

LFC Requester:	Michaela Fischer
----------------	------------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO AgencyAnalysis.nmlegis.gov 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. 20, 2025 *Check all that apply:*
Bill Number: SB 423 Original Correction
 Amendment Substitute

Sponsor: Senators Scott, Townsend, Gallegos and Block **Agency Name and Code** State Ethics Commission - 410
Short Title: Review and Approval of Rules **Number:** _____
Title: _____ **Person Writing** Jessica Randall
Phone: (505) 859-9625 **Email** jessica.randall@sec.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
			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	Indeterminate	Indeterminate	Indeterminate			General

(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: SB 423 proposes several amendments to existing statutes under the State Rules Act, Administrative Procedure Act (“APA”), and the Legislative Finance Committees’ defined duties.

SB423 would require the LFC to determine whether a proposed agency rule constitutes a “major rule” as newly defined by SB423, and if so, provide detailed fiscal and policy analyses including when requested by the chair of any legislative committee with jurisdiction over the subject matter of the rule, or other legislative leadership. The bill would add the new definition under State Rules Act, Section 14-4-2. Per the bill an agency has introduced a “major rule” in part any rule, “that will result in significant adverse effects on competition, employment, investment productivity innovation or individual industries or regions; and significant changes in social or cultural relations among, citizens, including significant impact on religions and ethnic, racial or gender populations[.]” Any “major rule” proposed by an agency shall first be approved by the legislature “by law.”

SB 423 would amend section 12-8-4 of the APA to require that before any rule promulgated by an agency is adopted or implemented, shall be first subject to approval of the Governor. And further that an agency is prohibited from publishing in the New Mexico register notice of the adoption of any rule without first receiving written approval from the Governor.

Section 7 of SB423 provides for the automatic expiration or “sunset” of all rules promulgated by any executive agency through the State Rules Act unless authorized “by law” by the legislature of the rule’s renewal for an additional five years, to be applied for to the legislature by the agency not less than two years before the rule is set to expire.

Section 8 of SB423 additionally requires that all executive agencies submit economic impact findings to the legislature to include an analysis as to whether the agency’s promulgated rule is necessary, is duplicative with other rules, and the overall consideration of whether the agency’s rule causes economic impacts on small businesses. Such findings shall be submitted to the legislature.

FISCAL IMPLICATIONS

Given the significant impact SB423 would have on state agencies with rulemaking authority, including the State Ethics Commission, SB 423 might require additional staff time for the Commission in its rulemaking capacity to comply with SB 423.

SIGNIFICANT ISSUES

SB 423 likely violates the separation of powers of the branches of state government and also violates the independent authority vested in independent agencies of the executive branch

described in Article V, Section 1 of New Mexico Constitution. Article V, Section 1 provides that “the executive branch comprises a governor, lieutenant governor secretary of state , state auditor, state treasurer attorney general, and commissioner of public lands.” Each of those described entities are distinct and separate from each other and are separate and distinct from those executive agencies created by statute. *See State ex rel. Gomez v. Campbell*, 1965-NMSC-056, ¶ 25, 55 N.M. 390 (discussing that there is an obvious distinction between offices created under the constitution itself and executive officers created by statute; the latter are creatures of the legislature, and may have their duties changed or their offices abolished at any time the legislature so desires, unlike the former). Further the State Ethics Commission, is also an executive agency created by Article V, Section 17 of the New Mexico Constitution and is expressly an “independent state agency under the direction of seven commissioners.”

Thus SB423 has two constitutional problems at the onset: (1) by requiring independent executive officers/agencies described in Article V to obtain permission from the Governor before executing their duties or functions related to their office, which is not an authority vested in the Governor, *see* N.M. Const. art. V, § 5; and (2) by requiring those independent constitutionally created executive agencies to obtain permission from the legislature before it can implement rules related to the execution of its core functions. *See* N.M. Const. art. III, § 1 (“The powers of the government of this state are divided into three distinct departments . . . and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.”). *See also Thompson v. Legislative Audit Comm’n*, 1968-NMSC-184, ¶ 6, 79 N.M. 693 (holding that the legislature has no power to abolish a constitutional office, nor deprive those agencies the execution of its constitutional duties by stripping the officer of his statutory duties, thereby leaving the office in name only, an empty shell).

Finally, while not a constitutional concern, automatic sunset of legislation or promulgated agency regulations is not without concern. First, an agency generally must go through the same rulemaking process to rescind a rule as it would to promulgate a new rule, including public notice of the agency’s explanation for changing policy and the opportunity to comment. The sunset rule, however, would result in the ability to rescind a rule *without* notice and comment if the agency decided not to take the necessary steps to avoid sunset. Arguably such lack of process deprives the public of the chance to comment on rescission of a particular rule. Second, by permitting auto-rescission of final rules adopted before SB423 in essence would have imposed a limitation on duration not intended at the time the original regulation was promulgated without adequate justification and opportunity for public comment *at the time it was adopted/promulgated*.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

SB423 would impose additional requirements on the State Ethics Commission in promulgating and maintaining its promulgated rules, which would necessitate additional resources, administrative tasks, and staff time to comply.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS