

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{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}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 2/24/2025
Bill No: SB 423

Sponsor: Scott
Short Title: REVIEW AND APPROVAL OF RULES

Agency Name and Code Commission of Public Records 36900
Number: _____
Person Writing Matthew Ortiz
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	n/a	
0	0		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	indeterminate	indeterminate	R	

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

State Rules Act, Section 14-4-1 et seq., NMSA 1978 (“Rules Act”).

Administrative Procedures Act, Section 12-8-1 et seq., NMSA 1978 (“A.P.A.”)

HB 358, Pettigrew, Interim Admin. Rules Oversight Committee

HB 360, Pettigrew, Rulemaking Info to State Legislators

HB 452, Armstrong, Rulemaking Response to Public Comments

HB 509, Pettigrew, Rule Change Public Comment

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 423 (“bill”) require the LFC to determine whether a proposed agency rule constitutes a “major rule”, and if so, provide detailed fiscal and policy analyses including when requested by the chair of any legislative committee with jurisdiction over the subject matter of the rule, or other legislative leadership.

The bill would add the new definition under the Rules Act for a “major rule”. If an agency introduces a major rule that results “...in significant adverse effects on competition, employment, investment productivity innovation or individual industries or regions; and significant changes in social or cultural relations among, citizens, including significant impact on religions and ethnic, racial or gender populations” That type of “major rule” proposed by an agency must be first approved by legislature.

The bill also amends the A.P.A., Section 12-8-4, to require that before any rule is promulgated by an agency or implemented, it shall first be subject to governor’s office approval. An agency is prohibited from publishing its notice of rule adoption in the N.M. Register, without first receiving written approval from governor’s office.

Section 7 of the bill provides for the automatic expiration or “sunset” of all rules promulgated by any executive agency through the State Rules Act unless authorized “by law” by the legislature of the rule’s renewal for an additional five years, to be applied for to the legislature by the agency not less than two years before the rule is set to expire.

Section 8 of the bill requires that all executive agencies submit economic impact findings to the legislature to include an analysis as to whether the agency’s promulgated rule is necessary, is duplicative with other rules, and the overall consideration of whether the agency’s rule causes economic impacts on small businesses. Such findings shall be submitted to the legislature.

FISCAL IMPLICATIONS

As a rule-filing agency, for SRCA (and all rule filing agencies), the potential fiscal impact of requiring rulemaking staff to determine and prepare any economic/fiscal impact analysis for every rule would be time-consuming. Requiring the additional, bureaucratic step of having any proposed rulemaking to first receive approval from the governor's office before publishing could have a significant impact and delay, that could result in the loss of funding for programs.

As the publisher of the N.M. Register, the agency can publish any additional notices that may have to contain economic/fiscal analysis. The increase in publishing additional analysis or governor's office approval for any rulemaking would have a small, indeterminate increase in revenue collected from rulemaking agencies.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Is it the intent of the bill to require that separate and independent agencies must conform their rulemaking to the executive branch? For example, the attorney general office, the state land office, and this agency are all constitutionally- or statutorily-created agencies. They are not subject to the authority of the governor's office. This bill, if adopted, violated the separation of powers between agencies. See, N.M. Constitution, Articles III & V.

As defined in the bill, the definitions proposed for "major rule", "significant adverse effects" and "significant changes" are vague and would be subject to legal challenge to determine what each term means and what the applicable legal standards are, since they are not sufficiently defined in the bill.

Requiring a blanket, automatic sunset of existing rules raises concerns regarding public comment concerning repeal of rules. There are some rules that have been in existence for decades, are considered settled as a matter of law and interpretation, and so any review of any rule would cause issues. (E.g., see NMAC Title 19, Chapter 27 – Underground Water rules that have adjudicated water basins). Also, the process for considering a repeal of a rule is the same under the Rules Act for adoption: that is, there must be a notice of rulemaking, proposed rules provided to the public, and a rule hearing has to be held. To allow a rule to be repealed via its 'sunset' would result in the ability to rescind a rule without notice and comment if the agency decided not to take the necessary steps to avoid sunset. Such rulemaking deprives the ability for public comment and a rulemaking hearing prior to any rule's repeal.

PERFORMANCE IMPLICATIONS

See, Significant Issues and Fiscal Implications above.

ADMINISTRATIVE IMPLICATIONS

See, Significant Issues and Fiscal Implications above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See, Significant Issues and Fiscal Implications above.

TECHNICAL ISSUES

See, Significant Issues and Fiscal Implications above.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS