico legislative
2 council for distribution to appropriate interim and standing
3 legislative committees;

4 F. "rule" means ~~[any rule, regulation or standard,~~
5 ~~including those that explicitly or implicitly implement or~~
6 ~~interpret a federal or state legal mandate or other applicable~~
7 ~~law and amendments thereto or repeals and renewals thereof,~~
8 ~~issued or promulgated by any agency and purporting to affect~~
9 ~~one or more agencies besides the agency issuing the rule or to~~
10 ~~affect persons not members or employees of the issuing agency,~~
11 ~~including affecting persons served by the agency]~~ an
12 administrative interpretation or application of federal or
13 state law issued, promulgated, amended, renewed or repealed by
14 an agency that explicitly or implicitly implements or
15 interprets a federal or state legal mandate or other applicable
16 law purporting to affect one or more agencies other than the
17 issuing agency or affecting persons not employees of the
18 issuing agency. "Rule" does not include:

19 (1) an order or decision or other document
20 issued or promulgated in connection with the judicial or quasi-
21 judicial disposition of any case or agency decision upon a
22 particular matter as applied to a specific set of facts; ~~[shall~~
23 ~~not be deemed such a rule, nor shall it constitute specific~~
24 ~~adoption thereof by the agency. "Rule" does not include] or~~

25 (2) rules relating to the management,

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1 confinement, discipline or release of inmates of any penal or
2 charitable institution, the New Mexico boys' school, the girls'
3 welfare home or any hospital; rules made relating to the
4 management of any particular educational institution, whether
5 elementary or otherwise; or rules made relating to admissions,
6 discipline, supervision, expulsion or graduation of students
7 from any educational institution; and

8 G. "rulemaking" means the process for adoption of a
9 new rule or the amendment, readoption or repeal of an existing
10 rule."

11 SECTION 2. A new section of the State Rules Act is
12 enacted to read:

13 "[NEW MATERIAL] AUTOMATIC EXPIRATION OF AGENCY RULES.--

14 A. All rules expire no more than twelve years after
15 adoption. An adopted rule shall contain the date on which the
16 rule will expire.

17 B. An agency, through rulemaking, may readopt a
18 rule at any time prior to the rule's expiration.

19 C. A rule that, through rulemaking, is readopted
20 shall expire no more than twelve years after the date of
21 readoption."

22 SECTION 3. A new section of the State Rules Act is
23 enacted to read:

24 "[NEW MATERIAL] EXPIRATION SCHEDULE FOR RULES ADOPTED
25 PRIOR TO JULY 1, 2018.--

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1 A. By July 1, 2020, the state records administrator
2 shall establish a schedule for the expiration of all agency
3 rules that were adopted prior to July 1, 2018.

4 B. The state records administrator shall work with
5 each agency to establish the schedule for expiration of the
6 agency's rules; provided that:

7 (1) no more than twenty percent of the rules
8 adopted by an agency expire in the same fiscal year;

9 (2) unless an earlier date is requested by an
10 agency, no rule adopted prior to July 1, 2018 shall be set to
11 expire fewer than twelve years after it was adopted;

12 (3) unless an earlier date is requested by an
13 agency, no rule adopted prior to July 1, 2017 shall expire
14 prior to July 1, 2022; and

15 (4) all rules adopted prior to July 1, 2018
16 shall expire no later than June 30, 2032.

17 C. Upon determining the schedule for the expiration
18 of all agency rules that were adopted prior to July 1, 2018,
19 the state records administrator shall note in each rule the
20 date the rule is scheduled to expire."

21 **SECTION 4.** A new section of the State Rules Act is
22 enacted to read:

23 "[NEW MATERIAL] INITIATION OF THE RULEMAKING PROCESS BY
24 THE PUBLIC.--

25 A. Any person may file a petition for rulemaking

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1 with an agency.

2 B. A petition for rulemaking shall be made in
3 writing and include an explanation of the purpose or statement
4 of reasons for the proposed rule. A petition shall include a
5 citation to the legal authority authorizing the agency to adopt
6 the rule and a copy of or citation to technical information, if
7 any, that serves as the basis for the proposed rule. A
8 petition shall be as clear as possible and shall include the
9 proposed rule in underline and strikethrough format, consistent
10 with requirements of the state records administrator.

11 C. The agency to which a petition is made shall
12 consider the petition and make a determination whether to grant
13 or deny the petition. If the agency denies the petition, it
14 shall issue a concise written statement explaining its reason
15 for denial.

16 D. If the agency is a public body subject to the
17 Open Meetings Act, the decision to grant a petition must be an
18 action taken by vote of the public body in open session.

19 E. Once the agency initiates the rulemaking
20 process, the agency shall maintain a record as prescribed in
21 Section 14-4-5.4 NMSA 1978."

22 SECTION 5. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2019.