

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 358 (HB 358) creates new sections within Chapter 2 NMSA 1978, “Legislative Branch,” for the establishment of the “interim administrative rule oversight committee” (administrative rule committee). The administrative rule committee would be composed of 12 members. HB 358 gives appointment power to the majority/minority floor leaders of the house and senate equally. HB 358 requires the administrative rule committee to meet at least once a month during the interim to review rules proposed by an executive agency two weeks prior to the public hearing for the rules, except when the legislature is in session. Further, HB 358 requires the administrative rule committee to make recommendations on proposed rules and statutory changes to clarify legislative intent. HB 358 requires that legislative council service hire no more than four (4) staff members for the administrative rule committee. Once the legislative council receives public notice of proposed rule making they shall write an analysis which shall include information about the relationship between the proposed rule and related statute, the necessity of the proposed rule, the fiscal impact of the proposed rule, legal implications of the proposed rule on existing federal and state law, and the proposing agency’s compliance with notice requirements contained within the State Rules Act.

Additionally, HB 358 allows the administrative rule committee to request a fiscal impact statement from the proposing agency. The administrative rule committee will review the proposed rule, and the committee will provide written recommendations during the public comment period. The requirements of HB 358 shall not apply to emergency rules.

HB 358 further amends NMSA 14-4-5.2, “Notice of Proposed Rulemaking,” to add an additional requirement to rulemaking—the agency will be required to include an estimate of the cost of implementing the proposed rules in the public notice. HB 358 further adds a new section defining the requirements for the fiscal impact statement to include the following: the fiscal impacts on other agencies, municipalities, counties, business sectors and other entities that will be impacted by the proposed rule, 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 mandate on counties and municipalities (and, if so, if the mandated is funded), and whether the rule is necessary to comply with a federal statute. It appears that the requirement for the fiscal impact statement to be included in the public notice if the fiscal impact of implementing the proposed rule is greater than 1 million dollars. However, HB 358 does provide the administrative rule committee with the authority to request a fiscal impact statement even if implementation is not greater than 1 million dollars.

HB 358 further makes an appropriation of 2 million dollars to the legislative council service for expenditure in fiscal year 2026 and any unexpended or unencumbered balances shall revert to the general fund.

FISCAL IMPLICATIONS

There may be fiscal implication for the New Mexico Aging and Long-Term Services Department (ALTSD) whenever the agency is required to provide a fiscal impact statement. The requirements of the fiscal impact statements are substantial and may require additional FTE or contractual support. Contractual support could cost up to \$60,000 plus gross receipts tax (varies \$3,000-4,000+). Further, hiring an additional FTE pay band LE at midpoint (\$36.80) plus benefits

\$104,331 within fiscal year 25 parameters.

SIGNIFICANT ISSUES

It will be challenging for ALTSD to determine, as required for the fiscal impact statement, the fiscal impact on other agencies, municipalities, counties, business sectors, and other entities as ALTSD will rarely be able to access all of the information it would need to determine fiscal impact for any other organization outside of ALTSD.

HB 358 Section 4 (A)(5) requires that the administrative oversight committee include in their written analysis the proposed agency's compliance with notice requirements set out in the State Rules Act. However, this requirement may be subject to challenge as violating the separation of powers under the New Mexico Constitution.

HB 358 requires an agency to provide an estimated cost of implementation of a proposed rulemaking as part of the notice of proposed rulemaking. However, HB 358 does not define what costs should be included in the estimate, or whether such costs are to the agency during the rulemaking process or a projection of costs to the agency in administering a rule once it is promulgated. Additionally, HB 358 is silent on associated timelines for when agencies are required to submit a fiscal impact statement when independently requested by the administrative oversight committee.

HB 358 requires legislative council services to distribute notice of proposed rulemaking to the administrative oversight committee. However, there is no requirement and no proposed changes to the notice requirement contained with NMSA 14-4-5.2 for notice to be sent to legislative council services, therefore it is presumed that legislative council services will receive public notice.

HB 358 does not state if rules agencies will be barred from implementing rules if the agency fails to fully comply with the administrative rules oversight committee Act. ALTSD oversees a variety of programs that require the department to promulgate new rules, amend existing rules, or repeal and replace existing rules based on changes in law, changes in rules promulgated by other government entities, and internal review of existing rules. The need to complete fiscal impact statements upon request of the administrative rule committee could impact the ALTSD's ability to promulgate new rules or update existing rules in a timely manner, especially in instances when state legislation or federal law makes it necessary for the ALTSD to promulgate new rules or update existing rules in a specific time frame in order to implement or update ALTSD programs. Additionally, HB 358 requires that the administrative rule committee meet once a month during the interim but does not require any sort of meeting during legislative session which implies that agencies may not be able to engage in rule making during or around the legislative session.

PERFORMANCE IMPLICATIONS

None identified for ALTSD

ADMINISTRATIVE IMPLICATIONS

None identified for ALTSD

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

None identified for ALTSD

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

The 2024 operating budget for the 2024 Legislative Session included \$2.5 million for a feasibility study on district staff offices and operations, which presumably includes how other legislatures are modernizing. The Legislature may want to postpone this effort until that study is completed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Agencies will continue to comply with all state law and rule regarding rule making which currently require a public comment period. Therefore, members of the public, including legislators can make public comment, recommendations and suggestions for any agency rule making.

AMENDMENTS