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LAW/RWH

P.L.2011, CHAPTER 33, *approved March 1, 2011*  
Assembly, No. 2720 (*First 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. a. Notwithstanding any other provision of the  
8 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
9 seq.), or rule adopted pursuant thereto, to the contrary, where,  
10 following a notice of proposal and upon conclusion of the public  
11 comment period, an agency determines that it would be appropriate  
12 to make substantial changes to the proposed rule upon adoption, the  
13 agency may follow the procedure set forth in this section instead of  
14 filing a new notice of proposal.

15 As used in this section, “substantial changes” means any changes  
16 to a proposed rule that would significantly: enlarge or curtail who  
17 and what will be affected by the proposed rule; change what is  
18 being prescribed, proscribed or otherwise mandated by the rule; or  
19 enlarge or curtail the scope of the proposed rule and its burden on  
20 those affected by it.

21 b. Upon making a determination that it would be appropriate to  
22 make substantial changes to a proposed rule upon adoption, an  
23 agency may submit a public notice to the Office of Administrative  
24 Law setting forth the proposed changes. The public notice shall  
25 include: (1) a description of the changes between the rule as  
26 originally proposed and the new proposed changes; (2) the specific  
27 reasons for proposing the additional changes; (3) a discussion of  
28 how the new proposed changes would alter the impact statements  
29 and analyses included in the notice of proposal; (4) a report listing  
30 all parties submitting comments on the originally proposed rule  
31 provisions subject to the proposed additional changes, summarizing  
32 the content of the submissions on those provisions, and providing  
33 the agency's response to the data, views and arguments contained in  
34 the submissions; and (5) the manner in which interested persons  
35 may present their views on the new proposed changes.

36 c. (1) Upon receipt of a public notice pursuant to subsection b.  
37 of this section, the Office of Administrative Law shall publish the  
38 notice in the New Jersey Register.

**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:

<sup>1</sup>Assembly ARG committee amendments adopted June 17, 2010.

1 (2) The agency ‘**[proposing]** submitting<sup>1</sup> the public notice  
2 containing substantial changes to a notice of proposal shall comply  
3 with the notice requirements set forth in paragraphs (1) and (3) of  
4 subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4), and  
5 provide a comment period of 60 days from the date the public  
6 notice is published in the New Jersey Register in which interested  
7 parties may present their views on the new proposed changes.

8 d. Upon the conclusion of the 60 day public comment period,  
9 the agency may proceed with a notice of adoption in accordance  
10 with the provisions of the “Administrative Procedure Act,”  
11 P.L.1968, c.410 (C.52:14B-1 et seq.). As part of the notice of  
12 adoption, the agency shall prepare for public distribution a report  
13 listing all parties submitting comments concerning the provisions of  
14 the proposed rule changes contained in the public notice,  
15 summarizing the content of the submissions that are related to the  
16 proposed rule changes contained in the public notice, and providing  
17 the agency's response to the data, views and arguments contained in  
18 the relevant submissions.

19 e. A notice of proposal that includes a public notice pursuant to  
20 this section shall expire 18 months after the date of publication of  
21 the notice of proposal in the New Jersey Register.

22

23 2. This act shall take effect immediately.

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28 \_\_\_\_\_  
29 Establishes new procedure in “Administrative Procedure Act” to  
allow substantial changes to agency rule-making upon adoption.

# ASSEMBLY, No. 2720

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 13, 2010

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Salem, Cumberland and Gloucester)**  
**Assemblyman SCOTT T. RUMANA**  
**District 40 (Bergen, Essex and Passaic)**  
**Assemblyman RALPH R. CAPUTO**  
**District 28 (Essex)**  
**Assemblywoman ANNETTE QUIJANO**  
**District 20 (Union)**  
**Assemblywoman LINDA R. GREENSTEIN**  
**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

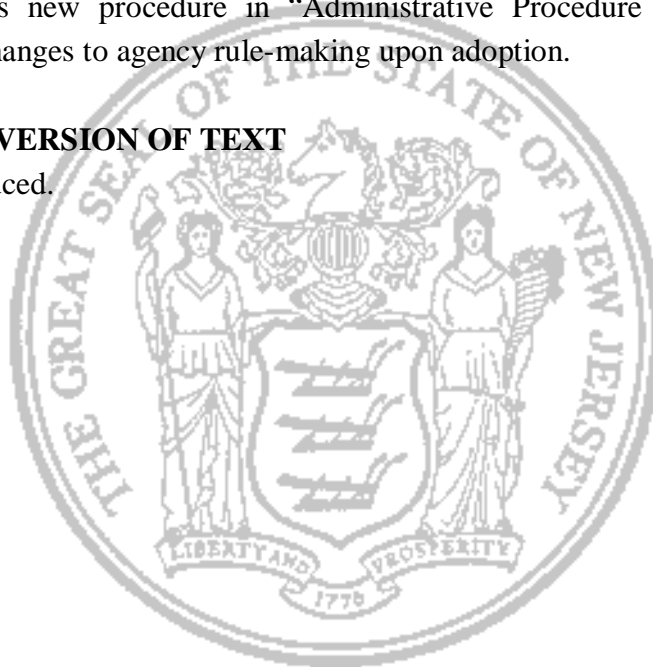
**Assemblyman Chiusano**

**SYNOPSIS**

Establishes new procedure in “Administrative Procedure Act” to allow substantial changes to agency rule-making upon adoption.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/21/2010)**

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. Notwithstanding any other provision of the  
8 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
9 seq.), or rule adopted pursuant thereto, to the contrary, where,  
10 following a notice of proposal and upon conclusion of the public  
11 comment period, an agency determines that it would be appropriate  
12 to make substantial changes to the proposed rule upon adoption, the  
13 agency may follow the procedure set forth in this section instead of  
14 filing a new notice of proposal.

15 As used in this section, “substantial changes” means any changes  
16 to a proposed rule that would significantly: enlarge or curtail who  
17 and what will be affected by the proposed rule; change what is  
18 being prescribed, proscribed or otherwise mandated by the rule; or  
19 enlarge or curtail the scope of the proposed rule and its burden on  
20 those affected by it.

21 b. Upon making a determination that it would be appropriate to  
22 make substantial changes to a proposed rule upon adoption, an  
23 agency may submit a public notice to the Office of Administrative  
24 Law setting forth the proposed changes. The public notice shall  
25 include: (1) a description of the changes between the rule as  
26 originally proposed and the new proposed changes; (2) the specific  
27 reasons for proposing the additional changes; (3) a discussion of  
28 how the new proposed changes would alter the impact statements  
29 and analyses included in the notice of proposal; (4) a report listing  
30 all parties submitting comments on the originally proposed rule  
31 provisions subject to the proposed additional changes, summarizing  
32 the content of the submissions on those provisions, and providing  
33 the agency's response to the data, views and arguments contained in  
34 the submissions; and (5) the manner in which interested persons  
35 may present their views on the new proposed changes.

36 c. (1) Upon receipt of a public notice pursuant to subsection b.  
37 of this section, the Office of Administrative Law shall publish the  
38 notice in the New Jersey Register.

39 (2) The agency proposing the public notice containing  
40 substantial changes to a notice of proposal shall comply with the  
41 notice requirements set forth in paragraphs (1) and (3) of subsection  
42 (a) of section 4 of P.L.1968, c.410 (C.52:14B-4), and provide a  
43 comment period of 60 days from the date the public notice is  
44 published in the New Jersey Register in which interested parties  
45 may present their views on the new proposed changes.

46 d. Upon the conclusion of the 60 day public comment period,  
47 the agency may proceed with a notice of adoption in accordance  
48 with the provisions of the “Administrative Procedure Act,”

1 P.L.1968, c.410 (C.52:14B-1 et seq.). As part of the notice of  
2 adoption, the agency shall prepare for public distribution a report  
3 listing all parties submitting comments concerning the provisions of  
4 the proposed rule changes contained in the public notice,  
5 summarizing the content of the submissions that are related to the  
6 proposed rule changes contained in the public notice, and providing  
7 the agency's response to the data, views and arguments contained in  
8 the relevant submissions.

9 e. A notice of proposal that includes a public notice pursuant to  
10 this section shall expire 18 months after the date of publication of  
11 the notice of proposal in the New Jersey Register.

12

13 2. This act shall take effect immediately.

14

15

16

#### STATEMENT

17

18 This bill establishes a new procedure to allow State agencies to  
19 make substantial changes to agency rule-making upon adoption  
20 instead of issuing a new notice of proposal. As used in the bill,  
21 "substantial changes" means any changes to a proposed rule that  
22 would significantly: enlarge or curtail who and what will be  
23 affected by the proposed rule; change what is being prescribed,  
24 proscribed or otherwise mandated by the rule; or enlarge or curtail  
25 the scope of the proposed rule and its burden on those affected by it.

26 The "Administrative Procedure Act," P.L.1968, c.410  
27 (C.52:14B-1 et seq.), sets forth the procedures that executive branch  
28 agencies must follow when exercising their authority to adopt rules.  
29 Currently, where, following the notice of proposal, an executive  
30 branch agency determines to make changes in the proposed rule  
31 which are "so substantial that the changes effectively destroy the  
32 value of the original notice," the agency is required to start the rule-  
33 making over from the beginning by issuing a new notice of  
34 proposal. This bill would provide the ability for an agency to make  
35 substantial changes upon adoption through the issuance of a public  
36 notice and a 60 day public comment period, without starting the  
37 rule-making process over with a new notice of proposal.

38 Under the bill, an agency that determines the need to make  
39 substantial changes upon adoption may submit a public notice to the  
40 Office of Administrative Law (OAL) setting forth the proposed  
41 changes. The public notice would include (1) a description of the  
42 changes between the rule as originally proposed and the new  
43 proposed changes, (2) the specific reasons for proposing the  
44 additional changes, (3) a discussion of how the new proposed  
45 changes would alter the impact statements and analyses included in  
46 the notice of proposal, (4) a report listing all parties submitting  
47 comments on the originally proposed rule provisions subject to the  
48 proposed additional changes, summarizing the content of the

1 submissions on those provisions, and providing the agency's  
2 response to the data, views and arguments contained in the  
3 submissions, and (5) the manner in which interested persons may  
4 present their views on the new proposed changes.

5 The OAL would publish the notice in the New Jersey Register.  
6 The agency proposing the public notice containing substantial  
7 changes would comply with the notice requirements set forth in the  
8 "Administrative Procedure Act," and provide a comment period of  
9 60 days from the date the public notice is published in the New  
10 Jersey Register.

11 Upon conclusion of the 60 day public comment period, the  
12 agency may proceed with a notice of adoption in accordance with  
13 the "Administrative Procedure Act." As part of the notice of  
14 adoption, the agency would summarize the public comments related  
15 to the proposed rule changes contained in the public notice and  
16 provide the agency's response to the data, views and arguments  
17 contained in the relevant submissions.

18 A notice of proposal that includes a public notice as provided in  
19 this bill would expire 18 months after the date of publication of the  
20 notice of proposal in the New Jersey Register. According to the  
21 OAL's current rules, if a notice of proposal has not been adopted  
22 and filed within one year after it was published in the New Jersey  
23 Register, the proposal expires. This bill would extend this time-  
24 period by six months in the case of rule-makings following the  
25 procedure set out in the bill.



ASSEMBLY REGULATORY OVERSIGHT AND GAMING  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2720**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 17, 2010

The Assembly Regulatory Oversight and Gaming Committee reports favorably and with committee amendments Assembly Bill No. 2720.

This bill establishes a new procedure to allow State agencies to make substantial changes to agency rule-making upon adoption instead of issuing a new notice of proposal. As used in the bill, “substantial changes” means any changes to a proposed rule that would significantly: enlarge or curtail who and what will be affected by the proposed rule; change what is being prescribed, proscribed or otherwise mandated by the rule; or enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

The “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), sets forth the procedures that executive branch agencies must follow when exercising their authority to adopt rules. Currently, where, following the notice of proposal, an executive branch agency determines to make changes in the proposed rule which are “so substantial that the changes effectively destroy the value of the original notice,” the agency is required to start the rule-making over from the beginning by issuing a new notice of proposal. This bill would provide the ability for an agency to make substantial changes upon adoption through the issuance of a public notice and a 60 day public comment period, without starting the rule-making process over with a new notice of proposal.

Under the bill, an agency that determines the need to make substantial changes upon adoption may submit a public notice to the Office of Administrative Law (OAL) setting forth the proposed changes. The public notice would include (1) a description of the changes between the rule as originally proposed and the new proposed changes, (2) the specific reasons for proposing the additional changes, (3) a discussion of how the new proposed changes would alter the impact statements and analyses included in the notice of proposal, (4) a report listing all parties submitting comments on the originally proposed rule provisions subject to the proposed additional changes,

summarizing the content of the submissions on those provisions, and providing the agency's response to the data, views and arguments contained in the submissions, and (5) the manner in which interested persons may present their views on the new proposed changes.

The OAL would publish the notice in the New Jersey Register. The agency submitting the public notice containing substantial changes would comply with the notice requirements set forth in the "Administrative Procedure Act," and provide a comment period of 60 days from the date the public notice is published in the New Jersey Register.

Upon conclusion of the 60 day public comment period, the agency may proceed with a notice of adoption in accordance with the "Administrative Procedure Act." As part of the notice of adoption, the agency would summarize the public comments related to the proposed rule changes contained in the public notice and provide the agency's response to the data, views and arguments contained in the relevant submissions.

A notice of proposal that includes a public notice as provided in this bill would expire 18 months after the date of publication of the notice of proposal in the New Jersey Register. According to the OAL's current rules, if a notice of proposal has not been adopted and filed within one year after it was published in the New Jersey Register, the proposal expires. This bill would extend this time-period by six months in the case of rule-makings following the procedure set out in the bill.

#### COMMITTEE AMENDMENTS:

The committee amendments to the bill make a technical correction to clarify that an agency submits, rather than proposes, a public notice.

**SENATE, No. 2014**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED JUNE 3, 2010

**Sponsored by:**

**Senator STEVEN V. OROHO**

**District 24 (Sussex, Hunterdon and Morris)**

**SYNOPSIS**

Establishes new procedure in “Administrative Procedure Act” to allow substantial changes to agency rule-making upon adoption.

**CURRENT VERSION OF TEXT**

As introduced.



S2014 OROHO

2

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S2014 OROHO

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STATEMENT

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**S2014 OROHO**

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11 Upon conclusion of the 60 day public comment period, the  
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20 notice of proposal in the New Jersey Register. According to the  
21 OAL's current rules, if a notice of proposal has not been adopted  
22 and filed within one year after it was published in the New Jersey  
23 Register, the proposal expires. This bill would extend this time-  
24 period by six months in the case of rule-makings following the  
25 procedure set out in the bill.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2014**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 16, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2014, with committee amendments.

The bill, as amended, establishes a new procedure to allow State agencies to make substantial changes to agency rule-making upon adoption instead of issuing a new notice of proposal. As used in the bill, “substantial changes” means any changes to a proposed rule that would significantly: enlarge or curtail who and what will be affected by the proposed rule; change what is being prescribed, proscribed or otherwise mandated by the rule; or enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

The “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), sets forth the procedures that executive branch agencies must follow when exercising their authority to adopt rules. Currently, where, following the notice of proposal, an executive branch agency determines to make changes in the proposed rule which are “so substantial that the changes effectively destroy the value of the original notice,” the agency is required to start the rule-making over from the beginning by issuing a new notice of proposal. This bill would provide the ability for an agency to make substantial changes upon adoption through the issuance of a public notice and a 60 day public comment period, without starting the rule-making process over with a new notice of proposal.

Under the bill, an agency that determines the need to make substantial changes upon adoption may submit a public notice to the Office of Administrative Law (OAL) setting forth the proposed changes. The public notice shall include (1) a description of the changes between the rule as originally proposed and the new proposed changes, (2) the specific reasons for proposing the additional changes, (3) a discussion of how the new proposed changes would alter the impact statements and analyses included in the notice of proposal, (4) a report listing all parties submitting comments on the originally proposed rule provisions subject to the proposed additional changes, summarizing the content of the submissions on those provisions, and providing the agency's response to the data, views and arguments contained in the submissions, and (5) the manner in which interested

persons may present their views on the new proposed changes. The OAL publishes the notice in the New Jersey Register. The agency submitting the public notice containing substantial changes shall comply with the notice requirements set forth in the “Administrative Procedure Act,” and provide a comment period of 60 days from the date the public notice is published in the New Jersey Register.

Upon conclusion of the 60 day public comment period, the agency may proceed with a notice of adoption in accordance with the “Administrative Procedure Act.” As part of the notice of adoption, the agency summarizes the public comments related to the proposed rule changes contained in the public notice and provides the agency's response to the data, views and arguments contained in the relevant submissions.

A notice of proposal that includes a public notice as provided in this bill would expire 18 months after the date of publication of the notice of proposal in the New Jersey Register. According to the OAL's current rules, if a notice of proposal has not been adopted and filed within one year after it was published in the New Jersey Register, the proposal expires. This bill would extend this time-period by six months in the case of rule-makings following the procedure set out in the bill.

As amended, this bill is identical to Assembly Bill No. 2720 (1R).

#### COMMITTEE AMENDMENTS:

The committee amendment makes a technical correction to clarify that an agency submits, rather than proposes, a public notice.

#### FISCAL IMPACT:

The bill has not been certified for a fiscal estimate. By allowing a mechanism for substantial changes to proposed rules upon adoption, rather than requiring a State agency to start the rule-making process over, the bill may mitigate the volume of State agency rule-making thereby resulting in an indeterminate fiscal impact.