

ASSEMBLY, No. 646

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen IMPREVEDUTO and KELLY

1 AN ACT concerning public hearings on proposed rules and amending
2 P.L.1968, c.410.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
8 as follows:

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

11 (1) Give at least 30 days' notice of its intended action. The notice
12 shall include a statement of either the terms or substance of the
13 intended action or a description of the subjects and issues involved,
14 and the time when, the place where, and the manner in which
15 interested persons may present their views thereon. The notice shall
16 be mailed to all persons who have made timely requests of the agency
17 for advance notice of its rule-making proceedings and in addition to
18 other public notice required by law shall be published in the New
19 Jersey Register and shall be filed with the President of the Senate and
20 the Speaker of the General Assembly. The notice shall be additionally
21 publicized in such manner as the agency deems most appropriate in
22 order to inform those persons most likely to be affected by or
23 interested in the intended action. Methods that may be employed
24 include publication of the notice in newspapers of general circulation
25 or in trade, industry, governmental or professional publications,
26 distribution of press releases to the news media and posting of notices
27 in appropriate locations;

28 (2) Prepare for public distribution at the time the notice appears in
29 the Register a statement setting forth a summary of the proposed rule,
30 a clear and concise explanation of the purpose and effect of the rule,
31 the specific legal authority under which its adoption is authorized, a
32 description of the expected socio-economic impact of the rule, and a

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 regulatory flexibility analysis, or the statement of finding that a
2 regulatory flexibility analysis is not required, as provided in section 4
3 of P.L. 1986, c. 169 (C. 52:14B-19);

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

8 The agency shall conduct a public hearing on the proposed rule [at
9 the request of a committee of the Legislature, or a governmental
10 agency or subdivision, provided such request is made to the agency
11 within 15 days following publication of the proposed rule in the
12 Register. The agency] and shall provide at least 15 days' notice of
13 such hearing, which shall be conducted in accordance with the
14 provisions of subsection (g) of this section;

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

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

23 (c) If an agency finds that an imminent peril to the public health,
24 safety, or welfare requires adoption of a rule upon fewer than 30 days'
25 notice and states in writing its reasons for that finding, and the
26 Governor concurs in writing that an imminent peril exists, it may
27 proceed without prior notice or hearing, or upon any abbreviated
28 notice and hearing that it finds practicable, to adopt the rule. The rule
29 shall be effective for a period of not more than 60 days unless each
30 house of the Legislature passes a resolution concurring in its extension
31 for a period of not more than 60 additional days. The rule shall not be
32 effective for more than 120 days unless repromulgated in accordance
33 with normal rule-making procedures.

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

38 (e) An agency may file a notice of intent with respect to a proposed
39 rule-making proceeding with the Office of Administrative Law, for
40 publication in the New Jersey Register at any time prior to the formal
41 notice of action required in subsection (a) of this section. The notice
42 shall be for the purpose of eliciting the views of interested parties on
43 an action prior to the filing of a formal rule proposal. An agency may
44 use informal conferences and consultations as means of obtaining the
45 viewpoints and advice of interested persons with respect to
46 contemplated rule-making. An agency may also appoint committees of

1 experts or interested persons or representatives of the general public
2 to advise it with respect to any contemplated rule-making.

3 (f) An interested person may petition an agency to promulgate,
4 amend or repeal any rule. Each agency shall prescribe the form for the
5 petition and the procedure for the submission, consideration and
6 disposition of the petition. The petition shall state clearly and
7 concisely:

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

9 (2) The reasons for the request and the petitioner's interest in the
10 request;

11 (3) References to the authority of the agency to take the requested
12 action.

13 Within 30 days following receipt of any such petition, the agency
14 shall either deny the petition, giving a written statement of its reasons,
15 or shall proceed to act on the petition, which action may include the
16 initiation of a formal rule-making proceeding. Upon the receipt of the
17 petition, the agency shall file a notice stating the name of the petitioner
18 and the nature of the request with the Office of Administrative Law for
19 publication in the New Jersey Register. Notice of formal agency action
20 on such petition shall also be filed with the division for publication in
21 the Register.

22 (g) All public hearings shall be conducted by a hearing officer, who
23 may be an official of the agency, a member of its staff, a person on
24 assignment from another agency, a person from the Office of
25 Administrative Law assigned pursuant to subsection o. of section 5 of
26 P.L.1978, c.67 (C.52:14F-5o.) or an independent contractor. The
27 hearing officer shall have the responsibility to make recommendations
28 to the agency regarding the adoption, amendment or repeal of a rule.
29 These recommendations shall be made public. At the beginning of
30 each hearing, or series of hearings, the agency, if it has made a
31 proposal, shall present a summary of the factual information on which
32 its proposal is based, and shall respond to questions posed by any
33 interested party. Hearings shall be conducted at such times and in
34 locations which shall afford interested parties the opportunity to
35 attend. A verbatim transcript of each hearing shall be maintained, and
36 copies of the transcript shall be available to the public at no more than
37 the actual cost.

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

39

40 2. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 The purpose of this bill is to require that a public hearing be held by
46 a State agency prior to the promulgation of a proposed rule or

1 regulation by that agency pursuant to the "Administrative Procedure
2 Act."

3

4 Under current law, an agency must conduct a public hearing on a
5 proposed rule if such hearing has been requested by a committee of the
6 Legislature or a governmental agency or subdivision, provided the
7 request is made within 15 days after the proposed rule is published in
8 the New Jersey Register. Except for such requests, agencies are not
9 required to provide for public hearings as part of the rulemaking
10 process unless required to do so by other statutory authorities.

11

12

13

14

15 Requires public hearing be held prior to promulgation of a proposed
16 rule by a State agency.