

ASSEMBLY, No. 1175

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DALTON

1 AN ACT concerning the administrative determination of the invalidity
2 of a proposed rule and amending P.L.1968, c.410.

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

6
7 1. Section 2 of P.L.1968, c.410 (C.52:14B-2) is amended to read
8 as follows:

9 2. As used in this act:

10 **[(a)]a.** "State agency" or "agency" shall include each of the
11 principal departments in the executive branch of the State
12 Government, and all boards, divisions, commissions, agencies,
13 departments, councils, authorities, offices or officers within any such
14 departments now existing or hereafter established and authorized by
15 statute to make, adopt or promulgate rules or adjudicate contested
16 cases, except the office of the Governor.

17 **[(b)]b.** "Contested case" means a proceeding, including any
18 licensing proceeding, in which the legal rights, duties, obligations,
19 privileges, benefits or other legal relations of specific parties are
20 required by constitutional right or by statute to be determined by an
21 agency by decisions, determinations, or orders, addressed to them or
22 disposing of their interests, after opportunity for an agency hearing,
23 but shall not include any proceeding in the Division of Taxation,
24 Department of the Treasury, which is reviewable de novo by the Tax
25 Court.

26 **[(c)]c.** "Administrative adjudication" or "adjudication" includes any
27 and every final determination, decision or order made or rendered in
28 any contested case.

29 **[(d)]d.** "The head of the agency" means and includes the individual
30 or group of individuals constituting the highest authority within any
31 agency authorized or required by law to render an adjudication in a
32 contested case.

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 [(e)]e. "Administrative rule" or "rule," when not otherwise
2 modified, means each agency statement of general applicability and
3 continuing effect that implements or interprets law or policy, or
4 describes the organization, procedure or practice requirements of any
5 agency. The term includes the amendment or repeal of any rule, but
6 does not include: (1) statements concerning the internal management
7 or discipline of any agency; (2) intraagency and interagency
8 statements; and (3) agency decisions and findings in contested cases.

9 [(f)]f. "License" includes the whole or part of any agency license,
10 permit, certificate, approval, chapter, registration or other form of
11 permission required by law.

12 [(g)]g. "Secretary" means the Secretary of State.

13 [(h)]h. "Director" means the Director of the Office of
14 Administrative Law, unless otherwise indicated by context.

15 i. "A description of the expected socio-economic impact of the
16 rule" means:

17 (1) A statement which describes the expected social impact of the
18 proposed rulemaking on the public, particularly on any segments of the
19 public proposed to be regulated and including any proposed or
20 expected differential impact on different segments of the public and
21 justification therefor; for those proposals that will impact differently
22 on those who will be regulated, the statement shall explain any scales
23 or ranges built into the proposal to account for the differences or shall
24 explain why the proposing agency has not accounted for the
25 differences among those regulated; and

26 (2) A statement which describes the expected costs, revenues, and
27 other economic impact upon governmental bodies of the State and any
28 segments of the public proposed to be regulated; if the agency has
29 considered and rejected modifications which would lessen the
30 economic impact on the regulated, it shall explain why the
31 modifications were undesirable.

32 j. "Standards of rulemaking" means:

33 (1) Authority and reference: the agency has demonstrated in the
34 rulemaking record that it has the legal authority to adopt the rule and
35 that the proposed rule is within the scope of that legal authority, that
36 it has cited the appropriate statutory or judicial reference to the
37 provisions of law which the rule implements or interprets, that it has
38 provided an adequate description of the expected socio-economic
39 impact of the rule and an adequate regulatory flexibility analysis, if
40 required, and that it has complied with all applicable rulemaking
41 requirements;

42 (2) Necessity and purpose: the agency has demonstrated in the
43 rulemaking record the necessity for the rule and has provided an
44 adequate explanation of the rule's intended purpose and effect;

45 (3) Consideration of objections and public burden: the agency has
46 satisfactorily responded to formal objections offered in the rulemaking

1 record and has demonstrated that any burden imposed by the rule is
2 necessary and reasonable in light of the rule's intended purpose; and

3 (4) Clarity and consistency: the agency has written the rule in a
4 manner that will enable those persons directly affected by it to
5 understand the rule's meaning and effect, and has demonstrated that
6 the rule is consistent with existing rules, laws, and judicial
7 determinations.

8 (cf: P.L.1981, c.511, s.21)

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

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

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

31 (2) Prepare for public distribution at the time the notice appears in
32 the Register a statement setting forth a summary of the proposed rule,
33 a clear and concise explanation of the purpose and effect of the rule,
34 the specific legal authority under which its adoption is authorized, a
35 description of the expected socio-economic impact of the rule, and a
36 regulatory flexibility analysis, or the statement of finding that a
37 regulatory flexibility analysis is not required, as provided in section 4
38 of P.L.1986, c.169 (C.52:14B-19);

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

43 The agency shall conduct a public hearing on the proposed rule at
44 the request of a committee of the Legislature, or a governmental
45 agency or subdivision, provided such request is made to the agency
46 within 15 days following publication of the proposed rule in the

1 Register. The agency shall provide at least 15 days' notice of such
2 hearing, which shall be conducted in accordance with the provisions
3 of subsection ~~[(g)]h.~~ of this section;

4 (4) Prepare for public distribution and publish in the Register a
5 notice of pending adoption along with a report listing all parties
6 offering written or oral submissions concerning the rule, summarizing
7 the content of the submissions and providing the agency's response to
8 the data, views and arguments contained in the submissions.

9 b. (1) Within 15 days after the publication of the notice of pending
10 adoption, any substantially affected person may file a petition seeking
11 an administrative determination of the invalidity of any proposed rule
12 on the ground that the proposed rule is in violation of one or more of
13 the standards of rulemaking. The petition shall be filed with the
14 director and shall state with particularity the provisions of the rule
15 alleged to be invalid with sufficient explanation of the facts or grounds
16 for the alleged violation of the standards of rulemaking and facts
17 sufficient to show that the person challenging the proposed rule would
18 be substantially affected by it.

19 (2) Within 10 days after receiving the petition, if the director
20 determines that the petition complies with the above requirements, an
21 administrative law judge shall be assigned who shall conduct a hearing
22 within 30 days thereafter, unless the petition is withdrawn. Within 30
23 days after conclusion of the hearing, the administrative law judge shall
24 render a decision and state the reasons therefor in writing. The
25 administrative law judge may declare the proposed rule invalid in
26 whole or in part. The proposed rule or provision of a proposed rule
27 declared invalid shall not be adopted. In the event part of a proposed
28 rule is declared invalid, the adopting agency may, in its sole discretion,
29 withdraw the proposed rule in its entirety. The agency whose
30 proposed rule has been declared invalid in whole or in part shall give
31 notice of the decision in the New Jersey Register. A proposed rule
32 which has been declared valid may be adopted by the agency and any
33 subsequent appeal shall be to the Appellate Division of the Superior
34 Court.

35 (3) Hearings held under this subsection shall be conducted on an
36 expedited basis, and the administrative law judge's order shall be the
37 final administrative decision. The agency proposing the rule and the
38 person requesting the hearing shall be adversary parties. Other
39 substantially affected persons may join the proceedings as parties or
40 intervenor on appropriate terms which will not substantially delay the
41 proceedings. Failure to proceed under this subsection shall not
42 constitute failure to exhaust administrative remedies. Any party may
43 appeal the order of the administrative law judge to the Appellate
44 Division of the Superior Court.

45 [(b)]c. A rule prescribing the organization of an agency may be
46 adopted at any time without prior notice or hearing. Such rules shall

1 be effective upon filing in accordance with section 5 of this act or
2 upon any later date specified by the agency.

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

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

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

31 [(f)]g. An interested person may petition an agency to promulgate,
32 amend or repeal any rule. Each agency shall prescribe the form for the
33 petition and the procedure for the submission, consideration and
34 disposition of the petition. The petition shall state clearly and
35 concisely:

- 36 (1) The substance or nature of the rule-making which is requested;
37 (2) The reasons for the request and the petitioner's interest in the
38 request;
39 (3) References to the authority of the agency to take the requested
40 action.

41 Within 30 days following receipt of any such petition, the agency
42 shall either deny the petition, giving a written statement of its reasons,
43 or shall proceed to act on the petition, which action may include the
44 initiation of a formal rule-making proceeding. Upon the receipt of the
45 petition, the agency shall file a notice stating the name of the petitioner
46 and the nature of the request with the Office of Administrative Law for

1 publication in the New Jersey Register. Notice of formal agency action
2 on such petition shall also be filed with the division for publication in
3 the Register.

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

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

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22 3. This act shall take effect immediately.
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25 STATEMENT

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27 This bill establishes a procedure for the administrative
28 determination of the invalidity of a proposed rule. It requires an
29 agency which is proposing a rule to file a notice of pending adoption
30 in the New Jersey Register at the time the agency publishes a report
31 summarizing the submissions received and the agency's response to the
32 submissions.

33 Within 15 days after the publication of the notice of pending
34 adoption, any substantially affected person may file a petition seeking
35 an administrative determination of the invalidity of any proposed rule
36 on the ground that the proposed rule is in violation of one or more of
37 the standards of rulemaking. The standards of rulemaking are defined
38 in detail under the topics of authority and reference, necessity and
39 purpose, consideration of objections and public burden, and clarity and
40 consistency.

41 If, within 10 days after receiving the petition, the Director of the
42 Office of Administrative Law determines that the petition complies
43 with the specified requirements, an administrative law judge will be
44 assigned who will conduct a hearing within 30 days thereafter. The
45 administrative law judge will render a decision within 30 days after the
46 conclusion of the hearing and may declare the proposed rule invalid in

1 whole or in part. A proposed rule which has been declared valid may
2 be adopted. Hearings will be on an expedited basis, and the
3 administrative law judge's decision shall be the final administrative
4 decision. Any party may appeal the order of the administrative law
5 judge to the Appellate Division of the Superior Court.

6 The bill also defines the description of the expected socio-economic
7 impact of a proposed rule, one of the impact statements which is
8 published in the Register when a rule is initially proposed.

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13 Provides procedure for the administrative determination of the
14 invalidity of a proposed rule.