

REGULATORY JUSTICE

A Call for Consistency and Accountability
in New Mexico's Regulatory Framework

For the
IPAMS & NCSL
Wednesday, December 13, 2006



Current Status of NM's Regulatory System:

New Mexico Agencies:

- Approximately 36 executive departments and independent agencies
- Approximately 208 boards and commissions
- Within the New Mexico Administrative Code, 22 Titles, 384 Chapters, and thousands of rules and regulations under each Chapter



Current Status of NM's Regulatory System:

- Over the years, the trend in NM's regulatory system has resulted in increases in:
 - Number of Administrative Agencies
 - Volume of Rules and Regulations
 - Complexity in Administrative Actions
 - Discretion for Regulators
- Result – Difficult for the public and business community to navigate the administrative maze!

Administrative Law in NM:

Major Milestones for Broad-Based Regulatory Reform:

- **1946** – Federal government enacted the federal Administrative Procedures Act
- **1957** – NM enacted the Uniform Licensing Act
- **1967** – NM enacted the State Rules Act
- **1969** – NM enacted the state Administrative Procedures Act
- **1977** – NM enacted the Executive Reorganization Act
- **1993** – NM enacted the Inspection of Public Records Act
- **1997** – NM enacted the Uniform Statute and Rule Construction Act
- **2005** – NM enacted the Small Business Regulatory Relief Act

Administrative Law in NM:

- Major Problem – the state Administrative Procedures Act does not apply to most agencies

- Result
 - Few uniform regulatory controls apply to **all** State agencies;
 - Agencies are allowed to establish their own administrative procedures without regard to cross-agency uniformity or consistency

- Impact - regulatory system is complex and not user-friendly

- Regulatory reform in NM has been incremental and only focused on particular agencies and topics

Regulatory Justice - Development:

- In the Spring of 2006, a group of businesses, industry groups, trade associations, and other interested parties began meeting in an informal network
- Goal – Develop proactive solutions to some of the **common** regulatory obstacles facing the business community.
- Conclusion - NM needs to closely examine the overall procedural framework within which agencies operate; without necessary procedural controls, agencies may either intentionally or inadvertently use their delegated authority to undermine the true intent of the legislative or executive branches of government
- *Broad-based regulatory reform is long overdue!*

Regulatory Justice – Development:

- “Regulatory Justice” is based on the principle that government should create a regulatory system that is simple and clear, enhances confidence, promotes accountability, and ensures consistency in administrative proceedings.

- The following groups have signed on to the principle of the Regulatory Justice effort:
 - New Mexico Cattle Growers’ Association
 - Dairy Producers of New Mexico
 - Dairy Farmers of America
 - New Mexico Farm Bureau
 - Northern New Mexico Independent Electrical Contractors
 - New Mexico Mining Association
 - New Mexico Home Builders Association
 - Independent Petroleum Association of New Mexico
 - New Mexico Water Utilities Association
 - Association of Commerce and Industry

- Other groups, such as various local chambers of commerce, continue to endorse the Regulatory Justice concepts, and we are in the process of updating the list of groups supporting this effort.

Regulatory Justice - Solving Administrative Obstacles and Problems:

- Lack of a generally applicable Administrative Procedures Act
- Need meaningful standards and limitations for rulemaking
- Lack of a formal process for interested stakeholders to negotiate rules
- Need for a central panel of independent hearing officers and administrative law judges

Regulatory Justice - Solving Administrative Obstacles and Problems:

- Lack generally applicable requirements for all agencies to follow when filing, publishing, and distributing agency proceedings
- Lack of generally applicable time frames for agencies to act when dealing with licenses and permits
- Lack generally applicable set of uniform inspection procedures
- Lack of applicable standards for setting fees
- Need for the right to proceed directly to court for substantial monetary sanctions

Regulatory Justice - Solving Administrative Obstacles and Problems:

- Need for a party to recover costs and attorney's fees where an agency pursues an adjudicatory proceeding without merit
- Lack of a generally applicable requirement to assess economic impacts when promulgating rules
- Need for agencies to periodically review all of their rules
- Need for agencies to publish their regulatory agendas setting forth anticipated topics



Regulatory Justice - Solving Administrative Obstacles and Problems:

- Need for a comprehensive administrative mechanism for a person or business to raise concerns about unnecessary burdens placed on the regulated community, as well as unfair regulatory practices
- Need for a continuing and formal process to identify and develop solutions to regulatory obstacles and problems
- Need for formal process for agencies to report to legislative interim committees the current status of affairs in the regulatory system

Regulatory Justice – Best Practices & Draft Legislation:

- Studied best regulatory practices from other states
- Prepared draft bills and discussion papers to outline the important concepts
- Intent of current package of standardize and simplify the administrative framework

Regulatory Justice – Best Practices & Draft Legislation:

- **Administrative Procedures Act** – amends state APA to make it applicable to all agencies
- **Administrative Negotiated Rulemaking Act** - provides a formal framework for interested stakeholders to negotiate rules with New Mexico agencies; modeled after federal Negotiated Rulemaking Act
- **Administrative Adjudications Act** - creates a central panel of hearing officers and ALJs and gives a regulated person the right to request and independent hearing officer or ALJ from this central panel
- **Administrative Publications and Reporting Act** - provides cross-agency uniformity and consistency with respect to filing, publishing, and distributing agency proceedings

Regulatory Justice – Best Practices & Draft Legislation:

- ❑ **Administrative Time Frames Act** - requires agencies to establish time frames for agency decision-making, including issuance of permits
- ❑ **Administrative Inspection Procedures Act** - requires agencies to follow a uniform set of procedures when conducting an inspection pursuant to a license
- ❑ **Administrative Fees and Sanctions Act** - mandates that any fees imposed by an agency derive from statutory authority and be allocated to general fund; provides a mechanism for a regulated person to bypass administrative adjudications dealing with substantial monetary sanctions
- ❑ **Administrative Attorney's Fees and Costs Act** - allows a person to recover attorney's fees and costs against an agency if the person prevails in an adjudicatory proceeding against an agency
- ❑ **Administrative Regulatory Relief Act** - establishes a fair, effective, and efficient means for the general public to raise concerns over unfair regulatory practices; required agencies to assess economic impact when promulgating rules

Regulatory Justice – Impact on Energy in New Mexico:

- **Number of Benefits**

- **Immediate Impacts:**
 - Fundamentally changes the way energy is regulated
 - Require agencies to engage in more thoughtful deliberations when promulgating rules impacting energy industry