

52:14B-3

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 5
NJSA: 52:14B-3 (Administrative rule making process—revision)
BILL NO: A1484 (Substituted for S1306)

SPONSORS: Heck and O'Toole

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Regulatory Oversight; Appropriations
 SENATE: State Government; Budget

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 16, 2000
 SENATE: December 4, 2000

DATE OF APPROVAL: January 16, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

A1484

	SPONSORS STATEMENT: (Begins on page 13 of original bill)	Yes
(Regulatory)	COMMITTEE STATEMENT: ASSEMBLY:	Yes 1/24/00
		3/2/00 (Approp.)
Govt.)	SENATE:	Yes 6/22/00 (State
		11/9/00 (Budget]
	FLOOR AMENDMENT STATEMENTS:	No

LEGISLATIVE FISCAL ESTIMATE: Yes

S1306

SPONSORS STATEMENT: (Begins on page 13 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

Govt.)

SENATE: Yes 6/22/00 (State

11/9/00 (Budget)

Identical to Assembly Statements for A1484

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

Identical to fiscal estimate to A1484

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

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ASSEMBLY, No. 1484

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman ROSE MARIE HECK

District 38 (Bergen)

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Co-Sponsored by:

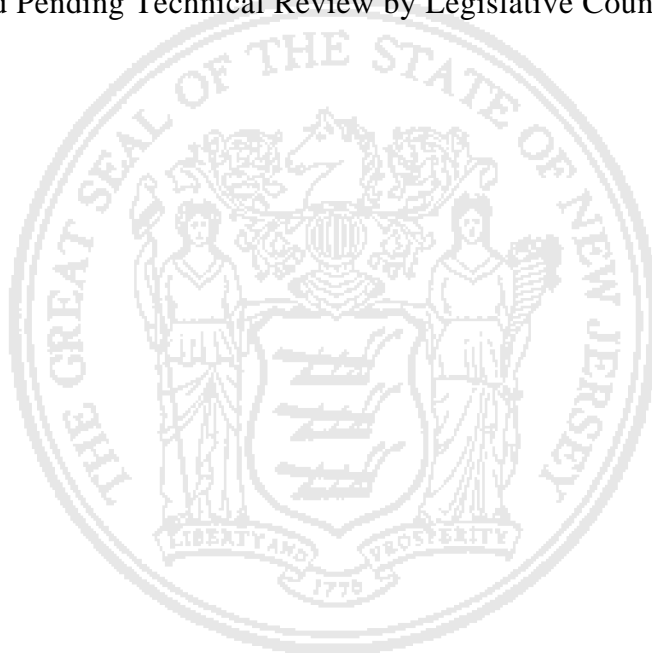
Assemblywomen Murphy, Crecco and Assemblyman LeFevre

SYNOPSIS

Revises administrative rule-making process.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

5

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

8

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

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

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

16 (2) adopt rules of practice setting forth the nature and
17 requirements of all formal and informal procedures available, including
18 a description of all forms and instructions used by the agency, and if
19 not otherwise set forth in an agency's rules, a table of all permits and
20 their fees, violations and penalties, deadlines, processing times and
21 appeals procedures;

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

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

34 In a manner prescribed by the Director of the Office of
35 Administrative Law, each agency shall appropriately publicize that
36 copies of its calendar are available to interested persons for a
37 reasonable fee. The amount of the fee shall be set by the director.

38 An agency shall notify the Director of the Office of Administrative
39 Law when it wishes to amend its calendar of rule-making activities.
40 Any amendment which involves the addition of any rule-making
41 activity to an agency's calendar shall provide that the agency shall take
42 no action on that matter until at least 45 days following the first
43 publication of the amended calendar in which the announcement of

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

Matter underlined thus is new matter.

1 that proposed rule-making activity first appears.

2 The provisions of this paragraph shall not apply to rule-making:

3 (a) governed by federal law;

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

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

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

9

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

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

14 (1) Give at least 30 days' notice of its intended action. The notice
15 shall include a statement of either the terms or substance of the
16 intended action or a description of the subjects and issues involved,
17 and the time when, the place where, and the manner in which
18 interested persons may present their views thereon. The notice shall
19 be mailed to all persons who have made timely requests of the agency
20 for advance notice of its rule-making proceedings and in addition to
21 other public notice required by law shall be published in the New
22 Jersey Register [and shall be filed with the President of the Senate and
23 the Speaker of the General Assembly. The notice shall be additionally
24 publicized in such manner as the agency deems most appropriate in
25 order to]. Notice shall also be distributed to the news media
26 maintaining a press office to cover the State House Complex, and
27 made available electronically through the largest nonproprietary
28 cooperative public computer network. Each agency shall additionally
29 publicize the intended action and shall adopt rules to prescribe the
30 manner in which it will do so, and inform those persons most likely to
31 be affected by or interested in the intended action. Methods that may
32 be employed include publication of the notice in newspapers of general
33 circulation or in trade, industry, governmental or professional
34 publications, distribution of press releases to the news media and
35 posting of notices in appropriate locations. The rules shall prescribe
36 the circumstances under which each additional method shall be
37 employed;

38 (2) Prepare for public distribution at the time the notice appears in
39 the Register a statement setting forth a summary of the proposed rule,
40 a clear and concise explanation of the purpose and effect of the rule,
41 the specific legal authority under which its adoption is authorized, a
42 [description of the expected socio-economic] regulatory impact
43 analysis of the rule in accordance with the requirements of section 8
44 of P.L. c. (C.)(now pending before the Legislature as this bill),
45 a regulatory flexibility analysis, or the statement of finding that a
46 regulatory flexibility analysis is not required, as provided in section 4

1 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
2 include an assessment of the number of jobs to be generated or lost if
3 the proposed rule takes effect, and an agriculture industry impact
4 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3).
5 If the agency finds that the substantive matters of a regulatory
6 flexibility analysis or jobs impact statement are sufficiently covered in
7 the regulatory impact analysis of the proposed rule, it may provide a
8 statement to that effect and shall not be required to prepare a separate
9 regulatory flexibility analysis or jobs impact statement; and

10 (3) Afford all interested persons reasonable opportunity to submit
11 data, views, or arguments, orally or in writing. The agency shall
12 consider fully all written and oral submissions respecting the proposed
13 rule. If within 30 days of the publication of the proposed rule
14 sufficient public interest is demonstrated in an extension of the time for
15 submissions, the agency shall provide an additional 30 day period for
16 the receipt of submissions by interested parties. The agency shall not
17 adopt the proposed rule until after the end of that 30 day extension.

18 The agency shall conduct a public hearing on the proposed rule at
19 the request of a committee of the Legislature, or a governmental
20 agency or subdivision, or if sufficient public interest is shown,
21 provided such request is made to the agency within [15] 30 days
22 following publication of the proposed rule in the Register. The agency
23 shall provide at least 15 days' notice of such hearing, which shall be
24 conducted in accordance with the provisions of subsection (g) of this
25 section[;].

26 The head of each agency shall adopt as part of its rules of practice
27 adopted pursuant to section 3 of P.L. 1968,410 (C.52:14B-3) definite
28 standards of what constitutes sufficient public interest for conducting
29 a public hearing and for granting an extension pursuant to this
30 paragraph.

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

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

39 (c) If an agency finds that an imminent peril to the public health,
40 safety, or welfare requires adoption of a rule upon fewer than 30 days'
41 notice and states in writing its reasons for that finding, and the
42 Governor concurs in writing that an imminent peril exists, it may
43 proceed without prior notice or hearing, or upon any abbreviated
44 notice and hearing that it finds practicable, to adopt the rule. The rule
45 shall be effective for a period of not more than 60 days unless each
46 house of the Legislature passes a resolution concurring in its extension

1 for a period of not more than 60 additional days. The rule shall not be
2 effective for more than 120 days unless repromulgated in accordance
3 with normal rule-making procedures.

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

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

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

24 (1) The substance or nature of the rule-making which is requested;

25 (2) The reasons for the request and the petitioner's interest in the
26 request;

27 (3) References to the authority of the agency to take the requested
28 action.

29 The petitioner may provide the text of the proposed new rule,
30 amended rule or repealed rule.

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

46 If an agency fails to act in accordance with the time frame set forth

1 in the preceding paragraph, upon written request by the petitioner, the
2 Director of the Office of Administrative Law shall order a public
3 hearing on the rule-making petition and shall provide the agency with
4 a notice of the director's intent to hold the public hearing if the agency
5 does not. If the agency does not provide notice of a hearing within 15
6 days of the director's notice, the director shall schedule and provide
7 the public with a notice of that hearing at least 15 days prior thereto.
8 If the public hearing is held by the Office of Administrative Law, it
9 shall be conducted by an administrative law judge, a person on
10 assignment from another agency, a person from the Office of
11 Administrative Law assigned pursuant to subsection o. of section 5 of
12 P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned
13 by the director. The petitioner and the agency shall participate in the
14 public hearing and shall present a summary of their positions on the
15 petition, a summary of the factual information on which their positions
16 on the petition are based and shall respond to questions posed by any
17 interested party. The hearing procedure shall otherwise be consistent
18 with the requirements for the conduct of a public hearing as prescribed
19 in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except
20 that the person assigned to conduct the hearing shall make a report
21 summarizing the factual record presented and the arguments for and
22 against proceeding with a rule proposal based upon the petition. This
23 report shall be filed with the agency and delivered or mailed to the
24 petitioner. A copy of the report shall be filed with the Legislature long
25 with the petition for rule-making. The Legislature, pursuant to section
26 8 of P.L. , c. (C.)(now pending before the Legislature as this
27 bill), shall review those materials forwarded by the office and may take
28 such action as it deems appropriate.

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

46 (cf: P.L.1998, c.48, s.4)

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

3 5. (a) Each agency shall file with the Director and Chief
4 Administrative Law Judge of the Office of Administrative Law a
5 certified copy of each rule adopted by it.

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

10 (c) The director shall: (1) accept for filing or publication any rule
11 duly adopted and submitted by any agency pursuant to this act and
12 which meets all of the requirements and standards of P.L. , c.
13 (C.)(now pending before the Legislature as this bill); (2) endorse
14 upon the certified copy of each rule accepted for filing pursuant to
15 this act the date and time upon which such rule was filed; ~~【and】~~ (3)
16 maintain the certified copy of each rule so filed in a permanent register
17 open to public inspection; and (4) accept for publication a duly
18 adopted concurrent resolution of the Legislature finding any rule not
19 consistent with legislative intent.

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

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

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

34

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

37 10. In contested cases:

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

1 case may present his case or defense by oral and documentary
2 evidence, submit rebuttal evidence and conduct such
3 cross-examination as may be required, in the discretion of the
4 administrative law judge, for a full and true disclosure of the facts.

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

15 (c) All hearings of a State agency required to be conducted as a
16 contested case under this act or any other law shall be conducted by
17 an administrative law judge assigned by the Director and Chief
18 Administrative Law Judge of the Office of Administrative Law, except
19 as provided by this amendatory and supplementary act. A
20 recommended report and decision which contains recommended
21 findings of fact and conclusions of law and which shall be based upon
22 sufficient, competent, and credible evidence shall be filed, not later
23 than 45 days after the hearing is concluded, with the agency in such
24 form that it may be adopted as the decision in the case and delivered
25 or mailed, to the parties of record with an indication of the date of
26 receipt by the agency head; and an opportunity shall be afforded each
27 party of record to file exceptions, objections, and replies thereto, and
28 to present argument to the head of the agency or a majority thereof,
29 either orally or in writing, as the agency may direct. The head of the
30 agency, upon a review of the record submitted by the administrative
31 law judge, shall adopt, reject or modify the recommended report and
32 decision no later than 45 days after receipt of such recommendations.
33 In reviewing the decision of an administrative law judge, the agency
34 head may reject or modify conclusions of law or interpretations of
35 agency policy in the decision, but shall state clearly the reasons for
36 doing so. The agency head may not reject or modify any findings of
37 fact unless it is first determined from a review of the record that the
38 findings of fact were not based upon sufficient, competent, and
39 credible evidence in the record. In reversing or modifying the findings
40 of fact, the agency head shall state with particularity the reasons for
41 rejecting the findings and shall make new or modified findings
42 supported by sufficient, competent, and credible evidence in the
43 record. Unless the head of the agency modifies or rejects the report
44 within such period, the decision of the administrative law judge shall
45 be deemed adopted as the final decision of the head of the agency.
46 The recommended report and decision shall be a part of the record in

1 the case. For good cause shown, upon certification by the director
2 and the agency head, the time limits established herein may be subject
3 to extension.

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

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

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

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

26

27 5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read
28 as follows:

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

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

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

41

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

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

1 a day during a regular or special session of the Legislature] within two
2 business days of its receipt by the office, and the President of the
3 Senate and the Speaker of the General Assembly shall immediately
4 refer the proposed rule to the appropriate [standing reference]
5 committee in each House.

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

7

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

10 3. [A rule shall be deemed approved unless within 60 days of the
11 submission thereof,] If the Senate and General Assembly adopt a
12 concurrent resolution [disapproving] finding the rule, in whole or in
13 part, inconsistent with legislative intent, [or providing that the rule not
14 take effect during the 60 days following the date of the adoption of the
15 resolution, during which time they may nevertheless adopt a
16 concurrent resolution disapproving the rule] the presiding officer of
17 the House of final adoption shall cause the concurrent resolution to be
18 transmitted to the Office of Administrative Law for publication in the
19 New Jersey Register and the New Jersey Administrative Code as an
20 annotation to the rule if the rule is adopted. [No action may be taken
21 by the Legislature under this section until after 1 calendar day from the
22 date of the standing reference committee's report.]

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

24

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

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

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

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

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

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

40 f. a statement of why the rule provides the least costly or least
41 intrusive approach for meeting the intended purpose;

42 g. an evaluation for the public and regulated parties of the cost
43 versus the benefits to be derived from the rule, including an evaluation
44 of how those benefits outweigh the cost. The evaluation shall include
45 the following, where appropriate:

- 1 (1) an estimate of the costs to regulated parties for compliance;
- 2 (2) an estimate of the costs to the agency for implementation and
3 enforcement of the regulations;
- 4 (3) an estimate of the nature, number and size of parties to be
5 regulated or affected by the rule;
- 6 (4) whether the rule will require on-site inspections;
- 7 (5) an estimate of the paperwork burden on a regulated or affected
8 party, such as the number of forms, impact statements, surveys and
9 other documents to be completed by the party;
- 10 (6) whether parties will be required to maintain any records which
11 will be subject to inspection;
- 12 (7) whether parties will be required to obtain licenses, permits or
13 other certifications and the associated fees and fines;
- 14 (8) whether parties will be required to appear in person before the
15 agency;
- 16 (9) whether parties will be required to disclose information on
17 materials or processes, including trade secrets;
- 18 (10) whether parties will be required to report any particular type
19 of incidents;
- 20 (11) whether parties will be required to adhere to either design or
21 performance standards;
- 22 (12) whether parties may have to retain or utilize lawyers,
23 accountants, engineers or other professional consultants in order to
24 comply with the regulations;
- 25 (13) how the agency expects to implement the provisions of the
26 proposed rule within current budget appropriations and other financial
27 resources.

28

29 9. (New section) a. The director is authorized to refuse to accept
30 from an agency a notice or preliminary notice of intention to adopt,
31 readopt or amend a rule or regulation, if the director determines that
32 the rule or regulation and its accompanying materials do not comply
33 satisfactorily with the interagency rules of the director. The State
34 agency shall not be authorized to adopt, readopt or amend a rule or
35 regulation where notice or preliminary notice of intention is refused by
36 the director, except by proposing the adoption, readoption or
37 amendment in compliance with agency rules.

38 b. The Office of Administrative Law, upon its review and
39 determination, shall not accept for publication any notice of intention
40 to adopt, readopt or amend a rule or regulation, a proposed rule,
41 summary of the proposed rule, regulatory impact analysis, or other
42 accompanying materials which lacks a standard of clarity.

43 As used in this section, "standard of clarity" means the document
44 is written in a reasonably simple and understandable manner which is
45 easily readable. The document is drafted to provide adequate notice
46 to affected persons and interested persons with some subject matter

1 expertise. The document conforms to commonly accepted principles
2 of grammar. The document contains sentences that are as short as
3 practical, and is organized in a sensible manner. The document does
4 not contain double negatives, confusing cross references, convoluted
5 phrasing or unreasonably complex language. Terms of art and words
6 with multiple meanings that may be misinterpreted are defined. The
7 document is sufficiently complete and informative as to permit the
8 public to understand accurately and plainly the legal authority,
9 purposes and expected consequences of the adoption, readoption or
10 amendment of the rule or regulation.

11 c. The provisions of subsection b. of this section shall not apply to
12 any administrative rule that a State agency adopts to conform to a
13 model code, federal rule, interstate agreement or other similar
14 regulatory measure not written by the State agency but incorporated
15 into an administrative rule. The State agency shall append to the
16 proposed rule for publication a written statement describing the rule
17 which complies with subsection b. of this section.

18 d. The Governor may, upon written request of a State agency,
19 waive the requirements of this section with respect to the
20 repromulgation, without amendment, of any rule or provision of a rule.
21

22 10. (New section) a. Every rule in effect on the enactment date of
23 P.L. , c. (C.)(now pending before the Legislature as this bill)
24 shall expire five years following the effective date of this act unless a
25 sooner expiration date has been established for the rule.

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

33 c. An agency may continue in effect an expiring rule for a five year
34 period by duly proposing and readopting the rule prior to its
35 expiration. Upon the filing of a notice of proposed readoption, the
36 expiration date of the rule shall be extended for 180 days, if such
37 notice is filed prior to the expiration of the rule.

38 d. The Governor may, upon the request of an agency head, and
39 prior to the expiration date of the rule, continue in effect an expiring
40 rule for a period to be specified by the Governor.

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

45

46 11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27

1 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

2

3 12. This act shall take effect on the first day of the third month
4 following enactment but shall not apply to any rule proposed in the
5 New Jersey Register or to any contested case filed prior to the
6 effective date.

7

8

9

STATEMENT

10

11 This bill amends, supplements and repeals various sections of the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.), to ensure a more open and deliberative process.

14 Under the provisions of the bill, each agency, in addition to its other
15 rule-making responsibilities, is required to publish with its rules of
16 practice, a table of all permits and fees, violations and penalties,
17 deadlines, processing times and appeals procedures.

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

28 In addition, the bill requires each agency to provide notice of
29 intention concerning the adoption, amendment or repeal of any rule to
30 the news media covering the State House Complex, and electronically
31 through the largest nonproprietary cooperative public computer
32 network, currently the Internet.

33 The bill provides that if within 30 days of the publication of a
34 proposed rule, there is sufficient public interest in an extension of time
35 for submissions regarding that proposed rule, an agency must provide
36 an additional 30 days for interested party comment. The agency is
37 precluded from adopting the proposed rule until after the end of the 30
38 day extension.

39 The bill also directs an agency to hold a public hearing if sufficient
40 public interest is shown. Currently a public hearing is held on a
41 proposed rule only at the request of a committee of the Legislature or
42 of a governmental agency or subdivision. Such a request for a public
43 hearing must be made within 30 days following publication of the
44 proposed rule in the Register. Current law provides that the request
45 must be made within 15 days. The definition of what constitutes
46 "sufficient public interest" is to be determined by the head of each

1 agency and included as part of that agency's rules of practice.

2 The bill allows any interested person to petition an agency to adopt
3 a new rule, or amend or repeal an existing rule. The bill amends
4 section 4 of the "Administrative Procedure Act," P.L.1968, c.410
5 (C.52:14B-1 et seq.), to require the agency to respond to any such
6 petition within 60 days, instead of the current 30 day time frame, by
7 either (1) denying the petition; (2) granting the petition and initiating
8 a rule-making proceeding within 90 days; or (3) referring the matter
9 for further study to be concluded within 90 days. If the agency fails
10 to act within this time frame, the petitioner may request the Director
11 of the OAL to order a public hearing on the rule-making petition.

12 If the Director of the OAL orders a public hearing, the affected
13 agency has 15 days in which to respond. If the agency does not
14 respond by notifying the director that it will hold a public hearing
15 within 15 days, the director is to conduct the hearing. The bill
16 specifies that both the agency and the petitioner are to participate in
17 such a hearing by presenting factual information and summaries of
18 their positions and by responding to any questions. Rather than the
19 verbatim transcript currently required, the bill authorizes a verbatim
20 record be kept of each such hearing and be available to the public at
21 cost.

22 In addition to the powers currently afforded the Director of the
23 OAL to certify, maintain and accept for filing and publication any rule
24 that meets the requirements and standards of this bill, the director is
25 empowered to accept for publication any duly adopted concurrent
26 resolution of the Legislature which finds that a rule is inconsistent with
27 legislative intent. Each such adopted concurrent resolution is to be
28 published in the New Jersey Register and in the New Jersey
29 Administrative Code as an annotation to the rule if the rule is adopted.

30 In contested cases, the bill allows agency heads to review decisions
31 by administrative law judges, and to reject or modify conclusions of
32 law or interpretations of agency policy in the decisions, but only if the
33 findings were not based upon sufficient, competent and credible
34 evidence in the record. In reversing or modifying the findings, the
35 agency head must set forth the reasons, and make new or modified
36 findings supported by sufficient, competent and credible evidence in
37 the record.

38 The bill provides that an administrative agency is obligated to
39 prepare a regulatory impact analysis when it proposes a rule. This
40 analysis must address specific questions and issues regarding the rule's
41 impact on the regulated parties. The proposed rule and regulatory
42 impact analysis, as well as any notice of intention to adopt, readopt or
43 amend a rule or regulation, summary of a proposed rule, or other
44 accompanying materials, is subject to a "standard of clarity," which is
45 defined in the bill.

46 The bill codifies the provisions of Executive Order No. 66 of 1978,

1 signed by Governor Byrne on April 14, 1978, which requires that a
2 rule remain in effect for not more than five years unless readopted in
3 a rule-making procedure.

4 Further, it repeals several provisions of the "Administrative
5 Procedure Act," specifically sections 2 and 4 through 7 of P.L.1981,
6 c.27 (C.52:14B:4.2 and 52:14B-4-.4 through 52:14B-4.7, inclusive).
7 These sections outline the Legislature's authority to review and
8 approve or disapprove proposed administrative rules. These sections
9 are no longer operative because in 1982, the New Jersey Supreme
10 Court determined that this Legislative veto power was a violation of
11 the separation of powers doctrine. These repealed sections also
12 provided for the establishment of a Joint Legislative Oversight
13 Committee.

14 Finally, the bill implements many of the recommendations of the
15 STARR Report. STARR is the acronym for a report on regulatory
16 reform issued by the Whitman Administration in July, 1995: *Strategy*
17 *to Advance Regulatory Reform, A Response of the Whitman*
18 *Administration.*

ASSEMBLY, No. 1484

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman ROSE MARIE HECK

District 38 (Bergen)

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Co-Sponsored by:

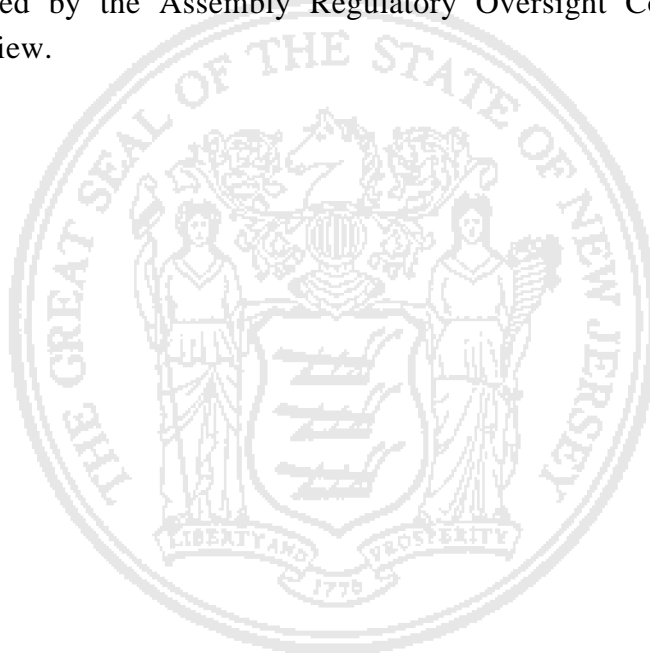
Assemblywomen Murphy, Crecco, Assemblymen LeFevre and Greenwald

SYNOPSIS

Revises administrative rule-making process.

CURRENT VERSION OF TEXT

As reported by the Assembly Regulatory Oversight Committee with technical review.



(Sponsorship Updated As Of: 2/1/2000)

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

5

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

8

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

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

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

16 (2) adopt rules of practice setting forth the nature and
17 requirements of all formal and informal procedures available, including
18 a description of all forms and instructions used by the agency, and if
19 not otherwise set forth in an agency's rules, a table of all permits and
20 their fees, violations and penalties, deadlines, processing times and
21 appeals procedures;

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

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

34 In a manner prescribed by the Director of the Office of
35 Administrative Law, each agency shall appropriately publicize that
36 copies of its calendar are available to interested persons for a
37 reasonable fee. The amount of the fee shall be set by the director.

38 An agency shall notify the Director of the Office of Administrative
39 Law when it wishes to amend its calendar of rule-making activities.
40 Any amendment which involves the addition of any rule-making
41 activity to an agency's calendar shall provide that the agency shall take
42 no action on that matter until at least 45 days following the first
43 publication of the amended calendar in which the announcement of

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

Matter underlined thus is new matter.

1 that proposed rule-making activity first appears.

2 The provisions of this paragraph shall not apply to rule-making:

3 (a) governed by federal law;

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

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

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

9

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

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

14 (1) Give at least 30 days' notice of its intended action. The notice
15 shall include a statement of either the terms or substance of the
16 intended action or a description of the subjects and issues involved,
17 and the time when, the place where, and the manner in which
18 interested persons may present their views thereon. The notice shall
19 be mailed to all persons who have made timely requests of the agency
20 for advance notice of its rule-making proceedings and in addition to
21 other public notice required by law shall be published in the New
22 Jersey Register [and shall be filed with the President of the Senate and
23 the Speaker of the General Assembly. The notice shall be additionally
24 publicized in such manner as the agency deems most appropriate in
25 order to]. Notice shall also be distributed to the news media
26 maintaining a press office to cover the State House Complex, and
27 made available electronically through the largest nonproprietary
28 cooperative public computer network. Each agency shall additionally
29 publicize the intended action and shall adopt rules to prescribe the
30 manner in which it will do so, and inform those persons most likely to
31 be affected by or interested in the intended action. Methods that may
32 be employed include publication of the notice in newspapers of general
33 circulation or in trade, industry, governmental or professional
34 publications, distribution of press releases to the news media and
35 posting of notices in appropriate locations. The rules shall prescribe
36 the circumstances under which each additional method shall be
37 employed;

38 (2) Prepare for public distribution at the time the notice appears in
39 the Register a statement setting forth a summary of the proposed rule,
40 a clear and concise explanation of the purpose and effect of the rule,
41 the specific legal authority under which its adoption is authorized, a
42 [description of the expected socio-economic] regulatory impact
43 analysis of the rule in accordance with the requirements of section 8
44 of P.L. c. (C.)(now pending before the Legislature as this bill),
45 a regulatory flexibility analysis, or the statement of finding that a
46 regulatory flexibility analysis is not required, as provided in section 4

1 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
2 include an assessment of the number of jobs to be generated or lost if
3 the proposed rule takes effect, and an agriculture industry impact
4 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3).
5 If the agency finds that the substantive matters of a regulatory
6 flexibility analysis or jobs impact statement are sufficiently covered in
7 the regulatory impact analysis of the proposed rule, it may provide a
8 statement to that effect and shall not be required to prepare a separate
9 regulatory flexibility analysis or jobs impact statement; and

10 (3) Afford all interested persons reasonable opportunity to submit
11 data, views, or arguments, orally or in writing. The agency shall
12 consider fully all written and oral submissions respecting the proposed
13 rule. If within 30 days of the publication of the proposed rule
14 sufficient public interest is demonstrated in an extension of the time for
15 submissions, the agency shall provide an additional 30 day period for
16 the receipt of submissions by interested parties. The agency shall not
17 adopt the proposed rule until after the end of that 30 day extension.

18 The agency shall conduct a public hearing on the proposed rule at
19 the request of a committee of the Legislature, or a governmental
20 agency or subdivision, or if sufficient public interest is shown,
21 provided such request is made to the agency within [15] 30 days
22 following publication of the proposed rule in the Register. The agency
23 shall provide at least 15 days' notice of such hearing, which shall be
24 conducted in accordance with the provisions of subsection (g) of this
25 section[;].

26 The head of each agency shall adopt as part of its rules of practice
27 adopted pursuant to section 3 of P.L. 1968,410 (C.52:14B-3) definite
28 standards of what constitutes sufficient public interest for conducting
29 a public hearing and for granting an extension pursuant to this
30 paragraph.

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

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

39 (c) If an agency finds that an imminent peril to the public health,
40 safety, or welfare requires adoption of a rule upon fewer than 30 days'
41 notice and states in writing its reasons for that finding, and the
42 Governor concurs in writing that an imminent peril exists, it may
43 proceed without prior notice or hearing, or upon any abbreviated
44 notice and hearing that it finds practicable, to adopt the rule. The rule
45 shall be effective for a period of not more than 60 days unless each
46 house of the Legislature passes a resolution concurring in its extension

1 for a period of not more than 60 additional days. The rule shall not be
2 effective for more than 120 days unless repromulgated in accordance
3 with normal rule-making procedures.

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

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

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

24 (1) The substance or nature of the rule-making which is requested;

25 (2) The reasons for the request and the petitioner's interest in the
26 request;

27 (3) References to the authority of the agency to take the requested
28 action.

29 The petitioner may provide the text of the proposed new rule,
30 amended rule or repealed rule.

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

46 If an agency fails to act in accordance with the time frame set forth

1 in the preceding paragraph, upon written request by the petitioner, the
2 Director of the Office of Administrative Law shall order a public
3 hearing on the rule-making petition and shall provide the agency with
4 a notice of the director's intent to hold the public hearing if the agency
5 does not. If the agency does not provide notice of a hearing within 15
6 days of the director's notice, the director shall schedule and provide
7 the public with a notice of that hearing at least 15 days prior thereto.
8 If the public hearing is held by the Office of Administrative Law, it
9 shall be conducted by an administrative law judge, a person on
10 assignment from another agency, a person from the Office of
11 Administrative Law assigned pursuant to subsection o. of section 5 of
12 P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned
13 by the director. The petitioner and the agency shall participate in the
14 public hearing and shall present a summary of their positions on the
15 petition, a summary of the factual information on which their positions
16 on the petition are based and shall respond to questions posed by any
17 interested party. The hearing procedure shall otherwise be consistent
18 with the requirements for the conduct of a public hearing as prescribed
19 in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except
20 that the person assigned to conduct the hearing shall make a report
21 summarizing the factual record presented and the arguments for and
22 against proceeding with a rule proposal based upon the petition. This
23 report shall be filed with the agency and delivered or mailed to the
24 petitioner. A copy of the report shall be filed with the Legislature long
25 with the petition for rule-making. The Legislature, pursuant to section
26 8 of P.L. , c. (C.)(now pending before the Legislature as this
27 bill), shall review those materials forwarded by the office and may take
28 such action as it deems appropriate.

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

46 (cf: P.L.1998, c.48, s.4)

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

3 5. (a) Each agency shall file with the Director and Chief
4 Administrative Law Judge of the Office of Administrative Law a
5 certified copy of each rule adopted by it.

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

10 (c) The director shall: (1) accept for filing or publication any rule
11 duly adopted and submitted by any agency pursuant to this act and
12 which meets all of the requirements and standards of P.L. , c.
13 (C.)(now pending before the Legislature as this bill); (2) endorse
14 upon the certified copy of each rule accepted for filing pursuant to
15 this act the date and time upon which such rule was filed; ~~【and】~~ (3)
16 maintain the certified copy of each rule so filed in a permanent register
17 open to public inspection; and (4) accept for publication a duly
18 adopted concurrent resolution of the Legislature finding any rule not
19 consistent with legislative intent.

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

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

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

34

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

37 10. In contested cases:

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

1 case may present his case or defense by oral and documentary
2 evidence, submit rebuttal evidence and conduct such
3 cross-examination as may be required, in the discretion of the
4 administrative law judge, for a full and true disclosure of the facts.

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

15 (c) All hearings of a State agency required to be conducted as a
16 contested case under this act or any other law shall be conducted by
17 an administrative law judge assigned by the Director and Chief
18 Administrative Law Judge of the Office of Administrative Law, except
19 as provided by this amendatory and supplementary act. A
20 recommended report and decision which contains recommended
21 findings of fact and conclusions of law and which shall be based upon
22 sufficient, competent, and credible evidence shall be filed, not later
23 than 45 days after the hearing is concluded, with the agency in such
24 form that it may be adopted as the decision in the case and delivered
25 or mailed, to the parties of record with an indication of the date of
26 receipt by the agency head; and an opportunity shall be afforded each
27 party of record to file exceptions, objections, and replies thereto, and
28 to present argument to the head of the agency or a majority thereof,
29 either orally or in writing, as the agency may direct. The head of the
30 agency, upon a review of the record submitted by the administrative
31 law judge, shall adopt, reject or modify the recommended report and
32 decision no later than 45 days after receipt of such recommendations.
33 In reviewing the decision of an administrative law judge, the agency
34 head may reject or modify conclusions of law or interpretations of
35 agency policy in the decision, but shall state clearly the reasons for
36 doing so. The agency head may not reject or modify any findings of
37 fact unless it is first determined from a review of the record that the
38 findings of fact were not based upon sufficient, competent, and
39 credible evidence in the record. In reversing or modifying the findings
40 of fact, the agency head shall state with particularity the reasons for
41 rejecting the findings and shall make new or modified findings
42 supported by sufficient, competent, and credible evidence in the
43 record. Unless the head of the agency modifies or rejects the report
44 within such period, the decision of the administrative law judge shall
45 be deemed adopted as the final decision of the head of the agency.
46 The recommended report and decision shall be a part of the record in

1 the case. For good cause shown, upon certification by the director
2 and the agency head, the time limits established herein may be subject
3 to extension.

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

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

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

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

26

27 5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read
28 as follows:

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

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

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

41

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

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

1 a day during a regular or special session of the Legislature] within two
2 business days of its receipt by the office, and the President of the
3 Senate and the Speaker of the General Assembly shall immediately
4 refer the proposed rule to the appropriate [standing reference]
5 committee in each House.

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

7

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

10 3. [A rule shall be deemed approved unless within 60 days of the
11 submission thereof,] If the Senate and General Assembly adopt a
12 concurrent resolution [disapproving] finding the rule, in whole or in
13 part, inconsistent with legislative intent, [or providing that the rule not
14 take effect during the 60 days following the date of the adoption of the
15 resolution, during which time they may nevertheless adopt a
16 concurrent resolution disapproving the rule] the presiding officer of

17 the House of final adoption shall cause the concurrent resolution to be
18 transmitted to the Office of Administrative Law for publication in the
19 New Jersey Register and the New Jersey Administrative Code as an
20 annotation to the rule if the rule is adopted. [No action may be taken
21 by the Legislature under this section until after 1 calendar day from the
22 date of the standing reference committee's report.]

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

24

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

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

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

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

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

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

40 f. a statement of why the rule provides the least costly or least
41 intrusive approach for meeting the intended purpose;

42 g. an evaluation for the public and regulated parties of the cost
43 versus the benefits to be derived from the rule, including an evaluation
44 of how those benefits outweigh the cost. The evaluation shall include
45 the following, where appropriate:

- 1 (1) an estimate of the costs to regulated parties for compliance;
- 2 (2) an estimate of the costs to the agency for implementation and
3 enforcement of the regulations;
- 4 (3) an estimate of the nature, number and size of parties to be
5 regulated or affected by the rule;
- 6 (4) whether the rule will require on-site inspections;
- 7 (5) an estimate of the paperwork burden on a regulated or affected
8 party, such as the number of forms, impact statements, surveys and
9 other documents to be completed by the party;
- 10 (6) whether parties will be required to maintain any records which
11 will be subject to inspection;
- 12 (7) whether parties will be required to obtain licenses, permits or
13 other certifications and the associated fees and fines;
- 14 (8) whether parties will be required to appear in person before the
15 agency;
- 16 (9) whether parties will be required to disclose information on
17 materials or processes, including trade secrets;
- 18 (10) whether parties will be required to report any particular type
19 of incidents;
- 20 (11) whether parties will be required to adhere to either design or
21 performance standards;
- 22 (12) whether parties may have to retain or utilize lawyers,
23 accountants, engineers or other professional consultants in order to
24 comply with the regulations;
- 25 (13) how the agency expects to implement the provisions of the
26 proposed rule within current budget appropriations and other financial
27 resources.

28

29 9. (New section) a. The director is authorized to refuse to accept
30 from an agency a notice or preliminary notice of intention to adopt,
31 readopt or amend a rule or regulation, if the director determines that
32 the rule or regulation and its accompanying materials do not comply
33 satisfactorily with the interagency rules of the director. The State
34 agency shall not be authorized to adopt, readopt or amend a rule or
35 regulation where notice or preliminary notice of intention is refused by
36 the director, except by proposing the adoption, readoption or
37 amendment in compliance with agency rules.

38 b. The Office of Administrative Law, upon its review and
39 determination, shall not accept for publication any notice of intention
40 to adopt, readopt or amend a rule or regulation, a proposed rule,
41 summary of the proposed rule, regulatory impact analysis, or other
42 accompanying materials which lacks a standard of clarity.

43 As used in this section, "standard of clarity" means the document
44 is written in a reasonably simple and understandable manner which is
45 easily readable. The document is drafted to provide adequate notice
46 to affected persons and interested persons with some subject matter

1 expertise. The document conforms to commonly accepted principles
2 of grammar. The document contains sentences that are as short as
3 practical, and is organized in a sensible manner. The document does
4 not contain double negatives, confusing cross references, convoluted
5 phrasing or unreasonably complex language. Terms of art and words
6 with multiple meanings that may be misinterpreted are defined. The
7 document is sufficiently complete and informative as to permit the
8 public to understand accurately and plainly the legal authority,
9 purposes and expected consequences of the adoption, readoption or
10 amendment of the rule or regulation.

11 c. The provisions of subsection b. of this section shall not apply to
12 any administrative rule that a State agency adopts to conform to a
13 model code, federal rule, interstate agreement or other similar
14 regulatory measure not written by the State agency but incorporated
15 into an administrative rule. The State agency shall append to the
16 proposed rule for publication a written statement describing the rule
17 which complies with subsection b. of this section.

18 d. The Governor may, upon written request of a State agency,
19 waive the requirements of this section with respect to the
20 repromulgation, without amendment, of any rule or provision of a rule.
21

22 10. (New section) a. Every rule in effect on the enactment date of
23 P.L. , c. (C.)(now pending before the Legislature as this bill)
24 shall expire five years following the effective date of this act unless a
25 sooner expiration date has been established for the rule.

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

33 c. An agency may continue in effect an expiring rule for a five year
34 period by duly proposing and readopting the rule prior to its
35 expiration. Upon the filing of a notice of proposed readoption, the
36 expiration date of the rule shall be extended for 180 days, if such
37 notice is filed prior to the expiration of the rule.

38 d. The Governor may, upon the request of an agency head, and
39 prior to the expiration date of the rule, continue in effect an expiring
40 rule for a period to be specified by the Governor.

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

45

46 11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27

A1484 HECK, O'TOOLE

13

1 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

2

3 12. This act shall take effect on the first day of the third month
4 following enactment but shall not apply to any rule proposed in the
5 New Jersey Register or to any contested case filed prior to the
6 effective date.

ASSEMBLY REGULATORY OVERSIGHT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1484

STATE OF NEW JERSEY

DATED: JANUARY 24, 2000

The Assembly Regulatory Oversight Committee reports favorably on Assembly Bill No. 1484.

Assembly Bill No. 1484 amends, supplements and repeals various sections of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to ensure a more open and deliberative process.

Table of fees, penalties, etc. Under the provisions of the bill, each agency, in addition to its other rule-making responsibilities, is required to publish with its rules of practice, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures.

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

Notice of intended action; revised publication requirements. In addition, the bill requires each agency to provide notice of intention concerning the adoption, amendment or repeal of any rule to the news media covering the State House Complex, and electronically through the largest nonproprietary cooperative public computer network, currently the Internet.

Extension of public comment period. The bill provides that if within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for submissions regarding that proposed rule, an agency must provide an additional 30 days for interested party comment. The agency is precluded from adopting the proposed rule until after the end of the 30 day extension.

Broadens public hearing requirement on proposed rule. The bill also directs an agency to hold a public hearing if sufficient public

interest is shown. Currently a public hearing is held on a proposed rule only at the request of a committee of the Legislature or of a governmental agency or subdivision. Such a request for a public hearing must be made within 30 days following publication of the proposed rule in the Register. Current law provides that the request must be made within 15 days. The definition of what constitutes "sufficient public interest" is to be determined by the head of each agency and included as part of that agency's rules of practice.

Public petition for rule adoption or revision. The bill allows any interested person to petition an agency to adopt a new rule, or amend or repeal an existing rule. The bill amends section 4 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to require the agency to respond to any such petition within 60 days, instead of the current 30 day time frame, by either (1) denying the petition; (2) granting the petition and initiating a rule-making proceeding within 90 days; or (3) referring the matter for further study to be concluded within 90 days. If the agency fails to act within this time frame, the petitioner may request the Director of the OAL to order a public hearing on the rule-making petition.

If the Director of the OAL orders a public hearing, the affected agency has 15 days in which to respond. If the agency does not respond by notifying the director that it will hold a public hearing within 15 days, the director is to conduct the hearing. The bill specifies that both the agency and the petitioner are to participate in such a hearing by presenting factual information and summaries of their positions and by responding to any questions.

Public hearings on rule-making; recording. Rather than the verbatim transcript currently required, the bill authorizes a verbatim record be kept of each such hearing and be available to the public at cost.

Publication of legislative finding of rule inconsistency. In addition to the powers currently afforded the Director of the OAL to certify, maintain and accept for filing and publication any rule that meets the requirements and standards of this bill, the director is empowered to accept for publication any duly adopted concurrent resolution of the Legislature which finds that a rule is inconsistent with legislative intent. Each such adopted concurrent resolution is to be published in the New Jersey Register and in the New Jersey Administrative Code as an annotation to the rule if the rule is adopted.

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

Regulatory impact analysis. The bill provides that an administrative agency is obligated to prepare a regulatory impact analysis when it proposes a rule. This analysis must address specific questions and issues regarding the rule's impact on the regulated parties. The proposed rule and regulatory impact analysis, as well as any notice of intention to adopt, readopt or amend a rule or regulation, summary of a proposed rule, or other accompanying materials, is subject to a "standard of clarity," which is defined in the bill.

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

Repeal of inoperative sections of law--Legislative veto power. Further, it repeals several provisions of the "Administrative Procedure Act," specifically sections 2 and 4 through 7 of P.L.1981, c.27 (C.52:14B:4.2 and 52:14B-4-.4 through 52:14B-4.7, inclusive). These sections outline the Legislature's authority to review and approve or disapprove proposed administrative rules. These sections are no longer operative because in 1982, the New Jersey Supreme Court determined that this Legislative veto power was a violation of the separation of powers doctrine. These repealed sections also provided for the establishment of a Joint Legislative Oversight Committee.

STARR Report. Finally, the bill implements many of the recommendations of the STARR Report. STARR is the acronym for a report on regulatory reform issued by the Whitman Administration in July, 1995: *Strategy to Advance Regulatory Reform, A Response of the Whitman Administration*.

This bill was pre-filed for introduction in the 2000 legislative session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1484

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 2, 2000

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1484 with committee amendments.

As amended, Assembly Bill No. 1484 amends, supplements and repeals various sections of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to ensure a more open and deliberative process.

Table of fees, penalties, etc. Under the provisions of the bill, each agency, in addition to its other rule-making responsibilities, is required to publish with its rules of practice, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures.

Quarterly calendar outlining next six month's anticipated rule-making activities. The bill directs that each agency publish a quarterly, instead of monthly, calendar in the New Jersey Register, setting forth its anticipated rule-making activities for the next six months. An agency is required to provide 45 days notice prior to amending its calendar. The bill specifies that each agency must publicize that copies of its calendar are available for a reasonable fee. The amount of that fee is to be set by the Director of the Office of Administrative Law (OAL).

Notice of intended action; revised publication requirements. The bill requires each agency to provide notice of intention concerning the adoption, amendment or repeal of any rule to the news media covering the State House Complex, and electronically through the largest nonproprietary cooperative public computer network, currently the Internet.

Extension of public comment period. The bill provides that if within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for submissions regarding that proposed rule, an agency must provide an additional 30 days for interested party comment. The agency is precluded from adopting the proposed rule until after the end of the 30 day extension.

Broadens public hearing requirement on proposed rule. The bill directs an agency to hold a public hearing if sufficient public interest is shown. Currently, a public hearing is held on a proposed

rule only at the request of a committee of the Legislature or of a governmental agency or subdivision. The bill provides that such a request for a public hearing must be made within 30 days following publication of the proposed rule in the Register; current law requires the request be made within 15 days. The definition of "sufficient public interest" is to be determined by the head of each agency and included as part of that agency's rules of practice.

Public petition for rule adoption or revision. Current law allows an interested person to petition an agency to adopt a new rule, or amend or repeal an existing rule. The bill requires the agency to respond to any such petition within 60 days, instead of the current 30 day time frame, by either (1) denying the petition; (2) granting the petition and initiating a rule-making proceeding within 90 days of granting the petition; or (3) referring the matter for further study to be concluded within 90 days of the referral. If the agency fails to act within this time frame, the petitioner may request the Director of the OAL to order a public hearing on the rule-making petition.

If the Director of the OAL orders a public hearing, the affected agency has 15 days in which to respond. If the agency does not respond by notifying the director that it will hold a public hearing within 15 days, the director is to conduct the hearing. The bill specifies that both the agency and the petitioner are to participate in such a hearing by presenting factual information and summaries of their positions and by responding to any questions.

Public hearings on rule-making; recording. Rather than the verbatim transcript currently required, the bill authorizes a verbatim record be kept of each such hearing and be available to the public at cost.

Publication of legislative finding of rule inconsistency. In addition to the powers currently afforded the Director of the OAL to certify, maintain and accept for filing and publication any rule that meets the requirements and standards of this bill, the director is empowered to accept for publication any duly adopted concurrent resolution of the Legislature invalidating a rule or regulation in whole or in part or prohibiting the proposed rule or regulation, in whole or in part, from taking effect. Each such concurrent resolution shall be published in the New Jersey Register and in the New Jersey Administrative Code as an annotation to the rule if the rule is adopted.

Authorize agency heads to review/modify administrative law decisions in certain contested cases. In contested cases, the bill allows an agency head to review decisions by administrative law judges, and to reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decisions (having stated clearly the reasons for doing so). The agency head can reject or modify findings of fact as to issues of lay witness credibility upon determination that the findings were arbitrary, capricious, unreasonable or not supported by sufficient, competent and credible evidence in the record. In rejecting or modifying those and any other

findings of fact, the agency head must set forth the reasons, and make new or modified findings supported by sufficient, competent and credible evidence in the record.

Regulatory Impact Analysis Advisory Task Force. The bill establishes a 17 member Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, consisting of: (1) as ex officio members, the Commissioners of the Departments of Environmental Protection, Community Affairs, Transportation, Health and Senior Services; the State Treasurer; the Attorney General; and the Chief Administrative Law Judge (or their designees); (2) six public members to be appointed by the Governor, at least two of whom shall represent business interests in the state and at least one of whom shall be an attorney with experience in administrative law; and (3) four members of the Legislature, two State Senators appointed by the President of the Senate, and two Assembly Members appointed by the Speaker. The Governor will designate a chairperson and vice-chairperson from among the members of the task force.

The task force shall comprehensively review and analyze the current requirements upon agencies to conduct regulatory impact analyses and recommend necessary and appropriate changes to these requirements. In conducting its review and making its recommendations, the task force shall seek to achieve efficiency and accessibility in the regulatory process.

The task force shall issue to the Governor, The Senate President and the Speaker of the General Assembly a report of its findings and recommendations for changes within one year of its convening and dissolve 60 days thereafter.

Standard of clarity The bill requires that a proposed rule and any notice of intention to adopt, readopt or amend a rule or regulation, summary of a proposed rule, or other accompanying material, is subject to a "standard of clarity," requiring simple understandable language providing adequate notice to persons with some subject matter expertise. This requirement does not apply to bills conforming to federal or other models not written by a State agency, and can be waived by the Governor for repromulgations without amendment.

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

Repeal of inoperative sections of law--Legislative veto power. The bill repeals sections 2 and 4 through 7 of P.L.1981, c.27 (C.52:14B:4.2 and 52:14B-4-.4 through 52:14B-4.7, inclusive) that are no longer operative of the New Jersey Supreme Court determination that they were in violation of the New Jersey Constitution's separation of powers doctrine.

FISCAL IMPACT:

An estimate provided by the Office of Administrative Law for a similar bill in the 1996-97 legislative session provided fiscal information for the OAL only (suggesting they would need about 3 more people). No additional information is available; however, due to the additional rule-making and reporting provisions specified in the bill, this bill has potential cost implications for every agency in State government.

COMMITTEE AMENDMENTS:

The amendments:

- ! Delete a provision requiring the Register calendar to indicate where and when interested persons could submit their comments, and the dates and locations of any hearings or other meetings related to the rule-making process.
- ! Expand and clarify the exceptions to postings in the quarterly calendar outlining next six month's anticipated rule-making activities; requires notice of the exception in the notice of proposal.
- ! Eliminate an expanded procedure of regulatory impact analysis.
- ! Establish the Regulatory Impact Analysis Advisory Task Force.
- ! Modify the powers of agency heads to review/modify administrative law decisions in certain contested cases.
- ! Make technical changes to legal references.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 1484
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: MARCH 15, 2000

SUMMARY

Synopsis: Revises administrative rule-making processes
Type of Impact: General Fund expenditure increase
Agencies Affected: Office of Administrative Law (OAL); all State agencies

Office of Legislative Services Estimate

Fiscal Impact	FY 2001	FY 2002	FY 2003
State Cost	\$160,522	\$149,695	\$154,148

- ! The "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), governs the process for the adoption of rules by each State agency.
- ! In order to comply with the rule-making and reporting provisions of this bill, OAL will incur the above costs associated with hiring new staff and purchasing additional equipment. Due to the additional rule-making and reporting provisions specified in the bill, the bill has potential cost implications for every agency of State government; however, no information is available in this regard.
- ! Costs incurred by State agencies as a result of the passage of this bill may be offset by revenues collected through calendar sales, public hearing transcripts and agency assessments.

BILL DESCRIPTION

Assembly Bill No. 1484 of 2000 revises the administrative rule-making process and amends, supplements and repeals various sections of the "Administrative Procedure Act," P.L. 1968, c.410, to ensure a more open and deliberative process.

This bill requires, in addition to other rule-making requirements that: if not currently done, each State agency publish with its rules of practice, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures; each State agency publish in the New Jersey Register a quarterly, instead of monthly, calendar with its anticipated rule-making activities for the next six months; each agency publicize the availability of its calendar and that the OAL set a reasonable fee for the purchase thereof; each State agency inform the news media

covering the State House Complex of the notice of the intended adoption, amendment or repeal of any rule; each State agency provide an additional 30-day comment period and hold a public hearing if sufficient public interest is shown; and if comment is received, each agency respond within 60 days. The bill also requires each agency to provide a regulatory impact analysis on proposed rules, repeals statutory reference to the Legislature's veto of an administrative rule decreed unconstitutional by the New Jersey Supreme Court in 1982, and repeals the provision of the "Administrative Procedure Act" establishing a Joint Legislative Oversight Committee.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

An estimate provided by the OAL, which is in, but not of, the Department of Treasury for the identical bill (ACS for Assembly Bill Nos. 1612, 1025 and 646) introduced in the 1996-97 Legislative session, provided fiscal information for the OAL only. No additional information is available; however, due to the additional rule-making and reporting provisions specified in the bill, this bill has potential cost implications for every agency in State government.

In FY1996, the OAL estimated that in the first year following enactment of this bill, it would incur additional costs of \$142,884. By applying an inflationary rate of 2.2% (the average rate since 1996), costs for FY 2001 are estimated to be \$160,522. Costs for the second and third years are estimated at \$149,695 and \$154,148 respectively. These costs are based on salaries for three new hires, including fringe benefits, materials and supplies, data processing and equipment costs. The total cost to the OAL is estimated to decrease in the second and third years due to the elimination of one-time equipment costs.

The Office of Legislative Services (OLS) notes that although State agencies are likely to incur additional costs as a result of the passage of this legislation, the potential exists for State agencies to recover some costs, although undetermined, through the sale of its calendars and records of each hearing made available to the public either at a reasonable fee or at cost. In addition, if any of the public hearings held by the OAL are conducted by an administrative law judge, the revenues realized through agency assessments could offset some of the estimated costs of this bill.

Section: *Education*

Analyst: *Cindy Grant*
Assistant Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[First Reprint]

ASSEMBLY, No. 1484

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman ROSE MARIE HECK

District 38 (Bergen)

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Co-Sponsored by:

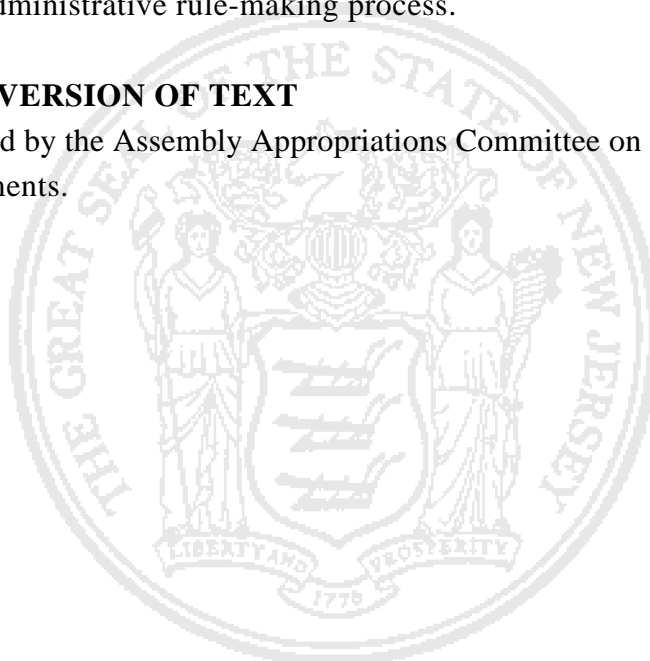
**Assemblywomen Murphy, Crecco, Assemblymen LeFevre, Greenwald,
Senators Bark and Adler**

SYNOPSIS

Revises administrative rule-making process.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on March 2, 2000,
with amendments.



(Sponsorship Updated As Of: 12/5/2000)

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

5

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

8

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

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

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

16 (2) adopt rules of practice setting forth the nature and
17 requirements of all formal and informal procedures available, including
18 a description of all forms and instructions used by the agency, and if
19 not otherwise set forth in an agency's rules, a table of all permits and
20 their fees, violations and penalties, deadlines, processing times and
21 appeals procedures;

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

25 (4) publish in the New Jersey Register a quarterly calendar setting
26 forth a schedule of the agency's anticipated rule-making activities for
27 the next six months. The calendar shall include the name of the agency
28 and agency head, a citation to the legal authority authorizing the
29 rule-making action and a synopsis of the subject matter and the
30 objective or purpose of the agency's proposed rules. ¹[The calendar
31 also shall indicate where and when interested persons may submit their
32 comments, orally or in writing, and the dates and locations of any
33 hearings or other meetings relating to the rule-making process.]¹

34 In a manner prescribed by the Director of the Office of
35 Administrative Law, each agency shall appropriately publicize that
36 copies of its calendar are available to interested persons for a
37 reasonable fee. The amount of the fee shall be set by the director.

38 An agency shall notify the Director of the Office of Administrative
39 Law when it wishes to amend its calendar of rule-making activities.
40 Any amendment which involves the addition of any rule-making
41 activity to an agency's calendar shall provide that the agency shall take

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted March 2, 2000.

1 no action on that matter until at least 45 days following the first
2 publication of the amended calendar in which the announcement of
3 that proposed rule-making activity first appears.

4 The provisions of this paragraph shall not apply to rule-making:

5 (a) ¹[governed] required or authorized¹ by federal law¹ when
6 failure to adopt rules in a timely manner will prejudice the State¹ ;

7 (b) subject to a specific statutory authorization requiring
8 promulgation in a lesser time period; ¹[or]¹

9 (c) involving an imminent peril subject to provisions of subsection
10 (c) of section 4 of P.L.1968, c.410 (C.52:14B-4)¹;

11 (d) for which the agency has published a notice of pre-proposal of
12 a rule in accordance with rules adopted by the Director of the Office
13 of Administrative Law; or

14 (e) for which a comment period of at least 60 days is provided.

15 A proposed rule falling within any of the exceptions to the
16 provisions of this subsection shall so indicate in the notice of
17 proposal¹ .

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

19
20 2. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
21 as follows:

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

24 (1) Give at least 30 days' notice of its intended action. The notice
25 shall include a statement of either the terms or substance of the
26 intended action or a description of the subjects and issues involved,
27 and the time when, the place where, and the manner in which
28 interested persons may present their views thereon. The notice shall
29 be mailed to all persons who have made timely requests of the agency
30 for advance notice of its rule-making proceedings and in addition to
31 other public notice required by law shall be published in the New
32 Jersey Register [and shall be filed with the President of the Senate and
33 the Speaker of the General Assembly. The notice shall be additionally
34 publicized in such manner as the agency deems most appropriate in
35 order to]. Notice shall also be distributed to the news media
36 maintaining a press office to cover the State House Complex, and
37 made available electronically through the largest nonproprietary
38 cooperative public computer network. Each agency shall additionally
39 publicize the intended action and shall adopt rules to prescribe the
40 manner in which it will do so, and inform those persons most likely to
41 be affected by or interested in the intended action. Methods that may
42 be employed include publication of the notice in newspapers of general
43 circulation or in trade, industry, governmental or professional
44 publications, distribution of press releases to the news media and
45 posting of notices in appropriate locations. The rules shall prescribe
46 the circumstances under which each additional method shall be

1 employed;

2 (2) Prepare for public distribution at the time the notice appears in
3 the Register a statement setting forth a summary of the proposed rule,
4 a clear and concise explanation of the purpose and effect of the rule,
5 the specific legal authority under which its adoption is authorized, a
6 [description of the expected socio-economic] ¹[regulatory]
7 description of the expected socio-economic ¹ impact ¹[analysis]¹ of
8 the rule ¹[in accordance with the requirements of section 8 of P.L.
9 c. (C.)](now pending before the Legislature as this bill)]¹, a
10 regulatory flexibility analysis, or the statement of finding that a
11 regulatory flexibility analysis is not required, as provided in section 4
12 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
13 include an assessment of the number of jobs to be generated or lost if
14 the proposed rule takes effect, and an agriculture industry impact
15 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3)¹].
16 If the agency finds that the substantive matters of a regulatory
17 flexibility analysis or jobs impact statement are sufficiently covered in
18 the regulatory impact analysis of the proposed rule, it may provide a
19 statement to that effect and shall not be required to prepare a separate
20 regulatory flexibility analysis or jobs impact statement]¹; and

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

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

37 The head of each agency shall adopt as part of its rules of practice
38 adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3)
39 definite standards of what constitutes sufficient public interest for
40 conducting a public hearing and for granting an extension pursuant to
41 this paragraph.

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

46 (b) A rule prescribing the organization of an agency may be

1 adopted at any time without prior notice or hearing. Such rules shall
2 be effective upon filing in accordance with section 5 of this act or
3 upon any later date specified by the agency.

4 (c) If an agency finds that an imminent peril to the public health,
5 safety, or welfare requires adoption of a rule upon fewer than 30 days'
6 notice and states in writing its reasons for that finding, and the
7 Governor concurs in writing that an imminent peril exists, it may
8 proceed without prior notice or hearing, or upon any abbreviated
9 notice and hearing that it finds practicable, to adopt the rule. The rule
10 shall be effective for a period of not more than 60 days unless each
11 house of the Legislature passes a resolution concurring in its extension
12 for a period of not more than 60 additional days. The rule shall not be
13 effective for more than 120 days unless repromulgated in accordance
14 with normal rule-making procedures.

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

19 (e) An agency may file a notice of intent with respect to a
20 proposed rule-making proceeding with the Office of Administrative
21 Law, for publication in the New Jersey Register at any time prior to
22 the formal notice of action required in subsection (a) of this section.
23 The notice shall be for the purpose of eliciting the views of interested
24 parties on an action prior to the filing of a formal rule proposal. An
25 agency may use informal conferences and consultations as means of
26 obtaining the viewpoints and advice of interested persons with respect
27 to contemplated rule-making. An agency may also appoint committees
28 of experts or interested persons or representatives of the general
29 public to advise it with respect to any contemplated rule-making.

30 (f) An interested person may petition an agency to **[promulgate]**
31 adopt a new rule, or amend or repeal any existing rule. Each agency
32 shall prescribe by rule the form for the petition and the procedure for
33 the submission, consideration and disposition of the petition. The
34 petition shall state clearly and concisely:

35 (1) The substance or nature of the rule-making which is requested;

36 (2) The reasons for the request and the petitioner's interest in the
37 request;

38 (3) References to the authority of the agency to take the requested
39 action.

40 The petitioner may provide the text of the proposed new rule,
41 amended rule or repealed rule.

42 Within **[30]** 60 days following receipt of any such petition, the
43 agency shall either; (i) deny the petition, giving a written statement of
44 its reasons [, or shall proceed to act on the petition, which action may
45 include the initiation of a formal rule-making proceeding] ; (ii) grant
46 the petition and initiate a rule-making proceeding within 90 days ¹of

1 granting the petition¹ ; or (iii) refer the matter for further deliberations
2 which shall be concluded within 90 days¹ of referring the matter for
3 further deliberations¹ . Upon conclusion of such further deliberations,
4 the agency shall either deny the petition and provide a written
5 statement of its reasons or grant the petition and initiate a rule-making
6 proceeding within 90 days. Upon the receipt of the petition, the
7 agency shall file a notice stating the name of the petitioner and the
8 nature of the request with the Office of Administrative Law for
9 publication in the New Jersey Register. Notice of formal agency
10 action on such petition shall also be filed with the ¹[division] Office
11 of Administrative Law¹ for publication in the Register.

12 If an agency fails to act in accordance with the time frame set forth
13 in the preceding paragraph, upon written request by the petitioner, the
14 Director of the Office of Administrative Law shall order a public
15 hearing on the rule-making petition and shall provide the agency with
16 a notice of the director's intent to hold the public hearing if the agency
17 does not. If the agency does not provide notice of a hearing within 15
18 days of the director's notice, the director shall schedule and provide
19 the public with a notice of that hearing at least 15 days prior thereto.
20 If the public hearing is held by the Office of Administrative Law, it
21 shall be conducted by an administrative law judge, a person on
22 assignment from another agency, a person from the Office of
23 Administrative Law assigned pursuant to subsection o. of section 5 of
24 P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned
25 by the director. The petitioner and the agency shall participate in the
26 public hearing and shall present a summary of their positions on the
27 petition, a summary of the factual information on which their positions
28 on the petition are based and shall respond to questions posed by any
29 interested party. The hearing procedure shall otherwise be consistent
30 with the requirements for the conduct of a public hearing as prescribed
31 in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except
32 that the person assigned to conduct the hearing shall make a report
33 summarizing the factual record presented and the arguments for and
34 against proceeding with a rule proposal based upon the petition. This
35 report shall be filed with the agency and delivered or mailed to the
36 petitioner. A copy of the report shall be filed with the Legislature
37 along with the petition for rule-making. ¹[The Legislature, pursuant
38 to section 8 of P.L. , c. (C.) (now pending before the Legislature
39 as this bill), shall review those materials forwarded by the office and
40 may take such action as it deems appropriate.]¹

41 (g) All public hearings shall be conducted by a hearing officer, who
42 may be an official of the agency, a member of its staff, a person on
43 assignment from another agency, a person from the Office of
44 Administrative Law assigned pursuant to subsection o. of section 5 of
45 P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The
46 hearing officer shall have the responsibility to make recommendations

1 to the agency regarding the adoption, amendment or repeal of a rule.
2 These recommendations shall be made public. At the beginning of
3 each hearing, or series of hearings, the agency, if it has made a
4 proposal, shall present a summary of the factual information on which
5 its proposal is based, and shall respond to questions posed by any
6 interested party. Hearings shall be conducted at such times and in
7 locations which shall afford interested parties the opportunity to
8 attend. A verbatim [transcript] record of each hearing shall be
9 maintained, and copies of the [transcript] record shall be available to
10 the public at no more than the actual cost, which shall be that of the
11 agency where the petition for rule-making originated.

12 (cf: P.L.1998, c.48, s.4)

13

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

16 5. (a) Each agency shall file with the Director and Chief
17 Administrative Law Judge of the Office of Administrative Law a
18 certified copy of each rule adopted by it.

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

23 (c) The director shall: (1) accept for filing or publication any rule
24 duly adopted and submitted by any agency pursuant to this act and
25 which meets all of the requirements and standards of P.L. , c.
26 (C.)(now pending before the Legislature as this bill); (2) endorse
27 upon the certified copy of each rule accepted for filing pursuant to
28 this act the date and time upon which such rule was filed; [and] (3)
29 maintain the certified copy of each rule so filed in a permanent register
30 open to public inspection; and (4) accept for publication a duly
31 adopted concurrent resolution of the Legislature ¹[finding]
32 invalidating¹ any rule ¹[not consistent with legislative intent] or
33 regulation, in whole or in part, or prohibiting the proposed rule or
34 regulation, in whole or in part, from taking effect ¹ .

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

42 (e) The publication of a rule in the New Jersey Administrative
43 Code or the New Jersey Register shall be deemed to establish the
44 rebuttable presumption that the rule was duly filed and that the text of
45 the rule as so published is the text of the rule adopted. Judicial notice
46 shall be taken of the text of each rule published in the New Jersey

1 Administrative Code or the New Jersey Register.
2 (cf: P.L.1993, c.343, s.2)

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

6 10. In contested cases:

7 (a) The parties shall not be bound by rules of evidence whether
8 statutory, common law, or adopted formally by the Rules of Court. All
9 relevant evidence is admissible, except as otherwise provided herein.
10 The administrative law judge may in his discretion exclude any
11 evidence if he finds that its probative value is substantially outweighed
12 by the risk that its admission will either (i) necessitate undue
13 consumption of time or (ii) create substantial danger of undue
14 prejudice or confusion. The administrative law judge shall give effect
15 to the rules of privilege recognized by law. Any party in a contested
16 case may present his case or defense by oral and documentary
17 evidence, submit rebuttal evidence and conduct such
18 cross-examination as may be required, in the discretion of the
19 administrative law judge, for a full and true disclosure of the facts.

20 (b) Notice may be taken of judicially noticeable facts. In addition,
21 notice may be taken of generally recognized technical or scientific
22 facts within the specialized knowledge of the agency or administrative
23 law judge. Parties shall be notified either before or during the hearing,
24 or by reference in preliminary reports or otherwise, of the material
25 noticed, including any staff memoranda or data, and they shall be
26 afforded an opportunity to contest the material so noticed. The
27 experience, technical competence, and specialized knowledge of the
28 agency or administrative law judge may be utilized in the evaluation of
29 the evidence, provided this is disclosed of record. (c) All

30 hearings of a State agency required to be conducted as a contested
31 case under this act or any other law shall be conducted by an
32 administrative law judge assigned by the Director and Chief
33 Administrative Law Judge of the Office of Administrative Law, except
34 as provided by this amendatory and supplementary act. A
35 recommended report and decision which contains recommended
36 findings of fact and conclusions of law and which shall be based upon
37 sufficient, competent, and credible evidence shall be filed, not later
38 than 45 days after the hearing is concluded, with the agency in such
39 form that it may be adopted as the decision in the case and delivered
40 or mailed, to the parties of record with an indication of the date of
41 receipt by the agency head; and an opportunity shall be afforded each
42 party of record to file exceptions, objections, and replies thereto, and
43 to present argument to the head of the agency or a majority thereof,
44 either orally or in writing, as the agency may direct. The head of the
45 agency, upon a review of the record submitted by the administrative
46 law judge, shall adopt, reject or modify the recommended report and

1 decision no later than 45 days after receipt of such recommendations.
2 In reviewing the decision of an administrative law judge, the agency
3 head may reject or modify ¹findings of fact, ¹conclusions of law or
4 interpretations of agency policy in the decision, but shall state clearly
5 the reasons for doing so. The agency head may not reject or modify
6 any findings of fact ¹as to issues of credibility of lay witness
7 testimony¹ unless it is first determined from a review of the record that
8 the findings ¹[of fact were not based upon] are arbitrary, capricious
9 or unreasonable or are not supported by¹ sufficient, competent, and
10 credible evidence in the record. In ¹[reversing] rejecting¹ or
11 modifying ¹[the] any¹ findings of fact, the agency head shall state with
12 particularity the reasons for rejecting the findings and shall make new
13 or modified findings supported by sufficient, competent, and credible
14 evidence in the record. Unless the head of the agency modifies or
15 rejects the report within such period, the decision of the administrative
16 law judge shall be deemed adopted as the final decision of the head of
17 the agency. The recommended report and decision shall be a part of
18 the record in the case. For good cause shown, upon certification by
19 the director and the agency head, the time limits established herein
20 may be subject to extension.

21 (d) A final decision or order adverse to a party in a contested case
22 shall be in writing or stated in the record. A final decision shall
23 include findings of fact and conclusions of law, separately stated and
24 shall be based only upon the evidence of record at the hearing, as such
25 evidence may be established by rules of evidence and procedure
26 promulgated by the director.

27 Findings of fact, if set forth in statutory language, shall be
28 accompanied by a concise and explicit statement of the underlying
29 facts supporting the findings. The final decision may incorporate by
30 reference any or all of the recommendations of the administrative law
31 judge. Parties shall be notified either personally or by mail of any
32 decision or order. Upon request a copy of the decision or order shall
33 be delivered or mailed forthwith by registered or certified mail to each
34 party and to his attorney of record.

35 (e) Except where otherwise provided by law, the administrative
36 adjudication of the agency shall be effective on the date of delivery or
37 on the date of mailing, of the final decision to the parties of record
38 whichever shall occur first, or shall be effective on any date after the
39 date of delivery or mailing, as the agency may provide by general rule
40 or by order in the case. The date of delivery or mailing shall be
41 stamped on the face of the decision.

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

43

44 5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read
45 as follows:

46 9. a. Nothing in this amendatory and supplementary act shall be

1 construed to deprive the head of any agency of the authority pursuant
2 to section 10 of P.L.1968, c.410 (C.52:14B-10) to determine whether
3 a case is contested or to adopt, reject or modify the findings of fact
4 and conclusions of law of any administrative law judge consistent with
5 the standards for the scope of review to be applied by the head of the
6 agency as set forth in that section and applicable case law.

7 b. Nothing in this amendatory and supplementary act shall be
8 construed to affect the conduct of any contested case initiated prior to
9 the effective date of this act, or the making of any administrative
10 adjudication in such contested case.

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

12
13 6. Section 1 of P.L.1981, c.27 (C.52:14B-4.1) is amended to read
14 as follows:

15 1. Every rule hereafter proposed by a State agency shall be
16 submitted by the [agency] Office of Administrative Law to the Senate
17 and General Assembly [prior to its adoption, amendment or repeal on
18 a day during a regular or special session of the Legislature] within two
19 business days of its receipt by the office, and the President of the
20 Senate and the Speaker of the General Assembly shall immediately
21 refer the proposed rule to the appropriate [standing reference]
22 committee in each House.

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

24
25 7. Section 3 of P.L.1981, c.27 (C.52:14B-4.3) is amended to read
26 as follows:

27 3. [A rule shall be deemed approved unless within 60 days of the
28 submission thereof,] If¹, pursuant to Article V, section 4, paragraph
29 6 of the New Jersey Constitution,¹ the Senate and General Assembly
30 adopt a concurrent resolution [disapproving] ¹[finding the rule, in
31 whole or in part, inconsistent with legislative intent,]¹ [or providing
32 that the rule not take effect during the 60 days following the date of
33 the adoption of the resolution, during which time they may
34 nevertheless adopt a concurrent resolution disapproving the rule]
35 ¹invalidating a rule or regulation, in whole or in part, or prohibiting a
36 proposed rule or regulation, in whole or in part, from taking effect,¹
37 the presiding officer of the House of final adoption shall cause the
38 concurrent resolution to be transmitted to the Office of Administrative
39 Law for publication in the New Jersey Register and the New Jersey
40 Administrative Code as an annotation to the rule¹ [if the rule is
41 adopted] or regulation¹. [No action may be taken by the Legislature
42 under this section until after 1 calendar day from the date of the
43 standing reference committee's report.]

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

- 1 ¹[8. (New section) The notice of a proposed rule shall include a
2 regulatory impact analysis containing each of the following:
- 3 a. an explanation of the necessity, appropriateness and
4 reasonableness of the rule;
- 5 b. a description of the current condition that the proposed rule will
6 address and how that condition will be affected by adoption of the
7 rule;
- 8 c. a statement that the rule does not conflict with nor duplicate any
9 existing rule or an explanation as to why the conflict or duplication
10 exists;
- 11 d. a statement as to whether the rule is in accord with or in conflict
12 with any judicial findings;
- 13 e. a statement of the factual, scientific or technical basis for the
14 agency's determination that the regulation will accomplish its intended
15 purpose;
- 16 f. a statement of why the rule provides the least costly or least
17 intrusive approach for meeting the intended purpose;
- 18 g. an evaluation for the public and regulated parties of the cost
19 versus the benefits to be derived from the rule, including an evaluation
20 of how those benefits outweigh the cost. The evaluation shall include
21 the following, where appropriate:
- 22 (1) an estimate of the costs to regulated parties for compliance;
- 23 (2) an estimate of the costs to the agency for implementation and
24 enforcement of the regulations;
- 25 (3) an estimate of the nature, number and size of parties to be
26 regulated or affected by the rule;
- 27 (4) whether the rule will require on-site inspections;
- 28 (5) an estimate of the paperwork burden on a regulated or affected
29 party, such as the number of forms, impact statements, surveys and
30 other documents to be completed by the party;
- 31 (6) whether parties will be required to maintain any records which
32 will be subject to inspection;
- 33 (7) whether parties will be required to obtain licenses, permits or
34 other certifications and the associated fees and fines;
- 35 (8) whether parties will be required to appear in person before the
36 agency;
- 37 (9) whether parties will be required to disclose information on
38 materials or processes, including trade secrets;
- 39 (10) whether parties will be required to report any particular type
40 of incidents;
- 41 (11) whether parties will be required to adhere to either design or
42 performance standards;
- 43 (12) whether parties may have to retain or utilize lawyers,
44 accountants, engineers or other professional consultants in order to
45 comply with the regulations;
- 46 (13) how the agency expects to implement the provisions of the

1 proposed rule within current budget appropriations and other financial
2 resources.]¹

3
4 ^{18.} (New section) a. There is established a Regulatory Impact
5 Analysis Advisory Task Force as an advisory body to the Governor
6 and the Legislature, hereinafter referred to as the “task force.” The
7 task force shall consist of seventeen members as follows:

8 (1) the Commissioner of the Department of Environmental
9 Protection; the Commissioner of the Department of Community
10 Affairs; the Commissioner of the Department of Transportation; the
11 Commissioner of the Department of Health and Senior Services; the
12 State Treasurer; the Attorney General; and the Chief Administrative
13 Law Judge, or their designees, who shall serve as ex-officio members;

14 (2) Six public members to be appointed by the Governor, at least
15 two of whom shall represent business interests in the state and at least
16 one of whom shall be an attorney with experience in administrative
17 law;

18 (3) Four members of the Legislature, two of whom shall be State
19 Senators appointed by the President of the Senate, no more than one
20 of whom shall be from the same political party, and two of whom shall
21 be Assembly members appointed by the Speaker of the General
22 Assembly, no more than one of whom shall be from the same political
23 party;

24 (4) The Governor shall designate a chairperson and vice-
25 chairperson from among the members of the task force.

26 b. The task force shall organize as soon as possible after the
27 appointment of its members. Vacancies shall be filled in the same
28 manner as the original appointments. Members of the task force shall
29 serve without compensation. The task force may request the
30 assistance and services of the employees of any State department,
31 board, bureau, commission, task force or agency as it may require and
32 as may be available to it for its purposes. The task force may meet and
33 hold hearings at any place or places in the State it shall designate.

34 c. It shall be the objective of the task force to comprehensively
35 review and analyze the current requirements upon agencies to conduct
36 regulatory impact analyses and recommend necessary and appropriate
37 changes to these requirements. In conducting its review and making
38 it recommendations, the task force shall seek to achieve efficiency and
39 accessibility in the regulatory process.

40 The task force shall review current regulatory impact analyses
41 requirements and determine whether and to what extent the required
42 statements and analyses may be consolidated and streamlined. The
43 task force may consider the following factors, along with any others
44 it deems appropriate:

45 (1) overall efficiency to departments in determining whether a
46 proposed major rule meets tests for necessity, reasonableness,

1 consistency and non-duplication with existing rules, and in assessing
2 a proposed rule's impact on measurable risks to human health or the
3 environment, cost efficiency, jobs, and paperwork burden:

4 (2) the costs to regulated parties for compliance; and

5 (3) the nature, number and size of parties to be regulated or
6 affected by the rule.

7 d. The task force shall issue to the Governor, the Senate President
8 and the Speaker of the General Assembly a report of its findings,
9 including any recommendations for legislative changes to the
10 Administrative Procedure Act, no later than one year from the date
11 that the task force convenes, and the task force shall dissolve 60 days
12 after the issuance of the report.¹

13
14 9. (New section) a. The director is authorized to refuse to accept
15 from an agency a notice ¹[or preliminary notice of intention to adopt,
16 readopt or amend] of proposal or notice of adoption which adopts,
17 readopts or amends¹ a rule or regulation, if the director determines
18 that the rule or regulation and its accompanying materials do not
19 comply satisfactorily with the interagency rules of the director. The
20 State agency shall not be authorized to adopt, readopt or amend a rule
21 or regulation where notice ¹[or preliminary notice of intention] of
22 proposal or notice of adoption¹ is refused by the director ¹in
23 accordance with this provision¹, except by proposing the adoption,
24 readoption or amendment in compliance with agency rules.

25 b. The Office of Administrative Law, upon its review and
26 determination, shall not accept for publication any notice of intention
27 to adopt, readopt or amend a rule or regulation, a proposed rule,
28 summary of the proposed rule, regulatory impact analysis, or other
29 accompanying materials which lacks a standard of clarity.

30 As used in this section, "standard of clarity" means the document
31 is written in a reasonably simple and understandable manner which is
32 easily readable. The document is drafted to provide adequate notice
33 to affected persons and interested persons with some subject matter
34 expertise. The document conforms to commonly accepted principles
35 of grammar. The document contains sentences that are as short as
36 practical, and is organized in a sensible manner. The document does
37 not contain double negatives, confusing cross references, convoluted
38 phrasing or unreasonably complex language. Terms of art and words
39 with multiple meanings that may be misinterpreted are defined. The
40 document is sufficiently complete and informative as to permit the
41 public to understand accurately and plainly the legal authority,
42 purposes and expected consequences of the adoption, readoption or
43 amendment of the rule or regulation.

44 c. The provisions of subsection b. of this section shall not apply to
45 any administrative rule that a State agency adopts to conform to a
46 model code, federal rule, interstate agreement or other similar

1 regulatory measure not written by the State agency but incorporated
2 into an administrative rule. The State agency shall append to the
3 proposed rule for publication a written statement describing the rule
4 which complies with subsection b. of this section.

5 d. The Governor may, upon written request of a State agency,
6 waive the requirements of this section with respect to the
7 repromulgation, without amendment, of any rule or provision of a rule.

8
9 10. (New section) a. Every rule in effect on the enactment date of
10 P.L. , c. (C.)(now pending before the Legislature as this bill)
11 shall expire five years following the effective date of this act unless a
12 sooner expiration date has been established for the rule.

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

20 c. An agency may continue in effect an expiring rule for a five year
21 period by duly proposing and readopting the rule prior to its
22 expiration. Upon the filing of a notice of proposed re adoption, the
23 expiration date of the rule shall be extended for 180 days, if such
24 notice is filed prior to the expiration of the rule.

25 d. The Governor may, upon the request of an agency head, and
26 prior to the expiration date of the rule, continue in effect an expiring
27 rule for a period to be specified by the Governor.

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

32
33 11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27
34 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

35
36 12. This act shall take effect on the first day of the ¹[third] sixth¹
37 month following enactment but shall not apply to any rule proposed in
38 the New Jersey Register or to any contested case filed prior to the
39 effective date.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1484

STATE OF NEW JERSEY

DATED: JUNE 22, 2000

The Senate State Government Committee reports favorably Assembly Bill No. 1484 (1R).

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

Table of fees, penalties, etc. Under the provisions of the bill, each agency, in addition to its other rule-making responsibilities, is required to publish with its rules of practice, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures.

Quarterly calendar outlining next six month's anticipated rule-making activities. The bill directs that each agency publish a quarterly calendar in the New Jersey Register, setting forth its anticipated rule-making activities for the next six months. An agency is required to provide 45 days notice prior to amending its calendar. The bill specifies that each agency must publicize that copies of its calendar are available for a reasonable fee. The amount of that fee is to be set by the Director of the Office of Administrative Law (OAL).

Notice of intended action; revised publication requirements. The bill requires each agency to provide notice of intention concerning the adoption, amendment or repeal of any rule to the news media covering the State House Complex, and electronically through the largest nonproprietary cooperative public computer network, currently the Internet.

Extension of public comment period. The bill provides that if within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for submissions regarding that proposed rule, an agency must provide an additional 30 days for interested party comment. The agency is precluded from adopting the proposed rule until after the end of the 30 day extension.

Broadens public hearing requirement on proposed rule. The bill directs an agency to hold a public hearing if sufficient public interest is shown. Currently, a public hearing is held on a proposed rule only at the request of a committee of the Legislature or of a governmental agency or subdivision. The bill provides that such a

request for a public hearing must be made within 30 days following publication of the proposed rule in the Register; current law requires the request be made within 15 days. The definition of "sufficient public interest" is to be determined by the head of each agency and included as part of that agency's rules of practice.

Public petition for rule adoption or revision. Current law allows an interested person to petition an agency to adopt a new rule, or amend or repeal an existing rule. The bill requires the agency to respond to any such petition within 60 days, instead of the current 30 day time frame, by either (1) denying the petition; (2) granting the petition and initiating a rule-making proceeding within 90 days of granting the petition; or (3) referring the matter for further study to be concluded within 90 days of the referral. If the agency fails to act within this time frame, the petitioner may request the Director of the OAL to order a public hearing on the rule-making petition.

If the Director of the OAL orders a public hearing, the affected agency has 15 days in which to respond. If the agency does not respond by notifying the director that it will hold a public hearing within 15 days, the director is to conduct the hearing. The bill specifies that both the agency and the petitioner are to participate in such a hearing by presenting factual information and summaries of their positions and by responding to any questions.

Public hearings on rule-making; recording. Rather than the verbatim transcript currently required, the bill authorizes a verbatim record be kept of each such hearing and be available to the public at cost.

Publication of legislative finding of rule inconsistency. In addition to the powers currently afforded the Director of the OAL to certify, maintain and accept for filing and publication any rule that meets the requirements and standards of this bill, the director is empowered to accept for publication any duly adopted concurrent resolution of the Legislature invalidating a rule or regulation in whole or in part or prohibiting the proposed rule or regulation, in whole or in part, from taking effect. Each such concurrent resolution will be published in the New Jersey Register and in the New Jersey Administrative Code as an annotation to the rule if the rule is adopted.

Authorize agency heads to review/modify administrative law decisions in certain contested cases. In contested cases, the bill allows an agency head to review decisions by administrative law judges, and to reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decisions (having stated clearly the reasons for doing so). The agency head can reject or modify findings of fact as to issues of lay witness credibility upon determination that the findings were arbitrary, capricious, unreasonable or not supported by sufficient, competent and credible evidence in the record. In rejecting or modifying those and any other findings of fact, the agency head must state with particularity the reasons for rejecting the findings, and make new or modified findings

supported by sufficient, competent and credible evidence in the record.

Regulatory Impact Analysis Advisory Task Force. The bill establishes a 17 member Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, consisting of: (1) as ex officio members, the Commissioners of the Departments of Environmental Protection, Community Affairs, Transportation, Health and Senior Services; the State Treasurer; the Attorney General; and the Chief Administrative Law Judge (or their designees); (2) six public members to be appointed by the Governor, at least two of whom will represent business interests in the State and at least one of whom will be an attorney with experience in administrative law; and (3) four members of the Legislature, two Senators appointed by the Senate President, no more than one of whom will be of the same political party, and two Assembly members appointed by the Speaker of the General Assembly, no more than one of whom will be of the same political party. The Governor will designate a chairperson and vice-chairperson from among the members of the task force.

The task force will comprehensively review and analyze the current requirements upon agencies to conduct regulatory impact analyses and recommend necessary and appropriate changes to these requirements. In conducting its review and making its recommendations, the task force will seek to achieve efficiency and accessibility in the regulatory process.

The task force will issue to the Governor, the Senate President and the Speaker of the General Assembly a report of its findings and recommendations for changes within one year of its convening and dissolve 60 days thereafter.

Standard of clarity The bill requires that a proposed rule and any notice of intention to adopt, readopt or amend a rule or regulation, summary of a proposed rule, or other accompanying material, is subject to a "standard of clarity," requiring simple understandable language providing adequate notice to persons with some subject matter expertise. This requirement does not apply to bills conforming to federal or other models not written by a State agency, and can be waived by the Governor for repromulgations without amendment.

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

Repeal of inoperative sections of law--Legislative veto power. The bill repeals sections 2 and 4 through 7 of P.L.1981, c.27 (C.52:14B:4.2 and 52:14B-4-.4 through 52:14B-4.7, inclusive) that are no longer operative of the New Jersey Supreme Court determination that they were in violation of the New Jersey Constitution's separation of powers doctrine.

According to the Legislative Fiscal Estimate on A-1484, as introduced, "costs for FY 2001 are estimated to be \$160,522. Costs for the second and third years are estimated at \$149,695 and \$154,148 respectively." The Office of Administrative Law (OAL) is expected to incur these costs in the hiring of new staff and purchasing additional equipment. However, the fiscal estimate notes that due to "the additional rule-making and reporting provisions specified in the bill, the bill has potential cost implications for every agency of State government; however, no information is available in this regard."

This bill is the same as Senate, No. 1306.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1484

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2000

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1484 (1R).

This bill revises New Jersey's "Administrative Procedure Act" to enhance access to the rule-making process.

Bill overview. This bill:

- ! Requires regulatory agencies to publish a calendar providing long-range notice of their rule-making plans;
- ! Provides for an extension, when warranted by public interest, in the time allowed for comment on proposed rules;
- ! Ensures official response to a member of the public's petitioning of an agency to adopt or change a rule;
- ! Provides that, in reviewing an administrative law judge's decision, an agency head shall apply an elevated standard in deciding whether to reject or modify findings of fact as to the credibility of lay witness testimony;
- ! Requires each rule-making agency to publish a table of specified matters that are of interest to regulated parties; and
- ! Codifies in law the "sunset" provisions of a 1978 executive order providing that administrative rules are to expire after five years.

General background. The "Administrative Procedure Act" (APA), enacted in 1968, establishes the procedures that agencies in the Executive branch of State government must follow when exercising their authority to adopt rules and regulations. The Act requires an agency to give 30 days' notice of its intention to adopt, amend or repeal a rule, and to publish that notice in the *New Jersey Register*. The notice must include a summary of the proposed rule and various analyses of its potential impact. The agency must give members of the public reasonable opportunity to comment on the proposal, and must publish a report of those comments, along with the agency's response. An interested party may petition an agency to adopt, amend or repeal a rule; current law directs an agency receiving such a petition to deny it or to act upon it—e.g., by initiating a rule-making proceeding.

In addition to administrative rule-making procedures, the APA prescribes procedures for the adjudication of "contested cases," i.e., proceedings in which specific parties' legal rights are to be determined

by an administrative agency after opportunity for an agency hearing.

Bill provisions. The provisions of the bill may be summarized as follows:

Table of fees, penalties, etc. Each agency would have to include, in the publication of its rules of practice, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures.

Quarterly calendar of anticipated rule-making activity. Each agency would have to publish in the *New Jersey Register* a quarterly calendar setting forth its anticipated rule-making activities for the next six months. An agency wishing to add a rule-making activity to its calendar would have to publish an amended calendar and delay that activity until at least 45 days after that publication. Exceptions to these notice requirements would be allowed if the rule-making

- < involves imminent peril to public health, safety or welfare,
- < is required or authorized by federal law and necessary to avoid prejudice to the State,
- < is subject to a more expedited schedule under State law, or
- < involves other specified procedural assurances of adequate public notice.

Notice of intended action: expanded publication. Each agency proposing to adopt or change a rule would have to provide the 30-day notice of its intention to the news media covering the State House Complex, and electronically through the Internet.

Extension of public comment period. If, within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for public comment, an agency would have to allow an additional 30 days' comment period. The agency could not adopt the proposed rule until the end of the 30-day extension.

Broadening of public hearing requirement. Currently, an agency is required to hold a public hearing on a proposed rule only at the request of a committee of the Legislature or a governmental agency or subdivision within 15 days after publication of the proposed rule in the *Register*. The bill extends the deadline for such a request to the 30th day after publication, and would also require the agency to hold a hearing if "sufficient public interest" is shown.

Petition to adopt or change a rule: revised procedure. An agency that receives a petition to adopt, amend or repeal a rule would have 60 days (rather than the current 30) to respond. The bill provides, however, that if the petition is granted, rule-making proceedings shall be initiated within 90 days. It also authorizes the agency, instead of denying or granting the petition, to refer the matter for further study to be concluded within 90 days of the referral.

If the agency doesn't act within this time frame, then upon the petitioner's written request, the Director of the Office of Administrative Law (OAL) would have to order a public hearing on the petition. The affected agency would have 15 days in which to respond by notifying the director that it will hold a public hearing

within 15 days. If the agency does not so respond, the director is to schedule and publish notice of such a hearing.

Public hearings generally: recording. Instead of the verbatim transcript now required, the bill authorizes a verbatim record be kept of public hearings.

Publication of legislative finding of rule inconsistency. In addition to the current duty of the OAL Director to accept for filing and publication any rule that meets the APA's requirements, the director would have to accept for publication any duly adopted concurrent resolution of the Legislature invalidating a rule in whole or in part, or prohibiting a proposed rule, in whole or in part, from taking effect.

Agency review of administrative law decisions in contested cases. The bill allows an agency head, when reviewing decisions by administrative law judges in contested cases, to reject or modify findings of fact on issues of lay witness credibility only upon a determination that the findings are arbitrary, capricious, unreasonable or not supported by sufficient, competent and credible evidence in the record. In rejecting or modifying *any* findings of fact, the agency head must state with particularity the reasons for rejecting the findings, and make new or modified findings supported by sufficient, competent and credible evidence in the record. The bill also provides that an agency head who rejects or modifies findings of fact, conclusions of law or interpretations of agency policy in a decision must state clearly the reasons for doing so.

Standard of clarity. The bill requires that any proposed rule, any summary of a proposed rule, any notice of intended rule-making, or any other document submitted to the Office of Administrative Law for publication shall be subject to a "standard of clarity." That is, the document must be written in simple language, give adequate notice to affected parties with some subject matter expertise, observe standard rules of grammar, avoid cross-references and convoluted phrasing, and otherwise convey the purport and significance of its contents. The standard would not apply to rules conforming to federal or other non-State agency models; the Governor could waive application of the standard in promulgations of rules without amendment.

"Sunsetting." The bill codifies the provisions of Executive Order No. 66 of 1978, which provides that rules are to remain in effect for no more than five years unless readopted in a rule-making procedure.

Regulatory Impact Analysis Advisory Task Force. The bill creates a 17-member Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, consisting of:

- < six Executive branch department heads and the Chief Administrative Law Judge (or their respective designees),
- < six public members appointed by the Governor, at least two of whom represent business interests in the State and at least one of whom is an attorney with experience in administrative law, and
- < four members of the Legislature, two from each House who are

not of the same political party, appointed by the respective presiding officers.

The task force will review current mandates upon agencies to conduct regulatory impact analyses, and will recommend changes to these requirements appropriate to the achievement of efficiency and accessibility in the regulatory process. The task force will report its findings and recommendations to the Governor, the Senate President, and the Speaker of the General Assembly within a year of convening.

Revision and partial repeal of inoperative law (Legislative veto). The bill repeals sections 2 and 4 through 7 of P.L.1981, c.27 (C.52:14B-4.2 and 52:14B-4.4 through -4.7, inclusive), which are no longer operative as a result of the New Jersey Supreme Court's decision (in General Assembly of N.J. v. Byrne, 90 N.J. 376 (1982)) that they violated the State Constitution's separation of powers doctrine.

The provisions of this bill are identical to those of Senate Bill No. 1306, which the committee also reports this day.

FISCAL IMPACT

According to the Legislative Fiscal Estimate on this bill as introduced, the estimated cost of this legislation for FY2001 is \$160,522; costs for the next two fiscal years are estimated at \$149,695 and \$154,148 respectively. The Office of Administrative Law (OAL) is expected to incur these costs in hiring new staff and purchasing additional equipment. The fiscal estimate notes that due to "the additional rule-making and reporting provisions specified in the bill, the bill has potential cost implications for every agency of State government; however, no information is available in this regard."

SENATE, No. 1306

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MAY 18, 2000

Sponsored by:

Senator MARTHA W. BARK

District 8 (Atlantic, Burlington and Camden)

Senator JOHN H. ADLER

District 6 (Camden)

SYNOPSIS

Revises administrative rule-making process.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/9/2000)

S1306 BARK, ADLER

2

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

5

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

8

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

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

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

16 (2) adopt rules of practice setting forth the nature and
17 requirements of all formal and informal procedures available, including
18 a description of all forms and instructions used by the agency, and if
19 not otherwise set forth in an agency's rules, a table of all permits and
20 their fees, violations and penalties, deadlines, processing times and
21 appeals procedures;

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

25 (4) publish in the New Jersey Register a quarterly calendar setting
26 forth a schedule of the agency's anticipated rule-making activities for
27 the next six months. The calendar shall include the name of the agency
28 and agency head, a citation to the legal authority authorizing the
29 rule-making action and a synopsis of the subject matter and the
30 objective or purpose of the agency's proposed rules.

31 In a manner prescribed by the Director of the Office of
32 Administrative Law, each agency shall appropriately publicize that
33 copies of its calendar are available to interested persons for a
34 reasonable fee. The amount of the fee shall be set by the director.

35 An agency shall notify the Director of the Office of Administrative
36 Law when it wishes to amend its calendar of rule-making activities.
37 Any amendment which involves the addition of any rule-making
38 activity to an agency's calendar shall provide that the agency shall take
39 no action on that matter until at least 45 days following the first
40 publication of the amended calendar in which the announcement of
41 that proposed rule-making activity first appears.

42 The provisions of this paragraph shall not apply to rule-making:

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.

1 (a) required or authorized by federal law when failure to adopt
2 rules in a timely manner will prejudice the State;

3 (b) subject to a specific statutory authorization requiring
4 promulgation in a lesser time period;

5 (c) involving an imminent peril subject to provisions of subsection
6 (c) of section 4 of P.L.1968, c.410 (C.52:14B-4);

7 (d) for which the agency has published a notice of pre-proposal of
8 a rule in accordance with rules adopted by the Director of the Office
9 of Administrative Law; or

10 (e) for which a comment period of at least 60 days is provided.

11 A proposed rule falling within any of the exceptions to the
12 provisions of this subsection shall so indicate in the notice of proposal.
13 (cf: P.L.1968, c.410, s.3)

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

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

19 (1) Give at least 30 days' notice of its intended action. The notice
20 shall include a statement of either the terms or substance of the
21 intended action or a description of the subjects and issues involved,
22 and the time when, the place where, and the manner in which
23 interested persons may present their views thereon. The notice shall
24 be mailed to all persons who have made timely requests of the agency
25 for advance notice of its rule-making proceedings and in addition to
26 other public notice required by law shall be published in the New
27 Jersey Register [and shall be filed with the President of the Senate and
28 the Speaker of the General Assembly. The notice shall be additionally
29 publicized in such manner as the agency deems most appropriate in
30 order to]. Notice shall also be distributed to the news media
31 maintaining a press office to cover the State House Complex, and
32 made available electronically through the largest nonproprietary
33 cooperative public computer network. Each agency shall additionally
34 publicize the intended action and shall adopt rules to prescribe the
35 manner in which it will do so, and inform those persons most likely to
36 be affected by or interested in the intended action. Methods that may
37 be employed include publication of the notice in newspapers of general
38 circulation or in trade, industry, governmental or professional
39 publications, distribution of press releases to the news media and
40 posting of notices in appropriate locations. The rules shall prescribe
41 the circumstances under which each additional method shall be
42 employed;

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

1 description of the expected socio-economic impact of the rule, a
2 regulatory flexibility analysis, or the statement of finding that a
3 regulatory flexibility analysis is not required, as provided in section 4
4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
5 include an assessment of the number of jobs to be generated or lost if
6 the proposed rule takes effect, and an agriculture industry impact
7 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3);
8 and

9 (3) Afford all interested persons reasonable opportunity to submit
10 data, views, or arguments, orally or in writing. The agency shall
11 consider fully all written and oral submissions respecting the proposed
12 rule. If within 30 days of the publication of the proposed rule
13 sufficient public interest is demonstrated in an extension of the time for
14 submissions, the agency shall provide an additional 30 day period for
15 the receipt of submissions by interested parties. The agency shall not
16 adopt the proposed rule until after the end of that 30 day extension.

17 The agency shall conduct a public hearing on the proposed rule at
18 the request of a committee of the Legislature, or a governmental
19 agency or subdivision, or if sufficient public interest is shown,
20 provided such request is made to the agency within [15] 30 days
21 following publication of the proposed rule in the Register. The agency
22 shall provide at least 15 days' notice of such hearing, which shall be
23 conducted in accordance with the provisions of subsection (g) of this
24 section[;].

25 The head of each agency shall adopt as part of its rules of practice
26 adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3)
27 definite standards of what constitutes sufficient public interest for
28 conducting a public hearing and for granting an extension pursuant to
29 this paragraph.

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

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

38 (c) If an agency finds that an imminent peril to the public health,
39 safety, or welfare requires adoption of a rule upon fewer than 30 days'
40 notice and states in writing its reasons for that finding, and the
41 Governor concurs in writing that an imminent peril exists, it may
42 proceed without prior notice or hearing, or upon any abbreviated
43 notice and hearing that it finds practicable, to adopt the rule. The rule
44 shall be effective for a period of not more than 60 days unless each
45 house of the Legislature passes a resolution concurring in its extension
46 for a period of not more than 60 additional days. The rule shall not be

1 effective for more than 120 days unless repromulgated in accordance
2 with normal rule-making procedures.

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

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

18 (f) An interested person may petition an agency to [promulgate]
19 adopt a new rule, or amend or repeal any existing rule. Each agency
20 shall prescribe by rule the form for the petition and the procedure for
21 the submission, consideration and disposition of the petition. The
22 petition shall state clearly and concisely:

23 (1) The substance or nature of the rule-making which is requested;

24 (2) The reasons for the request and the petitioner's interest in the
25 request;

26 (3) References to the authority of the agency to take the requested
27 action.

28 The petitioner may provide the text of the proposed new rule,
29 amended rule or repealed rule.

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

46 If an agency fails to act in accordance with the time frame set forth

1 in the preceding paragraph, upon written request by the petitioner, the
2 Director of the Office of Administrative Law shall order a public
3 hearing on the rule-making petition and shall provide the agency with
4 a notice of the director's intent to hold the public hearing if the agency
5 does not. If the agency does not provide notice of a hearing within 15
6 days of the director's notice, the director shall schedule and provide
7 the public with a notice of that hearing at least 15 days prior thereto.
8 If the public hearing is held by the Office of Administrative Law, it
9 shall be conducted by an administrative law judge, a person on
10 assignment from another agency, a person from the Office of
11 Administrative Law assigned pursuant to subsection o. of section 5 of
12 P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned
13 by the director. The petitioner and the agency shall participate in the
14 public hearing and shall present a summary of their positions on the
15 petition, a summary of the factual information on which their positions
16 on the petition are based and shall respond to questions posed by any
17 interested party. The hearing procedure shall otherwise be consistent
18 with the requirements for the conduct of a public hearing as prescribed
19 in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except
20 that the person assigned to conduct the hearing shall make a report
21 summarizing the factual record presented and the arguments for and
22 against proceeding with a rule proposal based upon the petition. This
23 report shall be filed with the agency and delivered or mailed to the
24 petitioner. A copy of the report shall be filed with the Legislature
25 along with the petition for rule-making.

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

43 (cf: P.L.1998, c.48, s.4)

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

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

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

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

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

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

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

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

32

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

35 10. In contested cases:

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

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

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

13 (c) All hearings of a State agency required to be conducted as a
14 contested case under this act or any other law shall be conducted by
15 an administrative law judge assigned by the Director and Chief
16 Administrative Law Judge of the Office of Administrative Law, except
17 as provided by this amendatory and supplementary act. A
18 recommended report and decision which contains recommended
19 findings of fact and conclusions of law and which shall be based upon
20 sufficient, competent, and credible evidence shall be filed, not later
21 than 45 days after the hearing is concluded, with the agency in such
22 form that it may be adopted as the decision in the case and delivered
23 or mailed, to the parties of record with an indication of the date of
24 receipt by the agency head; and an opportunity shall be afforded each
25 party of record to file exceptions, objections, and replies thereto, and
26 to present argument to the head of the agency or a majority thereof,
27 either orally or in writing, as the agency may direct. The head of the
28 agency, upon a review of the record submitted by the administrative
29 law judge, shall adopt, reject or modify the recommended report and
30 decision no later than 45 days after receipt of such recommendations.
31 In reviewing the decision of an administrative law judge, the agency
32 head may reject or modify findings of fact, conclusions of law or
33 interpretations of agency policy in the decision, but shall state clearly
34 the reasons for doing so. The agency head may not reject or modify
35 any findings of fact as to issues of credibility of lay witness testimony
36 unless it is first determined from a review of the record that the
37 findings are arbitrary, capricious or unreasonable or are not supported
38 by sufficient, competent, and credible evidence in the record. In
39 rejecting or modifying any findings of fact, the agency head shall state
40 with particularity the reasons for rejecting the findings and shall make
41 new or modified findings supported by sufficient, competent, and
42 credible evidence in the record. Unless the head of the agency
43 modifies or rejects the report within such period, the decision of the
44 administrative law judge shall be deemed adopted as the final decision
45 of the head of the agency. The recommended report and decision shall
46 be a part of the record in the case. For good cause shown, upon

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

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

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

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

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

25

26 5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read
27 as follows:

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

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

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

40

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

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

1 business days of its receipt by the office, and the President of the
2 Senate and the Speaker of the General Assembly shall immediately
3 refer the proposed rule to the appropriate [standing reference]
4 committee in each House.

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

6

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

9 3. [A rule shall be deemed approved unless within 60 days of the
10 submission thereof,] If, pursuant to Article V, section 4, paragraph 6
11 of the New Jersey Constitution, the Senate and General Assembly
12 adopt a concurrent resolution [disapproving the rule, in whole or in
13 part, or providing that the rule not take effect during the 60 days
14 following the date of the adoption of the resolution, during which time
15 they may nevertheless adopt a concurrent resolution disapproving the
16 rule] invalidating a rule or regulation, in whole or in part, or
17 prohibiting a proposed rule or regulation, in whole or in part, from
18 taking effect, the presiding officer of the House of final adoption shall
19 cause the concurrent resolution to be transmitted to the Office of
20 Administrative Law for publication in the New Jersey Register and the
21 New Jersey Administrative Code as an annotation to the rule or
22 regulation. [No action may be taken by the Legislature under this
23 section until after 1 calendar day from the date of the standing
24 reference committee's report.]

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

26

27 8. (New section) a. There is established a Regulatory Impact
28 Analysis Advisory Task Force as an advisory body to the Governor
29 and the Legislature, hereinafter referred to as the "task force." The
30 task force shall consist of seventeen members as follows:

31 (1) the Commissioner of the Department of Environmental
32 Protection; the Commissioner of the Department of Community
33 Affairs; the Commissioner of the Department of Transportation; the
34 Commissioner of the Department of Health and Senior Services; the
35 State Treasurer; the Attorney General; and the Chief Administrative
36 Law Judge, or their designees, who shall serve as ex-officio members;

37 (2) Six public members to be appointed by the Governor, at least
38 two of whom shall represent business interests in the state and at least
39 one of whom shall be an attorney with experience in administrative
40 law;

41 (3) Four members of the Legislature, two of whom shall be State
42 Senators appointed by the President of the Senate, no more than one
43 of whom shall be from the same political party, and two of whom shall
44 be Assembly members appointed by the Speaker of the General
45 Assembly, no more than one of whom shall be from the same political
46 party;

1 (4) The Governor shall designate a chairperson and vice-
2 chairperson from among the members of the task force.

3 b. The task force shall organize as soon as possible after the
4 appointment of its members. Vacancies shall be filled in the same
5 manner as the original appointments. Members of the task force shall
6 serve without compensation. The task force may request the
7 assistance and services of the employees of any State department,
8 board, bureau, commission, task force or agency as it may require and
9 as may be available to it for its purposes. The task force may meet and
10 hold hearings at any place or places in the State it shall designate.

11 c. It shall be the objective of the task force to comprehensively
12 review and analyze the current requirements upon agencies to conduct
13 regulatory impact analyses and recommend necessary and appropriate
14 changes to these requirements. In conducting its review and making
15 its recommendations, the task force shall seek to achieve efficiency and
16 accessibility in the regulatory process.

17 The task force shall review current regulatory impact analyses
18 requirements and determine whether and to what extent the required
19 statements and analyses may be consolidated and streamlined. The
20 task force may consider the following factors, along with any others
21 it deems appropriate:

22 (1) overall efficiency to departments in determining whether a
23 proposed major rule meets tests for necessity, reasonableness,
24 consistency and non-duplication with existing rules, and in assessing
25 a proposed rule's impact on measurable risks to human health or the
26 environment, cost efficiency, jobs, and paperwork burden;

27 (2) the costs to regulated parties for compliance; and

28 (3) the nature, number and size of parties to be regulated or
29 affected by the rule.

30 d. The task force shall issue to the Governor, the Senate President
31 and the Speaker of the General Assembly a report of its findings,
32 including any recommendations for legislative changes to the
33 Administrative Procedure Act, no later than one year from the date
34 that the task force convenes, and the task force shall dissolve 60 days
35 after the issuance of the report.

36
37 9. (New section) a. The director is authorized to refuse to accept
38 from an agency a notice of proposal or notice of adoption which
39 adopts, readopts or amends a rule or regulation, if the director
40 determines that the rule or regulation and its accompanying materials
41 do not comply satisfactorily with the interagency rules of the director.
42 The State agency shall not be authorized to adopt, readopt or amend
43 a rule or regulation where notice of proposal or notice of adoption is
44 refused by the director, in accordance with this provision, except by
45 proposing the adoption, readoption or amendment in compliance with
46 agency rules.

1 b. The Office of Administrative Law, upon its review and
2 determination, shall not accept for publication any notice of intention
3 to adopt, readopt or amend a rule or regulation, a proposed rule,
4 summary of the proposed rule, regulatory impact analysis, or other
5 accompanying materials which lacks a standard of clarity.

6 As used in this section, "standard of clarity" means the document
7 is written in a reasonably simple and understandable manner which is
8 easily readable. The document is drafted to provide adequate notice
9 to affected persons and interested persons with some subject matter
10 expertise. The document conforms to commonly accepted principles
11 of grammar. The document contains sentences that are as short as
12 practical, and is organized in a sensible manner. The document does
13 not contain double negatives, confusing cross references, convoluted
14 phrasing or unreasonably complex language. Terms of art and words
15 with multiple meanings that may be misinterpreted are defined. The
16 document is sufficiently complete and informative as to permit the
17 public to understand accurately and plainly the legal authority,
18 purposes and expected consequences of the adoption, readoption or
19 amendment of the rule or regulation.

20 c. The provisions of subsection b. of this section shall not apply to
21 any administrative rule that a State agency adopts to conform to a
22 model code, federal rule, interstate agreement or other similar
23 regulatory measure not written by the State agency but incorporated
24 into an administrative rule. The State agency shall append to the
25 proposed rule for publication a written statement describing the rule
26 which complies with subsection b. of this section.

27 d. The Governor may, upon written request of a State agency,
28 waive the requirements of this section with respect to the
29 repromulgation, without amendment, of any rule or provision of a rule.
30

31 10. (New section) a. Every rule in effect on the enactment date of
32 P.L. , c. (C.)(now pending before the Legislature as this bill)
33 shall expire five years following the effective date of this act unless a
34 sooner expiration date has been established for the rule.

35 b. Every rule adopted on or after the effective date of P.L. ,

36 c. (C.) (now pending before the Legislature as this bill) shall
37 expire five years following the effective date of the rule unless a
38 sooner expiration date has been established for the rule. The
39 expiration date shall be included in the adoption notice of the rule in

1 the New Jersey Register and noted in the New Jersey Administrative
2 Code.

3 c. An agency may continue in effect an expiring rule for a five year
4 period by duly proposing and readopting the rule prior to its
5 expiration. Upon the filing of a notice of proposed re adoption, the
6 expiration date of the rule shall be extended for 180 days, if such
7 notice is filed prior to the expiration of the rule.

8 d. The Governor may, upon the request of an agency head, and
9 prior to the expiration date of the rule, continue in effect an expiring
10 rule for a period to be specified by the Governor.

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

15

16 11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27
17 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

18

19 12. This act shall take effect on the first day of the sixth month
20 following enactment but shall not apply to any rule proposed in the
21 New Jersey Register or to any contested case filed prior to the
22 effective date.

23

24

25

STATEMENT

26

27 This bill amends, supplements and repeals various sections of the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), to ensure a more open and deliberative process.

30 **Table of fees, penalties, etc.** Under the provisions of the bill, each
31 agency, in addition to its other rule-making responsibilities, is required
32 to publish with its rules of practice, a table of all permits and fees,
33 violations and penalties, deadlines, processing times and appeals
34 procedures.

35 **Quarterly calendar outlining next six month's anticipated rule-**
36 **making activities.** The bill directs that each agency publish a
37 quarterly, instead of monthly, calendar in the New Jersey Register,
38 setting forth its anticipated rule-making activities for the next six
39 months. An agency is required to provide 45 days notice prior to
40 amending its calendar. The bill specifies that each agency must
41 publicize that copies of its calendar are available for a reasonable fee.
42 The amount of that fee is to be set by the Director of the Office of
43 Administrative Law (OAL).

44 **Notice of intended action; revised publication requirements.**
45 The bill requires each agency to provide notice of intention concerning
46 the adoption, amendment or repeal of any rule to the news media

1 covering the State House Complex, and electronically through the
2 largest nonproprietary cooperative public computer network, currently
3 the Internet.

4 **Extension of public comment period.** The bill provides that if
5 within 30 days of the publication of a proposed rule, there is sufficient
6 public interest in an extension of time for submissions regarding that
7 proposed rule, an agency must provide an additional 30 days for
8 interested party comment. The agency is precluded from adopting the
9 proposed rule until after the end of the 30 day extension.

10 **Broadens public hearing requirement on proposed rule.** The
11 bill directs an agency to hold a public hearing if sufficient public
12 interest is shown. Currently, a public hearing is held on a proposed
13 rule only at the request of a committee of the Legislature or of a
14 governmental agency or subdivision. The bill provides that such a
15 request for a public hearing must be made within 30 days following
16 publication of the proposed rule in the Register; current law requires
17 the request be made within 15 days. The definition of "sufficient
18 public interest" is to be determined by the head of each agency and
19 included as part of that agency's rules of practice.

20 **Public petition for rule adoption or revision.** Current law allows
21 an interested person to petition an agency to adopt a new rule, or
22 amend or repeal an existing rule. The bill requires the agency to
23 respond to any such petition within 60 days, instead of the current 30
24 day time frame, by either (1) denying the petition; (2) granting the
25 petition and initiating a rule-making proceeding within 90 days of
26 granting the petition; or (3) referring the matter for further study to be
27 concluded within 90 days of the referral. If the agency fails to act
28 within this time frame, the petitioner may request the Director of the
29 OAL to order a public hearing on the rule-making petition.

30 If the Director of the OAL orders a public hearing, the affected
31 agency has 15 days in which to respond. If the agency does not
32 respond by notifying the director that it will hold a public hearing
33 within 15 days, the director is to conduct the hearing. The bill
34 specifies that both the agency and the petitioner are to participate in
35 such a hearing by presenting factual information and summaries of
36 their positions and by responding to any questions.

37 **Public hearings on rule-making; recording.** Rather than the
38 verbatim transcript currently required, the bill authorizes a verbatim
39 record be kept of each such hearing and be available to the public at
40 cost.

41 **Publication of legislative finding of rule inconsistency.** In
42 addition to the powers currently afforded the Director of the OAL to
43 certify, maintain and accept for filing and publication any rule that
44 meets the requirements and standards of this bill, the director is
45 empowered to accept for publication any duly adopted concurrent
46 resolution of the Legislature invalidating a rule or regulation in whole

1 or in part or prohibiting the proposed rule or regulation, in whole or
2 in part, from taking effect. Each such concurrent resolution shall be
3 published in the New Jersey Register and in the New Jersey
4 Administrative Code as an annotation to the rule if the rule is adopted.

5 **Authorize agency heads to review/modify administrative law**
6 **decisions in certain contested cases.** In contested cases, the bill
7 allows an agency head to review decisions by administrative law
8 judges, and to reject or modify findings of fact, conclusions of law or
9 interpretations of agency policy in the decisions (having stated clearly
10 the reasons for doing so). The agency head can reject or modify
11 findings of fact as to issues of lay witness credibility upon
12 determination that the findings were arbitrary, capricious,
13 unreasonable or not supported by sufficient, competent and credible
14 evidence in the record. In rejecting or modifying those and any other
15 findings of fact, the agency head must set forth the reasons, and make
16 new or modified findings supported by sufficient, competent and
17 credible evidence in the record.

18 **Regulatory Impact Analysis Advisory Task Force.** The bill
19 establishes a 17 member Regulatory Impact Analysis Advisory Task
20 Force as an advisory body to the Governor and the Legislature,
21 consisting of: (1) as ex officio members, the Commissioners of the
22 Departments of Environmental Protection, Community Affairs,
23 Transportation, Health and Senior Services; the State Treasurer; the
24 Attorney General; and the Chief Administrative Law Judge (or their
25 designees); (2) six public members to be appointed by the Governor,
26 at least two of whom shall represent business interests in the state and
27 at least one of whom shall be an attorney with experience in
28 administrative law; and (3) four members of the Legislature, two
29 State Senators appointed by the President of the Senate, and two
30 Assembly Members appointed by the Speaker. The Governor will
31 designate a chairperson and vice-chairperson from among the members
32 of the task force.

33 The task force shall comprehensively review and analyze the current
34 requirements upon agencies to conduct regulatory impact analyses and
35 recommend necessary and appropriate changes to these requirements.
36 In conducting its review and making its recommendations, the task
37 force shall seek to achieve efficiency and accessibility in the regulatory
38 process.

39 The task force shall issue to the Governor, The Senate President
40 and the Speaker of the General Assembly a report of its findings and
41 recommendations for changes within one year of its convening and
42 dissolve 60 days thereafter.

43 **Standard of clarity** The bill requires that a proposed rule and
44 any notice of intention to adopt, readopt or amend a rule or regulation,
45 summary of a proposed rule, or other accompanying material, is
46 subject to a "standard of clarity," requiring simple understandable

1 language providing adequate notice to persons with some subject
2 matter expertise. This requirement does not apply to bills conforming
3 to federal or other models not written by a State agency, and can be
4 waived by the Governor for repromulgations without amendment.

5 **"Sunsetting" of rules.** The bill codifies the provisions of
6 Executive Order No. 66 of 1978, signed by Governor Byrne on April
7 14, 1978, which requires that a rule remain in effect for not more than
8 five years unless readopted in a rule-making procedure.

9 **Repeal of inoperative sections of law--Legislative veto power.**
10 The bill repeals sections 2 and 4 through 7 of P.L.1981, c.27
11 (C.52:14B:4.2 and 52:14B-4-.4 through 52:14B-4.7, inclusive) that
12 are no longer operative of the New Jersey Supreme Court
13 determination that they were in violation of the New Jersey
14 Constitution's separation of powers doctrine.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1306

STATE OF NEW JERSEY

DATED: JUNE 22, 2000

The Senate State Government Committee reports favorably Senate Bill No. 1306.

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

Table of fees, penalties, etc. Under the provisions of the bill, each agency, in addition to its other rule-making responsibilities, is required to publish with its rules of practice, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures.

Quarterly calendar outlining next six month's anticipated rule-making activities. The bill directs that each agency publish a quarterly calendar in the New Jersey Register, setting forth its anticipated rule-making activities for the next six months. An agency is required to provide 45 days notice prior to amending its calendar. The bill specifies that each agency must publicize that copies of its calendar are available for a reasonable fee. The amount of that fee is to be set by the Director of the Office of Administrative Law (OAL).

Notice of intended action; revised publication requirements. The bill requires each agency to provide notice of intention concerning the adoption, amendment or repeal of any rule to the news media covering the State House Complex, and electronically through the largest nonproprietary cooperative public computer network, currently the Internet.

Extension of public comment period. The bill provides that if within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for submissions regarding that proposed rule, an agency must provide an additional 30 days for interested party comment. The agency is precluded from adopting the proposed rule until after the end of the 30 day extension.

Broadens public hearing requirement on proposed rule. The bill directs an agency to hold a public hearing if sufficient public interest is shown. Currently, a public hearing is held on a proposed rule only at the request of a committee of the Legislature or of a governmental agency or subdivision. The bill provides that such a request for a public hearing must be made within 30 days following publication of the proposed rule in the Register; current law requires

the request be made within 15 days. The definition of "sufficient public interest" is to be determined by the head of each agency and included as part of that agency's rules of practice.

Public petition for rule adoption or revision. Current law allows an interested person to petition an agency to adopt a new rule, or amend or repeal an existing rule. The bill requires the agency to respond to any such petition within 60 days, instead of the current 30 day time frame, by either (1) denying the petition; (2) granting the petition and initiating a rule-making proceeding within 90 days of granting the petition; or (3) referring the matter for further study to be concluded within 90 days of the referral. If the agency fails to act within this time frame, the petitioner may request the Director of the OAL to order a public hearing on the rule-making petition.

If the Director of the OAL orders a public hearing, the affected agency has 15 days in which to respond. If the agency does not respond by notifying the director that it will hold a public hearing within 15 days, the director is to conduct the hearing. The bill specifies that both the agency and the petitioner are to participate in such a hearing by presenting factual information and summaries of their positions and by responding to any questions.

Public hearings on rule-making; recording. Rather than the verbatim transcript currently required, the bill authorizes a verbatim record be kept of each such hearing and be available to the public at cost.

Publication of legislative finding of rule inconsistency. In addition to the powers currently afforded the Director of the OAL to certify, maintain and accept for filing and publication any rule that meets the requirements and standards of this bill, the director is empowered to accept for publication any duly adopted concurrent resolution of the Legislature invalidating a rule or regulation in whole or in part or prohibiting the proposed rule or regulation, in whole or in part, from taking effect. Each such concurrent resolution will be published in the New Jersey Register and in the New Jersey Administrative Code as an annotation to the rule if the rule is adopted.

Authorize agency heads to review/modify administrative law decisions in certain contested cases. In contested cases, the bill allows an agency head to review decisions by administrative law judges, and to reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decisions (having stated clearly the reasons for doing so). The agency head can reject or modify findings of fact as to issues of lay witness credibility upon determination that the findings were arbitrary, capricious, unreasonable or not supported by sufficient, competent and credible evidence in the record. In rejecting or modifying those and any other findings of fact, the agency head must state with particularity the reasons for rejecting the findings, and make new or modified findings supported by sufficient, competent and credible evidence in the record.

Regulatory Impact Analysis Advisory Task Force. The bill

establishes a 17 member Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, consisting of: (1) as ex officio members, the Commissioners of the Departments of Environmental Protection, Community Affairs, Transportation, Health and Senior Services; the State Treasurer; the Attorney General; and the Chief Administrative Law Judge (or their designees); (2) six public members to be appointed by the Governor, at least two of whom will represent business interests in the State and at least one of whom will be an attorney with experience in administrative law; and (3) four members of the Legislature, two Senators appointed by the Senate President, no more than one of whom will be of the same political party, and two Assembly members appointed by the Speaker of the General Assembly, no more than one of whom will be of the same political party. The Governor will designate a chairperson and vice-chairperson from among the members of the task force.

The task force will comprehensively review and analyze the current requirements upon agencies to conduct regulatory impact analyses and recommend necessary and appropriate changes to these requirements. In conducting its review and making its recommendations, the task force will seek to achieve efficiency and accessibility in the regulatory process.

The task force will issue to the Governor, the Senate President and the Speaker of the General Assembly a report of its findings and recommendations for changes within one year of its convening and dissolve 60 days thereafter.

Standard of clarity The bill requires that a proposed rule and any notice of intention to adopt, readopt or amend a rule or regulation, summary of a proposed rule, or other accompanying material, is subject to a "standard of clarity," requiring simple understandable language providing adequate notice to persons with some subject matter expertise. This requirement does not apply to bills conforming to federal or other models not written by a State agency, and can be waived by the Governor for repromulgations without amendment.

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

Repeal of inoperative sections of law--Legislative veto power. The bill repeals sections 2 and 4 through 7 of P.L.1981, c.27 (C.52:14B:4.2 and 52:14B-4-.4 through 52:14B-4.7, inclusive) that are no longer operative of the New Jersey Supreme Court determination that they were in violation of the New Jersey Constitution's separation of powers doctrine.

This bill is the same as Assembly, No. 1484 (1R). According to the Legislative Fiscal Estimate on A-1484, as introduced, "costs for FY 2001 are estimated to be \$160,522. Costs for the second and third years are estimated at \$149,695 and \$154,148 respectively." The

Office of Administrative Law (OAL) is expected to incur these costs in the hiring of new staff and purchasing additional equipment. However, the fiscal estimate notes that due to "the additional rule-making and reporting provisions specified in the bill, the bill has potential cost implications for every agency of State government; however, no information is available in this regard."

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1306

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2000

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1306.

This bill revises New Jersey's "Administrative Procedure Act" to enhance access to the rule-making process.

Bill overview. This bill:

- ! Requires regulatory agencies to publish a calendar providing long-range notice of their rule-making plans;
- ! Provides for an extension, when warranted by public interest, in the time allowed for comment on proposed rules;
- ! Ensures official response to a member of the public's petitioning of an agency to adopt or change a rule;
- ! Provides that, in reviewing an administrative law judge's decision, an agency head shall apply an elevated standard in deciding whether to reject or modify findings of fact as to the credibility of lay witness testimony;
- ! Requires each rule-making agency to publish a table of specified matters that are of interest to regulated parties; and
- ! Codifies in law the "sunset" provisions of a 1978 executive order providing that administrative rules are to expire after five years.

General background. The "Administrative Procedure Act" (APA), enacted in 1968, establishes the procedures that agencies in the Executive branch of State government must follow when exercising their authority to adopt rules and regulations. The Act requires an agency to give 30 days' notice of its intention to adopt, amend or repeal a rule, and to publish that notice in the *New Jersey Register*. The notice must include a summary of the proposed rule and various analyses of its potential impact. The agency must give members of the public reasonable opportunity to comment on the proposal, and must publish a report of those comments, along with the agency's response. An interested party may petition an agency to adopt, amend or repeal a rule; current law directs an agency receiving such a petition to deny it or to act upon it—e.g., by initiating a rule-making proceeding.

In addition to administrative rule-making procedures, the APA prescribes procedures for the adjudication of "contested cases," i.e., proceedings in which specific parties' legal rights are to be determined by an administrative agency after opportunity for an agency hearing.

Bill provisions. The provisions of the bill may be summarized as

follows:

Table of fees, penalties, etc. Each agency would have to include, in the publication of its rules of practice, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures.

Quarterly calendar of anticipated rule-making activity. Each agency would have to publish in the *New Jersey Register* a quarterly calendar setting forth its anticipated rule-making activities for the next six months. An agency wishing to add a rule-making activity to its calendar would have to publish an amended calendar and delay that activity until at least 45 days after that publication. Exceptions to these notice requirements would be allowed if the rule-making

- < involves imminent peril to public health, safety or welfare,
- < is required or authorized by federal law and necessary to avoid prejudice to the State,
- < is subject to a more expedited schedule under State law, or
- < involves other specified procedural assurances of adequate public notice.

Notice of intended action: expanded publication. Each agency proposing to adopt or change a rule would have to provide the 30-day notice of its intention to the news media covering the State House Complex, and electronically through the Internet.

Extension of public comment period. If, within 30 days of the publication of a proposed rule, there is sufficient public interest in an extension of time for public comment, an agency would have to allow an additional 30 days' comment period. The agency could not adopt the proposed rule until the end of the 30-day extension.

Broadening of public hearing requirement. Currently, an agency is required to hold a public hearing on a proposed rule only at the request of a committee of the Legislature or a governmental agency or subdivision within 15 days after publication of the proposed rule in the *Register*. The bill extends the deadline for such a request to the 30th day after publication, and would also require the agency to hold a hearing if "sufficient public interest" is shown.

Petition to adopt or change a rule: revised procedure. An agency that receives a petition to adopt, amend or repeal a rule would have 60 days (rather than the current 30) to respond. The bill provides, however, that if the petition is granted, rule-making proceedings shall be initiated within 90 days. It also authorizes the agency, instead of denying or granting the petition, to refer the matter for further study to be concluded within 90 days of the referral.

If the agency doesn't act within this time frame, then upon the petitioner's written request, the Director of the Office of Administrative Law (OAL) would have to order a public hearing on the petition. The affected agency would have 15 days in which to respond by notifying the director that it will hold a public hearing within 15 days. If the agency does not so respond, the director is to schedule and publish notice of such a hearing.

Public hearings generally: recording. Instead of the verbatim transcript now required, the bill authorizes a verbatim record be kept of public hearings.

Publication of legislative finding of rule inconsistency. In addition to the current duty of the OAL Director to accept for filing and publication any rule that meets the APA's requirements, the director would have to accept for publication any duly adopted concurrent resolution of the Legislature invalidating a rule in whole or in part, or prohibiting a proposed rule, in whole or in part, from taking effect.

Agency review of administrative law decisions in contested cases. The bill allows an agency head, when reviewing decisions by administrative law judges in contested cases, to reject or modify findings of fact on issues of lay witness credibility only upon a determination that the findings are arbitrary, capricious, unreasonable or not supported by sufficient, competent and credible evidence in the record. In rejecting or modifying *any* findings of fact, the agency head must state with particularity the reasons for rejecting the findings, and make new or modified findings supported by sufficient, competent and credible evidence in the record. The bill also provides that an agency head who rejects or modifies findings of fact, conclusions of law or interpretations of agency policy in a decision must state clearly the reasons for doing so.

Standard of clarity. The bill requires that any proposed rule, any summary of a proposed rule, any notice of intended rule-making, or any other document submitted to the Office of Administrative Law for publication shall be subject to a "standard of clarity." That is, the document must be written in simple language, give adequate notice to affected parties with some subject matter expertise, observe standard rules of grammar, avoid cross-references and convoluted phrasing, and otherwise convey the purport and significance of its contents. The standard would not apply to rules conforming to federal or other non-State agency models; the Governor could waive application of the standard in repromulgations of rules without amendment.

"Sunsetting." The bill codifies the provisions of Executive Order No. 66 of 1978, which provides that rules are to remain in effect for no more than five years unless readopted in a rule-making procedure.

Regulatory Impact Analysis Advisory Task Force. The bill creates a 17-member Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, consisting of:

- < six Executive branch department heads and the Chief Administrative Law Judge (or their respective designees),
- < six public members appointed by the Governor, at least two of whom represent business interests in the State and at least one of whom is an attorney with experience in administrative law, and
- < four members of the Legislature, two from each House who are not of the same political party, appointed by the respective presiding officers.

The task force will review current mandates upon agencies to conduct regulatory impact analyses, and will recommend changes to these requirements appropriate to the achievement of efficiency and accessibility in the regulatory process. The task force will report its findings and recommendations to the Governor, the Senate President, and the Speaker of the General Assembly within a year of convening.

Revision and partial repeal of inoperative law (Legislative veto). The bill repeals sections 2 and 4 through 7 of P.L.1981, c.27 (C.52:14B-4.2 and 52:14B-4.4 through -4.7, inclusive), which are no longer operative as a result of the New Jersey Supreme Court's decision (in General Assembly of N.J. v. Byrne, 90 N.J. 376 (1982)) that they violated the State Constitution's separation of powers doctrine.

The provisions of this bill are identical to those of Assembly Bill No. 1484 (1R), which the committee also reports this day.

FISCAL IMPACT

According to the Legislative Fiscal Estimate on Assembly Bill No. 1484, as introduced, the estimated cost of this legislation for FY2001 is \$160,522; costs for the next two fiscal years are estimated at \$149,695 and \$154,148 respectively. The Office of Administrative Law (OAL) is expected to incur these costs in hiring new staff and purchasing additional equipment. The fiscal estimate notes that due to "the additional rule-making and reporting provisions specified in the bill, the bill has potential cost implications for every agency of State government; however, no information is available in this regard."

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1306
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: NOVEMBER 27, 2000

SUMMARY

Synopsis: Revises administrative rule-making processes
Type of Impact: General Fund expenditure increase
Agencies Affected: Office of Administrative Law (OAL); all State agencies

Office of Legislative Services Estimate

Fiscal Impact	FY 2001	FY 2002	FY 2003
State Cost	\$160,522	\$149,695	\$154,148

- ! The "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), governs the process for the adoption of rules by each State agency.
- ! In order to comply with the rule-making and reporting provisions of this bill, Office of Administrative Law (OAL) will incur the above costs associated with hiring new staff and purchasing additional equipment. Due to the additional rule-making and reporting provisions specified in the bill, the bill has potential cost implications for every agency of State government; however, no information is available in this regard.
- ! Costs incurred by State agencies as a result of the passage of this bill may be offset by revenues collected through calendar sales, public hearing transcripts and agency assessments.

BILL DESCRIPTION

Senate Bill No. 1306 of 2000 revises the administrative rule-making process and amends, supplements and repeals various sections of the "Administrative Procedure Act," P.L. 1968, c.410, to ensure a more open and deliberative process.

This bill requires, in addition to other rule-making requirements that: if not currently done, each State agency publish with its rules of practice, a table of all permits and fees, violations and penalties, deadlines, processing times and appeals procedures; each State agency publish in the New Jersey Register a quarterly, instead of monthly, calendar with its anticipated rule-making activities for the next six months; each agency publicize the availability of its calendar and that the OAL set a reasonable fee for the purchase thereof; each State agency inform the news media covering the State House Complex of the notice of the intended adoption, amendment or repeal

of any rule; each State agency provide an additional 30-day comment period and hold a public hearing if sufficient public interest is shown; and if comment is received, each agency respond within 60 days. The bill also requires each agency to provide a regulatory impact analysis on proposed rules, repeals statutory reference to the Legislature's veto of an administrative rule decreed unconstitutional by the New Jersey Supreme Court in 1982, and repeals the provision of the "Administrative Procedure Act" establishing a Joint Legislative Oversight Committee.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None Received.

OFFICE OF LEGISLATIVE SERVICES

An estimate provided by the Office of Administrative Law (OAL), which is in, but not of, the Department of Treasury for the identical bill (ACS for Assembly Bill Nos. 1612, 1025 and 646) introduced in the 1996-97 Legislative session, provided fiscal information for the OAL only. No additional information is available; however, due to the additional rule-making and reporting provisions specified in the bill, this bill has potential cost implications for every agency in State government.

In FY1996, the OAL estimated that the first year following enactment of this bill, it would incur additional costs of \$142,884. By applying an inflationary rate of 2.2 percent (the average rate since 1996), costs for FY 2001 are estimated to be \$160,522. Costs for the second and third years are estimated at \$149,695 and \$154,148 respectively. These costs are based on salaries for three new hires, including fringe benefits, materials and supplies, data processing and equipment costs. The total cost to the OAL is estimated to decrease in the second and third years due to the elimination of one-time equipment costs.

The Office of Legislative Services (OLS) notes that although State agencies are likely to incur additional costs as a result of the passage of this legislation, the potential exists for State agencies to recover some costs, although undetermined, through the sale of its calendars and records of each hearing made available to the public either at a reasonable fee or at cost. In addition, if any of the public hearings held by the OAL are conducted by an administrative law judge, the revenues realized through agency assessments could offset some of the estimated costs of this bill.

Section: *Education*

Analyst: *Cindy Grant*
Assistant Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

§8 - T&E
§9 - C.52:14B-4.1a
§10 - C.52:14B-5.1
§11 - Repealer
§12 - Note to §§1-11

P.L. 2001, CHAPTER 5, *approved January 16, 2001*
Assembly, No. 1484 (*First Reprint*)

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

5

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

8

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

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

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

16 (2) adopt rules of practice setting forth the nature and
17 requirements of all formal and informal procedures available, including
18 a description of all forms and instructions used by the agency, and if
19 not otherwise set forth in an agency's rules, a table of all permits and
20 their fees, violations and penalties, deadlines, processing times and
21 appeals procedures;

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

25 (4) publish in the New Jersey Register a quarterly calendar setting
26 forth a schedule of the agency's anticipated rule-making activities for
27 the next six months. The calendar shall include the name of the agency
28 and agency head, a citation to the legal authority authorizing the
29 rule-making action and a synopsis of the subject matter and the
30 objective or purpose of the agency's proposed rules. ¹[The calendar
31 also shall indicate where and when interested persons may submit their
32 comments, orally or in writing, and the dates and locations of any
33 hearings or other meetings relating to the rule-making process.]¹

34 In a manner prescribed by the Director of the Office of
35 Administrative Law, each agency shall appropriately publicize that
36 copies of its calendar are available to interested persons for a
37 reasonable fee. The amount of the fee shall be set by the director.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted March 2, 2000.

1 An agency shall notify the Director of the Office of Administrative
 2 Law when it wishes to amend its calendar of rule-making activities.
 3 Any amendment which involves the addition of any rule-making
 4 activity to an agency's calendar shall provide that the agency shall take
 5 no action on that matter until at least 45 days following the first
 6 publication of the amended calendar in which the announcement of
 7 that proposed rule-making activity first appears.

8 The provisions of this paragraph shall not apply to rule-making:

9 (a) ¹[governed] required or authorized¹ by federal law ¹when
 10 failure to adopt rules in a timely manner will prejudice the State¹ ;

11 (b) subject to a specific statutory authorization requiring
 12 promulgation in a lesser time period; ¹[or]¹

13 (c) involving an imminent peril subject to provisions of subsection
 14 (c) of section 4 of P.L.1968, c.410 (C.52:14B-4)¹;

15 (d) for which the agency has published a notice of pre-proposal of
 16 a rule in accordance with rules adopted by the Director of the Office
 17 of Administrative Law; or

18 (e) for which a comment period of at least 60 days is provided.

19 A proposed rule falling within any of the exceptions to the
 20 provisions of this subsection shall so indicate in the notice of
 21 proposal¹ .

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

23
 24 2. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
 25 as follows:

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

28 (1) Give at least 30 days' notice of its intended action. The notice
 29 shall include a statement of either the terms or substance of the
 30 intended action or a description of the subjects and issues involved,
 31 and the time when, the place where, and the manner in which
 32 interested persons may present their views thereon. The notice shall
 33 be mailed to all persons who have made timely requests of the agency
 34 for advance notice of its rule-making proceedings and in addition to
 35 other public notice required by law shall be published in the New
 36 Jersey Register [and shall be filed with the President of the Senate and
 37 the Speaker of the General Assembly. The notice shall be additionally
 38 publicized in such manner as the agency deems most appropriate in
 39 order to]. Notice shall also be distributed to the news media
 40 maintaining a press office to cover the State House Complex, and
 41 made available electronically through the largest nonproprietary
 42 cooperative public computer network. Each agency shall additionally
 43 publicize the intended action and shall adopt rules to prescribe the
 44 manner in which it will do so, and inform those persons most likely to
 45 be affected by or interested in the intended action. Methods that may
 46 be employed include publication of the notice in newspapers of general

1 circulation or in trade, industry, governmental or professional
2 publications, distribution of press releases to the news media and
3 posting of notices in appropriate locations. The rules shall prescribe
4 the circumstances under which each additional method shall be
5 employed;

6 (2) Prepare for public distribution at the time the notice appears in
7 the Register a statement setting forth a summary of the proposed rule,
8 a clear and concise explanation of the purpose and effect of the rule,
9 the specific legal authority under which its adoption is authorized, a
10 [description of the expected socio-economic] ¹[regulatory]
11 description of the expected socio-economic ¹ impact ¹[analysis]¹ of
12 the rule ¹[in accordance with the requirements of section 8 of P.L.
13 c. (C.) (now pending before the Legislature as this bill)]¹, a
14 regulatory flexibility analysis, or the statement of finding that a
15 regulatory flexibility analysis is not required, as provided in section 4
16 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
17 include an assessment of the number of jobs to be generated or lost if
18 the proposed rule takes effect, and an agriculture industry impact
19 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3)¹ [
20 If the agency finds that the substantive matters of a regulatory
21 flexibility analysis or jobs impact statement are sufficiently covered in
22 the regulatory impact analysis of the proposed rule, it may provide a
23 statement to that effect and shall not be required to prepare a separate
24 regulatory flexibility analysis or jobs impact statement]¹; and

25 (3) Afford all interested persons reasonable opportunity to submit
26 data, views, or arguments, orally or in writing. The agency shall
27 consider fully all written and oral submissions respecting the proposed
28 rule. If within 30 days of the publication of the proposed rule
29 sufficient public interest is demonstrated in an extension of the time for
30 submissions, the agency shall provide an additional 30 day period for
31 the receipt of submissions by interested parties. The agency shall not
32 adopt the proposed rule until after the end of that 30 day extension.

33 The agency shall conduct a public hearing on the proposed rule at
34 the request of a committee of the Legislature, or a governmental
35 agency or subdivision, or if sufficient public interest is shown,
36 provided such request is made to the agency within [15] 30 days
37 following publication of the proposed rule in the Register. The agency
38 shall provide at least 15 days' notice of such hearing, which shall be
39 conducted in accordance with the provisions of subsection (g) of this
40 section[;].

41 The head of each agency shall adopt as part of its rules of practice
42 adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3)
43 definite standards of what constitutes sufficient public interest for
44 conducting a public hearing and for granting an extension pursuant to
45 this paragraph.

46 (4) Prepare for public distribution a report listing all parties offering

1 written or oral submissions concerning the rule, summarizing the
2 content of the submissions and providing the agency's response to the
3 data, views and arguments contained in the submissions.

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

8 (c) If an agency finds that an imminent peril to the public health,
9 safety, or welfare requires adoption of a rule upon fewer than 30 days'
10 notice and states in writing its reasons for that finding, and the
11 Governor concurs in writing that an imminent peril exists, it may
12 proceed without prior notice or hearing, or upon any abbreviated
13 notice and hearing that it finds practicable, to adopt the rule. The rule
14 shall be effective for a period of not more than 60 days unless each
15 house of the Legislature passes a resolution concurring in its extension
16 for a period of not more than 60 additional days. The rule shall not be
17 effective for more than 120 days unless repromulgated in accordance
18 with normal rule-making procedures.

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

23 (e) An agency may file a notice of intent with respect to a
24 proposed rule-making proceeding with the Office of Administrative
25 Law, for publication in the New Jersey Register at any time prior to
26 the formal notice of action required in subsection (a) of this section.
27 The notice shall be for the purpose of eliciting the views of interested
28 parties on an action prior to the filing of a formal rule proposal. An
29 agency may use informal conferences and consultations as means of
30 obtaining the viewpoints and advice of interested persons with respect
31 to contemplated rule-making. An agency may also appoint committees
32 of experts or interested persons or representatives of the general
33 public to advise it with respect to any contemplated rule-making.

34 (f) An interested person may petition an agency to **[promulgate]**
35 adopt a new rule, or amend or repeal any existing rule. Each agency
36 shall prescribe by rule the form for the petition and the procedure for
37 the submission, consideration and disposition of the petition. The
38 petition shall state clearly and concisely:

39 (1) The substance or nature of the rule-making which is requested;

40 (2) The reasons for the request and the petitioner's interest in the
41 request;

42 (3) References to the authority of the agency to take the requested
43 action.

44 The petitioner may provide the text of the proposed new rule,
45 amended rule or repealed rule.

46 Within **[30]** 60 days following receipt of any such petition, the

1 agency shall either: (i) deny the petition, giving a written statement of
2 its reasons [, or shall proceed to act on the petition, which action may
3 include the initiation of a formal rule-making proceeding] ; (ii) grant
4 the petition and initiate a rule-making proceeding within 90 days¹ of
5 granting the petition¹ ; or (iii) refer the matter for further deliberations
6 which shall be concluded within 90 days¹ of referring the matter for
7 further deliberations¹ . Upon conclusion of such further deliberations,
8 the agency shall either deny the petition and provide a written
9 statement of its reasons or grant the petition and initiate a rule-making
10 proceeding within 90 days. Upon the receipt of the petition, the
11 agency shall file a notice stating the name of the petitioner and the
12 nature of the request with the Office of Administrative Law for
13 publication in the New Jersey Register. Notice of formal agency
14 action on such petition shall also be filed with the ¹[division] Office
15 of Administrative Law¹ for publication in the Register.

16 If an agency fails to act in accordance with the time frame set forth
17 in the preceding paragraph, upon written request by the petitioner, the
18 Director of the Office of Administrative Law shall order a public
19 hearing on the rule-making petition and shall provide the agency with
20 a notice of the director's intent to hold the public hearing if the agency
21 does not. If the agency does not provide notice of a hearing within 15
22 days of the director's notice, the director shall schedule and provide
23 the public with a notice of that hearing at least 15 days prior thereto.
24 If the public hearing is held by the Office of Administrative Law, it
25 shall be conducted by an administrative law judge, a person on
26 assignment from another agency, a person from the Office of
27 Administrative Law assigned pursuant to subsection o. of section 5 of
28 P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned
29 by the director. The petitioner and the agency shall participate in the
30 public hearing and shall present a summary of their positions on the
31 petition, a summary of the factual information on which their positions
32 on the petition are based and shall respond to questions posed by any
33 interested party. The hearing procedure shall otherwise be consistent
34 with the requirements for the conduct of a public hearing as prescribed
35 in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except
36 that the person assigned to conduct the hearing shall make a report
37 summarizing the factual record presented and the arguments for and
38 against proceeding with a rule proposal based upon the petition. This
39 report shall be filed with the agency and delivered or mailed to the
40 petitioner. A copy of the report shall be filed with the Legislature
41 along with the petition for rule-making. ¹[The Legislature, pursuant
42 to section 8 of P.L. , c. (C.) (now pending before the Legislature
43 as this bill), shall review those materials forwarded by the office and
44 may take such action as it deems appropriate.]¹

45 (g) All public hearings shall be conducted by a hearing officer, who
46 may be an official of the agency, a member of its staff, a person on

1 assignment from another agency, a person from the Office of
2 Administrative Law assigned pursuant to subsection o. of section 5 of
3 P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The
4 hearing officer shall have the responsibility to make recommendations
5 to the agency regarding the adoption, amendment or repeal of a rule.
6 These recommendations shall be made public. At the beginning of
7 each hearing, or series of hearings, the agency, if it has made a
8 proposal, shall present a summary of the factual information on which
9 its proposal is based, and shall respond to questions posed by any
10 interested party. Hearings shall be conducted at such times and in
11 locations which shall afford interested parties the opportunity to
12 attend. A verbatim ~~record~~ [transcript] record of each hearing shall be
13 maintained, and copies of the ~~record~~ [transcript] record shall be available to
14 the public at no more than the actual cost , which shall be that of the
15 agency where the petition for rule-making originated.

16 (cf: P.L.1998, c.48, s.4)

17

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

20 5. (a) Each agency shall file with the Director and Chief
21 Administrative Law Judge of the Office of Administrative Law a
22 certified copy of each rule adopted by it.

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

27 (c) The director shall: (1) accept for filing or publication any rule
28 duly adopted and submitted by any agency pursuant to this act and
29 which meets all of the requirements and standards of P.L. , c.
30 (C.)(now pending before the Legislature as this bill); (2) endorse
31 upon the certified copy of each rule accepted for filing pursuant to
32 this act the date and time upon which such rule was filed; ~~[and]~~ (3)
33 maintain the certified copy of each rule so filed in a permanent register
34 open to public inspection; ~~and~~ (4) accept for publication a duly
35 adopted concurrent resolution of the Legislature ¹[finding]
36 invalidating¹ any rule ¹[not consistent with legislative intent] or
37 regulation, in whole or in part, or prohibiting the proposed rule or
38 regulation, in whole or in part, from taking effect ¹.

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

46 (e) The publication of a rule in the New Jersey Administrative

1 Code or the New Jersey Register shall be deemed to establish the
2 rebuttable presumption that the rule was duly filed and that the text of
3 the rule as so published is the text of the rule adopted. Judicial notice
4 shall be taken of the text of each rule published in the New Jersey
5 Administrative Code or the New Jersey Register.

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

7

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

10 10. In contested cases:

11 (a) The parties shall not be bound by rules of evidence whether
12 statutory, common law, or adopted formally by the Rules of Court. All
13 relevant evidence is admissible, except as otherwise provided herein.
14 The administrative law judge may in his discretion exclude any
15 evidence if he finds that its probative value is substantially outweighed
16 by the risk that its admission will either (i) necessitate undue
17 consumption of time or (ii) create substantial danger of undue
18 prejudice or confusion. The administrative law judge shall give effect
19 to the rules of privilege recognized by law. Any party in a contested
20 case may present his case or defense by oral and documentary
21 evidence, submit rebuttal evidence and conduct such
22 cross-examination as may be required, in the discretion of the
23 administrative law judge, for a full and true disclosure of the facts.

24 (b) Notice may be taken of judicially noticeable facts. In addition,
25 notice may be taken of generally recognized technical or scientific
26 facts within the specialized knowledge of the agency or administrative
27 law judge. Parties shall be notified either before or during the hearing,
28 or by reference in preliminary reports or otherwise, of the material
29 noticed, including any staff memoranda or data, and they shall be
30 afforded an opportunity to contest the material so noticed. The
31 experience, technical competence, and specialized knowledge of the
32 agency or administrative law judge may be utilized in the evaluation of
33 the evidence, provided this is disclosed of record. (c) All

34 hearings of a State agency required to be conducted as a contested
35 case under this act or any other law shall be conducted by an
36 administrative law judge assigned by the Director and Chief
37 Administrative Law Judge of the Office of Administrative Law, except
38 as provided by this amendatory and supplementary act. A
39 recommended report and decision which contains recommended
40 findings of fact and conclusions of law and which shall be based upon
41 sufficient, competent, and credible evidence shall be filed, not later
42 than 45 days after the hearing is concluded, with the agency in such
43 form that it may be adopted as the decision in the case and delivered
44 or mailed, to the parties of record with an indication of the date of
45 receipt by the agency head; and an opportunity shall be afforded each
46 party of record to file exceptions, objections, and replies thereto, and

1 to present argument to the head of the agency or a majority thereof,
2 either orally or in writing, as the agency may direct. The head of the
3 agency, upon a review of the record submitted by the administrative
4 law judge, shall adopt, reject or modify the recommended report and
5 decision no later than 45 days after receipt of such recommendations.
6 In reviewing the decision of an administrative law judge, the agency
7 head may reject or modify ¹findings of fact,¹ conclusions of law or
8 interpretations of agency policy in the decision, but shall state clearly
9 the reasons for doing so. The agency head may not reject or modify
10 any findings of fact ¹as to issues of credibility of lay witness
11 testimony¹ unless it is first determined from a review of the record that
12 the findings ¹[of fact were not based upon] are arbitrary, capricious
13 or unreasonable or are not supported by¹ sufficient, competent, and
14 credible evidence in the record. In ¹[reversing] rejecting¹ or
15 modifying ¹[the] any¹ findings of fact, the agency head shall state with
16 particularity the reasons for rejecting the findings and shall make new
17 or modified findings supported by sufficient, competent, and credible
18 evidence in the record. Unless the head of the agency modifies or
19 rejects the report within such period, the decision of the administrative
20 law judge shall be deemed adopted as the final decision of the head of
21 the agency. The recommended report and decision shall be a part of
22 the record in the case. For good cause shown, upon certification by
23 the director and the agency head, the time limits established herein
24 may be subject to extension.

25 (d) A final decision or order adverse to a party in a contested case
26 shall be in writing or stated in the record. A final decision shall
27 include findings of fact and conclusions of law, separately stated and
28 shall be based only upon the evidence of record at the hearing, as such
29 evidence may be established by rules of evidence and procedure
30 promulgated by the director.

31 Findings of fact, if set forth in statutory language, shall be
32 accompanied by a concise and explicit statement of the underlying
33 facts supporting the findings. The final decision may incorporate by
34 reference any or all of the recommendations of the administrative law
35 judge. Parties shall be notified either personally or by mail of any
36 decision or order. Upon request a copy of the decision or order shall
37 be delivered or mailed forthwith by registered or certified mail to each
38 party and to his attorney of record.

39 (e) Except where otherwise provided by law, the administrative
40 adjudication of the agency shall be effective on the date of delivery or
41 on the date of mailing, of the final decision to the parties of record
42 whichever shall occur first, or shall be effective on any date after the
43 date of delivery or mailing, as the agency may provide by general rule
44 or by order in the case. The date of delivery or mailing shall be
45 stamped on the face of the decision.

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

1 5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read
2 as follows:

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

10 b. Nothing in this amendatory and supplementary act shall be
11 construed to affect the conduct of any contested case initiated prior to
12 the effective date of this act, or the making of any administrative
13 adjudication in such contested case.

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

15

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

18 1. Every rule hereafter proposed by a State agency shall be
19 submitted by the [agency] Office of Administrative Law to the Senate
20 and General Assembly [prior to its adoption, amendment or repeal on
21 a day during a regular or special session of the Legislature] within two
22 business days of its receipt by the office, and the President of the
23 Senate and the Speaker of the General Assembly shall immediately
24 refer the proposed rule to the appropriate [standing reference]
25 committee in each House.

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

27

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

30 3. [A rule shall be deemed approved unless within 60 days of the
31 submission thereof,] If ¹, pursuant to Article V, section 4, paragraph
32 6 of the New Jersey Constitution,¹ the Senate and General Assembly
33 adopt a concurrent resolution [disapproving] ¹[finding the rule, in
34 whole or in part, inconsistent with legislative intent.]¹ [or providing
35 that the rule not take effect during the 60 days following the date of
36 the adoption of the resolution, during which time they may
37 nevertheless adopt a concurrent resolution disapproving the rule]
38 ¹invalidating a rule or regulation, in whole or in part, or prohibiting a
39 proposed rule or regulation, in whole or in part, from taking effect,¹
40 the presiding officer of the House of final adoption shall cause the
41 concurrent resolution to be transmitted to the Office of Administrative
42 Law for publication in the New Jersey Register and the New Jersey
43 Administrative Code as an annotation to the rule ¹[if the rule is
44 adopted] or regulation¹. [No action may be taken by the Legislature
45 under this section until after 1 calendar day from the date of the

1 standing reference committee's report.]

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

3

4 ¹[8. (New section) The notice of a proposed rule shall include a
5 regulatory impact analysis containing each of the following:

6 a. an explanation of the necessity, appropriateness and
7 reasonableness of the rule;

8 b. a description of the current condition that the proposed rule will
9 address and how that condition will be affected by adoption of the
10 rule;

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

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

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

19 f. a statement of why the rule provides the least costly or least
20 intrusive approach for meeting the intended purpose;

21 g. an evaluation for the public and regulated parties of the cost
22 versus the benefits to be derived from the rule, including an evaluation
23 of how those benefits outweigh the cost. The evaluation shall include
24 the following, where appropriate:

25 (1) an estimate of the costs to regulated parties for compliance;

26 (2) an estimate of the costs to the agency for implementation and
27 enforcement of the regulations;

28 (3) an estimate of the nature, number and size of parties to be
29 regulated or affected by the rule;

30 (4) whether the rule will require on-site inspections;

31 (5) an estimate of the paperwork burden on a regulated or affected
32 party, such as the number of forms, impact statements, surveys and
33 other documents to be completed by the party;

34 (6) whether parties will be required to maintain any records which
35 will be subject to inspection;

36 (7) whether parties will be required to obtain licenses, permits or
37 other certifications and the associated fees and fines;

38 (8) whether parties will be required to appear in person before the
39 agency;

40 (9) whether parties will be required to disclose information on
41 materials or processes, including trade secrets;

42 (10) whether parties will be required to report any particular type
43 of incidents;

44 (11) whether parties will be required to adhere to either design or
45 performance standards;

46 (12) whether parties may have to retain or utilize lawyers,

1 accountants, engineers or other professional consultants in order to
2 comply with the regulations;

3 (13) how the agency expects to implement the provisions of the
4 proposed rule within current budget appropriations and other financial
5 resources.]¹

6

7 ¹8. (New section) a. There is established a Regulatory Impact
8 Analysis Advisory Task Force as an advisory body to the Governor
9 and the Legislature, hereinafter referred to as the “task force.” The
10 task force shall consist of seventeen members as follows:

11 (1) the Commissioner of the Department of Environmental
12 Protection; the Commissioner of the Department of Community
13 Affairs; the Commissioner of the Department of Transportation; the
14 Commissioner of the Department of Health and Senior Services; the
15 State Treasurer; the Attorney General; and the Chief Administrative
16 Law Judge, or their designees, who shall serve as ex-officio members;

17 (2) Six public members to be appointed by the Governor, at least
18 two of whom shall represent business interests in the state and at least
19 one of whom shall be an attorney with experience in administrative
20 law;

21 (3) Four members of the Legislature, two of whom shall be State
22 Senators appointed by the President of the Senate, no more than one
23 of whom shall be from the same political party, and two of whom shall
24 be Assembly members appointed by the Speaker of the General
25 Assembly, no more than one of whom shall be from the same political
26 party;

27 (4) The Governor shall designate a chairperson and vice-
28 chairperson from among the members of the task force.

29 b. The task force shall organize as soon as possible after the
30 appointment of its members. Vacancies shall be filled in the same
31 manner as the original appointments. Members of the task force shall
32 serve without compensation. The task force may request the
33 assistance and services of the employees of any State department,
34 board, bureau, commission, task force or agency as it may require and
35 as may be available to it for its purposes. The task force may meet and
36 hold hearings at any place or places in the State it shall designate.

37 c. It shall be the objective of the task force to comprehensively
38 review and analyze the current requirements upon agencies to conduct
39 regulatory impact analyses and recommend necessary and appropriate
40 changes to these requirements. In conducting its review and making
41 it recommendations, the task force shall seek to achieve efficiency and
42 accessibility in the regulatory process.

43 The task force shall review current regulatory impact analyses
44 requirements and determine whether and to what extent the required
45 statements and analyses may be consolidated and streamlined. The
46 task force may consider the following factors, along with any others

1 it deems appropriate:

2 (1) overall efficiency to departments in determining whether a
3 proposed major rule meets tests for necessity, reasonableness,
4 consistency and non-duplication with existing rules, and in assessing
5 a proposed rule's impact on measurable risks to human health or the
6 environment, cost efficiency, jobs, and paperwork burden;

7 (2) the costs to regulated parties for compliance; and

8 (3) the nature, number and size of parties to be regulated or
9 affected by the rule.

10 d. The task force shall issue to the Governor, the Senate President
11 and the Speaker of the General Assembly a report of its findings,
12 including any recommendations for legislative changes to the
13 Administrative Procedure Act, no later than one year from the date
14 that the task force convenes, and the task force shall dissolve 60 days
15 after the issuance of the report.¹

16

17 9. (New section) a. The director is authorized to refuse to accept
18 from an agency a notice ¹[or preliminary notice of intention to adopt,
19 readopt or amend] of proposal or notice of adoption which adopts,
20 readopts or amends¹ a rule or regulation, if the director determines
21 that the rule or regulation and its accompanying materials do not
22 comply satisfactorily with the interagency rules of the director. The
23 State agency shall not be authorized to adopt, readopt or amend a rule
24 or regulation where notice ¹[or preliminary notice of intention] of
25 proposal or notice of adoption¹ is refused by the director in
26 accordance with this provision¹, except by proposing the adoption,
27 readoption or amendment in compliance with agency rules.

28 b. The Office of Administrative Law, upon its review and
29 determination, shall not accept for publication any notice of intention
30 to adopt, readopt or amend a rule or regulation, a proposed rule,
31 summary of the proposed rule, regulatory impact analysis, or other
32 accompanying materials which lacks a standard of clarity.

33 As used in this section, "standard of clarity" means the document
34 is written in a reasonably simple and understandable manner which is
35 easily readable. The document is drafted to provide adequate notice
36 to affected persons and interested persons with some subject matter
37 expertise. The document conforms to commonly accepted principles
38 of grammar. The document contains sentences that are as short as
39 practical, and is organized in a sensible manner. The document does
40 not contain double negatives, confusing cross references, convoluted
41 phrasing or unreasonably complex language. Terms of art and words
42 with multiple meanings that may be misinterpreted are defined. The
43 document is sufficiently complete and informative as to permit the
44 public to understand accurately and plainly the legal authority,
45 purposes and expected consequences of the adoption, readoption or
46 amendment of the rule or regulation.

1 c. The provisions of subsection b. of this section shall not apply to
2 any administrative rule that a State agency adopts to conform to a
3 model code, federal rule, interstate agreement or other similar
4 regulatory measure not written by the State agency but incorporated
5 into an administrative rule. The State agency shall append to the
6 proposed rule for publication a written statement describing the rule
7 which complies with subsection b. of this section.

8 d. The Governor may, upon written request of a State agency,
9 waive the requirements of this section with respect to the
10 repromulgation, without amendment, of any rule or provision of a rule.

11
12 10. (New section) a. Every rule in effect on the enactment date of
13 P.L. , c. (C.)(now pending before the Legislature as this bill)
14 shall expire five years following the effective date of this act unless a
15 sooner expiration date has been established for the rule.

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

23 c. An agency may continue in effect an expiring rule for a five year
24 period by duly proposing and readopting the rule prior to its
25 expiration. Upon the filing of a notice of proposed re-adoption, the
26 expiration date of the rule shall be extended for 180 days, if such
27 notice is filed prior to the expiration of the rule.

28 d. The Governor may, upon the request of an agency head, and
29 prior to the expiration date of the rule, continue in effect an expiring
30 rule for a period to be specified by the Governor.

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

35
36 11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27
37 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

38
39 12. This act shall take effect on the first day of the ¹[third] sixth¹
40 month following enactment but shall not apply to any rule proposed in
41 the New Jersey Register or to any contested case filed prior to the
42 effective date.

43
44
45
46 Revises administrative rule-making process.

CHAPTER 5

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

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

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

C.52:14B-3 Additional requirements for rule-making.

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

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

- (2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures;

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

- (4) publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rule-making activities for the next six months. The calendar shall include the name of the agency and agency head, a citation to the legal authority authorizing the rule-making action and a synopsis of the subject matter and the objective or purpose of the agency's proposed rules.

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

An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rule-making activities. Any amendment which involves the addition of any rule-making activity to an agency's calendar shall provide that the agency shall take no action on that matter until at least 45 days following the first publication of the amended calendar in which the announcement of that proposed rule-making activity first appears.

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

- (a) required or authorized by federal law when failure to adopt rules in a timely manner will prejudice the State ;

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

- (c) involving an imminent peril subject to provisions of subsection (c) of section 4 of P.L.1968, c.410 (C.52:14B-4);

- (d) for which the agency has published a notice of pre-proposal of a rule in accordance with rules adopted by the Director of the Office of Administrative Law; or

- (e) for which a comment period of at least 60 days is provided.

A proposed rule falling within any of the exceptions to the provisions of this subsection shall so indicate in the notice of proposal .

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

C.52:14B-4 Adoption, amendment, repeal of rules.

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

- (1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register. Notice shall also

be distributed to the news media maintaining a press office to cover the State House Complex, and made available electronically through the largest nonproprietary cooperative public computer network. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so, and inform those persons most likely to be affected by or interested in the intended action. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, and an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3); and

(3) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. If within 30 days of the publication of the proposed rule sufficient public interest is demonstrated in an extension of the time for submissions, the agency shall provide an additional 30 day period for the receipt of submissions by interested parties. The agency shall not adopt the proposed rule until after the end of that 30 day extension.

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the Register. The agency shall provide at least 15 days' notice of such hearing, which shall be conducted in accordance with the provisions of subsection (g) of this section.

The head of each agency shall adopt as part of its rules of practice adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3) definite standards of what constitutes sufficient public interest for conducting a public hearing and for granting an extension pursuant to this paragraph.

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

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

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt the rule. The rule shall be effective for a period of not more than 60 days unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

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

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated

rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

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

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

The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition ; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations . Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

If an agency fails to act in accordance with the time frame set forth in the preceding paragraph, upon written request by the petitioner, the Director of the Office of Administrative Law shall order a public hearing on the rule-making petition and shall provide the agency with a notice of the director's intent to hold the public hearing if the agency does not. If the agency does not provide notice of a hearing within 15 days of the director's notice, the director shall schedule and provide the public with a notice of that hearing at least 15 days prior thereto. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned by the director. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition, a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition. This report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

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

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

C.52:14B-5 Filing of rules; concurrent resolution of the Legislature; effect of publication.

5. (a) Each agency shall file with the Director and Chief Administrative Law Judge of the Office of Administrative Law a certified copy of each rule adopted by it.

(b) Deleted by amendment, P.L.2001, c.5.

(c) The director shall: (1) accept for filing or publication any rule duly adopted and submitted by any agency pursuant to this act and which meets all of the requirements and standards of P.L.2001, c.5 (C.52:14B-4.1a et al.); (2) endorse upon the certified copy of each rule accepted for filing pursuant to this act the date and time upon which such rule was filed; (3) maintain the certified copy of each rule so filed in a permanent register open to public inspection; and (4) accept for publication a duly adopted concurrent resolution of the Legislature invalidating any rule or regulation, in whole or in part, or prohibiting the proposed rule or regulation, in whole or in part, from taking effect.

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

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

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

C.52:14B-10 Evidence; judicial notice; recommended report and decision; final decision; effective date.

10. In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

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

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority

thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations. In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

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

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

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

5. Section 9 of P.L.1978, c.67 (C.52:14F-7) is amended to read as follows:

C.52:14F-7 Construction of act.

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

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

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

C.52:14B-4.1 Rules, submission to Legislature; referral to committee.

1. Every rule hereafter proposed by a State agency shall be submitted by the Office of Administrative Law to the Senate and General Assembly within two business days of its receipt by the office, and the President of the Senate and the Speaker of the General Assembly shall immediately refer the proposed rule to the appropriate committee in each House.

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

C.52:14B-4.3 Concurrent resolution of Legislature to invalidate rules in whole or in part.

3. If, pursuant to Article V, section 4, paragraph 6 of the New Jersey Constitution, the Senate and General Assembly adopt a concurrent resolution invalidating a rule or regulation, in whole or in part, or prohibiting a proposed rule or regulation, in whole or in part, from taking effect, the presiding officer of the House of final adoption shall cause the concurrent resolution to be transmitted to the Office of Administrative Law for publication in the New Jersey Register and the New Jersey Administrative Code as an annotation to the rule or regulation.

8. a. There is established a Regulatory Impact Analysis Advisory Task Force as an advisory body to the Governor and the Legislature, hereinafter referred to as the "task force." The task force shall consist of seventeen members as follows:

(1) the Commissioner of the Department of Environmental Protection; the Commissioner of the Department of Community Affairs; the Commissioner of the Department of Transportation; the Commissioner of the Department of Health and Senior Services; the State Treasurer; the Attorney General; and the Chief Administrative Law Judge, or their designees, who shall serve as ex-officio members;

(2) Six public members to be appointed by the Governor, at least two of whom shall represent business interests in the state and at least one of whom shall be an attorney with experience in administrative law;

(3) Four members of the Legislature, two of whom shall be State Senators appointed by the President of the Senate, no more than one of whom shall be from the same political party, and two of whom shall be Assembly members appointed by the Speaker of the General Assembly, no more than one of whom shall be from the same political party;

(4) The Governor shall designate a chairperson and vice-chairperson from among the members of the task force.

b. The task force shall organize as soon as possible after the appointment of its members. Vacancies shall be filled in the same manner as the original appointments. Members of the task force shall serve without compensation. The task force may request the assistance and services of the employees of any State department, board, bureau, commission, task force or agency as it may require and as may be available to it for its purposes. The task force may meet and hold hearings at any place or places in the State it shall designate.

c. It shall be the objective of the task force to comprehensively review and analyze the current requirements upon agencies to conduct regulatory impact analyses and recommend necessary and appropriate changes to these requirements. In conducting its review and making its recommendations, the task force shall seek to achieve efficiency and accessibility in the regulatory process.

The task force shall review current regulatory impact analyses requirements and determine whether and to what extent the required statements and analyses may be consolidated and streamlined. The task force may consider the following factors, along with any others it deems appropriate:

(1) overall efficiency to departments in determining whether a proposed major rule meets tests for necessity, reasonableness, consistency and non-duplication with existing rules, and in assessing a proposed rule's impact on measurable risks to human health or the environment, cost efficiency, jobs, and paperwork burden;

(2) the costs to regulated parties for compliance; and

(3) the nature, number and size of parties to be regulated or affected by the rule.

d. The task force shall issue to the Governor, the Senate President and the Speaker of the General Assembly a report of its findings, including any recommendations for legislative changes to the Administrative Procedure Act, no later than one year from the date that the task force convenes, and the task force shall dissolve 60 days after the issuance of the report.

C.52:14B-4.1a Compliance with interagency rules required; OAL review for clarity.

9. a. The director is authorized to refuse to accept from an agency a notice of proposal or notice of adoption which adopts, readopts or amends a rule or regulation, if the director determines that the rule or regulation and its accompanying materials do not comply satisfactorily with the interagency rules of the director. The State agency shall not be authorized

to adopt, readopt or amend a rule or regulation where notice of proposal or notice of adoption is refused by the director in accordance with this provision, except by proposing the adoption, readoption or amendment in compliance with agency rules.

b. The Office of Administrative Law, upon its review and determination, shall not accept for publication any notice of intention to adopt, readopt or amend a rule or regulation, a proposed rule, summary of the proposed rule, regulatory impact analysis, or other accompanying materials which lacks a standard of clarity.

As used in this section, "standard of clarity" means the document is written in a reasonably simple and understandable manner which is easily readable. The document is drafted to provide adequate notice to affected persons and interested persons with some subject matter expertise. The document conforms to commonly accepted principles of grammar. The document contains sentences that are as short as practical, and is organized in a sensible manner. The document does not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language. Terms of art and words with multiple meanings that may be misinterpreted are defined. The document is sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

c. The provisions of subsection b. of this section shall not apply to any administrative rule that a State agency adopts to conform to a model code, federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall append to the proposed rule for publication a written statement describing the rule which complies with subsection b. of this section.

d. The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the repromulgation, without amendment, of any rule or provision of a rule.

C.52:14B-5.1 Expiration of rules in five years; continuation.

10. a. Every rule in effect on the enactment date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire five years following the effective date of this act unless a sooner expiration date has been established for the rule.

b. Every rule adopted on or after the effective date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire five years following the effective date of the rule unless a sooner expiration date has been established for the rule. The expiration date shall be included in the adoption notice of the rule in the New Jersey Register and noted in the New Jersey Administrative Code.

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

d. The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

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

Repealer.

11. Section 2 and sections 4 through 7, inclusive, of P.L.1981, c.27 (C.52:14B-4.2 and 52:14B-4.4 through 52:14B-4.7) are repealed.

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

Approved January 16, 2001.

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TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

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RELEASE: January 16, 2001

Gov. Christie Whitman today signed the following legislation:

A-1438, sponsored by Assemblymen Moran (R-Atlantic/Burlington/Ocean) and Connors (R-Atlantic/Burlington/Ocean) and Senators DiGaetano (R-Bergen/Essex/Passaic) and Crecco (R-Essex/Passaic), increases by 5 percent the pension allowance payable to certain previously retired members of the Consolidated Police and Fireman's Pension Fund (CPFPPF), the Police and Fireman's Retirement System (PFRS), and to certain past and prospective law enforcement officer (LEO) retirants under the Public Employee's Retirement System (PERS). To be eligible for the increase a retiree must have rendered at least 25 years of creditable service under the system.

A-1484, sponsored by Assembly Members Heck (R-Bergen) and O'Toole (R-Essex/Union) and Senators Bark (R-Atlantic/Burlington/Camden) and Adler (D-Camden), revises the administrative rule-making process.

A-2274, sponsored by Assembly Member Collins (R-Salem/Cumberland/Gloucester), allows the transfer of certain service credit between the Public Employees' Retirement System and the Teachers' Pension and Annuity Fund.

A-733, sponsored by Assembly Members Talarico (R-Bergen) and Chatzidakis (R-Atlantic/Burlington/Camden) and Senators Sinagra (R-Middlesex) and Matheussen (R-Camden/Gloucester), subjects health maintenance organizations to the law regulating insurance holding company systems and revises the calculation of health insurance policy reserves.

A-764, sponsored by Assembly Members Previte (D-Camden) and Holzapfel (R-Monmouth/Ocean) and Senators Allen (R-Burlington/Camden) and Bennett (R-Monmouth), disqualifies a person adjudicated delinquent as a juvenile from obtaining either a handgun purchase permit or a firearms purchaser identification card in certain cases.