

New Mexico State Rules Act:  
A Different Kind of APA



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Purpose

- Explain the efforts to make Administrative Procedures in New Mexico more uniform

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NM Administrative Procedures Act - 1969

- Based on the 1961 Model State Administrative Procedure Act
- Sets out the basics for rulemaking and adjudication in New Mexico
- State agencies are exempt from the provisions of the APA
- Has never really been in effect

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### State Rules Act - 1967

- The State Rules Act establishes the basic requirements for the rulemaking process
- It covers filing, publication and compilation requirements for rules
- It does not cover all steps necessary for rulemaking
- It does not cover adjudication

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### Additional Requirements

Agencies have additional rulemaking requirements from:

- Other statutes
  - Uniform Licensing Act
  - Executive Reorganization Act
  - Specific Organic Acts [Enabling Statutes]
- Rules
  - Rules on rules
  - Agency's own rules

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### No Uniform Statutes

In New Mexico, there are no uniform statutes that cover all agencies regarding:

- Adjudication
- Office of administrative hearings
- Legislative review

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### Unifying Rulemaking Laws

- 1970s – New APA by Legislature, but vetoed
- 1980s – Multiple attempts, NM Register
- 1990s – NM Administrative Code
- 2000s – Regulatory Justice / Reform
- 2010s – APA Task Force

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### Senate Joint Memorial 7

- 2010 legislative session
- SJM 7 to create a task force to study administrative procedures
- Varied interests represented on task force
- Support from all sides
- Died in last days of session

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### Lt. Governor's Task Force

- Lt. Governor formed a task force based on SJM 7
- Similar composition
- Same objectives

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### APA Task Force

- 2 State Representatives
- 2 State Senators
- Superintendent of Regulation and Licensing
- Secretary of Taxation and Revenue
- Secretary of Economic Development
- Secretary of Environment
- Secretary of Energy, Minerals and Natural Resources
- 2 representatives from New Mexico boards or commissions
- Attorney General
- Member of the State Bar of New Mexico
- Member from the faculty of the University of New Mexico School of Law
- Member representing the interests of the judicial branch
- 2 Members representing the interests of different industries affected by regulatory proceedings
- 2 Members representing public advocacy groups
- State Records Administrator

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### The Work

- APA Task Force began meeting in May 2010
- Met at least once every 3 week through the beginning of December 2010
- Initially discussed administrative procedures in general
- Eventually got more detailed
- Finally wrote proposed statutory text

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### Rulemaking Only

- Early on it was decided to focus on rulemaking only
- Adjudication was too big an issue to include
- More consensus on rulemaking – also more existing uniform statutes
- Hope to cover adjudication later

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### Dream Process

- Began by designing the “dream process” for rulemaking
- Charted out the process on huge pieces of paper
- Added a new step at the start to encourage public participation in the drafting of the rule text
- More concise explanation of the steps

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### Amend State Rules Act

- Decided to amend the State Rules Act instead of repealing and replacing with a new act
- The State Rules Act has functioned fairly well for 43 years and there was concern about doing away with it for something untested

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### Fill in the Gaps

- Compared the “dream process” with the State Rules Act
- Noted where there were gaps in the State Rules Act
- Used the Feb 2010 version of the MSAPA for ideas and verbiage to fill in the gaps

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### Draft Amendment

- Drafting took more time than anticipated
- Specific members were assigned sections of the MSAPA to redraft for New Mexico
- Submitted to task force before meeting
- Went through each section, word by word, in meeting
- Had a “reporter” to make changes to the text

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### Administrative Hearings

- Also drafted a new act, independent of the State Rules Act, to establish an Office of Administrative Hearings
- Based heavily on MSAPA
- Some debate on how many agencies should be required initially to use OAH

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### Regulatory Process Subcommittee

- Interim Subcommittee of the Legislature
- 18 members from 3 Interim Committees
  - Revenue Stabilization and Tax Policy
  - Economic and Rural Development
  - Courts, Corrections and Justice
- Met August 2 & 3, 2010 and October 27, 2010
- Potential overlap with the work from the APA Task Force

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### Subcommittee Work Plan

- Review the impact of rulemaking
- Review the MSAPA
- Review state agencies' interpretation of legislation and their rulemaking authority and adjudicatory functions
- Determine any necessary legislative action on regulatory process
- Prepare a subcommittee report

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### Final Review

- May through July constructing “dream process”
- August through November drafting text
- Legislative Subcommittee review in October
- Interim Committee endorsement in December

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### Bills Introduced – State Rules

- Senate Bill 30
  - Introduced on the first day of the session but has not been heard by first committee yet
- House Bill 360
  - Introduced this week (near the middle of the session)

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### Bills Introduced - OAH

- SB 67
  - Introduced on the first day of the session but has not been heard by first committee yet
- SB 104
  - A bill not made by the APA Task Force but almost identical to SB 67. Difference on where the OAH resides

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### Questions?

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