

52:14B-3a
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2011 **CHAPTER:** 215

NJSA: 52:14B-3a (Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents except under certain circumstances)

BILL NO: A2464 (Substituted for S1783)

SPONSOR(S) Burzichelli and Others

DATE INTRODUCED: March 4, 2010

COMMITTEE: **ASSEMBLY:** Regulatory Oversight and Gaming

SENATE: State Government, Wagering, Tourism & Historic Preservation

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 9, 2012

SENATE: January 9, 2012

DATE OF APPROVAL: January 17, 2012

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted)

A2464

SPONSOR'S STATEMENT: (Begins on page 2 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

S1783

SPONSOR'S STATEMENT: (Begins on page 2 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

CONDITIONAL VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW

P.L.2011, CHAPTER 215, *approved January 17, 2012*
Assembly, No. 2464 (*Third Reprint*)

1 AN ACT concerning State agency rule-making and supplementing
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

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

6
7 1. ¹a. A State agency shall follow the administrative rule-
8 making requirements set forth in the “Administrative Procedure
9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only
10 implement rules that have been adopted in accordance with those
11 rule-making requirements.

12 ³[Unless specifically authorized by State law, a]

13 b. ³No State agency shall ³[not] ³utilize regulatory guidance
14 documents ³[unless the documents] ³that ³have ³not ³been adopted
15 as rules in accordance with P.L.1968, c.410 ³[.

16 ¹b. Notwithstanding the provisions of subsection a. of this
17 section to the contrary, a State agency may implement a regulatory
18 guidance document without specific authorization by State law
19 when the State agency determines that regulatory guidance is
20 necessary in order to clarify or explain a component of a new rule
21 or adopted amendments to an existing rule, provided that the
22 regulatory guidance document is posted] unless the agency makes
23 such documents readily available to the regulated community
24 through appropriate means, including but not limited to posting³ in
25 a prominent place on the website for the agency.

26 ³c. ³A regulatory guidance document ³[authorized pursuant to
27 this subsection, until such time as it is] that has not been³ adopted
28 as a rule pursuant to P.L.1968, c.410, shall not:

29 (1) impose any new or additional requirements that are not
30 included in the ³State or federal law or³ rule that the regulatory
31 guidance document is intended to clarify or explain; or

32 (2) be used by the State agency ³as a substitute for the State or
33 federal law or rule³ for enforcement purposes.

34 ³[c. Within 30 days after the date of enactment of this act, each
35 State agency shall make public in a prominent place on the website
36 for the agency all regulatory guidance documents used by the
37 agency that are specifically authorized by State law and clearly

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 4, 2010.

²Assembly floor amendments adopted March 15, 2010.

³Assembly amendments adopted in accordance with Governor's recommendations January 9, 2012.

1 identify the State law providing the authorization for each
2 regulatory guidance document.¹]³

3 ²d. As used in this section, “regulatory guidance document”
4 means any policy memorandum or other similar document used by a
5 State agency to provide technical or regulatory assistance or
6 direction ³[in the implementation of] to the regulated community to
7 facilitate compliance with³ a State or federal law or a rule adopted
8 pursuant to P.L.1968, c.410 ³[where the document itself has not
9 been adopted pursuant to P.L.1968, c.410]³ , but shall not include
10 technical manuals adopted by the Department of Environmental
11 Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).²

12 ³e. Nothing in this section shall be construed to require the
13 disclosure of any information or record that is protected from
14 disclosure by law, court order or rule of court, or to abrogate or
15 erode any privilege or grant of confidentiality heretofore established
16 or recognized by the Constitution of this State, statute, court rule or
17 judicial case law.³

18

19 2. This act shall take effect immediately.

20

21

22

23

24 Requires all State agency rules be published in NJ Register, and
25 prohibits use of regulatory guidance documents except under certain
26 circumstances.

ASSEMBLY, No. 2464

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MARCH 4, 2010

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents unless specifically authorized by State law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning State agency rule-making and supplementing
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3

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

6

7 1. A State agency shall follow the administrative rule-making
8 requirements set forth in the “Administrative Procedure Act,”
9 P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only implement
10 rules that have been adopted in accordance with those rule-making
11 requirements.

12 Unless specifically authorized by State law, a State agency shall
13 not utilize regulatory guidance documents unless the documents
14 have been adopted as rules in accordance with P.L.1968, c.410.

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill would supplement the “Administrative Procedure Act,”
22 P.L.1968, c.410 (C.52:14B-1 et seq.), and specify that (1) all State
23 agency rules must be published in the New Jersey Register, and (2)
24 unless specifically authorized to do so by State law, State agencies
25 would be prohibited from using regulatory guidance documents.

[First Reprint]

ASSEMBLY, No. 2464

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MARCH 4, 2010

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents except under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Assembly Regulatory Oversight and Gaming Committee on March 4, 2010, with amendments.



1 AN ACT concerning State agency rule-making and supplementing
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3

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

6

7 1. ¹a. A State agency shall follow the administrative rule-
8 making requirements set forth in the “Administrative Procedure
9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only
10 implement rules that have been adopted in accordance with those
11 rule-making requirements.

12 Unless specifically authorized by State law, a State agency shall
13 not utilize regulatory guidance documents unless the documents
14 have been adopted as rules in accordance with P.L.1968, c.410.

15 ¹b. Notwithstanding the provisions of subsection a. of this
16 section to the contrary, a State agency may implement a regulatory
17 guidance document without specific authorization by State law
18 when the State agency determines that regulatory guidance is
19 necessary in order to clarify or explain a component of a new rule
20 or adopted amendments to an existing rule, provided that the
21 regulatory guidance document is posted in a prominent place on the
22 website for the agency.

23 A regulatory guidance document authorized pursuant to this
24 subsection, until such time as it is adopted as a rule pursuant to
25 P.L.1968, c.410, shall not:

26 (1) impose any new or additional requirements that are not
27 included in the rule that the regulatory guidance document is
28 intended to clarify or explain; or

29 (2) be used by the State agency for enforcement purposes.

30 c. Within 30 days after the date of enactment of this act, each
31 State agency shall make public in a prominent place on the website
32 for the agency all regulatory guidance documents used by the
33 agency that are specifically authorized by State law and clearly
34 identify the State law providing the authorization for each
35 regulatory guidance document.¹

36

37 2. This act shall take effect immediately.

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 4, 2010.

ASSEMBLY REGULATORY OVERSIGHT AND GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2464

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2010

The Assembly Regulatory Oversight and Gaming Committee reports favorably and with committee amendments Assembly Bill No. 2464.

As amended by the committee, this bill would supplement the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and specify that (1) all State agency rules must be published in the New Jersey Register, and (2) unless specifically authorized to do so by State law, or as otherwise provided by the bill, State agencies would be prohibited from using regulatory guidance documents.

The bill, as amended, would authorize a State agency to implement a regulatory guidance document without specific authorization by State law when the State agency determines that regulatory guidance is necessary in order to clarify or explain a component of a new rule or adopted amendments to an existing rule, provided the regulatory guidance document is prominently posted on the website for the agency. However, unless a regulatory guidance document is adopted as a rule, a State agency may not use a regulatory guidance document authorized by the bill to impose any new or additional requirements that are not included in the rule that the regulatory guidance document is intended to clarify or explain or for enforcement purposes.

In addition, as amended, the bill would require, within 30 days after the date of enactment of the bill into law, that each State agency make public in a prominent location on the agency’s website all regulatory guidance documents used by the agency that are specifically authorized by State law and clearly identify the State law providing the authorization for each regulatory guidance document.

COMMITTEE AMENDMENTS

The committee amended the bill to:

1) allow a State agency to implement a regulatory guidance document without specific authorization by State law when the State agency determines that regulatory guidance is necessary in order to clarify or explain a component of a new rule or adopted amendments

to an existing rule, provided the regulatory guidance document is prominently posted on the website for the agency;

2) provide that until the regulatory guidance document is adopted as a rule, a State agency may not use a regulatory guidance document, authorized by the bill: (a) to impose any new or additional requirements that are not included in the rule that the regulatory guidance document is intended to clarify or explain; or (b) for enforcement purposes; and

3) require, within 30 days after the date of enactment of the bill into law, that each State agency make public in a prominent location on the agency's website all regulatory guidance documents used by the agency that are specifically authorized by State law and clearly identify the State law providing the authorization for each regulatory guidance document.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 2464

STATE OF NEW JERSEY

DATED: MARCH 10, 2011

The Senate State Government, Wagering, Tourism & Historic Preservation Committee reports favorably and with committee amendments Assembly, No. 2464 (2R).

This bill would supplement the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and specify that (1) all State agency rules must be published in the New Jersey Register, and (2) unless specifically authorized to do so by State law, or as otherwise provided by the bill, State agencies would be prohibited from using regulatory guidance documents.

The bill, as amended, would authorize a State agency to implement a regulatory guidance document without specific authorization by State law when the State agency determines that regulatory guidance is necessary in order to clarify or explain a component of a new rule or adopted amendments to an existing rule, provided the regulatory guidance document is prominently posted on the website for the agency. However, unless a regulatory guidance document is adopted as a rule, a State agency may not use a regulatory guidance document authorized by the bill to impose any new or additional requirements that are not included in the rule that the regulatory guidance document is intended to clarify or explain or for enforcement purposes.

In addition, as amended, the bill would require, within 30 days after the date of enactment of the bill into law, that each State agency make public in a prominent location on the agency’s website all regulatory guidance documents used by the agency that are specifically authorized by State law and clearly identify the State law providing the authorization for each regulatory guidance document.

Assembly Bill No. 2464 (2R) is identical to Senate Bill No. 1783 (1R) of 2010.

[Second Reprint]

ASSEMBLY, No. 2464

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MARCH 4, 2010

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

Assemblywoman McHose, Senators Oroho and Addiego

SYNOPSIS

Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents except under certain circumstances.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 15, 2010.



(Sponsorship Updated As Of: 12/16/2011)

1 AN ACT concerning State agency rule-making and supplementing
 2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3

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

6

7 1. ¹a. A State agency shall follow the administrative rule-
 8 making requirements set forth in the “Administrative Procedure
 9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only
 10 implement rules that have been adopted in accordance with those
 11 rule-making requirements.

12 Unless specifically authorized by State law, a State agency shall
 13 not utilize regulatory guidance documents unless the documents
 14 have been adopted as rules in accordance with P.L.1968, c.410.

15 ¹b. Notwithstanding the provisions of subsection a. of this
 16 section to the contrary, a State agency may implement a regulatory
 17 guidance document without specific authorization by State law
 18 when the State agency determines that regulatory guidance is
 19 necessary in order to clarify or explain a component of a new rule
 20 or adopted amendments to an existing rule, provided that the
 21 regulatory guidance document is posted in a prominent place on the
 22 website for the agency.

23 A regulatory guidance document authorized pursuant to this
 24 subsection, until such time as it is adopted as a rule pursuant to
 25 P.L.1968, c.410, shall not:

26 (1) impose any new or additional requirements that are not
 27 included in the rule that the regulatory guidance document is
 28 intended to clarify or explain; or

29 (2) be used by the State agency for enforcement purposes.

30 c. Within 30 days after the date of enactment of this act, each
 31 State agency shall make public in a prominent place on the website
 32 for the agency all regulatory guidance documents used by the
 33 agency that are specifically authorized by State law and clearly
 34 identify the State law providing the authorization for each
 35 regulatory guidance document.¹

36 ²d. As used in this section, “regulatory guidance document”
 37 means any policy memorandum or other similar document used by a
 38 State agency to provide technical or regulatory assistance or
 39 direction in the implementation of a State or federal law or a rule
 40 adopted pursuant to P.L.1968, c.410 where the document itself has
 41 not been adopted pursuant to P.L.1968, c.410, but shall not include
 42 technical manuals adopted by the Department of Environmental
 43 Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).²

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 4, 2010.

²Assembly floor amendments adopted March 15, 2010.

- 1 2. This act shall take effect immediately.

[Third Reprint]

ASSEMBLY, No. 2464

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MARCH 4, 2010

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

Assemblywoman McHose, Senators Oroho and Addiego

SYNOPSIS

Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents except under certain circumstances.

CURRENT VERSION OF TEXT

As amended on January 9, 2012 by the General Assembly pursuant to the Governor's recommendations.



1 AN ACT concerning State agency rule-making and supplementing
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3

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

6

7 1. ¹a. A State agency shall follow the administrative rule-
8 making requirements set forth in the “Administrative Procedure
9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only
10 implement rules that have been adopted in accordance with those
11 rule-making requirements.

12 ³[Unless specifically authorized by State law, a]

13 b. No³ State agency shall ³[not]³ utilize regulatory guidance
14 documents ³[unless the documents] that³ have ³not³ been adopted
15 as rules in accordance with P.L.1968, c.410 ³[.

16 ¹b. Notwithstanding the provisions of subsection a. of this
17 section to the contrary, a State agency may implement a regulatory
18 guidance document without specific authorization by State law
19 when the State agency determines that regulatory guidance is
20 necessary in order to clarify or explain a component of a new rule
21 or adopted amendments to an existing rule, provided that the
22 regulatory guidance document is posted] unless the agency makes
23 such documents readily available to the regulated community
24 through appropriate means, including but not limited to posting³ in
25 a prominent place on the website for the agency.

26 ³c. ³A regulatory guidance document ³[authorized pursuant to
27 this subsection, until such time as it is] that has not been³ adopted
28 as a rule pursuant to P.L.1968, c.410, shall not:

29 (1) impose any new or additional requirements that are not
30 included in the ³State or federal law or³ rule that the regulatory
31 guidance document is intended to clarify or explain; or

32 (2) be used by the State agency ³as a substitute for the State or
33 federal law or rule³ for enforcement purposes.

34 ³[c. Within 30 days after the date of enactment of this act, each
35 State agency shall make public in a prominent place on the website
36 for the agency all regulatory guidance documents used by the
37 agency that are specifically authorized by State law and clearly
38 identify the State law providing the authorization for each
39 regulatory guidance document.]¹³

40 ²d. As used in this section, “regulatory guidance document”
41 means any policy memorandum or other similar document used by a

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 4, 2010.

²Assembly floor amendments adopted March 15, 2010.

³Assembly amendments adopted in accordance with Governor's recommendations January 9, 2012.

1 State agency to provide technical or regulatory assistance or
2 direction ³[in the implementation of] to the regulated community to
3 facilitate compliance with³ a State or federal law or a rule adopted
4 pursuant to P.L.1968, c.410 ³[where the document itself has not
5 been adopted pursuant to P.L.1968, c.410]³ , but shall not include
6 technical manuals adopted by the Department of Environmental
7 Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).²

8 ³e. Nothing in this section shall be construed to require the
9 disclosure of any information or record that is protected from
10 disclosure by law, court order or rule of court, or to abrogate or
11 erode any privilege or grant of confidentiality heretofore established
12 or recognized by the Constitution of this State, statute, court rule or
13 judicial case law.³

14

15 2. This act shall take effect immediately.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 2464

with Assembly Floor Amendments
(Proposed by Assemblyman BURZICHELLI)

ADOPTED: MARCH 15, 2010

These floor amendments add a definition of “regulatory guidance document” in recognition that such documents may be called by different names. These amendments define “regulatory guidance document” to include any policy memorandum or other similar document used by a State agency to provide technical or regulatory assistance or direction in the implementation of a State or federal law or a rule adopted pursuant to the “Administrative Procedure Act” where the document itself has not been adopted pursuant to the “Administrative Procedure Act,” but the term does not include technical manuals adopted by the Department of Environmental Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).

ASSEMBLY BILL No. 2464
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2464 (Second Reprint) with my recommendations for reconsideration.

Current law does not govern how agencies can promulgate informal guidance, commonly referred to as a regulatory guidance document, to the communities subject to those regulations. Rather, agencies are free to distribute these materials in any format and by whichever means they choose. Unfortunately, this haphazard dissemination of important guidance can lead to instances where members of a regulated community may not be equally informed as to an agency's interpretation of a specific law or rule. Well-intentioned individuals and businesses who wish to remain in compliance with existing laws may thus inadvertently run afoul of regulatory changes.

Since taking office, my Administration has worked to reduce the red tape that regulated communities must navigate to operate in New Jersey. This bill represents a worthy expansion of that goal by seeking to preclude a State agency from utilizing regulatory guidance documents that have not been formally adopted as rules. I applaud the sponsors for their efforts, which will continue the success of our State's businesses while simultaneously increasing regulatory transparency.

To strengthen these ideas, I recommend supplementing this bill to facilitate the use of regulatory guidance documents, provided that they are made available to all members of the regulated community by posting these documents in a prominent location on the respective agency's website. This additional

requirement will provide a single uniform standard for the distribution of agency guidance, and allow regulated entities up-to-the-minute access to changes in regulatory standards.

Accordingly, I herewith return Assembly Bill No. 2464 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 12:</u>	Delete "Unless specifically authorized by State law, a" and insert "b. No"
<u>Page 2, Section 1, Line 13:</u>	Delete "not"
<u>Page 2, Section 1, Line 13:</u>	Delete "unless the documents" and insert "that"
<u>Page 2, Section 1, Line 14:</u>	After "have" insert "not"
<u>Page 2, Section 1, Line 14:</u>	After "c.410" insert "unless the agency makes such documents readily available to the regulated community through appropriate means, including but not limited to posting"
<u>Page 2, Section 1, Lines 15-20:</u>	Delete in their entirety
<u>Page 2, Section 2, Line 21:</u>	Delete " <u>regulatory guidance document is posted</u> "
<u>Page 2, Section 1, Line 23:</u>	Before " <u>A regulatory guidance</u> " insert "c."
<u>Page 2, Section 1, Line 23:</u>	Delete " <u>authorized pursuant to this</u> "
<u>Page 2, Section 1, Line 24:</u>	Delete " <u>subsection, until such time as it is</u> " and insert "that has not been"
<u>Page 2, Section 1, Line 27:</u>	After " <u>included in the</u> " insert "State or federal law or"
<u>Page 2, Section 1, Line 29:</u>	After " <u>the State agency</u> " insert "as a substitute for the State or federal law or rule"
<u>Page 2, Section 1, Lines 30-35:</u>	Delete in their entirety
<u>Page 2, Section 1, Line 39:</u>	Delete " <u>in the implementation of</u> " and insert "to the regulated community to facilitate compliance with"

Page 2, Section 1, Line 40:

Delete "where the document itself has"

Page 2, Section 1, Line 41:

Delete "not been adopted pursuant to P.L.1968, c.410"

Page 2, Section 1, Line 43:

After "c.422 (C.13:1D-111)." insert "e. Nothing in this section shall be construed to require the disclosure of any information or record that is protected from disclosure by law, court order or rule of court, or to abrogate or erode any privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Kevin M. O'Dowd

Deputy Chief Counsel to the Governor

SENATE, No. 1783

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MARCH 15, 2010

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

Senator DAWN MARIE ADDIEGO

District 8 (Burlington)

SYNOPSIS

Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents except under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/11/2011)

S1783 OROHO, ADDIEGO

2

1 AN ACT concerning State agency rule-making and supplementing
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3

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

6

7 1. a. A State agency shall follow the administrative rule-
8 making requirements set forth in the “Administrative Procedure
9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only
10 implement rules that have been adopted in accordance with those
11 rule-making requirements.

12 Unless specifically authorized by State law, a State agency shall
13 not utilize regulatory guidance documents unless the documents
14 have been adopted as rules in accordance with P.L.1968, c.410.

15 b. Notwithstanding the provisions of subsection a. of this
16 section to the contrary, a State agency may implement a regulatory
17 guidance document without specific authorization by State law
18 when the State agency determines that regulatory guidance is
19 necessary in order to clarify or explain a component of a new rule
20 or adopted amendments to an existing rule, provided that the
21 regulatory guidance document is posted in a prominent place on the
22 website for the agency.

23 A regulatory guidance document authorized pursuant to this
24 subsection, until such time as it is adopted as a rule pursuant to
25 P.L.1968, c.410, shall not:

26 (1) impose any new or additional requirements that are not
27 included in the rule that the regulatory guidance document is
28 intended to clarify or explain; or

29 (2) be used by the State agency for enforcement purposes.

30 c. Within 30 days after the date of enactment of this act, each
31 State agency shall make public in a prominent place on the website
32 for the agency all regulatory guidance documents used by the
33 agency that are specifically authorized by State law and clearly
34 identify the State law providing the authorization for each
35 regulatory guidance document.

36

37 2. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill would supplement the “Administrative Procedure Act,”
43 P.L.1968, c.410 (C.52:14B-1 et seq.), and specify that (1) all State
44 agency rules must be published in the New Jersey Register, and (2)
45 unless specifically authorized to do so by State law, or as otherwise
46 provided by the bill, State agencies would be prohibited from using
47 regulatory guidance documents.

S1783 OROHO, ADDIEGO

1 The bill would authorize a State agency to implement a
2 regulatory guidance document without specific authorization by
3 State law when the State agency determines that regulatory
4 guidance is necessary in order to clarify or explain a component of
5 a new rule or adopted amendments to an existing rule, provided the
6 regulatory guidance document is prominently posted on the website
7 for the agency. However, unless a regulatory guidance document is
8 adopted as a rule, a State agency may not use a regulatory guidance
9 document authorized by the bill to impose any new or additional
10 requirements that are not included in the rule that the regulatory
11 guidance document is intended to clarify or explain or for
12 enforcement purposes.

13 In addition, the bill would require, within 30 days after the date
14 of enactment of the bill into law, that each State agency make
15 public in a prominent location on the agency's website all
16 regulatory guidance documents used by the agency that are
17 specifically authorized by State law and clearly identify the State
18 law providing the authorization for each regulatory guidance
19 document.

[First Reprint]

SENATE, No. 1783

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MARCH 15, 2010

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

Senator DAWN MARIE ADDIEGO

District 8 (Burlington)

SYNOPSIS

Requires all State agency rules be published in NJ Register, and prohibits use of regulatory guidance documents except under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on March 10, 2011, with amendments.



(Sponsorship Updated As Of: 3/11/2011)

1 AN ACT concerning State agency rule-making and supplementing
2 P.L.1968, c.410 (C.52:14B-1 et seq.).

3

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

6

7 1. a. A State agency shall follow the administrative rule-
8 making requirements set forth in the “Administrative Procedure
9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and shall only
10 implement rules that have been adopted in accordance with those
11 rule-making requirements.

12 Unless specifically authorized by State law, a State agency shall
13 not utilize regulatory guidance documents unless the documents
14 have been adopted as rules in accordance with P.L.1968, c.410.

15 b. Notwithstanding the provisions of subsection a. of this
16 section to the contrary, a State agency may implement a regulatory
17 guidance document without specific authorization by State law
18 when the State agency determines that regulatory guidance is
19 necessary in order to clarify or explain a component of a new rule
20 or adopted amendments to an existing rule, provided that the
21 regulatory guidance document is posted in a prominent place on the
22 website for the agency.

23 A regulatory guidance document authorized pursuant to this
24 subsection, until such time as it is adopted as a rule pursuant to
25 P.L.1968, c.410, shall not:

26 (1) impose any new or additional requirements that are not
27 included in the rule that the regulatory guidance document is
28 intended to clarify or explain; or

29 (2) be used by the State agency for enforcement purposes.

30 c. Within 30 days after the date of enactment of this act, each
31 State agency shall make public in a prominent place on the website
32 for the agency all regulatory guidance documents used by the
33 agency that are specifically authorized by State law and clearly
34 identify the State law providing the authorization for each
35 regulatory guidance document.

36 ¹d. As used in this section, “regulatory guidance document”
37 means any policy memorandum or other similar document used by a
38 State agency to provide technical or regulatory assistance or
39 direction in the implementation of a State or federal law or a rule
40 adopted pursuant to P.L.1968, c.410 where the document itself has
41 not been adopted pursuant to P.L.1968, c.410, but shall not include
42 technical manuals adopted by the Department of Environmental

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SSG committee amendments adopted March 10, 2011.

S1783 [1R] OROHO, ADDIEGO

3

1 Protection pursuant to section 1 of P.L.1991, c.422 (C.13:1D-111).¹

2

3 2. This act shall take effect immediately.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 1783

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 10, 2011

The Senate State Government, Wagering, Tourism & Historic Preservation Committee reports favorably and with committee amendments Senate, No. 1783.

As amended, this bill would supplement the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and specify that (1) all State agency rules must be published in the New Jersey Register, and (2) unless specifically authorized to do so by State law, or as otherwise provided by the bill, State agencies would be prohibited from using regulatory guidance documents.

The bill would authorize a State agency to implement a regulatory guidance document without specific authorization by State law when the State agency determines that regulatory guidance is necessary in order to clarify or explain a component of a new rule or adopted amendments to an existing rule, provided the regulatory guidance document is prominently posted on the website for the agency. However, unless a regulatory guidance document is adopted as a rule, a State agency may not use a regulatory guidance document authorized by the bill to impose any new or additional requirements that are not included in the rule that the regulatory guidance document is intended to clarify or explain or for enforcement purposes.

In addition, the bill would require, within 30 days after the date of enactment of the bill into law, that each State agency make public in a prominent location on the agency’s website all regulatory guidance documents used by the agency that are specifically authorized by State law and clearly identify the State law providing the authorization for each regulatory guidance document.

Senate Bill No. 1783 (1R) is identical to Assembly Bill No. 2464 (2R) of 2010.

COMMITTEE AMENDMENTS:

The committee amended the bill to make it identical to Assembly, No. 2464 (2R) by defining “regulatory guidance document” to mean any policy memorandum or other similar document used by a State

agency to provide technical or regulatory assistance or direction in the implementation of a State or federal law or a rule adopted pursuant to P.L.1968, c.410 where the document itself has not been adopted pursuant to that section of law, but not include technical manuals adopted by the Department of Environmental Protection pursuant to N.J.S.A..13:1D-111.