

LFC Requester:

Leger

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to billanalysis@dfa.nm.gov*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: Feb. 13, 2025

Check all that apply:

Bill Number: HB 358

Original Correction Amendment Substitute

Sponsor: Rep. Pettigrew

Short Title: Interim Admin. Rules Oversight Committee

Agency Name

and Code

State Ethics Commission - 410

Number:

Person Writing

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Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$2,000	Nonrecurring	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 358 creates a new legislative interim committee charged with overseeing the development and implantation of administrative rules created by administrative agencies in New Mexico.

Section 1 of HB 358 creates a new section in Chapter 2 that creates the Interim Administrative Rule Oversight Committee (herein “oversight committee”). The oversight committee would have 12 total members, 3 appointed by the House majority, 3 appointed by the House minority, 3 appointed by the Senate majority, and 3 appointed by the Senate minority. The chair of the oversight committee would alternate between the House and Senate and the two political parties every year, provided that at no time the majority political party in both chambers *not* be represented as the chair or vice-chair. Section 1 additionally provides that membership shall be decided every year and provides methods of dealing with vacancies on the oversight committee and requires the oversight committee to meet at least once per month, excluding meeting during legislative sessions.

Section 2 of HB 358 creates a new section in Chapter 2 providing oversight for rules proposed by executive agencies. Under this section, the oversight committee would assess fiscal impacts of implementation, make recommendations to the agency, and “direct the work of committee staff.” Additionally, the oversight committee would also be allowed to endorse legislation to amend or repeal statutes that authorize agencies to promulgate rules.

Section 3 of HB 358 creates a new section in Chapter 2 that would require the Legislative Council Service to hire no more than 4 employees to staff the oversight committee.

Section 4 of HB 358 creates a new section in Chapter 2 of NMSA 1978 which provides that when an agency notices a proposed rulemaking, that the proposed rule is sent to the oversight committee’s staff. Staff are then required to produce a written report assessing whether the agency has the requisite statutory authority to issue the rule, the necessity of the rule, the fiscal impact of the rule, legal implications, and whether the agency complied with notice requirements. If, in the oversight committee’s judgement, the estimated fiscal impact is over \$1,000,000.00, the committee may request a fiscal impact report from the issuing agency.

Section 5 of HB 358 amends the State Rules Act, NMSA 1978, § 14-4-5.2, to include a section requiring that, when publishing a notice of proposed rulemaking, agencies include a fiscal impact report if the estimated cost of implementation of the rule is greater than \$1,000,000.00.

Section 6 of HB 358 creates a new section of the State Rules Act requiring the fiscal impact reports described in the paragraph above to include fiscal impacts on not just the state, but also counties, municipalities and other political subdivisions of the state, the necessity of the rule, a statement of how the rule is consistent with the legislative intent of the authorizing statute, whether the rule amounts to a funded or unfunded mandate, and whether the rule requires to comply with a federal mandate.

Section 7 of HB 358 provides for a \$2,000,000.00 appropriation from the general fund for expenditure in FY 26 for staff salaries and other costs incidental to establishing the oversight committee.

FISCAL IMPLICATIONS

HB 358 would appropriate \$2,000,000.000 from the general fund to the oversight committee for expenditure in FY 26 for staff hiring and other “incidental costs.” By the language of the bill, “the legislative council service shall hire no more than four staff members for the. . . committee.” If HB 358 applies to the State Ethics Commission (see discussion below related to what constitutes an “executive agency”), HB 358 might require additional staff time for the Commission in its rulemaking capacity to comply with HB 358. However, any fiscal impact is likely minimal.

SIGNIFICANT ISSUES

Lack of Defined Scope of Oversight

The scope of which agencies are subject to oversight by the oversight committee is unclear. Unlike the State Rules Act, which provides a clear definition which agencies are subject to its requirements, HB 358 provides no definitions and the term “executive agency” is left up to interpretation. There are 3 reasonable interpretations:

First, the committee’s oversight would be limited to those organized under Article V of the New Mexico Constitution, titled “Executive Department.” These agencies are the office of the governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, the commissioner of public lands, N.M. Const. Art. V, § 1. Article V, and the State Ethics Commission. N.M. Const. art. V, § 17.

Second, the committee’s oversight would be limited to agencies organized under Chapter 9 NMSA 1978, also titled “Executive Department.” These agencies are the Children, Youth and Families Department, NMSA 1978, §§ 9-2A-1 to -24, the Corrections Department, NMSA 1978, §§ 9-3-1 to -13, the Cultural Affairs Department, NMSA 1978, §§ 9-4A-1 to -27, the Energy, Minerals, and Natural Resources Department, NMSA 1978, §§ 9-5A-1 to -11, the Department of Finance and Administration, NMSA 1978, §§ 9-6-1 to -21, the Department of Health NMSA 1978, §§ 9-7-1 to -18, the Department of Environment , NMSA 1978, §§ 9-7A-1 to -17, the Health Care Authority, NMSA 1978, §§ 9-8-1 to -14, the Taxation and Revenue Department, NMSA 1978, §§ 9-11-1 to -15, the Economic Development Department, NMSA 1978, §§ 9-15-1 to -59, the Regulation and Licensing Department, NMSA 1978, §§ 9-16-1 to -16, the Department of Public Safety, NMSA 1978, §§ 9-19-1 to -14, the Indian Affairs Department, NMSA 1978, § 9-21-1 to -16, the General Services Department, NMSA 1978, §§ 9-17-1 to -9, the Veterans’ Services Department, NMSA 1978, §§ 9-22-1 to -22, Aging and Long-Term Services Department, NMSA 1978, §§ 9-23-1 to -14, the Public Education Department, NMSA 1978, §§ 9-24-1 to -15, the Higher Education Department, NMSA 1978, §§ 9-25-1 to -14, the Department of Workforce Solutions, NMSA 1978, §§ 9-26-1 to -17, the Department of Information Technology, NMSA 1978, §§ 9-27-1 to -27, the Department of Homeland Security, NMSA 1978, §§ 9-28-1 to -7, and the Early Childhood Education and Care Department, NMSA 1978, §§ 9-29-1 to -13.

Third, the oversight committee’s scope would be the same as the State Rules Act’s scope, which applies to “any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government.” *See* NMSA 1978, 14-4-2(A). Given HB 358’s amendment to the State Rules Act, this is likely the intent of the

bill.

Possible Capacity Issues

Agencies in New Mexico propose many rules. Based on the New Mexico Record's Center cumulative index, in 2024, agencies published 101 notices to either promulgate entirely new rules, or amend existing rules. *See* New Mexico Commission of Public Records, New Mexico Register, Cumulative Index, Volume XXXV, Issues 1–24. (2024)

<https://www.srca.nm.gov/nmac/nmregister/pdf/2024%20index%201-24.pdf>.

Assuming, perhaps improperly, that proposed rulemakings are published at a consistent pace, the oversight committee would have to consider 9 proposed rules per month in years where the legislative session lasts 30 days, and 10 proposed rules per month when the legislative session lasts 60 days. Given that members of legislative typically have outside employment, much of the rule analysis would likely fall to the 4-person staff of the committee. This means that, assuming an equal division of labor, each committee staffer would have to produce 2 or 3 analyses for proposed rules per month. While this does not seem like a heavy load, rules are often written by experts in their field and are highly technical. For example, in October 2024, the Environmental Improvement Board published a proposed rulemaking to implement new regulations related to regional air quality. As proposed, one of the primary purposes of this rule was to regulate nitrogen oxide emissions for industrial plants and generators. Rule 20.2.68.102(A) NMAC (proposed) (<https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2024/10/New-Rule-20.2.68-NMAC-09.11.2024-Proposed-Draft.pdf>). If a staff member of the oversight committee was assigned this rule, they would likely need some expertise or background in air quality regulation to determine whether a fiscal impact report is required. Expertise in one area—like air quality control—is possible, but expertise in every field that is regulated in New Mexico to be covered by 4 staff members may be more idealistic than practical.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS