

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2013 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 2-6-13
Bill No: HB108(A)—305

Sponsor: Patricia Lundstrom / HGIAC **Reviewing** Attorney General's Office
Short Rules Development **Person Writing** M. Reynolds
Title: Requirements **Phone:** 827-7416 **Email** mreynolds@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to an agency’s, committee’s or legislator’s request.

An analysis of HB 108 has previously been submitted by the Attorney General’s Office. This Analysis is solely on the HHGIC amendment to HB 108

BILL SUMMARY

HHGIC Amendment:

The HHGIC amendments modify HB 108 to (1) require that agencies adopting an emergency rule provide a “detailed justification” for its finding that an emergency rule is warranted; (2) require that the default procedural rules to be written by the Attorney General be completed within 6 months of the effective date of the act; and (3) state that no rule can conflict with statute and a rule cannot define a word that is defined in an “applicable statute.”

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

Without any guidance as to what a “detailed justification” entails, emergency regulations will be susceptible to legal challenge for failure to provide a detailed justification. Depending on how detailed a justification needs to be, the amendment may defeat the purpose of an emergency rule provision which is to enable agencies to quickly and temporarily handle emergency situations.

From a legal perspective, the amendment that a regulation cannot conflict with statute is superfluous as that principle is well established in law.

Prohibiting the further defining of words defined by an “applicable statute” seems to be an unnecessary restriction because, under current law, a rule cannot define a term in a way that is inconsistent with an applicable statutory definition. Also, there are likely to be legal disputes as to what constitutes an “applicable statute” for purposes of a word definition. A complete prohibition on defining terms defined in statute means that there can be no regulatory definition for terms that arise in contexts not anticipated by the legislature. Increased judicial resolution of disputes, rather than administrative resolution, is the likely outcome.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS
INTRODUCED THIS SESSION**

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS NEEDED TO IMPROVE THIS BILL