

LFC Requester:	Emily Hilla
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 2/14/2025 *Check all that apply:*  
**Bill Number:** HB 425 Original  Correction   
 Amendment  Substitute

**Sponsor:** Gail Armstrong, Rebecca Dow & Cristina Parajon **Agency Name and Code Number:** Regulation and Licensing Dept. - 420  
**Short Title:** Rulemaking Agency Response to Public Comment **Person Writing:** Kevin Graham  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
n/a	n/a	n/a	n/a

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
n/a	n/a	n/a	n/a	n/a

(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>		67.1	67.1	134.2	Recurring	Multiple*

(Parenthesis ( ) Indicate Expenditure Decreases)

\*There are multiple funding sources for the operations of the different divisions of the Regulation and Licensing Department and the many boards and commissions administratively attached to the Department; in addition to the General Fund, there are multiple specific non-reverting funds that are designated to be utilized to pay the operational costs of certain divisions, boards or commissions.

Duplicates/Conflicts with/Companion to/Relates to: n/a

Duplicates/Relates to Appropriation in the General Appropriation Act n/a

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

SECTION 1: HB 425 amends the time limit of NMSA 1978, §14-4-5, regarding the adoption of a proposed rule to be published in the New Mexico register. HB 425 amends only a portion of section 5 of Chapter 14 indicating an “agency shall not adopt a rule until the public comment period has ended and the agency has responded in writing to each public comment on the proposed rule.” pp. 1-2.

SECTION 2: HB 425 amends NMSA 1978, §14-5-5.3 requiring the agency “to respond in writing to each public comment, pursuant to Subsection D” which requires agencies to respond to all public comments during the specified public comment period of at least thirty (30) days after publication of the proposed rule in the New Mexico Register. HB 425 states that an agency’s response to public comments on a proposed rule shall:

- (1) be unique to that public comment;
- (2) be fact-specific to the concerns of that comment;
- (3) address the impact of that comment on the rule to be promulgated;
- (4) be in writing; and
- (5) be published along with the rule in the New Mexico Register pp. 3-4.

SECTION 3 : HB 425 amends NMSA 1978, §14-4-7.1 with regards to the publication of the New Mexico Register that the Register “shall include the full text of any adopted rules, including emergency rules, and responses to public comments as provided in Section D of Section NMSA 1978, §14-4-5.3.” pp. 4-5.

**FISCAL IMPLICATIONS:** There are seven (7) regulatory divisions of the New Mexico Regulation and Licensing Department (RLD) and the frequency and volume of administrative rulemaking varies significantly from division to Division. For example, the Securities Division of the RLD has only rarely engaged in rulemaking over the past few years, while the Construction Industries Division (CID) must regularly update administrative rules concerning the New Mexico Building Code in order to keep our state code up-to-date with national building codes. Additionally, depending on the number of code provisions being amended by the CID, some of those rulemaking processes can involve amending multiple rules at one time. Estimated additional costs resulting from HB 425 for the RLD, broken down by RLD Divisions are as follows:

- (1) Securities Division: Six hundred dollars (\$600) per year;
- (2) Cannabis Control Division: Two thousand dollars (\$2,000) per year;
- (3) CID: Twenty thousand dollars (\$20,000) per year;
- (4) Financial Institutions Division: Two thousand (\$2,000) per year; and
- (5) Boards and Commissions Division [including costs associated with sixteen (16)

administratively attached boards and commissions]: Thirty-seven thousand five hundred dollars (\$37,500) per year;  
(6) Alcoholic Beverage Control Division: Five thousand dollars (\$5,000); and  
(7) Manufactured Housing Division: Uncertain at this time.

In addition to the points noted above regarding variances in the number of rulemaking processes and the complexity of those rulemaking processes, the costs for any rulemaking process would be impacted by the number and complexity of public comments that are received on any individual rulemaking due to the costs of publishing those comments and the RLD's response to the public comments in the New Mexico Register. Those publication costs can be expected to vary significantly from one rulemaking process to another.

### **SIGNIFICANT ISSUES:**

HB 425 requires a written and specific response to each public comment prior to publication of the rule on the New Mexico Register which ultimately enables the enactment of a rule. HB 425 would have a significant operational impact on most of the divisions of the RLD. Rulemaking can already be a time-consuming, document-heavy and costly process for state agencies, including the RLD. Pursuant to the State Rules Act, NMSA 1978, §14-4-1 et. al. (specifically pursuant to NMSA 1978, §14-4-3), "each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator...accompanied by the concise explanatory statement required by the State Rules Act."

HB 425's requirement for specific, defined and written responses to each public comment for each new proposed rule, and the requirement to publish all required responses in the Register will likely result in at least slowing down the process for rules that are eventually promulgated. HB 425 might not anticipate that some public comments on suggested rules will be lengthier and require more of a response than other public comments as well as certain public comments might be duplicative of other comments. HB 425 requires the agency to provide a unique response to each public comment, even if multiple comments effectively answer the same question identically. Under the amendments to HB 425, agencies may need additional time to respond in writing to the public comments to enable the required contemporaneous publication depending upon the volume, magnitude or amount and type of the comments received. This may cause a delay on the publication of the rule in the Register and enactment.

### **PERFORMANCE IMPLICATIONS:**

HB 425 will have a lesser impact on agencies that do not engage in promulgating new rules or entering into the rulemaking process as frequently, as opposed to agencies that are required to promulgate new rules or are statutorily required to engage in the rulemaking process more often.

**ADMINISTRATIVE IMPLICATIONS:** Under the amendments to HB 425, agencies may need additional time to respond in writing to the public comments to enable the required contemporaneous publication depending upon the volume, magnitude or amount and type of the comments received. This may cause a delay on the publication of the rule in the Register and enactment.

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

Potential Duplication of Existing Law:

Rule 1.24.25 of the New Mexico Administrative Code requires an agency's "concise explanatory statement" must include "reasons for not accepting substantive arguments made through public comment" *See* Rule 1.24.25.14(F)(7). Additionally, pursuant to the State Rules Act, NMSA 1978,

§14-4-1 et. al. and specifically pursuant to NMSA 1978, §14-4-3, indicating that “each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator...accompanied by the concise explanatory statement required by the State Rules Act.” The concise explanatory statement must include reasons for not adopting substantive arguments made through public comment. The concise explanatory statement is a public record and made part of the rule hearing record and is therefore subject to the New Mexico Inspection of Public Records Act (IPRA), §14-2-1 NMSA 1978 *et seq.* Anyone wishing to review an agency’s reasoning regarding public comments received on proposed rulemaking actions may already do so pursuant to an IPRA request.

**TECHNICAL ISSUES:**

HB 425 is unclear as to whether an agency must publish both the public comment received concerning a proposed rulemaking and the agency’s response, or only the agency response. If both the comment and the response must be published in the Register, the cost of such publication could effectively be doubled. While this might result in increased revenue for the New Mexico Register, that revenue would be coming directly from state agencies, and therefore present no actual increase in revenue to the state budget.

**OTHER SUBSTANTIVE ISSUES:**

**ALTERNATIVES:**

Instead of mandating that written responses to public comments be published in the New Mexico Register, the requirement could be that each agency must publish the written responses to public comments on the agency’s official website on a webpage dedicated to rulemaking matters, and/or require publication on the New Mexico Sunshine Portal. Each of these options would appear to be much more cost-effective as well as resulting in the information being made available to the public in a timelier fashion (as opposed to waiting until the next bi-monthly publication date of the Register).

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:** The State Rules Act, 14-4-1 et a. remains in effect requiring that each agency that promulgates any rule shall be accompanied by the concise explanatory statement required by the State Rules Act as well as the New Mexico Administrative Code , Section 1.24.25.14, section seven, allows for the agency to explain on the record the reasons not accepting substantive arguments made through public comment. The concise explanatory statements currently required of all agencies prior to rule adoptions would continue in effect.

**AMENDMENTS**

Please see comments in the “Alternatives” section, above.