

LFC Requester: Marty Daly

AGENCY BILL ANALYSIS
2015 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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{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 February 12, 2015

Bill No: SB 194-305

Roy,Shaylyn, EO ..., 2/12/2015 12:57 PM
Deleted: February 11, 2015 January 23, 2015

Sponsor: Sen. Daniel Ivey-Soto Agency Code: Attorney General's Office
Short Requirements for Proposing Person Writing Jennifer Salazar, AAG
Title: & Changing Rules Phone: 827-6990 Email jsalazar@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

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

BILL SUMMARY

Synopsis:

SB 194 would amend, repeal, and adopt new sections of the State Rules Act, NMSA 1978, Sections 14-4-1 through -4, to establish requirements applicable to all New Mexico State agencies, for adopting, amending and repealing rules. According to Section 14 of the Bill, the effective date of the Bill would be July 1, 2015.

Section 13 of the Bill proposes to repeal Section 14-4-5.1 which currently allows rules filed prior to July 1, 1995, to continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing.

FISCAL IMPLICATIONS

The requirement that the Attorney General’s Office adopt “default procedural rules” for a public hearing may require additional personnel and/or funding.

SIGNIFICANT ISSUES

SB 194 is a vast reworking of the State Rules Act (“Act”). The Act currently sets forth the procedures that must be followed by state agencies to publish rules. SB 194 expands on the Act by adding several key portions to the law that agencies would be required to follow when contemplating rule-making.

There is some question as to whether this is the proper place to set forth procedures for rule-making. The current intent of the State Records Act centers on the publication of state rules.

The Administrative Procedures Act (“APA”), NMSA 1978, Sections 12-8-1 through -25, already provides a framework for rule-making. It is unclear whether the APA currently applies to any state agencies, but assuming it does, the Bill does not address its effect on the agencies that are currently subject to the rule-making procedures specified in the APA.

Similarly, some state agencies, commissions and boards, already have rule-making provisions provided for in the governing statutes. For example, the Uniform Licensing Act sets forth procedures that professional boards and commissions must follow. Under Section 61-1-30(A) of the ULA, emergency rules will remain in effect for no more than 120 days; this is inconsistent with Section 9 of the Bill, which would allow the emergency rule to remain in place 180 days after the effective date. As currently proposed, it is unclear whether the Bill's mandates would trump the current rule-making provisions contained in conflicting statutes.

In addition, the proposal to repeal section 14-4-5.1 would have significant consequences because it would effectively invalidate all the rules that were filed prior to 1995. There is a strong possibility that this section of SB 194 would generate legal challenges since it seeks to invalidate rules that were legally promulgated at the time they were put in place.

PERFORMANCE IMPLICATIONS

The requirement that the Attorney General's Office adopt "default procedural rules" for a public hearing may require additional personnel and/or funding.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

In Section 1 of the proposal, the term "rulemaking information" is used under the definition of "provide to the public." As currently proposed, the language does not define what information is contemplated. Is the intent that this information include only the notice of rule-making? Or, is it something more?

In subsection B of Section 5, state agencies are authorized to "charge a reasonable fee" for providing for providing rule-making records in nonelectronic form. Would this reasonable fee be the same as that authorized under Section 14-2-9 of the Inspection of Public Records Act?

In subsection D of Section 5, the proposed language would require that agency provide notice to the public of any change in the rule hearing date; however, this language does not make clear how much advance notice would be required.

OTHER SUBSTANTIVE ISSUES

The requirement in Section 11 that the Attorney General adopt "default procedural rules" for a public hearing is not clear. Would this be boilerplate/template language that each agency can use to implement the Act's requirements? If so, the Bill may need to clarify that state agencies are required to promulgate rules, within a specified period of time, setting forth procedures for rulemaking that are consistent with the Act.

Another issue may arise under Section 4, which authorizes state agencies to appoint a rules drafting committee to research rule-making. According to the language, the committee meetings would be open to the public but would not be subject to the Open Meetings Act. If this is the case, how would the public be provided with notice of these meetings? What standard would be

used to provide notice?

Finally, Section 12 would authorize the state records administrator to review an agency rule for any conflicts with the statute but does not delineate what happens when a conflict is found.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A

