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SENATE BILL 30

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Timothy M. Keller and Thomas C. Taylor

ENDORSED BY THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE STATE RULES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967,
Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission,
department, institution or officer of the state government
except the judicial and legislative branches of the state
government;

B. "person" includes individuals, associations,
partnerships, companies, business trusts and corporations;

~~[and]~~

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1 C. "proceeding" means a formal or informal agency
2 process or procedure that is commenced or conducted by an
3 agency;

4 D. "proposed rule" means a rule that is provided to
5 the public by an agency for review and public comment prior to
6 its adoption, amendment or repeal;

7 E. "provide to the public" means for an agency to
8 distribute rulemaking information in ways designed to notify
9 members of the public of the rulemaking action, particularly
10 those who may be affected by the subject of the rulemaking,
11 provided that:

12 (1) "provide to the public" includes
13 distribution of rulemaking information by:

14 (a) posting it on the agency web site,
15 if any;

16 (b) posting it on the sunshine portal
17 when the portal is available and capable of posting the
18 rulemaking information;

19 (c) making it available in the agency's
20 district, field and regional offices, if any;

21 (d) sending it by mail or electronic
22 mail to persons who have made a written request, including
23 current contact information, for notice from the agency of
24 announcements addressing the subject of the rulemaking
25 proceeding; and

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1 (e) providing it to the New Mexico
2 legislative council for distribution to appropriate interim and
3 standing legislative committees; and

4 (2) where appropriate, feasible or required by
5 law, "provide to the public" may include distribution of
6 rulemaking information:

7 (a) in languages other than English;

8 (b) to agencies of local and tribal
9 governments;

10 (c) to community, interest group and
11 trade publications;

12 (d) to public facilities, such as
13 community centers and libraries, for display in each county in
14 which the subject of the announcement will have significant
15 impacts and in which there is not an agency office;

16 (e) to radio and television outlets for
17 use in public service announcements, particularly in areas in
18 which there are no printed media and in which the language or
19 languages used by a significant percentage of the population
20 are not written; and

21 (f) for publication in a newspaper of
22 general circulation, if any, in each county in which the
23 subject of the announcement will have significant impacts;

24 [~~G.~~] F. "rule" means any rule, regulation, order or
25 standard [~~or statement of policy~~], including amendments thereto

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1 or repeals thereof, issued or promulgated by any agency and
2 purporting to affect one or more agencies besides the agency
3 issuing [~~such~~] the rule or to affect persons not members or
4 employees of [~~such~~] the issuing agency. An order or decision
5 or other document issued or promulgated in connection with the
6 disposition of any case or agency decision upon a particular
7 matter as applied to a specific set of facts shall not be
8 deemed such a rule, nor shall it constitute specific adoption
9 thereof by the agency. [~~Such term shall~~] "Rule" does not
10 include rules relating to the management, confinement,
11 discipline or release of inmates of any penal or charitable
12 institution, the [~~Springer~~] New Mexico boys' school, the girls'
13 welfare home [~~of~~] or any hospital [~~nor to~~]; rules made relating
14 to the management of any particular educational institution,
15 whether elementary or otherwise [~~nor to~~]; or rules made
16 relating to admissions, discipline, supervision, expulsion or
17 graduation of students [~~therefrom~~] from any educational
18 institution; and

19 G. "rulemaking" means the process for adoption of a
20 new rule or the amendment or repeal of an existing rule."

21 SECTION 2. A new section of the State Rules Act is
22 enacted to read:

23 "[NEW MATERIAL] AGENCY ANNUAL REGULATORY AGENDA.--

24 A. On or before June 30 of each year, each agency
25 expecting to engage in a rulemaking shall prepare and provide

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1 to the public a regulatory agenda.

2 B. The regulatory agenda shall include:

3 (1) a list of pending rulemakings and the
4 current status of each rulemaking; and

5 (2) a list of any rulemakings expected to be
6 proposed for the next fiscal year.

7 C. This section does not prohibit an agency from
8 undertaking a rulemaking even if that rulemaking has not been
9 included in the agency's regulatory agenda. This section does
10 not require an agency to undertake a rulemaking listed on the
11 agency's regulatory agenda.

12 D. The regulatory agenda shall be updated on a
13 timely basis by the agency to indicate a change to the status
14 of a rulemaking proceeding, including the preliminary outline,
15 notice, public comment, public hearing and final agency
16 action."

17 SECTION 3. A new section of the State Rules Act is
18 enacted to read:

19 "[NEW MATERIAL] PRELIMINARY OUTLINE.--

20 A. For the purpose of seeking public input, an
21 agency is encouraged to gather information relevant to the
22 subject matter of the rulemaking and solicit comments and
23 recommendations from the public.

24 B. Prior to publication pursuant to Section 5 of
25 this 2011 act, the agency proposing the rulemaking shall

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1 include a preliminary outline of the rulemaking on the
2 regulatory agenda. The preliminary outline shall include:

3 (1) the subject matter, statutory authority
4 and purpose of the rulemaking being considered;

5 (2) the name of the agency that is proposing
6 the rulemaking and that has the authority to adopt the rule and
7 the agency's contact for information;

8 (3) the procedure and deadlines for providing
9 input to the agency on the drafting of the preliminary rule;

10 (4) the agency's contemplated timetable for
11 the rulemaking; and

12 (5) any other information deemed appropriate
13 by the agency.

14 C. In response to a request from a member of the
15 public for a copy of the preliminary outline, the agency:

16 (1) shall provide the preliminary outline as
17 soon as is practicable and without requiring a formal
18 inspection of public records request; and

19 (2) shall provide the preliminary outline
20 without charge except to cover any actual costs incurred by the
21 agency.

22 D. Nothing in this section shall be construed to
23 preclude an agency from:

24 (1) changing a rulemaking that the agency is
25 considering; or

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1 (2) not proceeding with a rulemaking that the
2 agency has considered."

3 SECTION 4. A new section of the State Rules Act is
4 enacted to read:

5 "[NEW MATERIAL] RULE DRAFTING COMMITTEE.--

6 A. An agency may appoint a rule drafting committee
7 to comment or make recommendations on the subject matter of a
8 rulemaking under active consideration within the agency. The
9 committee, in consultation with one or more agency
10 representatives, may attempt to reach a consensus on the terms
11 or substance of a proposed rule. In making appointments to the
12 committee, the agency shall make reasonable efforts to inform
13 the public of the formation of the committee and to seek a
14 balance in representation from among interested members of the
15 public. The formation of the committee, the agency contact,
16 the process by which interested members of the public may
17 request to be a member of the committee and a notice of
18 scheduled meetings shall be included on the regulatory agenda.
19 Committee meetings shall be open to the public but shall not be
20 subject to the Open Meetings Act or the Per Diem and Mileage
21 Act.

22 B. Pursuant to the Governmental Dispute Prevention
23 and Resolution Act, an agency or member of the public may seek
24 alternative dispute resolution during rulemaking. It is at the
25 discretion of the agency if the rulemaking will proceed during

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1 alternative dispute resolution."

2 SECTION 5. A new section of the State Rules Act is
3 enacted to read:

4 "[NEW MATERIAL] NOTICE OF PROPOSED RULEMAKING.--

5 A. Not later than thirty days before a public rule
6 hearing, the agency proposing the rule shall provide to the
7 public and publish in the New Mexico register a notice of
8 proposed rulemaking. The notice shall include:

9 (1) a summary of the full text of the proposed
10 rule;

11 (2) a short explanation of the purpose of the
12 proposed rule;

13 (3) a citation to the specific legal authority
14 authorizing the proposed rule and the adoption of the rule;

15 (4) information on how a copy of the full text
16 of the proposed rule may be obtained;

17 (5) information on how a person may comment on
18 the proposed rule, where comments will be received and when
19 comments are due;

20 (6) information on where and when a public
21 rule hearing will be held and how a person may participate in
22 the hearing; and

23 (7) a citation to technical information, if
24 any, that served as a basis for the proposed rule, and
25 information on how the full text of the technical information

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1 may be obtained.

2 B. An agency may charge a reasonable fee for
3 providing any written material requested by a person under this
4 section.

5 C. An internet link to the notice and an internet
6 link to the full text of the proposed rule shall be included on
7 the regulatory agenda.

8 D. If the agency changes the date of the public
9 rule hearing or the deadline for submitting comments as stated
10 in the notice, the agency shall provide notice to the public of
11 the change."

12 SECTION 6. A new section of the State Rules Act is
13 enacted to read:

14 "[NEW MATERIAL] PUBLIC PARTICIPATION, COMMENTS AND RULE
15 HEARINGS.--

16 A. The notice required under Section 5 of this 2011
17 act shall specify a public comment period of at least thirty
18 days after publication in the New Mexico register during which
19 a person may submit information and comment on the proposed
20 rule. The information or comment may be submitted in an
21 electronic or written format or at a public rule hearing, if
22 any, pursuant to Subsection B of this section. The agency
23 shall consider all information and comment on a proposed rule
24 that is submitted within the comment period.

25 B. At a public rule hearing, members of the public

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1 shall be given a reasonable opportunity to submit data, views
2 or arguments orally or in writing. Except as otherwise
3 provided by law, an agency representative or hearing officer
4 shall preside over a public rule hearing.

5 C. The rule hearing shall be open to the public and
6 be recorded."

7 SECTION 7. A new section of the State Rules Act is
8 enacted to read:

9 "[NEW MATERIAL] AGENCY RECORD IN RULEMAKING PROCEEDING.--

10 A. An agency shall maintain a rulemaking record for
11 each rule it proposes to adopt. The record and materials
12 incorporated by reference in the proposed rule shall be readily
13 available for public inspection in the central office of the
14 agency and available for public display on the sunshine portal
15 when the portal is available. If an agency determines that any
16 part of the rulemaking record cannot be practicably displayed
17 or is inappropriate for public display on the sunshine portal,
18 the agency shall describe the document and shall note on the
19 sunshine portal that the document is not displayed.

20 B. A rulemaking record shall contain:

21 (1) a copy of all publications in the New
22 Mexico register relating to the proposed rule;

23 (2) a copy of any technical information that
24 was relied upon in formulating the final rule;

25 (3) any official transcript of a public rule

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1 hearing or, if not transcribed, any audio recording or verbatim
2 transcript of the hearing, and any memoranda summarizing the
3 contents of the hearing prepared by the hearing officer or
4 agency official who presided over the hearing;

5 (4) a copy of all comments and other material
6 received by the agency during the public comment period and at
7 the public hearing;

8 (5) a copy of the rule and a concise
9 explanatory statement filed with the records center; and

10 (6) any corrections made by the state records
11 administrator pursuant to Section 14-4-3 NMSA 1978."

12 SECTION 8. A new section of the State Rules Act is
13 enacted to read:

14 "[NEW MATERIAL] CONCISE EXPLANATORY STATEMENT.--At the
15 time it adopts a rule, an agency shall provide to the public a
16 concise explanatory statement containing:

- 17 A. the date the agency adopted the rule;
- 18 B. a reference to the specific statutory or other
19 authority authorizing the rule;
- 20 C. any findings required by a provision of law for
21 adoption of the rule;
- 22 D. the agency's reasons for adopting the proposed
23 rule, including the agency's reasons for not accepting
24 substantial arguments made in testimony and comments; and
- 25 E. the reasons for any substantive change between

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1 the text of the proposed rule at the time of the notice of
2 proposed rulemaking issued pursuant to Section 5 of this 2011
3 act and the text of the rule as adopted."

4 SECTION 9. A new section of the State Rules Act is
5 enacted to read:

6 "[NEW MATERIAL] EMERGENCY RULE.--

7 A. An agency shall comply with the rulemaking
8 procedures of Sections 3 through 8 of this 2011 act unless the
9 agency finds that the time required to complete the procedures
10 would:

11 (1) cause an imminent peril to the public
12 health, safety or welfare;

13 (2) cause the loss of funding for an agency
14 program; or

15 (3) place the agency in violation of federal
16 or state law.

17 B. The agency shall provide to the public a record
18 of any finding pursuant to Subsection A of this section before
19 adopting an emergency rule. The record shall include a
20 statement that the emergency rule is temporary. After such
21 record has been provided to the public, the agency may adopt
22 the emergency rule immediately without prior notice or hearing
23 or with any abbreviated notice and hearing that it finds
24 practicable.

25 C. Emergency rules may take effect immediately upon

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1 filing with the records center. Emergency rules shall be
2 published in the New Mexico register.

3 D. No emergency rule shall permanently amend or
4 repeal an existing rule. An emergency rule shall remain in
5 effect until a permanent rule takes effect under the normal
6 rulemaking process. If no permanent rule is adopted within one
7 hundred eighty days from the effective date of the emergency
8 rule, the emergency rule shall expire. If an expired emergency
9 rule temporarily amended or repealed an existing rule, the rule
10 shall revert to what it was immediately before the emergency
11 rule took effect."

12 SECTION 10. A new section of the State Rules Act is
13 enacted to read:

14 "[NEW MATERIAL] VARIANCE BETWEEN PROPOSED AND FINAL
15 ACTION.--An agency shall not take action on a proposed rule
16 that differs from the action proposed in the notice of proposed
17 rulemaking on which the rule is based unless the action is a
18 logical outgrowth of the action proposed in the notice."

19 SECTION 11. A new section of the State Rules Act is
20 enacted to read:

21 "[NEW MATERIAL] TIME LIMIT ON ADOPTION OF A PROPOSED
22 RULE.--

23 A. Except in the case of an emergency rule as
24 provided in Section 9 of this 2011 act, an agency shall not
25 adopt a proposed rule until the public comment period has

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1 ended.

2 B. If the agency fails to take action on a proposed
3 rule within two years after the notice of proposed rulemaking
4 is published in the New Mexico register, the rulemaking is
5 automatically terminated unless the agency takes action to
6 extend the period. The agency may extend the period of time
7 for adopting the proposed rule for an additional period of two
8 years by filing a statement of good cause for the extension in
9 the rulemaking record, but shall provide for additional public
10 participation as provided in Section 6 of this 2011 act prior
11 to adopting the proposed rule.

12 C. The agency may terminate a rulemaking at any
13 time by publishing a notice of termination in the New Mexico
14 register.

15 D. If a rulemaking is terminated under this
16 section, the agency shall provide notice to the public and to
17 each person who has participated in the rulemaking and who has
18 provided contact information to the agency.

19 E. An agency shall file adopted rules with the
20 records center and publish the adopted rules in the New Mexico
21 register not later than one hundred eighty days after the date
22 of adoption of the proposed rule.

23 F. A proposed rule shall not take effect unless it
24 is adopted and filed within the time limits set by this
25 section."

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1 SECTION 12. A new section of the State Rules Act is
2 enacted to read:

3 "[NEW MATERIAL] DEFAULT PROCEDURAL RULES--RULEMAKING
4 HEARING.--

5 A. The attorney general shall adopt default
6 procedural rules for a public rule hearing for use by agencies.

7 B. Except as otherwise provided in Subsection C of
8 this section, an agency shall use the default procedural rules
9 published under Subsection A of this section.

10 C. An agency may adopt a rule of procedure that
11 differs from the default procedural rules adopted under
12 Subsection A of this section."

13 SECTION 13. Section 14-4-3 NMSA 1978 (being Laws 1967,
14 Chapter 275, Section 3, as amended) is amended to read:

15 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

16 A. Each agency promulgating any rule shall place
17 the rule in the format and style required by rule of the
18 records center and shall deliver [~~one original paper copy and~~
19 ~~one electronic copy~~] the rule to the records center accompanied
20 by the concise explanatory statement required by Section 8 of
21 this 2011 act. The records center shall note thereon the date
22 and hour of filing.

23 B. The records center shall maintain [~~the original~~]
24 a copy of the rule as a permanent record open to public
25 inspection during office hours and shall have the rule

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1 published in a timely manner in the New Mexico register and
2 compiled into the New Mexico Administrative Code.

3 C. At the time of filing, an agency may submit to
4 the records center [~~an additional~~] a paper copy, for annotation
5 with the date and hour of filing, to be returned to the agency.

6 D. The state records administrator, after written
7 notification to the filing agency, may make minor,
8 nonsubstantive corrections in spelling, grammar and format in
9 filed rules. The state records administrator shall make a
10 record of the correction and shall deliver the record to the
11 filing agency and issuing authority within ten days of the
12 change."

13 SECTION 14. Section 14-4-5 NMSA 1978 (being Laws 1967,
14 Chapter 275, Section 6, as amended) is amended to read:

15 "14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--No
16 rule shall be valid or enforceable until it is filed with the
17 records center and published in the New Mexico register as
18 provided by the State Rules Act. Unless a later date is
19 otherwise provided by law, the effective date of a rule shall
20 be the date of publication in the New Mexico register.

21 [~~Emergency regulations may go into effect immediately upon~~
22 ~~filing with the records center, but shall be effective no more~~
23 ~~than thirty days unless they are published in the New Mexico~~
24 ~~register.]"~~

25 SECTION 15. REPEAL.--Section 14-4-5.1 NMSA 1978 (being
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Laws 1995, Chapter 110, Section 10) is repealed.