

LFC Requester:	Marty Daly
-----------------------	-------------------

**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 1-18-13
Bill No: HB108--305

Sponsor: Rep. Patricia Lundstrom **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 SHAGED 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.

BILL SUMMARY

Summary Synopsis:

HB108 proposes to amend the State Rules Act, Section 14-4-2 NMSA 1978 et seq., by setting forth new administrative rulemaking procedures.

HB108 is a substantial overhaul of the State Rules Act. The bill expands the State Rules Act by adding many additional requirements to rulemaking. HB108 includes new requirements relating to, among other things: (1) the proper way to seek public comment on proposed rules; (2) proper publication of rules; (3) the establishment of rulemaking “agendas”; (4) the use of rule drafting committees; (5) alternative dispute resolution; (6) notice of proposed rule making; (7) rule hearings; (8) and post-rule hearing periods.

HB108 requires the Attorney General to adopt “default procedural rules” to be used by agencies. An agency shall follow the default rules unless it adopts its own procedural rules.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

There are rulemaking procedures in the Uniform Licensing Act, Section 61-1-29 NMSA 1978 that apply to many state boards and commissions. Also rulemaking procedures currently exist in the governing statutes of some agencies, boards and commissions. It is unclear how HB108 relates to the rulemaking procedures in existing law. Most importantly, it is not known which law prevails in the event of a conflict.

It may be difficult for the AG’s Office to adopt default rules without statutory guidance on how to resolve conflicts between HB108 and rulemaking procedures in existing law.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

Given the substantial new requirements contemplated by the bill, agencies, boards and commissions that rely on the AG’s Office for counsel will certainly need and demand additional services from the AG to ensure compliance. This will especially be the case while the additional requirements are still new and unfamiliar. This burden, in addition to the requirement to write default rules, may decrease the ability of the Office to meet performance goals.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

Currently, different agencies, boards and commissions have different rulemaking procedures. HB108 will bring some uniformity to the administrative rulemaking process which should help facilitate public input and those interested in and affected by proposed rules.

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

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

Currently, the State Rules Act does not address rulemaking procedures but merely sets forth the procedures used to publish rules and formalize them into law. An argument can be made that the more proper place to make the amendments contemplated by HB108 is the Administrative Procedures Act, rather than the State Rules Act. The Administrative Procedures Act, 12-8-1 to 12-8-25 NMSA 1978, provides a framework for rulemaking but only applies to certain agencies. An alternative to amending the State Rules Act, therefore, is to amend the Administrative Procedures Act and also make it applicable to all state agencies.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS NEEDED TO IMPROVE THIS BILL

An amendment to clarify the relationship between this bill and rulemaking procedures already in law under the Uniform Licensing Act and the statutes of various agencies, boards and commissions. The amendment should make clear which law “trumps” should there be conflict between the laws.