

LFC Requestor: HILLA, Emily

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House
Number: HB508

Category: Bill
Type: Introduced

Date (of THIS analysis): 3/3/2025

Sponsor(s): Randall T. Pettigrew

Short Title: Rule Change Public Comment Period

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		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

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	\$	Undetermined	Undetermined	Undetermined	Recurring	General Fund

HB508 could have the effect of requiring that NMDOH conduct more rule hearings, which would create greater expense for the agency. NMDOH rule hearings can typically cost between \$2,000 and \$10,000+ depending on their complexity.

Section III: Relationship to other legislation

Duplicates:

Conflicts with:

Companion to:

Relates to:

Duplicates/Relates to an Appropriation in the General Appropriation Act:

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

HB508 proposes to amend the State Rules Act to require that, “[i]f an agency makes a substantial change to a proposed rule, the agency shall provide an additional twenty-one-day public comment period on the changes made to the proposed rule.” The bill would define “substantial change” to mean “a change to a proposed rule that alters the meaning or effect of a regulatory provision of the rule.” Agencies that make substantial changes to rules would be required to “publish in the New Mexico register a notice of additional public comment period” that “specif[ies] a twenty-one-day public comment period after publication in the New Mexico register during which a person may submit information and comment in written or electronic format on the changes to the proposed rule.”

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

HB508 would require that an agency receive additional public comments for 21 days whenever the agency adopts a “substantial change to a rule”. This additional public comment period would occur *after* the agency adopts the substantial change, and “after publication in the New Mexico register”. Rather than extending the 30-day comment period of the State Rules Act by 21 days, HB508 would require that agencies receive additional public comments for 21 days, after a rule is finalized and adopted through the

ordinary rulemaking process. This would create various complications, and it would be less likely that an agency would adopt changes based on the additional public comments.

The bill states that “[a] substantial change to a proposed rule does not require an additional public rule hearing.” However, even if a substantial change did not require an additional public rule hearing, the adoption of further revisions to a rule based on those additional public comments would ordinarily require that the agency hold an additional hearing prior to adoption of the revisions. See 1.24.25.14 NMAC (stating that “[a]mendments that exceed the scope of the noticed rulemaking may require a new rulemaking proceeding”). Because HB508 would require that additional public comments be received and considered *after* a rule becomes effective, it would create the potential for an endless rulemaking cycle, wherein a final rule is adopted; more public comments are received post-adoption; more “substantial changes” are made based on the new comments; another hearing is held; more public comments proposing substantial changes are received; etc.

The ambiguity of whether an additional hearing must be held before adopting changes based on comments received in the 21-day comment period presents a double-edged sword: agencies will either be required to hold an additional hearing, generating significant additional delay and expense; or alternatively, agencies will not hold an additional hearing, but may adopt further changes to a rule based on comments received during the added 21-day comment period, without proposing the change and without discussing it at a hearing. If agencies are enabled to adopt further changes to a rule without holding an additional hearing, this may have adverse impacts on the rulemaking process. For example, if a member of the public anticipates that their suggested changes to a rule will be controversial, they might reserve their comments until after the final rule is adopted and the 21-day comment period begins. That way, the agency can adopt the commenter’s proposed changes without ever proposing to adopt them and without discussing them in a public hearing, thereby avoiding additional scrutiny.

“Substantial change” is defined to mean “a change to a proposed rule that alters the meaning or effect of a regulatory provision of the rule.” By this broad definition, virtually every agency rulemaking would involve a substantial change and would therefore require that the agency receive additional public comment for 21 days after adopting and publishing a rule.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- 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

The bill would also require that NMDOH pay additional costs to publish notices in the NM Register for the receipt of public comment after rules are adopted and published.

4. ADMINISTRATIVE IMPLICATIONS

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

Again: HB508 could have the effect of requiring that NMDOH conduct more rule hearings. If NMDOH is required to conduct further hearings after incorporating changes based on the additional comments, this could extend the agency's rulemakings process by a month or longer.

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

8. DISPARITIES ISSUES

None.

9. HEALTH IMPACT(S)

None.

10. ALTERNATIVES

None.

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

If HB508 is not enacted, the State Rules Act will not be amended to require that New Mexico state agencies provide a 21-day public comment period, and consider those comments, after a rule is adopted and published.

12. AMENDMENTS

None.