

ASSEMBLY, No. 1612

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 29, 1996

By Assemblywoman HECK

1 AN ACT concerning rule-making and the Office of Administrative
2 Law, amending P.L.1968, c.410, P.L.1978, c.67 and P.L.1981,
3 c.27, supplementing P.L.1968, c.410 (C.52:14B-1 et seq.) and
4 repealing sections 4 through 7, inclusive, of P.L.1981, c.27.

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

8
9 1. Section 3 of P.L.1968, c.410 (C.52:14B-3) is amended to read as
10 follows:

11 3. In addition to other rule-making requirements imposed by law,
12 each agency shall:

13 (1) adopt as a rule a description of its organization, stating the
14 general course and method of its operations and the methods whereby
15 the public may obtain information or make submissions or requests;

16 (2) adopt rules of practice setting forth the nature and requirements
17 of all formal and informal procedures available, including a description
18 of all forms and instructions used by the agency, and a description of
19 all permits and their fees, deadlines, processing times and appeals
20 procedures;

21 (3) make available for public inspection all final orders, decisions,
22 and opinions, in accordance with the provisions of chapter 73 of the
23 laws of 1963 as amended and supplemented (C.47:1A-1 et seq.);

24 (4) publish in the New Jersey Register a monthly calendar setting
25 forth a binding schedule of the agency's anticipated rule-making
26 activities for the next six months. The calendar shall include the name
27 of the agency and agency head, a citation to the legal authority
28 authorizing the rule-making action and a synopsis of the subject matter
29 and the objective or purpose of the agency's proposed rules. The
30 calendar also shall indicate where and when interested persons may
31 submit their comments, orally or in writing, and the dates and
32 locations of any hearings or other meetings relating to the rule-making
33 process. If more than 25 interested parties acting individually submit
34 comments, the proposing agency shall hold a public hearing on the

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 matter.

2 In a manner prescribed by the Director of the Office of
3 Administrative Law, each agency shall appropriately publicize that
4 copies of its calender are available to interested persons for a
5 reasonable fee. The amount of the fee shall be set by the director.

6 An agency may petition the Director of the Office of Administrative
7 Law to amend its calender of rule-making activities. Any petition
8 granted by the director which involves the addition of any rule-making
9 activity to an agency's calender shall provide that the agency shall take
10 no action on that matter until at least 90 days following the first
11 publication of the amended calender in which the announcement of
12 that proposed rule-making activity first appears.

13 The provisions of this subparagraph shall not apply to rule-making:

14 (a) governed by federal law;

15 (b) subject to a specific statutory authorization requiring
16 promulgation in a lesser time period; or

17 (c) involving an imminent peril subject to provisions of subsection
18 (c) of section 4 of P.L.1986, c.410 (C.52:14B-4).

19 (cf: P.L.1968, c.410, s.3)

20

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

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

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

42 (2) Prepare for public distribution at the time the notice appears in
43 the Register a statement setting forth a summary of the proposed rule,
44 a clear and concise explanation of the purpose and effect of the rule,
45 the specific legal authority under which its adoption is authorized, a
46 [description of the expected socio-economic] regulatory impact

1 analysis of the rule in accordance with the requirements of section 11
2 of P.L. , c. (C.)(now pending before the Legislature as this
3 bill), a regulatory flexibility analysis, or the statement of finding that
4 a regulatory flexibility analysis is not required, as provided in section
5 4 of P.L.1986, c.169 (C.52:14B-19) and a jobs impact statement
6 which shall include an assessment of the number of jobs to be
7 generated or lost if the proposed rule takes effect. Prior to filing a
8 notice of proposed rule with the Office of Administrative Law, the
9 agency shall submit the text of the proposed rule, its summary and
10 explanation of purpose and effect, and legal authority for the proposal
11 to the Attorney General for review. A proposed rule shall not be filed
12 unless it is accompanied by an affidavit signed by the head of the
13 agency which is proposing that rule certifying that the summary and
14 explanatory statements fully and fairly disclose the extent of the
15 proposed rule's application and impact. Any person who willfully and
16 knowingly violates the provisions of this paragraph shall be subject to
17 the penalties set forth in chapter 28 of Title 2C of the New Jersey
18 Statutes; and

19 (3) Afford all interested persons reasonable opportunity to submit
20 data, views, or arguments, orally or in writing. The agency shall
21 consider fully all written and oral submissions respecting the proposed
22 rule. If within 30 days of the publication of the proposed rule more
23 than 25 interested parties acting individually request an extension, the
24 agency shall provide an additional 30 day period for the receipt of
25 submissions by interested parties. The agency shall not adopt the
26 proposed rule until after the end of that 30 day extension.

27 The agency shall conduct a public hearing on the proposed rule at
28 the request of a committee of the Legislature, or a governmental
29 agency or subdivision, provided such request is made to the agency
30 within [15]30 days following publication of the proposed rule in the
31 Register. The agency shall provide at least 15 days' notice of such
32 hearing, which shall be conducted in accordance with the provisions
33 of subsection (g) of this section;

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

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

42 (c) If an agency finds that an imminent peril to the public health,
43 safety, or welfare requires adoption of a rule upon fewer than 30 days'
44 notice and states in writing its reasons for that finding, and the
45 Governor concurs in writing that an imminent peril exists, it may
46 proceed without prior notice or hearing, or upon any abbreviated

1 notice and hearing that it finds practicable, to adopt the rule. The rule
2 shall be effective for a period of not more than 60 days unless each
3 house of the Legislature passes a resolution concurring in its extension
4 for a period of not more than 60 additional days. The rule shall not be
5 effective for more than 120 days unless repromulgated in accordance
6 with normal rule-making procedures.

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

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

23 (f) An interested person may petition an agency to [~~promulgate~~]
24 adopt a new rule, or amend or repeal any existing rule. Each agency
25 shall prescribe by rule the form for the petition and the procedure for
26 the submission, consideration and disposition of the petition. The
27 petition shall state clearly and concisely:

- 28 (1) The substance or nature of the rule-making which is requested;
29 (2) The reasons for the request and the petitioner's interest in the
30 request;
31 (3) References to the authority of the agency to take the requested
32 action.

33 (4) The text of the proposed new rule, amended rule or repealed
34 rule.

35 Within [~~30~~] 60 days following receipt of any such petition, the
36 agency shall either: (i) deny the petition, giving a written statement of
37 its reasons [, or shall proceed to act on the petition, which action may
38 include the initiation of a formal rule-making proceeding] ; (ii) grant
39 the petition and initiate a rule-making proceeding within 90 days; or
40 (iii) refer the matter for further deliberations which shall be concluded
41 within 90 days. Upon conclusion of such further deliberations, the
42 agency shall either deny the petition and provide a written statement
43 of its reasons or grant the petition and initiate a rule-making
44 proceeding within 90 days. Upon the receipt of the petition, the
45 agency shall file a notice stating the name of the petitioner and the
46 nature of the request with the Office of Administrative Law for

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

4 If an agency fails to act in accordance with the timeframe set forth
5 in the preceding paragraph, the Director of the Office of
6 Administrative Law shall order a public hearing on the rule-making
7 petition and shall provide the public with a notice of that hearing at
8 least 15 days prior thereto. The public hearing shall be conducted by
9 an administrative law judge assigned by the director. The petitioner
10 and the agency shall participate in the public hearing and shall present
11 a summary of their positions on the petition, a summary of the factual
12 information on which their positions on the petition are based and shall
13 respond to questions posed by any interested party. The hearing
14 procedure shall otherwise be consistent with the requirements for the
15 conduct of a public hearing as prescribed in subsection (g), section 4
16 of P.L.1968, c.410 (C.52:14B-4), except that the administrative law
17 judge assigned to conduct the hearing shall make a report summarizing
18 the factual record presented and the arguments for and against
19 proceeding with a rule proposal based upon the petition. This report
20 shall be filed with the agency and delivered or mailed to the petitioner.
21 A copy of the report shall be filed with the Legislature along with the
22 petition for rule-making. The Legislature, pursuant to section 8 of
23 P.L. , c. (C.)(now pending before the Legislature as this bill),
24 shall review those materials forwarded by the office and may take such
25 action as it deems appropriate.

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

42 (cf: P.L.1995, c.166, s.1)

43

44 3. Section 5 of P.L.1968, c.410 (C.52:14B-5) is amended to read as
45 follows:

46 5. (a) Each agency shall file with the Director and Chief

1 Administrative Law Judge of the Office of Administrative Law a
2 certified copy of each rule adopted by it.

3 (b) [No rule hereafter adopted shall be effective unless it has been
4 deemed to be approved by the Legislature pursuant to section 3 of this
5 amendatory and supplementary act.]~~Deleted by amendment, P.L. . ,~~
6 c. (C.)(now pending before the Legislature as this bill)

7 (c) The director shall: (1) accept for filing or publication any rule
8 duly adopted and submitted by any agency pursuant to this act and
9 which meets all of the requirements and standards of P.L. . , c.
10 (C.)(now pending before the Legislature as this bill); (2) endorse
11 upon the certified copy of each rule accepted for filing pursuant to
12 this act the date and time upon which such rule was filed; [and] (3)
13 maintain the certified copy of each rule so filed in a permanent register
14 open to public inspection ; and (4) accept for publication a duly
15 adopted concurrent resolution of the Legislature specifying its
16 disapproval of a rule.

17 (d) The filing of a certified copy of any rule shall be deemed to
18 establish the rebuttable presumptions that: (1) it was duly adopted; (2)
19 it was duly submitted for prepublication and made available for public
20 inspection at the hour and date endorsed upon it; (3) all requirements
21 of this act and of interagency rules of the director relative to such rule
22 have been complied with; (4) its text is the text of the rule as adopted.
23 Judicial notice shall be taken of the text of each rule and of any
24 concurrent resolution of disapproval, duly filed.

25 (e) The publication of a rule in the New Jersey Administrative Code
26 or the New Jersey Register shall be deemed to establish the rebuttable
27 presumption that the rule was duly filed and that the text of the rule as
28 so published is the text of the rule adopted. Judicial notice shall be
29 taken of the text of each rule and of any concurrent resolution of
30 disapproval published in the New Jersey Administrative Code or the
31 New Jersey Register.

32 (cf: P.L.1993, c.343, s.2)

33

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

36 10. In contested cases:

37 (a) The parties shall not be bound by rules of evidence whether
38 statutory, common law, or adopted formally by the Rules of Court. All
39 relevant evidence is admissible, except as otherwise provided herein.
40 The administrative law judge may in his discretion exclude any
41 evidence if he finds that its probative value is substantially outweighed
42 by the risk that its admission will either (i) necessitate undue
43 consumption of time or (ii) create substantial danger of undue
44 prejudice or confusion. The administrative law judge shall give effect
45 to the rules of privilege recognized by law. Any party in a contested
46 case may present his case or defense by oral and documentary

1 evidence, submit rebuttal evidence and conduct such
2 cross-examination as may be required, in the discretion of the
3 administrative law judge, for a full and true disclosure of the facts.

4 (b) Notice may be taken of judicially noticeable facts. In addition,
5 notice may be taken of generally recognized technical or scientific
6 facts within the specialized knowledge of the agency or administrative
7 law judge. Parties shall be notified either before or during the hearing,
8 or by reference in preliminary reports or otherwise, of the material
9 noticed, including any staff memoranda or data, and they shall be
10 afforded an opportunity to contest the material so noticed. The
11 experience, technical competence, and specialized knowledge of the
12 agency or administrative law judge may be utilized in the evaluation of
13 the evidence, provided this is disclosed of record.

14 (c) All hearings of a State agency required to be conducted as a
15 contested case under this act or any other law shall be conducted by
16 an administrative law judge assigned by the Director and Chief
17 Administrative Law Judge of the Office of Administrative Law, except
18 as provided by this amendatory and supplementary act. A
19 recommended report and decision which contains recommended
20 findings of fact and conclusions of law and which shall be based upon
21 sufficient, competent, and credible evidence shall be filed, not later
22 than 45 days after the hearing is concluded, with the agency in such
23 form that it may be adopted as the decision in the case and delivered
24 or mailed, to the parties of record with an indication of the date of
25 receipt by the agency head; and an opportunity shall be afforded each
26 party of record to file exceptions, objections, and replies thereto, and
27 to present argument to the head of the agency or a majority thereof,
28 either orally or in writing, as the agency may direct. The head of the
29 agency, upon a review of the record submitted by the administrative
30 law judge, shall adopt, reject or modify the recommended report and
31 decision no later than 45 days after receipt of such recommendations.

32 In reviewing the decision of an administrative law judge, the agency
33 head may reject or modify conclusions of law or interpretations of
34 agency policy in the decision, but shall state clearly the reasons for
35 doing so. The agency head may not reject or modify any findings of
36 fact unless it is first determined from a review of the record that the
37 findings of fact were not based upon sufficient, competent, and
38 credible evidence in the record. In reversing or modifying the findings
39 of fact, the agency head shall state with particularity the reasons for
40 rejecting the findings and shall make new or modified findings
41 supported by sufficient, competent, and credible evidence in the
42 record. Unless the head of the agency modifies or rejects the report
43 within such period, the decision of the administrative law judge shall
44 be deemed adopted as the final decision of the head of the agency. The
45 recommended report and decision shall be a part of the record in the
46 case. For good cause shown, upon certification by the director and the

1 agency head, the time limits established herein may be subject to
2 extension.

3 (d) A final decision or order adverse to a party in a contested case
4 shall be in writing or stated in the record. A final decision shall
5 include findings of fact and conclusions of law, separately stated and
6 shall be based only upon the evidence of record at the hearing, as such
7 evidence may be established by rules of evidence and procedure
8 promulgated by the director.

9 Findings of fact, if set forth in statutory language, shall be
10 accompanied by a concise and explicit statement of the underlying
11 facts supporting the findings. The final decision may incorporate by
12 reference any or all of the recommendations of the administrative law
13 judge. Parties shall be notified either personally or by mail of any
14 decision or order. Upon request a copy of the decision or order shall
15 be delivered or mailed forthwith by registered or certified mail to each
16 party and to his attorney of record.

17 (e) Except where otherwise provided by law, the administrative
18 adjudication of the agency shall be effective on the date of delivery or
19 on the date of mailing, of the final decision to the parties of record
20 whichever shall occur first, or shall be effective on any date after the
21 date of delivery or mailing, as the agency may provide by general rule
22 or by order in the case. The date of delivery or mailing shall be
23 stamped on the face of the decision.

24 (cf: P.L.1993, c.343, s.3)

25

26 5. Section 9 of P.L.1978, c.67 (C.52:14F-9) is amended to read as
27 follows:

28 9. a. Nothing in this amendatory and supplementary act shall be
29 construed to deprive the head of any agency of the authority pursuant
30 to section 10 of P.L.1968, c.410 (C.52:14B-10) to determine whether
31 a case is contested or to adopt, reject or modify the findings of fact
32 and conclusions of law of any administrative law judge consistent with
33 the standards for the scope of review to be applied by the head of the
34 agency as set forth in that section and applicable case law.

35 b. Nothing in this amendatory and supplementary act shall be
36 construed to affect the conduct of any contested case initiated prior to
37 the effective date of this act, or the making of any administrative
38 adjudication in such contested case.

39 (cf: P.L.1978, c.67, s.9)

40

41 6. Section 1 of P.L.1981, c.27 (C.52:14B-4.1) is amended to read
42 as follows:

43 1. Every rule hereafter proposed by a State agency shall be
44 submitted by the [agency] Office of Administrative Law to the Senate
45 and General Assembly [prior to its adoption, amendment or repeal on
46 a day during a regular or special session of the Legislature] within two

1 business days of its acceptance for publication by the office, and the
2 President of the Senate and the Speaker of the General Assembly shall
3 immediately refer the proposed rule to the appropriate [standing
4 reference] committee in each House and shall cause a copy of the rule
5 to be transmitted to each member of the committee.

6 (cf: P.L.1981, c.27, s.1)

7

8 7. Section 2 of P.L.1981, c.27 (C.52:14B-4.2) is amended to read
9 as follows:

10 2. In conducting its review of a proposed rule or a petition pursuant
11 to subsection (f) of section 4 of P.L.1968, c.410 (C.52:14B-4), the
12 committee may:

13 a. direct the promulgating agency to provide such information as the
14 committee deems necessary for the conduct of the review;

15 b. conduct a public hearing regarding the rule;

16 c. direct the promulgating agency to conduct a public hearing
17 regarding the rule and to report the results to the committee;

18 d. negotiate with and offer recommendations to the agency
19 concerning revisions in the rule.

20 The committee, or any member of the Legislature, may [report its
21 approval or] signify disapproval of the proposed rule to the full
22 membership of the House [or its recommendation that the rule not
23 take effect for 60 days, within 45 days of the date on which it is
24 referred to the committee] by means of introducing a concurrent
25 resolution at any time prior to or after the adoption of the rule.

26 A concurrent resolution of disapproval shall be based upon one or
27 more findings that the proposed rule is inadequate, improper, untimely,
28 inappropriate, unnecessary, unreasonable, inequitable, not
29 understandable, inconsistent with legislative intent, not in accord with
30 judicial findings, or not within the scope of the promulgating agency's
31 authority.

32 (cf: P.L.1981, c.27, s.2)

33

34 8. Section 3 of P.L.1981, c.27 (C.52:14B-4.3) is amended to read
35 as follows:

36 3. [A rule shall be deemed approved unless within 60 days of the
37 submission thereof,] If the Senate and General Assembly adopt a
38 concurrent resolution disapproving the rule, in whole or in part, [or
39 providing that the rule not take effect during the 60 days following the
40 date of the adoption of the resolution, during which time they may
41 nevertheless adopt a concurrent resolution disapproving the rule] the
42 presiding officer of the House of final adoption shall cause the
43 concurrent resolution to be transmitted to the Office of Administrative
44 Law for publication in the New Jersey Register and the New Jersey
45 Administrative Code as an annotation to the rule if the rule is adopted.

46 No action may be taken by the Legislature under this section until after

1 1 calendar day from the date of the standing reference committee's
2 report.

3 (cf: P.L.1981, c.27, s.3)

4

5 9. (New section) The head of an agency shall initiate a rule-making
6 procedure for an agency action when at least four of the following
7 criteria are present:

8 a. the action is intended to have wide coverage encompassing a
9 large segment of the regulated or general public, rather than an
10 individual or a narrow select group;

11 b. the action is intended to be applied generally and uniformly to all
12 similarly situated persons;

13 c. the action is designed to operate only prospectively;

14 d. the action prescribes a legal standard or directive that is not
15 otherwise expressly provided by or clearly inferable from the enabling
16 statutory authorization;

17 e. the action reflects an administrative policy that

18 (1) was not previously expressed in any official and explicit agency
19 determination, adjudication or rule, or

20 (2) constitutes a material and significant change from a clear, past
21 agency position on the identical subject matter; or

22 f. the action reflects a decision on administrative regulatory policy
23 in the nature of the interpretation of law or general policy.

24

25 10. (New section) The notice of a proposed rule shall include a
26 regulatory impact analysis containing each of the following:

27 a. an explanation of the necessity, appropriateness and
28 reasonableness of the rule;

29 b. a description of the current condition that the proposed rule will
30 address and how that condition will be affected by adoption of the
31 rule;

32 c. a statement that the rule does not conflict with nor duplicate any
33 existing rule or an explanation as to why the conflict or duplication
34 exists;

35 d. a statement as to whether the rule is in accord with or in conflict
36 with any judicial findings;

37 e. a statement of the factual, scientific or technical basis for the
38 agency's determination that the regulation will accomplish its intended
39 purpose;

40 f. a demonstration that the rule provides the least costly or least
41 intrusive approach for meeting the intended purpose;

42 g. a description of any alternative approaches considered by the
43 agency or suggested by interested parties and the reasons for their
44 rejection;

45 h. an estimate of the nature, number and size of parties to be
46 regulated or affected by the rule;

- 1 i. whether the rule will require on-site inspections;
- 2 j. an estimate of the paperwork burden on a regulated or affected
- 3 party, such as the number of forms, impact statements, surveys and
- 4 other documents to be completed by the party;
- 5 k. whether parties will be required to maintain any records which
- 6 will be subject to inspection;
- 7 l. whether parties will be required to obtain licenses, permits or
- 8 other certifications and the associated fees and fines;
- 9 m. whether parties will be required to appear in person before the
- 10 agency;
- 11 n. whether parties will be required to disclose information on
- 12 materials or processes, including trade secrets;
- 13 o. whether parties will be required to report any particular type of
- 14 incidents;
- 15 p. whether parties will be required to adhere to either design or
- 16 performance standards;
- 17 q. whether parties may have to retain or utilize lawyers,
- 18 accountants, engineers or other professional consultants in order to
- 19 comply with the regulations;
- 20 r. an estimate of the costs to regulated parties for compliance;
- 21 s. an estimate of the costs to the agency for implementation and
- 22 enforcement of the regulations;
- 23 t. an evaluation of the cost versus the benefits to be derived from
- 24 the rule to include how those benefits outweigh the cost;
- 25 u. whether the agency can be reasonably expected to implement the
- 26 provisions of the proposed rule within current budget appropriations.
- 27
- 28 11. (New section) The Office of Administrative Law, upon its
- 29 review and determination, shall not accept for publication any
- 30 proposed rule, summary of the proposed rule, or regulatory impact
- 31 analysis which lacks a standard of clarity.
- 32 As used in this section, "standard of clarity" means the document is
- 33 written in a reasonably simple and understandable manner which is
- 34 easily readable. The document must be drafted to provide adequate
- 35 notice to affected persons and interested persons with some subject
- 36 matter expertise. The document shall conform to commonly accepted
- 37 principles of grammar. The document must contain sentences that are
- 38 as short as practical, and be organized in a sensible manner. The
- 39 document shall not contain double negatives, confusing cross
- 40 references, convoluted phrasing or unreasonably complex language.
- 41 Terms of art and words with multiple meanings that may be
- 42 misinterpreted shall be defined.
- 43
- 44 12. (New section) a. Every rule in effect on the enactment date of
- 45 P.L. , c. (C.)(now pending before the Legislature as this bill)
- 46 shall expire five years following the effective date of this act unless a

1 sooner expiration date has been established for the rule.

2 b. Every rule adopted on or after the effective date of P.L. , c.
3 (C.) (now pending before the Legislature as this bill) shall expire
4 five years following the effective date of the rule unless a sooner
5 expiration date has been established for the rule. The expiration date
6 shall be included in the adoption notice of the rule in the New Jersey
7 Register and noted in the New Jersey Administrative Code.

8 c. An agency may continue in effect an expiring rule for a five year
9 period by duly proposing and readopting the rule prior to its
10 expiration. Upon the filing of a notice of proposed re Adoption, the
11 expiration date of the rule shall be extended for 180 days, if such
12 notice is filed prior to the expiration of the rule.

13 d. The Governor may, upon the request of an agency head, and prior
14 to the expiration date of the rule, continue in effect an expiring rule for
15 a period not exceeding 90 days.

16 e. This section shall not apply to any rule repealing a rule or any rule
17 prescribed by federal law or whose expiration would violate any other
18 federal or State law, in which case the federal or State law shall be
19 cited in the publication of the rule.

20

21 13. (New section) The Office of Administrative Law shall issue a
22 report to the Legislature no later than 12 months after the effective
23 date of this act containing a quantitative analysis of the rule-making
24 procedure and an analysis of the effects of the rule-making procedure
25 on the regulated public and regulatory process.

26

27 14. (New section) The Director of the Office of Administrative Law
28 shall promulgate rules and regulations to effectuate the purposes of
29 this act. Those rules may include the establishment of an appropriate
30 fee schedule to help defray the costs of implementing and
31 administering the provisions of this act. Any such fee schedule may
32 include assessments against promulgating agencies.

33

34 15. Sections 4 through 7, inclusive, of P.L.1981, c.27
35 (C.52:14B-4.4 through 52:14B-4.7) are repealed.

36

37 16. This act shall take effect on the first day of the third month
38 following enactment but shall not apply to any rule proposed in the
39 New Jersey Register or to any contested case filed prior to the
40 effective date.

41

42

43

STATEMENT

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45 This bill revises the administrative rule-making process. The
46 provisions of the bill amend, supplement and repeal various sections

1 of "The Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
2 et seq.), to ensure a more open and deliberative process.

3 Under the provisions of the bill, every agency must publish in the
4 New Jersey register a monthly calender setting forth its rule-making
5 activities for the next six months. If 25 or more interested parties
6 acting individually submit comments, an agency must hold a public
7 hearing on the matter. Any interested person may petition an agency
8 to adopt a new rule, or amend or repeal an existing rule. The bill
9 requires the agency to respond to any such petition within 60 days by
10 either (1) denying the petition, (2) granting the petition and initiating
11 a rule-making proceeding or (3) referring the matter for further study.
12 If the agency fails to act within 90 days, the Director of the Office of
13 Administrative law shall hold a public hearing and report to the
14 Legislature.

15 The bill authorizes the Legislature to adopt a concurrent resolution
16 signifying disapproval of a proposed rule based upon a finding that the
17 proposed rule is inadequate, improper, untimely, inappropriate,
18 unnecessary, unreasonable, inequitable, not understandable,
19 inconsistent with legislative intent, not in accord with judicial findings
20 or not within the agency's authority. The finding would be published
21 in the New Jersey Register and annotated in the New Jersey
22 Administrative Code.

23 The bill provides that an administrative agency must prepare a
24 regulatory impact analysis when it proposes a rule. This analysis shall
25 address 21 specific questions and issues regarding the rule's impact on
26 the regulated parties. Both the proposed rule and regulatory impact
27 analysis are subject to a "standard of clarity," which is defined in the
28 bill.

29 To effectuate the purposes of this legislation, the duties and
30 responsibilities of the Director of the Office of Administrative Law are
31 expanded and modified. The director is empowered to provide for the
32 publication, sale and distribution of the New Jersey Administrative
33 Code and New Jersey Register to the public by whatever means,
34 including entering into contractual or licensing arrangements, most
35 likely to ensure the widest dissemination possible. To ensure that a
36 rule proposing agency has appropriate statutory authority, the bill
37 requires an agency to submit a copy of the text of the proposed rule
38 and supporting materials to the Attorney General for review prior to
39 filing a notice of proposed rule with the Office of Administrative Law.

40 The bill codifies the provisions of Executive Order No. 66 of 1978,
41 signed by Governor Brendan T. Byrne on April 14, 1978, which
42 requires that a rule remain in effect for not more than five years unless
43 readopted in a rule-making procedure. It codifies the criteria for
44 identifying when an agency must undertake a rule-making procedure,
45 which were set forth in Metromedia, Inc. v. Director of Div. of
46 Taxation, 97 N.J.313 (1984). The bill also repeals the statutory

1 reference to the Legislature's veto of an administrative rule, since this
2 veto was ruled unconstitutional by the State Supreme Court in 1982.
3 In addition, it repeals the provisions of the "Administrative Procedure
4 Act," (P.L.1968, c.410; C.52:14B-1 et seq.) which provided for the
5 establishment of a Joint Legislative Oversight Committee.

6 Finally, the bill directs the Office of Administrative Law to submit a
7 report to the Legislature no later than 12 months after the effective
8 date of this act. This report shall provide a quantitative analysis of
9 the rule-making procedure and an analysis of the effects of the
10 rule-making procedure on the regulated public and the regulatory
11 process.

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16 Revises administrative rule-making process.