

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 1/25/2017

Bill No: HB58

Sponsor: Rep. Nate Gentry

Agency Code: 924

Short RULEMAKING

Person Writing Matt Pahl

Title: REQUIREMENTS

Phone: _____ **Email** Matt.pahl@state.nm.u

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
See fiscal analysis below	See fiscal analysis below	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$20,000	\$20,000	\$20,000	\$60,000	Recurring	General

(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: House Bill 58 (HB-58) amends an existing section of the State Rules Act relating to rulemaking requirements for proposing, adopting, amending or repealing rules. Amendments and new material call for more information to be provided to the public when proposing and adopting, amending or repealing, a rule. Additionally, amendments give state records administrators the power to make nonsubstantive corrections in filed rules and the power to request that an agency review any existing rule that is believed to conflict with statute.

FISCAL IMPLICATIONS

There is a cost increase related to the requirement of providing more information to the public. Lengthier public notices published in the NM Register and the newspaper will increase the cost ([New Material] Section 4, paragraph A, subparagraph 1-7). Filing an explanatory statement in addition to the rule will increase the cost which is currently \$3.00 per columnar inch.

Additionally, the requirement of sending postcard notices will increase the cost relating to public notification of proposed rulemaking and other rulemaking information (Section 1, paragraph E, subparagraph 6). The normal rate of sending a post card is 46.5 cents per postcard. The list required by this statute seems to imply that a list would continually grow as people are interested.

Further, to the extent that the new record-keeping requirements involve more extensive record-keeping than the Agency may have previously been engaging in, there will be increased cost, related to organizing and retaining appropriate files.

A Department actively engaging in rule changes would experience significant increase in costs. If the Public Education Department engaged in 10 rule changes in a year, the cost would accumulate to nearly \$20,000 annually. These costs are itemized below:

Explanatory Statements: \$6.00 for two columnar inches per notice X 10 = \$60.00;
Postcard Notice: 4,000 people provide postal address X \$.465 X 10 = \$18,600

Also, review upon the request of the state records administrator, for conflict with statute, to the extent that it requires additional review of a rule, outside of normal and regular Agency planning, will lead to additional cost to the Agency.

SIGNIFICANT ISSUES

HB-58 requires agencies to provide additional information in the Notice of Proposed Rulemaking - summary, explanation, citation of legal authority, and citation to technical information. This will provide the public with more information and justification from the agency but will increase the cost of publication and significantly slow the process of rulemaking for the agency.

The requirement in Section 1 of distributing rulemaking information to any parties who have previously requested notification of rulemaking information will be burdensome on the agency.

Further, this level of distribution required in Section 1 is unnecessary considering the notices for rulemaking for the PED are published in the NM Register, the Albuquerque Journal, and on the PED website.

Section 2 requires that the agency promulgating a rule shall include a concise explanatory statement when filing the rule for publication. This will provide more information to the public concerning the reasoning behind the rule change. Additionally, this section gives the state records administrator the power to make minor, nonsubstantive corrections in spelling, grammar and format in file rules. This could potentially reduce errors and long-term costs. Currently, all spelling and grammar changes must go through the entire rulemaking process.

Section 3 requires that an agency adopt a rule within two years after the notice of proposed rulemaking is published in the NM Register. This requirement is reasonable and one which the PED currently follows.

Section 7 outlines the requirements for the explanatory statement to be submitted at the time of filing. Providing clarifying information/reasoning to the public is beneficial for practical implementation of rule. However, stating statutory authority and reason for not accepting substantial arguments is redundant considering the other requirements in this bill. Additionally, the criteria for what determines a "substantial argument" are not clear; and what constitutes a "substantive change" is arguably vague.

Section 3, paragraph D is confusing. A rule is not considered "adopted" until it is filed with the state records administrator. However, this section states that an agency must file 15 days after the adoption of the rule. The proposed bill should include definitions for both "adopted" and "filed" in the definitional section and should use the terms throughout the bill consistently with such definitions.

Section 4 outlines what the notice of proposed rulemaking shall include. Although a summary of text, explanation of purpose, citation of legal authority, and citation to technical information will provide the public with more information pertaining to the proposed rule change, the inclusion of this information in a notice will increase the cost of publication for the agency. Additionally, some of this information is redundant because it can be found in the draft rule which is made available to the public.

Section 6 outlines requirements of records kept and made public. The requirement of all comments being on display in the sunshine portal may be burdensome in some cases of rulemaking.

Section 5 requirements are in alignment with current rulemaking practices at the PED.

Section 9, a new section of the State Rules Act addresses potential conflicts between agency rules and “statute”. This section does not explain whether it is intended to address conflicts with State statutes, Federal statutes, or both.

Section 9(C) uses the vague phrase “logical outgrowth of the action proposed in the notice” to define when a final rule may contain material that differs from the action proposed in the notice of proposed rulemaking. If the different material is a “logical outgrowth of the action proposed in the notice” and a detailed justification is included in the rulemaking record, it will be allowed. This standard could be difficult to apply.

Section 11 raises the same issue as Section 9 with regard to whether the conflict with statute that allows the state records administrator to request review is limited to State statutes. Further Section 11(B) allows an agency thirty days after a request to review a rule for conflict to “review” the agency rule in question. This provision is vague; it does not clarify whether the “review” is to be completed, or only begun, within the thirty day period. Thirty days may not be sufficient time in which to complete a complicated review. If the Agency only has to begin the review within the thirty day period, is there a time limit on how long the review can take? Does the Agency have to notify the state records administrator upon the completion of their review? Also, there is nothing that addresses what is to occur in the event that there is a conflict between the state records administrator and the agency regarding the existence of a conflict. Does the agency retain sole discretion to make the final determination regarding a conflict once they have conducted a review? This should be ensured to maintain the powers of the implementing agency. How often can the state records administrator request review of the same rule, based on the same alleged conflict?