

1 SENATE BILL 533

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Sander Rue and Cathrynn N. Brown

5
6
7
8
9
10 AN ACT

11 RELATING TO GOVERNMENT OPERATIONS; PROVIDING AUTHORITY TO THE
12 DEPARTMENT OF FINANCE AND ADMINISTRATION TO PERFORM COST-
13 BENEFIT ANALYSES ON AGENCY RULES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. REGULATORY REVIEW AND RESCISSION.--

17 A. As used in this section, "department" means the
18 department of finance and administration.

19 B. Except as provided in Subsection G of this
20 section, the department shall perform a cost-benefit analysis
21 upon each proposed rule and report to the governor and the
22 legislative finance committee its findings and recommendations
23 and post the report on the sunshine portal.

24 C. If a proposed rule has an impact of at least
25 five hundred thousand dollars (\$500,000), the cost-benefit

.192415.2

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material]~~ = delete

1 analysis performed by the department shall be used for fiscal
2 analyses and performance budgeting of the program, bureau,
3 division or budget line item for which the rule was proposed.

4 D. In preparing a cost-benefit analysis under this
5 section, the department shall consider in its analysis any
6 verified data provided voluntarily by interested parties,
7 regulated persons and nonprofit corporations whose members may
8 be affected by the proposed rule. A cost-benefit analysis
9 prepared under this section is a public document. This
10 subsection does not empower the department or a state agency to
11 require an interested party or a regulated person to provide
12 materials, documents or other information in connection with a
13 cost-benefit analysis under this section. If an interested
14 party or a regulated person voluntarily provides materials,
15 documents or other information to the department or state
16 agency in connection with a cost-benefit analysis under this
17 section, the department or a state agency, as applicable, shall
18 ensure the adequate protection of any confidential and
19 proprietary business plans and other confidential information.
20 Interested parties and regulated persons shall submit the
21 information in accordance with the confidentiality rules
22 adopted by a state agency to ensure proper processing of
23 confidentiality claims. The department and any state agency
24 involved in proposing the rule, or in administering the rule
25 upon the rule's adoption, shall exercise all necessary caution

.192415.2

underscoring material = new
~~[bracketed material]~~ = delete

1 to avoid disclosure of any confidential information supplied to
2 the department or a state agency by an interested party or a
3 regulated person.

4 E. The department shall make the cost-benefit
5 analysis and other related public documents available to
6 interested parties, regulated persons and nonprofit
7 corporations whose members may be affected by the proposed rule
8 at least thirty days before presenting the cost-benefit
9 analysis to the governor and the legislative finance committee.

10 F. If the department or a state agency is unable to
11 obtain verified data for the cost-benefit analysis, the
12 department shall state in the cost-benefit analysis which data
13 were unavailable for purposes of the cost-benefit analysis.

14 G. Exempted from the requirements of this section
15 is any rule that is a technical amendment with no substantive
16 effect on an existing rule, and the department need not prepare
17 a cost-benefit analysis of the rule under this section. A
18 state agency shall submit the proposed rule to the department
19 with a statement explaining how the proposed rule meets the
20 requirements of this subsection. If the department finds that
21 the rule meets the requirements of this subsection, the
22 department shall provide its findings to the governor and to
23 the legislative finance committee. If a state agency amends or
24 modifies the proposed rule after the department finds that a
25 cost-benefit analysis need not be prepared for the rule, a

.192415.2

underscoring material = new
~~[bracketed material] = delete~~

1 state agency shall resubmit the proposed rule to the department
2 either for a new determination that the rule meets the
3 requirements of this subsection or for the department to
4 prepare a cost-benefit analysis of the rule.

5 H. The department shall perform a retroactive cost-
6 benefit analysis for each rule adopted and that has taken
7 effect after December 31, 2012 with respect to the period
8 encompassing the first three years following the rule's
9 effective date. Except as otherwise required by the governor
10 or the legislative finance committee, the department shall
11 submit a cost-benefit analysis to the governor and the
12 legislative finance committee not later than six months after
13 the third anniversary of the rule's effective date. A cost-
14 benefit analysis prepared pursuant to this subsection shall
15 include the following:

16 (1) the estimate of the primary and direct
17 benefits of the rule, including the impact on:

18 (a) consumer protection;

19 (b) worker safety;

20 (c) employment;

21 (d) energy reliability;

22 (e) the environment; and

23 (f) business competitiveness, as

24 determined before the rule's adoption;

25 (2) the estimate of the secondary or indirect

.192415.2

1 benefits of the rule and the explanation of how the conduct
2 regulated by the rule is linked to the primary and secondary
3 benefits, as determined before the rule's adoption;

4 (3) the estimate of any cost savings to
5 regulated persons, including individuals and businesses, as a
6 result of the rule, including any savings from:

7 (a) a change in an existing requirement;

8 (b) the imposition of a new requirement;

9 or

10 (c) the imposition of cumulative
11 requirements; as determined before the rule's adoption;

12 (4) a statement of the number of regulated
13 persons, classified by industry sector, subject to the rule;
14 and

15 (5) a comparison of:

16 (a) the cost-benefit analysis for the
17 rule prepared before the rule's implementation; and

18 (b) the actual costs and benefits of the
19 rule during the first three years of the rule's implementation,
20 including any actual primary and direct benefits of the rule
21 and including the rule's impact on consumer protection, worker
22 safety, employment, energy reliability, the environment and
23 business competitiveness; any actual secondary or indirect
24 benefits of the rule and an explanation of how the conduct
25 regulated by the rule is linked to the primary and secondary

underscoring material = new
~~[bracketed material] = delete~~

1 benefits; and any actual cost savings to regulated persons,
2 including individuals and businesses, as a result of the rule,
3 including any savings from a change in an existing requirement
4 or from the imposition of a new requirement.

5 - 6 -

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25