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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

1 distribute rulemaking information by:

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

4 (2) posting it on the sunshine portal;

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

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

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

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

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

22 F. "rule" means any rule, regulation, or standard,
23 including those that explicitly or implicitly implement or
24 interpret a federal or state legal mandate or other
25 applicable law and amendments thereto or repeals and renewals

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

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

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

23 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

24 A. Each agency promulgating any rule shall place
25 the rule in the format and style required by rule of the

1 state records administrator and shall deliver the rule to the
2 state records administrator or the administrator's designee,
3 accompanied by the concise explanatory statement required by
4 the State Rules Act. The state records administrator or the
5 administrator's designee shall note thereon the date and hour
6 of filing.

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

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

17 D. The state records administrator, after written
18 notification to the filing agency, may make minor,
19 nonsubstantive corrections in spelling, grammar and format in
20 filed rules. The state records administrator shall make a
21 record of the correction and shall deliver the record to the
22 filing agency and issuing authority within ten days of the
23 change. Within thirty days of receiving that state records
24 administrator's record of a correction, the agency shall
25 provide to the public notice of the correction in the same

1 manner as the agency used to give notice of the rulemaking
2 proceeding pursuant to Section 4 of this 2017 act."

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

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

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

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

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

25 D. Within fifteen days after adoption of a rule,

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

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

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

15 "NOTICE OF PROPOSED RULEMAKING.--

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

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

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

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

1 the rule;

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

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

7 (6) information on where and when a public
8 rule hearing will be held and how a person may participate in
9 the hearing; and

10 (7) a citation to technical information, if
11 any, that served as a basis for the proposed rule, and
12 information on how the full text of the technical information
13 may be obtained.

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

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

22 D. If the agency changes the date of the public
23 rule hearing or the deadline for submitting comments as
24 stated in the notice, the agency shall provide notice to the
25 public of the change.

1 E. The state records administrator or the
2 administrator's designee shall timely publish the notice of
3 proposed rulemaking in the next publication of the New Mexico
4 register."

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

7 "PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

8 A. The notice of proposed rulemaking shall specify
9 a public comment period of at least thirty days after
10 publication in the New Mexico register during which a person
11 may submit information and comment on the proposed rule.

12 The information or comment may be submitted in an electronic
13 or written format or at a public rule hearing pursuant to
14 Subsection B of this section. The agency shall consider all
15 information and comment on a proposed rule that is submitted
16 within the comment period.

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

1 over a public rule hearing.

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

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

6 "AGENCY RECORD IN RULEMAKING PROCEEDING.--

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

19 B. A rulemaking record shall contain:

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

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

24 (3) any official transcript of a public rule
25 hearing or, if not transcribed, any audio recording or

1 verbatim transcript of the hearing, and any memoranda
2 summarizing the contents of the hearing prepared by the
3 hearing officer or agency official who presided over the
4 hearing;

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

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

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

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

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

19 A. the date the agency adopted the rule;

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

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

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

1 "EMERGENCY RULE.--

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

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

7 (2) cause the unanticipated loss of funding
8 for an agency program; or

9 (3) place the agency in violation of federal
10 law.

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

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

24 D. Emergency rules may take effect immediately
25 upon filing with the state records administrator or the

1 administrator's designee or at a later date specified in the
2 emergency rule. Emergency rules shall be published in the
3 New Mexico register.

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

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

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

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

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

25 **SECTION 10.** A new section of the State Rules Act is

1 enacted to read:

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

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

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