

LFC Requester:

Jeannae Leger

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 2/12/2025

Check all that apply:

Bill Number: HB 358

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Randall T. Pettigrew

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: INTERIM ADMIN. RULES OVERSIGHT COMMITTEE

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

##### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

House Bill 358 (“HB358” or the “Bill”) would create a legislative interim committee to evaluate and comment on all proposed rules made by executive agencies.

Section 1: This creates a new section of Chapter 2 NMSA 1978, which pertains to the Legislative Branch. This new section establishes the Interim Administrative Rule Oversight Committee.

Section 1A: Creates the Committee of twelve members, six each appointed by the leadership of the house and senate. Of those six, three each are appointed by the majority and minority floor leaders of the legislative houses.

Section 1B: The chair of the Committee alternates between the house and the senate, and (for the foreseeable future, unless a third party becomes the second party), the Democrats and the Republicans. The rest of the section is a little unclear, but it appears that the majority party shall either have a chair or a vice chair.

Section 1C: A term for a Committee term member is two years, expiring on the first day of the long (odd-numbered year) session. A member of the Committee loses their seat if the member is no longer in the legislature. A member serves at the pleasure of the floor leader who appointed them. If the member is removed or resigns, that floor leader can fill the vacant position for the remainder of the term.

Section 1D: The Committee meets at least once a month during the interim, which is not defined, but presumably means the period between sessions.

Section 2: This creates a new section of Chapter 2 NMSA 1978, describing the duties of the committees.

Section 2A: The Committee reviews and analyzes rules proposed by executive agencies “two weeks prior to the public rule hearing,” except during the legislative session, makes recommendations on the rules to the proposing executive agency, recommends changes to the authorizing statute to clarify legislative intent, and direct its staff.

Section 2B: The Commission also may endorse legislature to change an agency’s rulemaking

authority.

Section 3: This creates a new section of Chapter 2 NMSA 1978, simply authorizing the Committee to hire no more than four staff members.

Section 4: This creates a new section of Chapter 2 NMSA 1978, describing the rule review procedures.

Section 4A: The legislative council service shall distribute a notice of proposed rulemaking, issued pursuant to Section 14-4-5.2 to the staff and members of the Committee. The staff then would write an analysis of the proposed rule, taking into account the scope of the authorizing statute, the necessity of the rule, the fiscal impact of the proposed rule if the impact is greater than \$1 million or is otherwise requested (see below), legal implications of the rule on current federal and state law, and the compliance with notice requirements.

Section 4B: As noted below, a fiscal impact statement is required for any rule that has a fiscal impact of over \$1 million. This section allows the committee and the staff to request a statement from the agency even if the fiscal impact is less than that amount.

Section 4C: Requires the staff to provide the written analysis and the rule at least 10 days before the committee meeting at which the rule will be discussed.

Section 4D: Requires the committee to meet and review the rule and make recommendations to the agency. These recommendations would be submitted in writing to the agency during the public comment period. The recommendations would also be submitted to the governor and the N.M. Department of Justice.

Section 4E. Exempting emergency rules from the process described in the section.

Section 5: This amends the State Rules Act, specifically Section 14-4-5.2(A), creating a new Section 14-4-5.2(A)(3) requiring that the required notice of proposed rulemaking shall include an estimate of the cost of implementation of the proposed rule. Moreover, if the estimated cost is greater than \$1 million, a fiscal impact statement (described in more detail below) is required. The remainder of Section 14-4-5.2 is renumbered accordingly.

Section 6: This creates a new section of the State Rules Act, Section 14-4-5.9, which describes the requirements for the fiscal impact statement.

Section 6A: Requires the fiscal impact statement to include the fiscal impact of the proposed rule on all entities impacted by the rule. This is not just limited to the impact on the state or even on other public entities, such as municipalities. Rather, it even includes private entities, such as business sectors. The fiscal impact statement also needs to discuss the necessity of the rule, a statement of whether and how the rule is consistent with the legislative intent of the authorizing statute, whether the rule amounts to a funded or unfunded mandate on counties or municipalities, and whether the rule is necessary to comply with a federal mandate. Thus, the requirements go beyond a mere discussion of the fiscal impact.

Section 6B: Repeats the statement in Section 4B that allows the Committee and its staff to request a fiscal impact statement even if the fiscal impact is less than \$1 million.

Section 7: This section is only applicable to fiscal year 2026, as presumably future appropriations would be included in general appropriations bills. For fiscal year 2026, \$2

million would be appropriated to the legislative council service to staff the committee and for other incidental costs. Any unexpended balance would revert to the general fund. It should be noted the committee staff is limited to 4 employees, and compensation for the Committee members would presumably be limited to the legislative *per diem*. Either they are anticipating very high “incidental expenses” or the staff members would receive very high NM state employee salaries.

Section 8: The proposed bill takes effect July 1, 2025.

## **FISCAL IMPLICATIONS**

HB358 would have a fiscal implication on the New Mexico Department of Justice (the “NMDOJ”) as to rulemaking. As discussed below, the fiscal impact statement would be a fairly involved addition to the rulemaking process, and the NMDOJ. *See, e.g.,* N.M.A.C. 12.2.1.1.

## **SIGNIFICANT ISSUES**

HB358 may violate the principle of separation of powers incorporated into the New Mexico Constitution. Article III, Section 1 of the New Mexico Constitution states that “[t]he powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.”

Administrative rulemaking is a function of the executive department, and HB358 may reflect an unconstitutional invasion of that area by the Legislature. While some of the Committee’s functions, such as considering legislation to alter an agency’s authority, are within the purview of the Legislature, the heavy involvement in the rulemaking process itself is likely a bridge too far. Members of the public have the right to comment on pending administrative rules, and presumably members of the legislature can comment as private citizens. However, this Committee is, in essence, mandated to produce an official “legislative” public comment with every rulemaking. If the Legislature were to become an integral part of the process in this manner, this would likely be unconstitutional.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

This would potentially have administrative implications for the NMDOJ. HB358 would substantially impact every agency that conducts rulemaking. The Bill would require the notice of proposed rulemaking include an in-depth analysis of fiscal and other impacts, including on business sectors, which have generally demonstrated the ability to represent themselves during public comment periods. This could add additional administrative burdens to the NMDOJ who work with rulemaking public bodies and defend such decisions should they be challenged.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

Sections 1-4 appear to not only create new Sections of Chapter 2, but also create a new article, and it should be specified that they are all within this article.

The term “interim” should be defined for that article.

Section 1B could be somewhat clearer.

Section 2(A)(1) requires the review of the rules “two weeks prior to the public rules hearing.” This implies that the review is to be conducted exactly two weeks prior, which would require a different meeting for every rule, rather than once a month. Perhaps the drafter meant to say “at least two weeks prior...”

Section 4(A) states that “the legislative council services shall distribute a notice of proposed rulemaking received by an executive agency pursuant to Section 14-4-5.2 NMSA 1978.” The executive agencies do not receive the notices, they distribute them. Perhaps the drafter meant to say “received from an executive agency...”

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

#### **AMENDMENTS**

N/A