

LFC Requester:	Fischer
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to 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: 20 Feb 2025 *Check all that apply:*
Bill Number: SB 423 Original Correction
 Amendment Substitute

Sponsor: Scott/Townsend/Gallegos/Block **Agency Name and Code** 218 AOC
Short Title: REVIEW AND APPROVAL OF RULES **Number:** _____
Person Writing Aaron Holloman
Phone: 505-487-6140 **Email** aocash@nmcourts.gov

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		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: The bill would increase legislative oversight by requiring legislative authorization of a “major rule” and requiring submission of a cost-benefit analysis at the time of a notice of proposed rulemaking (Sec. 6). A “major rule” is defined by the bill as one that (1) has an effect on the state or cost to the private sector of \$10,000,000, (2) has a “significant adverse effect” on business standards including “competition, employment, investment”, or (3) has a “significant change[]” in “social or cultural relations among citizens.”(Secs. 2 and 5).

Further, the bill amends the Administrative Procedures Act, in that when a rule is challenged in court the court would need to review whether the appropriate legislative authorization had occurred and may make a de novo determination about whether the rule is a “major rule.” (Sec. 4).

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

1. Additional Findings Required. Under the existing Administrative Procedures Act, a plaintiff may seek declaratory judgment for relief of the negative effects of a rule by filing in the district court in Santa Fe county. The bill adds a new legislative authorization requirement for “major rules.” As part of the court’s role in reviewing the impact the rule has on the plaintiff, the court will now have to conduct a de novo review of whether or not it is a “major rule” (“de novo” meaning “anew” as in the court has to make its own determination based on direct evidence presented and not rely on previous evidence or determinations). Determining whether or not a rule is a “major rule” is a fact-heavy determination and will require the testimony of experts to establish the scope of the impact (e.g., does it impact an industry to a level of \$10,000,000 or more). Resolution on these cases will be much slower and will require more court resources in making these determinations.
2. Vague Standards. As noted above, the court will now be required to determine whether or not a rule is a “major rule.” The standards set out for establishing a major rule are vague in that they are not based on an existing legal standard and are not defined in the statute. The second component of a major rule is one that costs individuals or industries \$10,000,000, but does not establish what time frame should be considered in calculating that cost. The third and fourth component both consider “significant adverse effects” and “significant changes” which are left undefined. It would then require courts over time to determine through common law what is meant by those terms. This means the meaning of the law will be subject to gradual evolution over time, leaving uncertainty in the

interim. Finally, the fourth component addresses significant changes in difficult to measure or quantify areas such as “cultural relations among citizens.” Again, this would require common law interpretations to arise which will take a long time and lead to potentially inconsistent application in the interim.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district court in Santa Fe county where declaratory judgments would also require extensive consideration of whether or not the rule is a “major rule.”

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS