

LFC Requestor: HILLA, Emily

2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS

Section I: General

Chamber: House  
Number: HB425

Category: Bill  
Type: Introduced

Date (of THIS analysis): 2/14/2025

Sponsor(s): Gail Armstrong and Rebecca Dow and Cristina Parajón

Short Title: Rulemaking Agency Response to Public Comments

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$	\$		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$	\$	\$		

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$Unknown	\$Unknown	\$Unknown	\$Unknown	Recurring	SGF

If enacted, HB425 would make rulemakings substantially more costly. Additional man hours would be required

to generate individual, fact-specific responses to each public comment. Also, publication of the responses in the NM Register would cost \$80 per page. In the case of very contentious or controversial rulemakings, in which many comments are received, these publication costs could be very significant.

### **Section III: Relationship to other legislation**

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

### **Section IV: Narrative**

#### **1. BILL SUMMARY**

##### a) Synopsis

HB42 proposes to amend the State Rules Act Sections 14-4-5 and 14-4-5.3 NMSA 1978, to compel all governmental agencies to respond in writing to each public comment on a proposed rule. The bill would require that an agency response to a public comment:

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

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

##### b) Significant Issues

HB425 would require, as a prerequisite to adoption of a proposed rule, that an agency provide a written, unique, fact-specific response to every concern raised by every public commenter. Each response would be required to address the impact of the comment on the proposed rule; and each response would also be required to be published in the NM Register.

Requiring executive agencies to respond individually to every comment by a member of the public would create a significant new barrier to the ability of executive agencies to adopt rules. Opponents of a given rule could delay or prevent the adoption of the rule by

inundating the proposing agency with comments. The agency would be required to respond to each comment individually, with a response “unique to that public comment” and “fact-specific to the concerns of that comment”. Formulating detailed responses to every comment would be very burdensome for agencies and would add additional delays and expenses to the rulemaking process. Publication of all the individual responses in the Register would also be costly; publication costs for the NM Register total approximately \$80 per page.

By establishing such broad and burdensome standards as prerequisites to the adoption of a rule, HB425 would also create additional grounds for members of the public to challenge agencies’ adoption of rules in district court. If an agency response was deemed either insufficiently “unique” to the public comment, or not sufficiently specific to the comment, or if the agency response was deemed to have not sufficiently addressed the impact of the comment on the rule, this might be considered a sufficient basis for a court to invalidate the rule. Given the breadth of the requirements, virtually every agency rulemaking would be susceptible to legal challenges.

If enacted, HB425 would threaten the independence of the executive branch, and would negatively impact the ability of state agencies to effectively create and implement rules. The primary purpose and issue of concern addressed by this legislation is somewhat unclear. The legislature has the original responsibility of granting rule-making authority or not to agencies when passing laws and in doing so acknowledges a level of agency expertise in interpreting the implementation of statutes that pertain to that agency’s programs and structure. This can be useful to the legislature, which is responsible for establishing policy in a wide range of issue areas and does not necessarily have the same depth of expertise that agencies may have or knowledge of the details of their programs and services. When promulgating rules, agencies are required to follow a certain set of procedures prescribed in law collectively comprising the rulemaking process. Avoiding statutory ambiguity is important when passing good law and something agencies depend on to ensure fidelity to the law when promulgating rules. A solution this burdensome, expensive, and vulnerable to abuse should first establish an appropriately urgent problem.

## 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes  No

If enacted HB425 would add delays and additional expenses to the rulemakings of NMDOH and every other executive agency in New Mexico. Because the agency would have to generate detailed, unique responses to every public comment, rulemakings would take more time to be completed. Delays in the adoption of rules would in turn have various adverse impacts on the functions of the agency. In the case of controversial rulemakings, the agency may be flooded with public comments, and the burden of having to generate unique, fact-specific responses to each comment may effectively prevent the agency from adopting the rule.

- Is this proposal related to the NMDOH Strategic Plan?  Yes  No

**Goal 1:** We expand equitable access to services for all New Mexicans

**Goal 2:** We ensure safety in New Mexico healthcare environments

**Goal 3:** We improve health status for all New Mexicans

**Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

### 3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

Yes  No  N/A

- If there is an appropriation, is it included in the LFC Budget Request?

Yes  No  N/A

- Does this bill have a fiscal impact on NMDOH?  Yes  No

If enacted, HB425 would make rulemakings substantially more costly. Additional man hours would be required to generate individual, fact-specific responses to each public comment. Also, publication of the responses in the NM Register would cost \$80 per page. In the case of very contentious or controversial rulemakings, in which many comments are received, these publication costs could be very significant.

### 4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH?  Yes  No

See “Significant Issues”, “Performance Implications”, and “Fiscal Implications”, above.

### 5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None.

### 6. TECHNICAL ISSUES

Are there technical issues with the bill?  Yes  No

### 7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written?  Yes  No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)?  Yes  No
- Does this bill conflict with federal grant requirements or associated regulations?  
 Yes  No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?  Yes  No

In some instances, delays resulting from the added administrative burdens imposed by HB425 may contribute to a loss of federal funding, due to rules not being adopted in a timely manner.

### 8. DISPARITIES ISSUES

None.

**9. HEALTH IMPACT(S)**

None.

**10. ALTERNATIVES**

None.

**11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

If HB425 is not enacted, the NM State Rules Act will not be amended to require that state agencies respond in writing to each public comment on a proposed rule with a unique written response specific to concerns of each comment, and will not be amended to require that agencies publish each of those responses in the NM Register.

**12. AMENDMENTS**

None.