

LFC Requester:

Leger

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)*****(Analysis must be uploaded as a PDF)*****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/12/25 *Check all that apply:*  
**Bill Number:** HB 358 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Pettigrew **Agency Name and Code Number:** NM DoIT - 361  
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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		
0	0	0		

(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**

#### **BILL SUMMARY**

Synopsis: House Bill 358 (HB 358) would create an “Interim Administrative Rule Oversight Committee” (the committee) which would consist of twelve members: three appointed by the majority floor leader of the senate, three appointed by the minority floor leader of the senate, three appointed by the majority floor leader of the house of representatives, and three appointed by the minority floor leader of the house of representatives. The position of chair would alternate between the house and the senate based on the two political parties having the most members in both houses each year. Members would be appointed for two-year terms, expiring on the first day of each odd-numbered year regular session, or when the member ceases to be a member of the legislature. The committee would meet at least once per month during the interim.

The committee would review rules proposed by executive branch agencies, make recommendations on the rules to the proposing executive agency, recommend changes to the authorizing statutes of a rule to clarify legislative intent, and direct the work of committee staff. The committee would also be able to endorse legislation as is necessary to amend or repeal a statute authorizing an agency to promulgate rules.

Legislative council service would be able to hire no more than four staff members for the committee.

Council service would be required to distribute a notice of proposed rulemaking received by an executive agency, pursuant to Section 14-4-5.2 NMSA 1978, to the staff and members of the committee when a notice is received. Committee staff would then develop an analysis of the proposed rulemaking, which would consider the following:

- (1) the proposed rule in relation to the scope of the authorizing statute;
- (2) the necessity of the proposed rule;
- (3) the fiscal impact of the proposed rule on state agencies, political subdivisions, regulated persons, businesses and all other foreseeable stakeholders if a fiscal impact statement is required pursuant to Section 14-4-5.2 NMSA 1978 or otherwise requested by the committee;
- (4) legal implications of the proposed rule on existing federal and state laws; and
- (5) the proposing agency's compliance with notice requirements provided pursuant to the State Rules Act.

The committee and its staff at the request of committee members may request a fiscal impact statement from the agency proposing a rule after receiving the rule even if the fiscal impact of the rule does not exceed one million dollars (\$1,000,000). Committee staff would provide the analysis to the committee at least ten days prior to the committee meeting at which the proposed rule will be reviewed. Following a meeting at which the proposed rule is reviewed, committee staff shall submit the committee's approved recommendations in writing to the proposing agency during the public comment period for the proposed rule as provided pursuant to the State Rules Act. These recommendations would also be submitted to the state department of

justice and the Governor. The requirements would not apply to emergency rules, as provided pursuant to the State Rules Act.

Section 14-4-5.2 NMSA 1978 would be amended to require an agency proposing a rule to post notice of “an estimate of the cost of implementing the proposed rule; provided that the agency shall include a fiscal impact statement pursuant to Section 14-4-5.9 NMSA 1978 if the cost of implementing the proposed rule is estimated to be greater than one million dollars (\$1,000,000).”

The fiscal impact statement required by the legislation would have to include the following:  
“(1) the fiscal impact of the proposed rule on other agencies, municipalities, counties, business sectors and other entities that will be impacted by the proposed rule;  
(2) the necessity of the rule;  
(3) a statement of whether and how the rule is consistent with the legislative intent of the authorizing statute;  
(4) whether the rule amounts to a mandate on counties and municipalities and, if so, whether that mandate is funded or unfunded; and  
(5) whether the rule is necessary to comply with a federal mandate.”

HB 358 would appropriate \$2 million from the general fund to the legislative council service for expenditure in fiscal year 2026 to staff the committee and for other costs incidental to establishing the committee. Any unexpended or unencumbered amount remaining at the end of the fiscal year would revert to the general fund.

The effective date would be July 1, 2025.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

Through enabling legislation, the Legislature delegates regulatory authority to an agency when a high degree of expertise is required to effectively balance public interests, such as economic, environmental, health or safety, with the private interests of regulated entities. Agencies are expected to house, incubate and leverage subject matter expertise to strike the necessary balance and achieve legislative objectives. This is particularly true when an agency is vested with rulemaking authority. In that context, the Legislature specifies the scope of rulemaking authority, objectives and considerations. The agency, following the State Rules Act, leverages subject matter expertise to most effectively balance the competing interests and meet legislative expectations.

HB358 could jeopardize the state’s investment in agency expertise by giving undue weight to the opinions of non-subject matter experts. If enacted as proposed, the committee, informed by opinions of the LCS, would be authorized to offer commentary on proposed rules of any agency. Because the committee would be comprised of legislators who may ultimately decide budget,

authority and other matters that directly impact agency operations, there is a risk committee commentary would be given undue weight in a rulemaking proceedings and deliberations. That, in turn, could dilute the value of agency subject matter expertise and informed judgment. In short, opinions expressed in comments of non-experts may be given deference to the detriment of informed, independent, decision-making of agency experts.

The potential for adverse consequences from any such deference is enhanced because of the compressed timeline in which the committee must form its opinion. Before issuing a notice of proposed rulemaking, an agency likely spent several months on fact gathering, stakeholder engagement, subject matter analysis, feasibility studies, legal analysis, drafting, review, redrafting and assessment of public comment. In this process, feasibility and impact analysis, which invariably require subject matter expertise, predominate. Under HB358, the committee, informed by the Legislative Counsel Service (LCS), would, in many instances, have no more than 30 days to evaluate proposed rules for the specified legal and fiscal impacts, develop comments and propose rule revisions.

The LCS is entirely capable of evaluating legal sufficiency of proposed rules, such as whether the rules are authorized by law and within the agency's delegated discretion. However, LCS is not equipped to evaluate fiscal and other impacts of proposed rules. No one agency or committee has the subject matter expertise to evaluate the diverse rules promulgated by up to 70 New Mexico agencies. Although HB358 would provide funding for four additional positions within LCS, it is unlikely that those positions will be staffed with subject matter experts cognizant of the myriad arenas in which agencies regulate, including insurance, banking, land use, extraction industries, environment, education, cosmetology, animal husbandry, water, energy and many others. Determining fiscal impact, feasibility and alignment with legislative objectives within any one of these arenas requires specialized expertise. HB358 makes no provision for staffing LCS with all of the necessary experts. Even if LCS had access to such expertise, the compressed time in which the required evaluations would need to be conducted would likely result in opinions that are not fully informed. It could be detrimental to public interests for an agency to give undue weight to any such opinions.

HB358 would require LCS staff to prepare a fiscal impact analysis for any rules that are likely to have an impact greater than \$1MM. The bill would allow LCS to offer a fiscal analysis for any other proposed rules. HB358 does not specify how fiscal impacts are to be identified or quantified. Also, the \$1MM trigger applies to impacts in the public or private sector. Evaluating private sector fiscal impacts requires expertise and often proprietary data. HB358 does not provide funding or any guaranty that the data/expertise to conduct a meaningful private sector fiscal impact would be available to LCS or the committee.

Also, once the \$1MM fiscal impact trigger is met, a fiscal impact analysis would be required even if the enabling legislation authorizing the rulemaking did not require the agency to consider potential fiscal impacts when promulgating rules. Many agencies are not required to consider fiscal impact in connection with meeting regulatory objectives. By requiring a fiscal impact analysis even when fiscal impacts are not part of a required agency calculus, HB358 may undermine regulatory objectives that are, by law, intended to be agnostic to such impacts.

**PERFORMANCE IMPLICATIONS**

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**