

52:14B-16 to 52:14B-21

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:14B-16 to 52:14B-21; 52:14B-4 "New Jersey Regulatory Flexibility Act"

CHAPTER 169

Laws Of: 1986

Bill No: A10

Sponsor(s): Zimmer

Date Introduced: June 16, 1986

Committee: Assembly: Regulatory Efficiency & Oversight

Senate: State Government

Amended during passage: Assembly committee substitute enacted

Date of Passage: Assembly: September 8, 1986

Senate: October 20, 1986

Date of Approval: December 4, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Bill, vetoed by Governor Byrne during 1980-81 Legislative session: S876-- attached.

12-4-86

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 10**  


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**STATE OF NEW JERSEY**

ADOPTED JUNE 16, 1986

Sponsored by Assemblyman ZIMMER

AN ACT concerning flexible regulations and amending and supplementing P. L. 1968, c. 410.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
 2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as the  
 2 "New Jersey Regulatory Flexibility Act."

1 2. (New section) As used in this act, "small business" means  
 2 any business which is resident in this State, independently owned  
 3 and operated and not dominant in its field, and which employs fewer  
 4 than 100 full-time employees.

1 3. (New section) In developing and proposing a rule for adop-  
 2 tion, the agency involved shall utilize approaches which will ac-  
 3 complish the objectives of applicable statutes while minimizing any  
 4 adverse economic impact of the proposed rule on small businesses  
 5 of different types and of differing sizes. Consistent with the ob-  
 6 jectives of applicable statutes, the agency shall utilize such ap-  
 7 proaches as:

8 a. The establishment of differing compliance or reporting re-  
 9 quirements or timetables that take into account the resources avail-  
 10 able to small businesses;

11 b. The use of performance rather than design standards; and

12 c. An exemption from coverage by the rule, or by any part  
 13 thereof, for small businesses so long as the public health, safety,  
 14 or general welfare is not endangered.

1 4. (New section) In proposing a rule for adoption, the agency in-  
 2 volved shall issue a regulatory flexibility analysis regarding the  
 3 rule which shall be included in the notice of a proposed rule as

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

**Matter printed in italics thus is new matter.**

4 required by subsection (a) of section 4 of P. L. 1968, c. 410 (C.  
5 52:14B-4). Each regulatory flexibility analysis shall contain:

6 a. A description of the types and an estimate of the number of  
7 small businesses to which the proposed rule will apply;

8 b. A description of the reporting, recordkeeping and other com-  
9 pliance requirements being proposed for adoption, and the kinds  
10 of professional services that a small business is likely to need in  
11 order to comply with the requirements;

12 c. An estimate of the initial capital costs and an estimate of the  
13 annual cost of complying with the rule, with an indication of any  
14 likely variation in the costs for small businesses of different types  
15 and of differing sizes; and

16 d. An indication of how the rule, as proposed for adoption, is  
17 designed to minimize any adverse economic impact of the proposed  
18 rule on small businesses.

19 This section shall not apply to any proposed rule which the  
20 agency finds would not impose reporting, recordkeeping, or other  
21 compliance requirements on small businesses. The agency's finding  
22 and an indication of the basis for its finding shall be included in  
23 the notice of a proposed rule as required by subsection (a) of sec-  
24 tion 4 of P. L. 1968, c. 410 (C. 52:14B-4).

1 5. (New section) In order to avoid duplicative action, an agency  
2 may consider a series of closely related rules as one rule for the  
3 purposes of complying with section 4 of this act.

1 6. (New section) In complying with the provisions of section 4  
2 of this act, an agency may provide either a quantifiable or numeri-  
3 cal description of the effects of a proposed rule or more general  
4 descriptive statements if quantification is not practicable or reliable.

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

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

5 (1) Give at least 30 days' notice of its intended action. The  
6 notice shall include a statement of either the terms or substance  
7 of the intended action or a description of the subjects and issues  
8 involved, and the time when, the place where, and the manner  
9 in which interested persons may present their views thereon.  
10 The notice shall be mailed to all persons who have made timely  
11 requests of the agency for advance notice of its rule-making pro-  
12 ceedings and in addition to other public notice required by law  
13 shall be published in the New Jersey Register and shall be filed  
14 with the President of the Senate and the Speaker of the General  
15 Assembly. The notice shall be additionally publicized in such

16 manner as the agency deems most appropriate in order to inform  
17 those persons most likely to be affected by or interested in the  
18 intended action. Methods that may be employed include publication  
19 of the notice in newspapers of general circulation or in trade, in-  
20 dustry, governmental or professional publications, distribution of  
21 press releases to the news media and posting of notices in appro-  
22 priate locations;

23 (2) Prepare for public distribution at the time the notice appears  
24 in the Register a statement setting forth a summary of the pro-  
25 posed rule, a clear and concise explanation of the purpose and  
26 effect of the rule, the specific legal authority under which its  
27 adoption is authorized, [and] a description of the expected socio-  
28 economic impact of the rule, *and a regulatory flexibility analysis,*  
29 *or the statement of finding that a regulatory flexibility analysis is*  
30 *not required, as provided in section 4 of P. L. . . . , c. . . . (C. . . .)*  
31 *(now pending before the Legislature as this bill);*

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

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

43 (4) Prepare for public distribution a report listing all parties  
44 offering written or oral submissions concerning the rule, sum-  
45 marizing the content of the submissions and providing the agency's  
46 response to the data, views and arguments contained in the sub-  
47 missions.

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

52 (c) If an agency finds that an imminent peril to the public health,  
53 safety, or welfare requires adoption of a rule upon fewer than  
54 30 days' notice and states in writing its reasons for that finding,  
55 and the Governor concurs in writing that an imminent peril exists,  
56 it may proceed without prior notice or hearing or upon any  
57 abbreviated notice and hearing that it finds practicable, to adopt  
58 the rule. The rule shall be effective for a period of not more than

59 60 days unless each House of the Legislature passes a resolution  
60 concurring in its extension for a period of not more than 60 addi-  
61 tional days. The rule shall not be effective for more than 120 days  
62 unless repromulgated in accordance with normal rule-making pro-  
63 cedures.

64 (d) No rule hereafter adopted is valid unless adopted in sub-  
65 stantial compliance with this act. A proceeding to contest any  
66 rule on the ground of noncompliance with the procedural require-  
67 ments of this act shall be commenced within one year from the  
68 effective date of the rule.

69 (e) An agency may file a notice of intent with respect to a  
70 proposed rule-making proceeding with the Office of Administrative  
71 Law, for publication in the New Jersey Register at any time prior  
72 to the formal notice of action required in subsection (a) of this  
73 section. The notice shall be for the purpose of eliciting the views of  
74 interested parties on an action prior to the filing of a formal rule  
75 proposal. An agency may use informal conferences and consulta-  
76 tions as a means of obtaining the viewpoints and advice of interested  
77 persons with respect to contemplated rule-making. An agency may  
78 also appoint committees of experts or interested persons or repre-  
79 sentatives of the general public to advise it with respect to any  
80 contemplated rule-making.

81 (f) An interested person may petition an agency to promulgate,  
82 amend or repeal any rule. Each agency shall prescribe the form for  
83 the petition and the procedure for the submission, consideration and  
84 disposition of the petition. The petition shall state clearly and  
85 concisely:

86 (1) The substance or nature of the rule-making which is re-  
87 quested;

88 (2) The reasons for the request and the petitioner's interest in  
89 the request;

90 (3) References to the authority of the agency to take the re-  
91 quested action.

92 Within 30 days following receipt of any such petition, the agency  
93 shall either deny the petition, giving a written statement of its  
94 reasons, or shall proceed to act on the petition, which action may  
95 include the initiation of a formal rule-making proceeding. Upon the  
96 receipt of the petition, the agency shall file a notice stating the  
97 name of the petitioner and the nature of the request with the Office  
98 of Administrative Law for publication in the New Jersey Register.  
99 Notice of formal agency action on such petition shall also be filed  
100 with the division for publication in the Register.

101 (g) All public hearings shall be conducted by a hearing officer

102 who may be an official of the agency, a member of its staff, a person  
103 on assignment from another agency, a person from the Office of  
104 Administrative Law assigned pursuant to subsection o. of section  
105 5 of P. L. 1973, c. 67 (C. 52:14F-5o.) or an independent contractor.  
106 The hearing officer shall have the responsibility to make recom-  
107 mendations to the agency regarding the adoption, amendment or  
108 repeal of a rule. These recommendations shall be made public. At  
109 the beginning of each hearing, or series of hearings, the agency, if  
110 it has made a proposal, shall present a summary of the factual in-  
111 formation on which its proposal is based, and shall respond to  
112 questions posed by any interested party. Hearings shall be con-  
113 ducted at such times and in locations which shall afford interested  
114 parties the opportunity to attend. A verbatim transcript of each  
115 hearing shall be maintained, and copies of the transcript shall be  
116 available to the public at no more than the actual cost.

1 8. This act shall take effect immediately.

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PUBLIC NOTICE, MEETINGS, PARTICIPATION  
The "New Jersey Regulatory Flexibility Act."

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# ASSEMBLY, No. 10

Introduced Pending Technical Review by Legislative Counsel  
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION  
By Assemblyman ZIMMER

# ASSEMBLY, No. 3379

# STATE OF NEW JERSEY

INTRODUCED APRIL 15, 1985

By Assemblymen ZIMMER, BROWN, HARDWICK, WEIDEL, HAYTAIAN, KAVANAUGH, MILLER, MARTIN, HENDRICKSON, ROCCO, PALAIA, Assemblywoman OGDEN, Assemblymen LOVEYS, PENN, FRANKS, Assemblywoman MUHLER, Assemblymen SHUSTED, KLINE, MUZIANI, Assemblywoman COOPER, Assemblymen SHINN, COLBURN, KOSCO, DOYLE, Assemblywoman FORD, Assemblyman CHARLES and Assemblywoman PERUN.

AN ACT concerning State agencies and amending and supplementing P. L. 1968, c. 410.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. (New section) Sections 1 through 7 of this act shall be known  
2 and may be cited as the "New Jersey Regulatory Flexibility Act."

1 2. (New section) The Legislature finds that in numerous in-  
2 stances compliance with the rules and regulations issued and prom-  
3 ulgated by State agencies imposes unreasonable demands and  
4 burdens on individuals of limited means and on businesses and  
5 organizations engaged in or planning business projects on a small  
6 scale; that a regulatory dilemma has developed in which efforts to  
7 protect the health, safety, and economic welfare of the people of this  
8 State have created a burden of required legal, accounting, and con-  
9 sulting services which is causing economic harm to individuals and  
10 organizations of limited resources, and is adversely affecting com-  
11 petition in the marketplace; that the sheer scope and volume of  
12 rules and regulations already in place has created high entry  
13 barriers in many industries, and discouraged potential entre-  
14 preneurs from introducing beneficial products and processes; that  
15 the practice of treating all regulated individuals, organizations,  
16 businesses and business activities as equivalent, for purposes of  
17 regulatory and paperwork requirements, has led to inefficient use  
18 of the resources of some State agencies and to enforcement prob-  
19 lems; that the collection of information by the State has not ade-  
20 quately weighed the privacy rights of individuals and enterprises

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**Matter printed in italics thus is new matter.**

21 against the State's need to know because the design of the regu-  
22 latory process has encouraged regulators to treat information as a  
23 free good; and that the deep public dissatisfaction with the regu-  
24 latory process has stemmed in large part from a public perception  
25 of the failure of burdensome regulations to correct key problems.

26 The Legislature, therefore, declares it to be in the best interest  
27 of its citizens that this State establish as a principle of regulatory  
28 issuance that regulatory and informational requirements fit the  
29 scale of the persons and activities being regulated, that fewer and  
30 simpler requirements be made of individuals, small organizations,  
31 small businesses, and larger private entities engaged in business  
32 activity on a small scale, and that to achieve these ends State  
33 agencies should be empowered and encouraged to issue regulations  
34 which apply differently to different segments of regulated indus-  
35 tries and activities.

1 3. (New section) As used in sections 4 through 7 of this 1985  
2 amendatory and supplementary act, "business" means any trade,  
3 business or professional entity or activity which is conducted for  
4 profit.

1 4. (New section) a. Each State agency shall, at least 90 days  
2 prior to the submission for publication of a proposed rule in the  
3 New Jersey Register, conduct an analysis for the purpose of mak-  
4 ing a determination, based on the amount of governmental informa-  
5 tion collection the proposed rule would necessitate, of the approxi-  
6 mate amount, if any, of legal, enforcement, consulting, and account-  
7 ing costs to the State which would be so necessitated, and of the  
8 approximate overall cost to persons other than public entities of  
9 compliance with the rule, averaged, for each person, business, and  
10 organization affected by it, as compared with the importance of the  
11 public policy to be achieved, and shall, pursuant to this analysis,  
12 make a further determination whether the rule should apply at  
13 all or in the same manner to persons, businesses, and organizations  
14 of various sizes and resources, or to businesses of different scope.

15 b. The chief executive officer of any agency preparing any admin-  
16 istrative rule shall submit the proposed rule, together with the  
17 analysis of its costs and benefits as hereinabove provided, to the  
18 office of Business Advocacy in the Department of Commerce and  
19 Economic Development at least 90 days prior to the submission for  
20 publication of the proposed rule in the New Jersey Register. The  
21 Office of Business Advocacy shall review the proposed rule and the  
22 analysis of costs and benefits and shall, if it determines that the  
23 proposed rule will have a substantial effect on any significant num-  
24 ber of businesses, issue a statement to the agency within 90 days of



25 receipt of the rule, containing comments on the impact of the pro-  
 26 posed rule should it be promulgated. The statement shall also  
 27 contain comments on the impact of the proposed rule on businesses  
 28 not directly regulated by it.

29 c. The chief executive officer of the agency proposing an admin-  
 30 istrative rule shall issue a notice that the analysis of costs and  
 31 benefits and any statement on the impact of the proposed rule  
 32 made by the Office of Business Advocacy is on file with the Office  
 33 of Business Advocacy and the notice is to be included with the  
 34 public notice which is to be distributed to interested persons and  
 35 published in the New Jersey Register pursuant to the provisions  
 36 of the "Administrative Procedure Act," P. L. 1968, c. 410 (C.  
 37 52:14B-1 et seq.).

38 d. The Office of Business Advocacy shall maintain a file of all  
 39 administrative rules submitted to it pursuant to this act along with  
 40 the analysis of costs and benefits and the statement of impact, if  
 41 any. The contents of this file shall be made available to any inter-  
 42 ested party pursuant to the provisions of P. L. 1963, c. 73 (C.  
 43 47:1A-1 et seq.).

1 5. (New section) a. Whenever both the results of the analysis by a  
 2 State agency and comments by the Office of Business Advocacy  
 3 indicate the desirability and feasibility of promulgating rules which  
 4 differ with respect to their substance or applicability to various  
 5 segments of the businesses or business activities to which the rules,  
 6 as proposed, would apply, the agency shall, prior to the submission  
 7 of the proposed rule for publication as required in subsection (a) of  
 8 section 4 of P. L. 1968, c. 410 (C. 52:14B-4(a)), conduct a public  
 9 hearing for the purpose of eliciting the comments and views from  
 10 businesses which are most likely to be affected by or interested in  
 11 the proposed rule. The agency shall publicize notice of the public  
 12 hearing by any means reasonably calculated to reach those busi-  
 13 nesses or activities most likely to be affected by or interested in the  
 14 proposed rule. The hearing shall be conducted in accordance with  
 15 the provisions of subsection (g) of section 4 of P. L. 1968, c. 410  
 16 (C. 52:14B-4).

17 The agency shall, if it finds that substantive changes are needed  
 18 in the text of a proposed rule in response to the comments and views  
 19 elicited at the public hearing held pursuant to this section, revise  
 20 the text of the proposed rule in accordance with its findings prior to  
 21 the submission of the proposed rule for publication as provided  
 22 in the "Administrative Procedure Act," P. L. 1968, c. 410 (C.  
 23 52:14B-1 et seq.).

24 In order to supplement the information obtained at the public

25 hearing, an agency may also be guided by information obtained  
26 from informal conferences and consultations with interested per-  
27 sons as well as committees appointed by the agency of experts,  
28 interested persons, or representatives from the general public.

29 b. An agency which submits a new rule on which a hearing has  
30 been held under subsection a. of this section for publication in the  
31 New Jersey Register, shall prepare the new rule in two or more  
32 parts, with each part containing varying requirements for per-  
33 formance or reporting, as appropriate, to persons, business con-  
34 cerns, and organizations of carrying economic sizes and resources  
35 engaged in business activities of varying scope. These varying re-  
36 quirements shall take into account (1) the capitalization, annual  
37 income, number of employees, and other factors as bear on the  
38 ability of the regulated persons, concerns or organizations to  
39 sustain the costs attached to compliance with the rule; and (2)  
40 in the case of regulated activities, the value of the activities to  
41 the economy of the State and the welfare of its citizens. In estab-  
42 lishing segments of regulated businesses or business activities for  
43 the purposes of this section, agencies shall establish objective,  
44 and to the maximum extent feasible, uniform criteria to facilitate  
45 determinations by those engaged in such businesses and business  
46 activities of the applicability to themselves of rules issued here-  
47 under.

48 c. Any business or representative organization of a business  
49 affected directly or indirectly by a proposed rule or an adopted rule  
50 issued in two or more parts pursuant to subsection b. of this section  
51 may at any time apply to the agency for an exemption to the rule  
52 according to the criteria established by the agency pursuant to sub-  
53 section b. of this section. The agency shall review all applications  
54 and may include any exemptions requested therein in its official  
55 criteria and standards for exemptions, or in any revision thereof,  
56 upon finding that the public health, safety or welfare will be pro-  
57 tected. Within 60 days after its receipt of an application the agency  
58 shall inform the applicant of: (1) its rejection of the application  
59 and its reasons therefor; or, (2) its approval of the application and  
60 the approximate date when the applied for exemptions will be in-  
61 cluded in the agency's official criteria and standards therefor, or  
62 in any revision thereof. If an agency response is not postmarked  
63 within the aforesaid 60 days, the application shall be considered  
64 approved.

65 d. Notwithstanding the provisions of the "Administrative Pro-  
66 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), or any other  
67 law, the chief executive officer of any agency issuing a rule in two or

68 more parts, as hereinabove provided, shall upon issuing the rule  
 69 transmit a copy of it, together with any statements and comments  
 70 which may be made in connection therewith by the Office of Business  
 71 Advocacy to the President of the Senate and to the Speaker of the  
 72 General Assembly.

1 6. (New section) Each agency shall, during the five-year period  
 2 beginning with the date of enactment of this act, review its sub-  
 3 stantive rules which are in effect on that date and make the deter-  
 4 minations referred to in this 1985 amendatory and supplementary  
 5 act with respect to each rule.

1 7. (New section) The requirements of sections 4 and 5 of this 1985  
 2 amendatory and supplementary act shall not apply when an agency  
 3 finds that an imminent peril to the public health, safety or welfare  
 4 requires the immediate adoption of a rule and states in writing its  
 5 reasons for that finding pursuant to the provisions of the "Admin-  
 6 istrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq).

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

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

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

23 (2) *Prepare a fiscal impact statement to be submitted for publica-*  
 24 *tion in the New Jersey Register together with the notice of intended*  
 25 *action. The fiscal impact statement shall set forth in detail, based*  
 26 *upon the best information available to the agency, the manner and*  
 27 *extent to which the proposed rule may, directly or indirectly:*

28        (aa) *Result in increased costs of goods or services in the*  
29        *State, and the estimated dollar measure of these costs;*

30        (bb) *Result in increased costs to the State, local govern-*  
31        *ments and regulated persons, businesses and organizations and*  
32        *the estimated dollar measure of these costs; and*

33        (cc) *Result in any adverse economic impacts within the State*  
34        *other than those impacts specifically referred to in this para-*  
35        *graph.*

36        *A fiscal impact statement that omits any information required by*  
37        *this subsection shall specifically note its omission; the reason for its*  
38        *omission; the importance of relevant information so omitted to a*  
39        *realistic assessment of the fiscal impact of the rule during the*  
40        *24-month period first following its effective date, separately*  
41        *described for each 12-month period thereof; and the additional time*  
42        *and effect required to obtain any information needed for an assess-*  
43        *ment.*

44        *In order to reduce paperwork, an agency, when appropriate, may*  
45        *consider a series of closely related and simultaneously proposed*  
46        *rules as one rule for the purpose of submitting a consolidated*  
47        *agency fiscal impact statement and may submit a consolidated*  
48        *agency fiscal impact statement for any series of virtually identical*  
49        *rules proposed in the same year.*

50        *An agency may claim an exemption from the requirements of*  
51        *submitting a fiscal impact statement for a proposed rule that in-*  
52        *volves only technical amendment, or for a proposed rule prescribing*  
53        *the organization of an agency, provided, however, that the agency*  
54        *shall state in the notice of its intended action prepared pursuant to*  
55        *this section, the reason for claiming an exemption.*

56        **[(2)]** (3) *Prepare for public distribution at the time the notice*  
57        *appears in the Register a statement setting forth a summary of the*  
58        *proposed rule, a clear and concise explanation of the purpose and*  
59        *effect of the rule, the specific legal authority under which its adop-*  
60        *tion is authorized, [and] a description of the expected socio-*  
61        *economic impact of the rule, and a summary of the agency's fiscal*  
62        *impact statement accompanying the proposed rule;*

63        **[(3)]** (4) *Afford all interested persons reasonable opportunity to*  
64        *submit data, views, or arguments, orally or in writing. The agency*  
65        *shall consider fully all written and oral submissions respecting the*  
66        *proposed rule and fiscal impact statement.*

67        *The agency shall conduct a public hearing on the proposed rule at*  
68        *the request of a committee of the Legislature, or a governmental*  
69        *agency or subdivision, provided such request is made to the agency*  
70        *within 15 days following publication of the proposed rule in the*

71 Register. The agency shall provide at least 15 days' notice of  
 72 such hearing, which shall be conducted in accordance with the pro-  
 73 visions of subsection (g) of this section;

74 **[(4)]** (5) Prepare for public distribution a report listing all  
 75 parties offering written or oral submissions concerning the rule  
 76 *and fiscal impact statement*, summarizing the content of the sub-  
 77 missions and providing the agency's response to the data, views and  
 78 arguments contained in the submissions.

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

83 (c) If an agency finds that an imminent peril to the public health,  
 84 safety, or welfare requires adoption of a rule upon fewer than  
 85 30 days' notice and states in writing its reasons for that finding,  
 86 and the Governor concurs in writing that an imminent peril exists,  
 87 it may proceed without prior notice or hearing *and without pre-*  
 88 *paration of a fiscal impact statement* or upon any abbreviated  
 89 notice and hearing that it finds practicable, to adopt the rule. The  
 90 rule shall be effective for a period of not more than 60 days unless  
 91 each House of the Legislature passes a resolution concurring in its  
 92 extension for a period of not more than 60 additional days. The  
 93 rule shall not be effective for more than 120 days unless repromul-  
 94 gated in accordance with normal rule-making procedures, *including*  
 95 *preparation of a fiscal impact statement as required by this act.*

96 (d) No rule hereafter adopted is valid unless adopted in sub-  
 97 stantial compliance with this act *and P. L. 1985, c. ... (C. ....)*  
 98 *(now pending before the Legislature as this bill)*. A proceeding to  
 99 contest any rule on the ground of noncompliance with the procedural  
 100 requirements of this act shall be commenced within one year from  
 101 the effective date of the rule.

102 (e) An agency may file a notice of intent with respect to a pro-  
 103 posed rule-making proceeding with the Office of Administrative  
 104 Law, for publication in the New Jersey Register at any time prior  
 105 to the formal notice of action required in subsection (a) of this  
 106 section. The notice shall be for the purpose of eliciting the views of  
 107 interested parties on an action prior to the filing of a formal rule  
 108 proposal. An agency may use informal conferences and consulta-  
 109 tions as a means of obtaining the viewpoints and advice of interested  
 110 persons with respect to contemplated rule-making. An agency may  
 111 also appoint committees of experts or interested persons or repre-  
 112 sentatives of the general public to advise it with respect to any  
 113 contemplated rule-making.

114 (f) An interested person *or representative organization of a*  
115 *business* may petition an agency to promulgate, amend or repeal  
116 any rule. Each agency shall prescribe the form for the petition and  
117 the procedure for the submission, consideration and disposition of  
118 the petition. The petition shall state clearly and concisely:

119 (1) The substance or nature of the rule-making which is re-  
120 quested;

121 (2) The reasons for the request and the petitioner's interest in  
122 the request;

123 (3) References to the authority of the agency to take the re-  
124 quested action.

125 Within 30 days following receipt of any such petition, the agency  
126 shall either deny the petition, giving a written statement of its  
127 reasons, or shall proceed to act on the petition, which action may  
128 include the initiation of a formal rule-making proceeding. Upon the  
129 receipt of the petition, the agency shall file a notice stating the  
130 name of the petitioner and the nature of the request with the Office  
131 of Administrative Law for publication in the New Jersey Register.  
132 Notice of formal agency action on such petition shall also be filed  
133 with the division for publication in the Register.

134 (g) All public hearings shall be conducted by a hearing officer  
135 who may be an official of the agency, a member of its staff, a person  
136 on assignment from another agency, a person from the Office of  
137 Administrative Law assigned pursuant to subsection o. of section  
138 5 of P. L. 1978, c. 67 (C. 52:14F-5o.) or an independent contractor.  
139 The hearing officer shall have the responsibility to make recom-  
140 mendations to the agency regarding the adoption, amendment or  
141 repeal of a rule. These recommendations shall be made public. At  
142 the beginning of each hearing, or series of hearings, the agency, if  
143 it has made a proposal, shall present a summary of the factual in-  
144 formation on which its proposal is based, and shall respond to  
145 questions posed by any interested party. Hearings shall be con-  
146 ducted at such times and in locations which shall afford interested  
147 parties the opportunity to attend. A verbatim transcript of each  
148 hearing shall be maintained, and copies of the transcript shall be  
149 available to the public at no more than the actual cost.

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

3 5. (a) Each agency shall file with the Director of the Office of  
4 Administrative Law a certified copy of each rule adopted by it *and*  
5 *a fiscal impact statement containing the information specified in*  
6 *paragraph (2) of subsection (a) of section 4 of P. L. 1968, c. 410*  
7 *(C. 52:14B-4 (a) (2)).*

8     *Whenever there are substantive changes in the text of a rule to*  
9     *be adopted as compared with the text of the proposed rule, an*  
10    *agency shall submit a revised fiscal impact statement to be pub-*  
11    *lished together with the adopted rule in the New Jersey Register.*  
12    *A revised fiscal impact statement shall include an explanation of*  
13    *the reasons for the changes in the statement.*

14    (b) No rule hereafter adopted shall be effective unless it has been  
15    deemed to be approved by the Legislature pursuant to section 3  
16    of this amendatory and supplementary act.

17    (c) The director shall: (1) accept for filing or publication any  
18    rule duly adopted and submitted by any agency pursuant to this  
19    act; (2) endorse upon the certified copy of each rule accepted for  
20    filing pursuant to this act the date and time upon which such rule  
21    was filed; and (3) maintain the certified copy of each rule so filed  
22    in a permanent register open to public inspection.

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

31    (e) The publication of a rule in the New Jersey Administrative  
32    Code or the New Jersey Register shall be deemed to establish the  
33    rebuttable presumption that the rule was duly filed and that the  
34    text of the rule as so published is the text of the rule adopted.  
35    Judicial notice shall be taken of the text of each rule published  
36    in the New Jersey Administrative Code or the New Jersey Register.

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

3     7. (a) The director shall compile, index, and publish a publica-  
4     tion to be known as the "New Jersey Administrative Code," con-  
5     taining all effective rules adopted by each agency. The code shall  
6     be periodically supplemented or revised.

7     (b) The director shall publish a monthly bulletin to be known  
8     as the "New Jersey Register" setting forth: (1) the text of all  
9     rules filed during the preceding month, *including the fiscal impact*  
10    *statement accompanying the rules*, and (2) such notices as shall  
11    have been submitted pursuant to this act.

12    (c) The director may omit from the New Jersey Register or  
13    compilation any rule *or fiscal impact statement* the publication of  
14    which would be unduly cumbersome, expensive, or otherwise in-

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15 expedient, if the rule *or fiscal impact statement* in printed or pro-  
16 cessed form is made available by the adopting agency on applica-  
17 tion thereto, and if the register or code contains a notice stating  
18 the general subject matter of the omitted rule *or fiscal impact state-*  
19 *ment* and stating the manner in which a copy thereof may be  
20 obtained. He may include within the New Jersey Register and the  
21 New Jersey Administrative Code any document, material or in-  
22 formation which he in his discretion may deem appropriate and  
23 convenient.

24 (d) At least one copy of the New Jersey Administrative Code  
25 and copies of the New Jersey Register and compilations shall be  
26 made available upon request to the Governor, the head of each  
27 principal department, the **Legislative Services Agency** *Office of*  
28 *Legislative Services*, the State Library and to such other State  
29 agencies and public officials as the director may designate free of  
30 charge and to other persons at prices fixed by the director to cover  
31 mailing and publication costs.

32 (e) To facilitate uniformity in the compilation and indexing of  
33 all agency rules, the director, in collaboration with the Director  
34 of the Division of the State Library, Archives and History, shall  
35 formulate and distribute to all agencies standards for the form,  
36 arrangement, numbering and indexing of agency rules and shall  
37 consult with each agency in the preparation of compilations of its  
38 rules.

39 (f) The director may determine the order in which such rules  
40 or any parts thereof are to be presented in the New Jersey Register  
41 and the New Jersey Administrative Code; he may number or re-  
42 number the parts, paragraphs and sections into which such rules  
43 may be divided; he may further divide or combine existing parts,  
44 paragraphs and sections and he may provide for appropriate  
45 digests, indices and other related material. He shall not, however,  
46 change the language of any existing rule excepting a title or  
47 explanatory caption; but he shall recommend any such changes as  
48 he may deem advisable to the administrative agency authorized to  
49 adopt such rule.

50 (g) The director is hereby authorized and empowered to promul-  
51 gate and enforce interagency rules for the implementation and  
52 administration of this act.

1 11. This act shall take effect immediately.



## Sponsor's STATEMENT

The purpose of this bill is twofold:

(1) The bill requires all State agencies to conduct a detailed analysis on a proposed rule prior to publication to determine whether it would be possible and desirable to issue the rule to provide for different treatment for regulated businesses and activities of differing size.

(2) The bill requires all rule adoptions and changes submitted for publication in the New Jersey Register by State agencies to include a fiscal impact statement certifying what, if any, increased costs will result as a result of the rule adoption or change.

At the present time, rules are frequently issued by State agencies with little or no indication as to how the rule may impact differently on different segments of regulated businesses and activities or the increased costs of goods and services in the State or increased costs to State government, local governments and businesses which may result from the adoption of a new rule.

By requiring cost/benefit analyses to be performed to determine whether flexible rules should be issued according to the size and resources of the regulated party, and by requiring detailed fiscal impact statements to be filed with proposed rules, it is anticipated that State agencies will more closely analyze the impact of proposed rules and will, perhaps, in many cases question or reconsider their proposals as unreasonable or unwarranted.

The bill further directs each State agency to review all of its existing "substantive" rules during the five-year period following the enactment date of the act in terms of the cost/benefits analysis required for new rules.

Sections of this bill mandating issuance of "flexible rules" by State agencies were previously introduced in separate legislation which was vetoed in 1981 by former Governor Byrne. Changes have been made in this bill to address certain issues raised in the former Governor's veto message.

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[OFFICIAL COPY REPRINT]

SENATE, No. 876

# STATE OF NEW JERSEY

INTRODUCED JANUARY 17, 1980

By Senators HAMILTON, DWYER, WEISS, DODD and LIPMAN

Referred to Committee on State Government, Federal and  
Interstate Relations and Veterans Affairs

A SUPPLEMENT to the "Administrative Procedure Act," approved  
January 14, 1969 (P. L. 1968, c. 410, C. 52:14B-1 et seq.).

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. This act shall be known and may be cited as the "New Jersey  
2 Regulatory Flexibility Act."

1 2. The Legislature finds that in numerous instances compli-  
2 ance with the rules and regulations issued and promulgated by  
3 State agencies imposes unreasonable demands and burdens on in-  
4 dividuals of limited means and on businesses and organizations  
5 engaged in or planning business projects on a small scale; that a  
6 regulatory dilemma has developed in which efforts to protect the  
7 health, safety, and economic welfare of the people of this State  
8 have created a burden of required legal, accounting, and consulting  
9 services which is causing economic harm to individuals and organi-  
10 zations of limited resources, and is adversely affecting competition  
11 in the marketplace; that the sheer scope and volume of rules and  
12 regulations already in place has created high entry barriers in  
13 many industries, and discouraged potential entrepreneurs from  
14 introducing beneficial products and processes; that the practice of  
15 treating all regulated individuals, organizations, businesses and  
16 business activities as equivalent, for purposes of regulatory and  
17 paperwork requirements, has led to inefficient use of the resources  
18 of some State agencies and to enforcement problems; that the  
19 collection of information by the State has not adequately weighed  
20 the privacy rights of individuals and enterprises against the State's  
21 need to know because the design of the regulatory process has en-  
22 couraged regulators to treat information as a free good; and that  
23 the deep public dissatisfaction with the regulatory process has

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

24 stemmed in large part from a public perception of the failure of  
25 burdensome regulations to correct key problems.

26 The Legislature, therefore, declares it to be in the best interest  
27 of its citizens that this State establish as a principle of regulatory  
28 issuance that regulatory and informational requirements fit the  
29 scale of the persons and activities being regulated, that fewer and  
30 simpler requirements be made of individuals, small organizations,  
31 small businesses, and larger private entities engaged in business  
32 activity on a small scale, and that to achieve these ends State  
33 agencies should be empowered and encouraged to issue regulations  
34 which apply differently to different segments of regulated indus-  
35 tries and activities.

1-2 3. As used in this act:

3 a. "Administrative rule" or "rule" means any agency statement  
4 which is made, adopted and promulgated pursuant to law, is of  
5 general applicability and continuing effect, and which implements  
6 or interprets any law or policy and applies to persons engaged in  
7 business;

8 b. "Business" means any trade, business or professional entity  
9 or activity which is conducted for profit;

10 c. "State agency" or "agency" means each of the principal  
11 departments in the Executive Branch of the State Government,  
12 and all boards, divisions, commissions, agencies, departments, coun-  
13 cils, authorities, offices or officers within any such departments now  
14 existing or hereafter established and authorized by statute to  
15 make, adopt or promulgate rules.

1 4. a. Each State agency shall, prior to the adoption and promul-  
2 gation of a proposed administrative rule, conduct an analysis for  
3 the purpose of making a determination, based on the amount of  
4 \***[public]**\* *governmental* information collection the proposed rule  
5 would necessitate, of the *approximate* amount, if any, of legal,  
6 *enforcement*, consulting, and accounting costs to the State which  
7 would be so necessitated, and of the *approximate* overall cost  
8 to persons other than public entities of compliance with the rule,  
8a averaged, for each person, business concern, and organization  
9 affected by it, as compared with the importance of the public policy  
10 to be achieved, and shall, pursuant to such an analysis, make a  
11 further determination whether such rule should apply at all or in  
12 the same manner to persons, businesses, and organizations of  
13 various sizes and resources, or to business operations of different  
14 scope.

15 b. The chief executive officer of any agency preparing any such  
16 administrative rule shall submit the rule, together with the analysis

17 of its costs and benefits as hereinabove provided, to the Office of  
18 Business Advocacy in the Department of Labor and Industry. The  
19 Office of Business Advocacy shall review the proposed rule and the  
20 analysis of costs and benefits and shall, if it determines that the  
21 proposed rule will have a substantial effect on any significant num-  
22 ber of businesses, issue a statement to the agency. *within 90 days*  
23 *of receipt of the rule,* **\*[continuing]\*** *containing* comments on  
24 the impact of the proposed rule should it be promulgated. The  
25 statement shall *also* contain comments on the impact of the pro-  
25A posed rule on businesses not directly regulated by it.

26 c. The chief executive officer of the agency proposing such an  
27 administrative rule shall issue a notice that the analysis of costs  
28 and benefits and any statement on the impact of the proposed rule  
29 made by the Office of Business Advocacy is on file with the Office  
30 of Business Advocacy and the notice is to be included with the  
31 public notice which is to be distributed to interested persons and  
32 published in the New Jersey Register pursuant to the provisions  
33 of the "Administrative Procedure Act," P. L. 1968, c. 410  
34 (C. 52:13B-1 et seq.).

35 d. The Office of Business Advocacy shall maintain a file of all  
36 administrative rules submitted to it pursuant to this act along with  
37 the analysis of costs and benefits and the statement of impact, if  
38 any. The contents of this file shall be made available to any inter-  
39 ested party pursuant to the provisions of P. L. 1963, c. 73  
40 (C. 47:1A-1 et seq.).

1 5. a. Whenever *both* the results of the analysis by a State  
2 agency and comments by the Office of Business Advocacy indicate  
3 the desirability and feasibility of promulgating rules which differ  
4 with respect to their substance or applicability to various segments  
5 of the businesses or business activities to which the rules, as  
6 proposed, would apply, the agency shall issue the new rule in two  
7 or more parts, with each part containing varying requirements  
8 for performance or reporting, as appropriate, to persons, business  
9 concerns, and organizations of varying economic sizes and resources  
10 engaged in business activities of varying scope. These varying re-  
11 quirements shall take into account (1) the capitalization, annual  
12 income, number of employees, and such other factors as bear on  
13 the ability of the regulated persons, concerns or organizations to  
14 sustain the costs attached to compliance with the rule; and (2)  
15 in the case of regulated activities, the value of the activities to  
16 the economy of the State and the welfare of its citizens. In estab-  
17 lishing segments of regulated businesses or business activities for  
18 the purposes of this section, agencies shall establish objective,

19 and to the maximum extent feasible, uniform criteria to facilitate  
20 determinations by those engaged in such businesses and business  
21 activities of the applicability to themselves of rules issued here-  
22 under.

23 b. Whenever a State agency proposes to issue or issues a rule,  
24 any business affected directly or indirectly by the rule may at  
25 any time apply to the agency for any exemption to the rule as  
26 it believes to be authorized by subsection a. of this section. The  
27 agency shall review all applications and may include any ex-  
28 emptions requested therein in its official criteria and standards  
29 for such exemptions, or in any revision thereof, upon finding that  
30 the public health, safety ~~\*[and]\*~~ *\*or\** welfare will be protected.  
31 Within 60 days after its receipt of an application the agency shall  
32 inform the applicant of: (1) its rejection of the application and its  
33 reasons therefor; or, (2) its approval of the application and the  
34 approximate date when the applied for exemptions will be in-  
35 cluded in the agency's official criteria and standards therefor, or  
36 in any revision thereof. *\*If an agency response is not postmarked*  
36A *within the aforesaid 60 days, the application shall be considered*  
36B *approved.\**

37 c. Notwithstanding the provisions of the "Administrative Pro-  
38 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), or any other  
39 law, the chief executive officer of any agency issuing such a rule in  
40 two or more parts, as hereinabove provided, shall upon issuing the  
41 rule transmit a copy of the same, together with such statements  
42 and comments as may be made in connection therewith by the Office  
43 of Business Advocacy to the President of the Senate and to the  
44 Speaker of the General Assembly.

1 6. The provisions of this act shall not apply when an agency finds  
2 that an imminent peril to the public health, safety or welfare re-  
3 quires the immediate adoption of a rule and states in writing its  
4 reasons for that finding pursuant to the provisions of the "Admin-  
5 istrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.).

1 7. Each agency shall, during the 5-year period beginning with  
2 the date of enactment of this act, review its substantive rules which  
3 are in effect on such date and make the determinations referred to  
4 in section 4 hereof with respect to each rule.

1 8. This act shall take effect immediately.

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ASSEMBLY REGULATORY EFFICIENCY AND  
OVERSIGHT COMMITTEE

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 10**

**STATE OF NEW JERSEY**

DATED: JUNE 16, 1986

The Assembly Regulatory Efficiency and Oversight Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 10.

This bill, to be known and cited as the "New Jersey Regulatory Flexibility Act," requires an agency proposing a rule to utilize approaches which will minimize any adverse economic impact of the proposed rule on small businesses. "Small business" is defined as a resident business in the State which is independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

If a proposed rule imposes compliance requirements on small businesses, the agency shall issue a regulatory flexibility analysis which shall be included in the notice of the proposed rule and printed in the New Jersey Register. The analysis contains a description of the small businesses to which the proposed rule will apply, a description of compliance requirements and their costs, and an indication of how the rule is designed to minimize adverse economic impact on small businesses. If the agency finds that the proposed rule does not impose compliance requirements on small businesses, it shall include a statement of its finding, along with an indication of the basis for the finding, in the notice to be printed in the Register.

SENATE STATE GOVERNMENT AND FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS AFFAIRS  
COMMITTEE

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 10**

**STATE OF NEW JERSEY**

DATED: OCTOBER 6, 1986

The Senate State Government Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 10.

This bill, the "New Jersey Regulatory Flexibility Act," requires a State agency, when proposing a rule for adoption which would place compliance requirements on small businesses, to issue a regulatory flexibility analysis regarding the proposed rule. "Small business" is defined as a resident business in the State which is independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

If a proposed rule imposes compliance requirements on small businesses, the regulatory flexibility analysis shall be included in the notice of the proposed rule and printed in the New Jersey Register. The analysis shall contain a description of compliance requirements and their costs, and an indication of how the rule is designed to minimize adverse economic impact on small businesses. If the agency finds that the proposed rule does not impose compliance requirements on small businesses, it shall include a statement of that finding, along with an indication of the basis for it, in the notice to be printed in the Register.

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