

ASSEMBLY POLICY AND REGULATORY OVERSIGHT  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 1612, 1025 and 646**

**STATE OF NEW JERSEY**

DATED: MAY 20, 1996

The Assembly Policy and Regulatory Oversight Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1612, 1025 and 646.

This committee substitute revises the administrative rule-making process. It amends, supplements and repeals various sections of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to ensure a more open and deliberative process.

Under the provisions of the committee substitute, in addition to other rule-making requirements, each agency would be required to publish with its rules of practice, if not presently done, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures.

The committee substitute would require each agency to publish in the New Jersey Register a quarterly, instead of monthly, calendar setting forth its anticipated rule-making activities for the next six months. The calendar would indicate where and when interested persons could submit their comments, and dates and locations of any hearings or other meetings related to the rule-making process. An agency would be required to provide 45 days notice prior to amending its calendar. The committee substitute directs each agency to publicize that copies of its calendar are available for a reasonable fee, which is to be set by the Director of the Office of Administrative Law (OAL).

In addition to requiring each agency to publish its calendar in the New Jersey Register, the committee substitute would require each agency to provide notice of intended adoption, amendment or repeal of any rule to the news media covering the State House Complex, and electronically through the largest nonproprietary cooperative public computer network, currently the Internet.

The committee substitute requires that if within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for submissions regarding the proposed rule, an agency must provide the additional 30 days. The agency could not adopt the proposed rule until after the end of the 30 day extension.

The committee substitute also directs an agency to hold a public hearing if sufficient public interest is shown. Currently a public hearing is held on a proposed rule at the request of a committee of the Legislature or a governmental agency or subdivision. The request would have to be made within 30 days following publication of the proposed rule in the Register. Current law requires the request be within 15 days. The committee substitute would require the head of each agency to adopt as its rules of practice definite standards of what constitutes sufficient public interest, for conducting a public hearing and for granting an extension of time for submissions.

The committee substitute allows any interested person to petition an agency to adopt a new rule, or amend or repeal an existing rule. The committee substitute amends the Administrative Procedure Act to require the agency to respond to any such petition within 60 days, instead of the current 30, by either (1) denying the petition; (2) granting the petition and initiating a rule-making proceeding within 90 days; or (3) referring the matter for further study to be concluded within 90 days. It would then deny the petition, or grant it and initiate a rule-making proceeding within 90 days. If the agency fails to act within this time frame, the petitioner may request the Director of the OAL to order a public hearing on the rule-making petition.

If the Director of OAL orders a public hearing, the agency is notified. If the agency does not give notice that it will hold a public hearing within 15 days, the director would hold the hearing. The agency and the petitioner would participate. The committee substitute requires a verbatim record, changed from transcript, to be maintained, and made available to the public at cost.

The committee substitute authorizes the OAL to accept for filing and publication any rule that meets the requirements and standards of this committee substitute, and to adopt a concurrent resolution by the Legislature finding that the proposed rule is inconsistent with legislative intent. The concurrent resolution would be published in the New Jersey Register and in the New Jersey Administrative Code, annotated to the rule if the rule is adopted.

In contested cases, the committee substitute allows agency heads to review decisions by administrative law judges, and to reject or modify conclusions of law or interpretations of agency policy in the decisions, but only if the findings were not based upon sufficient, competent and credible evidence in the record. In reversing or modifying the findings, the agency head would state the reasons, and make new or modified findings supported by sufficient, competent and credible evidence in the record.

The committee substitute provides that an administrative agency must prepare a regulatory impact analysis when it proposes a rule. This analysis would address specific questions and issues regarding the rule's impact on the regulated parties. The proposed rule and regulatory impact analysis, as well as any notice of intention to adopt, readopt or amend a rule or regulation, summary of a proposed rule, or

other accompanying materials, would be subject to a "standard of clarity," which is defined in the committee substitute.

The committee substitute codifies the provisions of Executive Order No. 66 of 1978, signed by Governor Byrne on April 14, 1978, which requires that a rule remain in effect for not more than five years unless readopted in a rule-making procedure.

Finally, the committee substitute repeals several provisions of the Administrative Procedure Act, including the statutory reference to the Legislature's veto of an administrative rule, since this veto was ruled unconstitutional by the State Supreme Court in 1982. It also repeals the provisions of the Administrative Procedure Act that provided for the establishment of a Joint Legislative Oversight Committee.

This committee substitute as reported by the Assembly Policy and Regulatory Oversight Committee implements many of the recommendations of the STARR Report: Strategy to Advance Regulatory Reform, A Response of the Whitman Administration (July, 1995). The enactment of the legislation would ensure that the STARR initiatives become permanent law. The STARR Report initiatives incorporated in the committee substitute are:

Page 1-2, Section 1 STARR recommends that legislation should direct executive agencies to publish a rulemaking calendar of anticipated regulatory activity for each six month block of time. (page III-16)

Page 2-3, Section 2 STARR recommends using additional rulemaking notices to provide a more open and timely rulemaking process. (I-8).

Page 3-4, Section 2 STARR recommends use of extended comment periods and processes that maximize participation of regulated parties and the public. (I-8).

Page 4-5, Section 2 STARR recommends a more open and timely process by which petitions of the public for rulemaking are reviewed and acted upon. (I-8)

Pages 8-9, Sections 4-5 STARR endorses SCORE proposal that standards to be followed by agencies in reviewing recommended decisions of Administrative Law Judges should be developed. Judge's findings of fact may be rejected or modified only on the basis of standards of sufficiency, competency and credible evidence in the record. (IA-3)

Pages 10-11, Section 8 STARR recommends that the system by which department/agency rulemaking or internal guidance is appropriately subject to regulatory impact analysis (e.g., rule clarity, scientific/economic bases, risk assessment, jobs impact,

paperwork burden, etc.) prior to implementation so that only rules that are necessary and well thought out can be adopted. (I-22) It also endorses the federal Administrative Procedure Reform Act (H.R. 4949, Franks) which requires a similar federal regulatory impact analysis. (A-1)

Pages 11-12, Section 9 STARR recommends that OAL authority to address procedurally defective rulemaking should be clarified (I-8); that OAL should be provided authority to decline to publish a rule for procedural non-compliance (III-17); that the Legislature should codify standards which executive agencies must adhere to when seeking to propose and adopt a rule. (III-16)

Pages 12-13, Section 10 STARR and SCORE recommend that the Legislature enact the requirements of Executive Order 66 of 1978, so that all regulations have to be readopted periodically. This would include regulations adopted before the publication of E.O. 66 as well as those covered by the original executive order. (IA-3) STARR also recommends that systems be created by which both legislative and regulatory, bodies periodically review and, as appropriate, revise enabling legislation and any relevant regulations and policies to identify, modify and/or eliminate provisions that are outdated or ineffective. (I-22)