

ASSEMBLY, No. 598

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen LUSTBADER and AUGUSTINE

1 AN ACT concerning the evaluation of administrative rules for their  
2 potential to constitute unconstitutional takings, and amending and  
3 supplementing P.L.1968, c.410.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

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8 1. (New section) The Attorney General shall establish guidelines  
9 which shall be used by State agencies in their evaluation of rules prior  
10 to their adoption, amendment or repeal, to assess the potential of a  
11 rule to constitute a taking of real property. The guidelines shall be  
12 based upon the most current law as articulated by the United States  
13 Supreme Court and the New Jersey Supreme Court. The Attorney  
14 General shall review and, if necessary update the guidelines on an  
15 annual basis.

16 As used in this section, "State agency" means each of the principal  
17 departments in the executive branch of the State government, and all  
18 boards, divisions, commissions, agencies, councils, authorities, offices  
19 or officers with any such department authorized to grant, deny,  
20 modify, suspend or revoke a license, permit, certificate, approval,  
21 chapter, registration, or other form of permission required by law,  
22 other than a license or certificate issued to an individual for the  
23 practice of a profession or occupation; and "Taking" means the taking  
24 of real property for public use which would require compensation  
25 pursuant to the United States constitution or the New Jersey State  
26 constitution.

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28 2. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read  
29 as follows:

30 4. (a) Prior to the adoption, amendment, or repeal of any rule,  
31 except as may be otherwise provided, the agency shall:

32 (1) Give at least 30 days' notice of its intended action. The notice

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 shall include a statement of either the terms or substance of the  
2 intended action or a description of the subjects and issues involved,  
3 and the time when, the place where, and the manner in which  
4 interested persons may present their views thereon. The notice shall  
5 be mailed to all persons who have made timely requests of the agency  
6 for advance notice of its rule-making proceedings and in addition to  
7 other public notice required by law shall be published in the New  
8 Jersey Register and shall be filed with the President of the Senate and  
9 the Speaker of the General Assembly. The notice shall be additionally  
10 publicized in such manner as the agency deems most appropriate in  
11 order to inform those persons most likely to be affected by or  
12 interested in the intended action. Methods that may be employed  
13 include publication of the notice in newspapers of general circulation  
14 or in trade, industry, governmental or professional publications,  
15 distribution of press releases to the news media and posting of notices  
16 in appropriate locations;

17 (2) Prepare for public distribution at the time the notice appears in  
18 the Register a statement setting forth a summary of the proposed rule,  
19 a clear and concise explanation of the purpose and effect of the rule,  
20 the specific legal authority under which its adoption is authorized, a  
21 description of the expected socio-economic impact of the rule, [and]  
22 a regulatory flexibility analysis, or the statement of finding that a  
23 regulatory flexibility analysis is not required, as provided in section 4  
24 of P.L.1986, c.169 (C.52:14B-19) and an evaluation of the rule for its  
25 potential to result in a taking, based upon guidelines established by the  
26 Attorney General pursuant to section 1 of P.L. , c. (C. ) (now  
27 before the Legislature as this bill);

28 (3) Afford all interested persons reasonable opportunity to submit  
29 data, views, or arguments, orally or in writing. The agency shall  
30 consider fully all written and oral submissions respecting the proposed  
31 rule.

32 The agency shall conduct a public hearing on the proposed rule at  
33 the request of a committee of the Legislature, or a governmental  
34 agency or subdivision, provided such request is made to the agency  
35 within 15 days following publication of the proposed rule in the  
36 Register. The agency shall provide at least 15 days' notice of such  
37 hearing, which shall be conducted in accordance with the provisions  
38 of subsection (g) of this section;

39 (4) Prepare for public distribution a report listing all parties  
40 offering written or oral submissions concerning the rule, summarizing  
41 the content of the submissions and providing the agency's response to  
42 the data, views and arguments contained in the submissions.

43 (b) A rule prescribing the organization of an agency may be  
44 adopted at any time without prior notice or hearing. Such rules shall  
45 be effective upon filing in accordance with section 5 of this act or  
46 upon any later date specified by the agency.

1 (c) If an agency finds that an imminent peril to the public health,  
2 safety, or welfare requires adoption of a rule upon fewer than 30 days'  
3 notice and states in writing its reasons for that finding, and the  
4 Governor concurs in writing that an imminent peril exists, it may  
5 proceed without prior notice or hearing, or upon any abbreviated  
6 notice and hearing that it finds practicable, to adopt the rule. The rule  
7 shall be effective for a period of not more than 60 days unless each  
8 house of the Legislature passes a resolution concurring in its extension  
9 for a period of not more than 60 additional days. The rule shall not be  
10 effective for more than 120 days unless repromulgated in accordance  
11 with normal rule-making procedures.

12 (d) No rule hereafter adopted is valid unless adopted in substantial  
13 compliance with this act. A proceeding to contest any rule on the  
14 ground of noncompliance with the procedural requirements of this act  
15 shall be commenced within one year from the effective date of the rule.

16 (e) An agency may file a notice of intent with respect to a proposed  
17 rule-making proceeding with the Office of Administrative Law, for  
18 publication in the New Jersey Register at any time prior to the formal  
19 notice of action required in subsection (a) of this section. The notice  
20 shall be for the purpose of eliciting the views of interested parties on  
21 an action prior to the filing of a formal rule proposal. An agency may  
22 use informal conferences and consultations as means of obtaining the  
23 viewpoints and advice of interested persons with respect to  
24 contemplated rule-making. An agency may also appoint committees of  
25 experts or interested persons or representatives of the general public  
26 to advise it with respect to any contemplated rule-making.

27 (f) An interested person may petition an agency to promulgate,  
28 amend or repeal any rule. Each agency shall prescribe the form for the  
29 petition and the procedure for the submission, consideration and  
30 disposition of the petition. The petition shall state clearly and  
31 concisely:

32 (1) The substance or nature of the rule-making which is requested;

33 (2) The reasons for the request and the petitioner's interest in the  
34 request;

35 (3) References to the authority of the agency to take the requested  
36 action.

37 Within 30 days following receipt of any such petition, the agency  
38 shall either deny the petition, giving a written statement of its reasons,  
39 or shall proceed to act on the petition, which action may include the  
40 initiation of a formal rule-making proceeding. Upon the receipt of the  
41 petition, the agency shall file a notice stating the name of the petitioner  
42 and the nature of the request with the Office of Administrative Law for  
43 publication in the New Jersey Register. Notice of formal agency action  
44 on such petition shall also be filed with the division for publication in  
45 the Register.

46 (g) All public hearings shall be conducted by a hearing officer, who

1 may be an official of the agency, a member of its staff, a person on  
2 assignment from another agency, a person from the Office of  
3 Administrative Law assigned pursuant to subsection o. of section 5 of  
4 P.L.1978, c.67 (C.52:14F-5o.) or an independent contractor. The  
5 hearing officer shall have the responsibility to make recommendations  
6 to the agency regarding the adoption, amendment or repeal of a rule.  
7 These recommendations shall be made public. At the beginning of  
8 each hearing, or series of hearings, the agency, if it has made a  
9 proposal, shall present a summary of the factual information on which  
10 its proposal is based, and shall respond to questions posed by any  
11 interested party. Hearings shall be conducted at such times and in  
12 locations which shall afford interested parties the opportunity to  
13 attend. A verbatim transcript of each hearing shall be maintained, and  
14 copies of the transcript shall be available to the public at no more than  
15 the actual cost.

16 (cf: P.L.1986, c.169, s.7)

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18 3. This act shall take effect immediately.

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#### STATEMENT

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23 This bill would require that the notice of the adoption, amendment,  
24 or repeal of any administrative rule include an evaluation of the rule's  
25 potential to constitute a taking of real property in violation of the  
26 federal and State constitutional provisions which prohibit the taking of  
27 private property for public use without just compensation. The bill  
28 would require that the Attorney General establish guidelines for the  
29 review of administrative rules that conform to the law as articulated in  
30 the most current United States Supreme Court and Supreme Court of  
31 New Jersey opinions.

32 The provisions of this bill follow a national trend of state  
33 governments to be more sensitive to the effect of regulations upon the  
34 rights of private property owners. To date, four other states have  
35 adopted legislation similar to this bill.

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40 Requires State agencies to evaluate proposed administrative rules for  
41 potential to constitute a taking of real property based on criteria  
42 established by Attorney General.