AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES; AMENDING 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, political
subdivisions and corporations;

C. "proceeding" means a formal agency process or
procedure that is commenced or conducted pursuant to the
State Rules Act;

D. "proposed rule" means a rule that is provided
to the public by an agency for review and public comment
prior to its adoption, amendment or repeal, and for which
there is specific legal authority authorizing the proposed
rule;

E. "provide to the public" means for an agency to
distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

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

(4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;

(5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals.
thereof, issued or promulgated by any agency and purporting
to affect one or more agencies besides the agency issuing the
rule or to affect persons not members or employees of the
issuing agency, including affecting persons served by the
agency. An order or decision or other document issued or
promulgated in connection with the disposition of any case or
agency decision upon a particular matter as applied to a
specific set of facts shall not be deemed such a rule, nor
shall it constitute specific adoption thereof by the agency.
"Rule" does not include rules relating to the management,
confinement, discipline or release of inmates of any penal or
charitable institution, the New Mexico boys' school, the
girls' welfare home or any hospital; rules made relating to
the management of any particular educational institution,
whether elementary or otherwise; or rules made relating to
admissions, discipline, supervision, expulsion or graduation
of students from any educational institution; and

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

SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967,
Chapter 275, Section 3, as amended) is amended to read:

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

A. Each agency promulgating any rule shall place
the rule in the format and style required by rule of the
state records administrator and shall deliver the rule to the
state records administrator or the administrator's designee,
accompanied by the concise explanatory statement required by
the State Rules Act. The state records administrator or the
administrator's designee shall note thereon the date and hour
of filing.

B. The state records administrator or the
administrator's designee shall maintain a copy of the rule as
a permanent record open to public inspection during office
hours, on the website of the records center, published in a
timely manner in the New Mexico register and compiled into
the New Mexico Administrative Code.

C. At the time of filing, an agency may submit to
the state records administrator or the administrator's
designee a copy, for annotation with the date and hour of
filing, to be returned to the agency.

D. The state records administrator, after written
notification to the filing agency, may make minor,
nonsubstantive corrections in spelling, grammar and format in
filed rules. The state records administrator shall make a
record of the correction and shall deliver the record to the
filing agency and issuing authority within ten days of the
change. Within thirty days of receiving that state records
administrator's record of a correction, the agency shall
provide to the public notice of the correction in the same
manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act."

SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967, Chapter 275, Section 6, as amended) is amended to read:

"14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.

B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.

C. An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.

D. Within fifteen days after adoption of a rule,
an agency shall file the adopted rule with the state records administrator or the administrator's designee and shall provide to the public the adopted rule. The state records administrator or the administrator's designee shall publish rules as soon as practicable after filing, but in no case later than ninety days after the date of adoption of the proposed rule. Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.

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

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

“NOTICE OF PROPOSED RULEMAKING.--

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

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

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

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

    (4) information on how a copy of the full
text of the proposed rule may be obtained;
    (5) information on how a person may comment
on the proposed rule, where comments will be received and
when comments are due;
    (6) information on where and when a public
rule hearing will be held and how a person may participate in
the hearing; and
    (7) a citation to technical information, if
any, that served as a basis for the proposed rule, and
information on how the full text of the technical information
may be obtained.

    B. An agency may charge a reasonable fee for
providing any records in nonelectronic form when provided to
a person pursuant to this section. An agency shall not
charge a fee for providing any records in electronic form
when provided to a person pursuant to this section.

    C. An internet link providing free access to the
full text of the proposed rule shall be included on the
notice of proposed rulemaking.

    D. If the agency changes the date of the public
rule hearing or the deadline for submitting comments as
stated in the notice, the agency shall provide notice to the
public of the change.
E. The state records administrator or the administrator's designee shall timely publish the notice of proposed rulemaking in the next publication of the New Mexico register."

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

"PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.

B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside
over a public rule hearing.

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

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

"AGENCY RECORD IN RULEMAKING PROCEEDING.--

   A. An agency shall maintain a rulemaking record
   for each rule it proposes to adopt. The record and materials
   incorporated by reference in the proposed rule shall be
   readily available for public inspection in the central office
   of the agency and available for public display on the state
   sunshine portal. If an agency determines that any part of
   the rulemaking record cannot be practicably displayed or is
   inappropriate for public display on the sunshine portal, the
   agency shall describe that part of the record, shall note on
   the sunshine portal that the part of the record is not
   displayed and shall provide instructions for accessing or
   inspecting that part of the record.

   B. A rulemaking record shall contain:

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

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

      (3) any official transcript of a public rule
      hearing or, if not transcribed, any audio recording or
verbatim transcript of the hearing, and any memoranda
summarizing the contents of the hearing prepared by the
hearing officer or agency official who presided over the
hearing;

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

(5) a copy of the full text of the initial
proposed rule and the full text of the final adopted rule and
the concise explanatory statement filed with the state
records administrator or the administrator's designee; and

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

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

"CONCISE EXPLANATORY STATEMENT.--At the time it adopts a
rule, an agency shall provide to the public a concise
explanatory statement containing:

A. the date the agency adopted the rule;

B. a reference to the specific statutory or other
authority authorizing the rule; and

C. any findings required by a provision of law for
adoption of the rule."

SECTION 8. A new section of the State Rules Act is
enacted to read:
"EMERGENCY RULE.--

A. An agency shall comply with the rulemaking procedures of the State Rules Act unless the agency finds that the time required to complete the procedures would:

   (1) cause an imminent peril to the public health, safety or welfare;
   
   (2) cause the unanticipated loss of funding for an agency program; or
   
   (3) place the agency in violation of federal law.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

C. When an agency makes a finding pursuant to Subsection A of this section, the agency shall follow the provisions of this section in addition to any more specific requirements in statute that pertain to the agency regarding promulgating emergency or interim rules.

D. Emergency rules may take effect immediately upon filing with the state records administrator or the
administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

E. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within one hundred eighty days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued."

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

"CONFLICTS BETWEEN RULE AND STATUTE--VARIANCE BETWEEN PROPOSED AND FINAL ACTION.--

A. No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.

B. A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute."

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

"PROCEDURAL RULES.--No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website."

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.