

52:14B-2 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 52:14B-2 et al. (Administrative agency rules--review procedure)

LAWS 1981 CHAPTER 27

Bill No. S1560

Sponsor(s) Zane and others

Date Introduced Oct. 9, 1980

Committee: Assembly -----

Senate -----

| | | |
|---------------------------|----------------------|---|
| Amended during passage | Yes | No Substituted for A2209 (attached) Over-ridden 2-9-81 |
| Date of Passage: Assembly | <u>Nov. 10, 1980</u> | Over-ridden 1-22-81 |
| Senate | <u>Nov. 10, 1980</u> | (Filed with Secretary of State) |
| Date of approval | <u>Feb. 9, 1981</u> | |

Following statements are attached if available:

| | | |
|-------------------------------|----------------|--|
| Sponsor statement | Yes | No Also attached: Senate amendments adopted 9-10-80 (with statement) |
| Committee Statement: Assembly | Yes | No |
| Senate | Yes | No |
| Fiscal Note | Yes | No |
| Veto Message | Yes | No |
| Message on signing | Yes | No |

Following were printed:


| | | |
|----------|----------------|----|
| Reports | Yes | No |
| Hearings | Yes | No |

Public hearings held on similar legislation proposed in prior legislative session:

974.90 New Jersey. Legislature. Assembly. Legislative
R424 Oversight Committee.
1977 f Public hearing, held 5-18-77, New Brunswick...1977.
v.1

6/22/81

(over)

974.90 N.J. Legislature. Legislative Oversight Committee.
R424 Eye on the executive...December, 1977. Trenton, 1977.
1977k 

Also attached: (mentioned in veto message on S1560)

S.1203 (vetoed by Governor), Senate committee statement,
2nd OCR, veto and sponsor's statement

Filed with
Sec. of State

APPROVED 3-9-81

[OFFICIAL COPY REPRINT]

SENATE, No. 1560

STATE OF NEW JERSEY

INTRODUCED OCTOBER 9, 1980

By Senators ZANE, CAFIERO, DUMONT, DODD, HIRKALA, ORECHIO, HERBERT, SKEVIN, RODGERS, SHEIL, DWYER, DiFRANCESCO, EWING, WALLWORK, VREELAND, PARKER, FORAN, J. RUSSO, LIPMAN, CAUFIELD, A. RUSSO, GREGORIO, MERLINO, MARESSA, HAMILTON, WEISS, BEDELL, PERSKIE, MUSTO, GAGLIANO, LASKIN, DORSEY and GRAVES

(Without Reference)

AN ACT to amend and supplement the "Administrative Procedure Act," approved January 14, 1969 (P. L. 1968, c. 410).

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

1 1. (New section) Every rule hereafter proposed by a State
2 agency shall be submitted by the agency to the Senate and General
3 Assembly prior to its adoption, amendment or repeal on a day
4 during a regular or special session of the Legislature, and the
5 President of the Senate and the Speaker of the General Assembly
6 shall immediately refer the proposed rule to the appropriate stand-
7 ing reference committee in each House.

1 2. (New section) The standing reference committee may report
2 its approval or disapproval of the proposed rule to the full mem-
3 bership of the House or **[suspend]** **its recommendation that**
4 *the **[taking effect of a]** rule **not take effect* for **[30]** **60***
5 *days, within 45 days of the date on which it is referred to the*
6 *committee.**

1 3. (New section) A rule shall be deemed approved unless within
2 60 days of the submission thereof, the Senate and General Assembly
3 adopt a concurrent resolution disapproving the rule, in whole or
4 in part, or providing that the rule not take effect **[for]** **during*
5 *the* 60 days **following the date of the adoption of the resolution**,*
6 *during which time they may nevertheless adopt a concurrent reso-*
7 *lution disapproving the rule. No action may be taken by the Leg-*
8 *islature under this section until after 1 calendar day from the date*

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

9 of the standing reference committee's report [or suspension of
10 the rule]*.

1 4. (New section) Prior legislative approval in accordance with
2 this act shall not be required in the case of the adoption of a rule
3 required by the Federal Government or because of an emergency
4 affecting the public health, safety or welfare. When an emergency
5 affecting the public health, safety or welfare requires the adoption
6 of a rule, the head of the State agency adopting the rule shall
7 notify the President of the Senate and the Speaker of the General
8 Assembly by letter stating the nature of the emergent matter, the
9 reason for the adoption of the rule, and attaching a copy of the
10 rule. The President and the Speaker shall forward these docu-
11 ments to the appropriate standing reference committee in each
12 House.

1 5. (New section) The Senate and General Assembly shall estab-
2 lish by joint rule a joint committee of the Legislature to be known
3 as the Joint Legislative Oversight Committee. The committee shall
4 have such membership, be constituted in such manner and be gov-
5 erned by such procedures, as may be provided by joint rules.

1 6. (New section) It shall be the duty of the committee to:

2 a. Promote adequate and proper rules, statements of general
3 policy and interpretations of statutes by State agencies through
4 consultation with agencies, legislative standing reference commit-
5 tees and the general public;

6 b. Maintain a continuous review of the statutory authority for
7 the promulgation of rules and revisions to that authority through
8 legislative enactments or judicial findings;

9 c. Review existing rules in the manner provided in this act;

10 d. Engage in a continuous study of oversight procedures in order
11 to assess their effectiveness and to remain informed of new tech-
12 niques;

13 e. Develop criteria for the evaluation of rules;

14 f. When directed by either House or by the President of the
15 Senate or the Speaker of the General Assembly,

16 (1) Conduct examinations of agency programs, policies and
17 procedures to determine whether agency activities are efficient,
18 effective and serving their intended purpose;

19 (2) Evaluate and monitor the implementation of recommenda-
20 tions regarding agency programs, policies and procedures which
21 are offered in oversight examinations conducted by the committee,
22 special legislative committees or commissions, standing reference
23 committees, or any agency of the Legislature;

24 (3) Investigate complaints concerning agency programs, poli-
25 cies and procedures;

26 (4) Conduct such other studies related to oversight functions
27 or procedures not otherwise delegated or assigned by statute to
28 other joint legislative committees and issue such reports and make
29 such recommendations as the committee deems necessary in regard
30 thereto.

31 Written notice of any directive under this subsection shall be
32 delivered to the members of the Legislature at least 48 hours be-
33 fore the issuance of the directive.

1 7. (New section) a. The committee may review any rule proposed
2 and adopted after the effective date of this act to determine
3 whether the rule is adequate, proper, timely, appropriate, neces-
4 sary, reasonable, equitable, understandable, consistent with legis-
5 lative intent, in accord with judicial findings, and within the scope
6 of the promulgating agency's authority.

7 In conducting its review, the committee may:

8 (1) Direct the State agency to provide such information as the
9 committee deems necessary for the conduct of the review;

10 (2) Conduct a public hearing regarding the rule;

11 (3) Direct the State agency to conduct a public hearing regard-
12 ing the rule and to report the results to the committee;

13 (4) Negotiate with and offer recommendations to the agency
14 concerning revisions in the rule;

15 b. The committee, by majority vote of its authorized membership
16 may report its ***[disapproval or]*** recommendation of suspension
17 for 60 days, of a rule to the President of the Senate and Speaker of
18 the General Assembly, who may refer the report of the committee
19 to a standing reference committee or the full membership of the
20 House for appropriate action.

21 *c.* The Senate and General Assembly may adopt a concurrent
22 resolution ***[disapproving the rule or]*** suspending ***[it]*** *the
23 rule* for 60 days, after 1 calendar day from the date of the com-
24 mittee's report.

25 *d. Upon adoption by the Senate and General Assembly of the
26 concurrent resolution, the rule shall be suspended for 60 days.*

1 8. (New section) A vote by the Senate or General Assembly on a
2 concurrent resolution on any action authorized by this act shall
3 be a recorded vote.

1 9. (New section) Any rule proposed by a State agency which
2 revises, rescinds or replaces either (1) any proposed or existing
3 rule or (2) any rule which has been suspended shall be considered

4 as a new rule and shall be subject to the provisions of this act and
5 the act to which it is a supplement.

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

3 2. As used in this act:

4 (a) "State agency" or "agency" shall include each of the
5 principal departments in the executive branch of the State Govern-
6 ment, and all boards, divisions, commissions, agencies, depart-
7 ments, councils, authorities, offices or officers within any such de-
8 partments now existing or hereafter established and authorized
9 by statute to make, adopt or promulgate rules or adjudicate con-
10 tested cases, except the office of the Governor, the Division of
11 Workmen's Compensation in the Department of Labor and Indus-
12 try, the Department of Defense, and any boards, divisions, com-
13 missions, councils, agencies, departments, authorities, offices or
14 officers therein, and all agencies the primary responsibility of
15 which is the management or operation of a State educational,
16 medical, mental, rehabilitative, custodial, penal or correctional in-
17 stitution or program, insofar as the acts of such agency relate to
18 the internal affairs of such institution or program.

19 (b) "Contested case" means a proceeding, including any licens-
20 ing proceeding, in which the legal rights, duties, obligations,
21 privileges, benefits or other legal relations of specific parties are
22 required by constitutional right or by statute to be determined by
23 an agency by decisions, determinations, or orders, addressed to
24 them or disposing of their interests, after opportunity for an
25 agency hearing.

26 (c) "Administrative adjudication" or "adjudication" includes
27 any and every final determination, decision or order made or
28 rendered in any contested case.

29 (d) "The head of the agency" means and includes the individual
30 or group of individuals constituting the highest authority within
31 any agency authorized or required by law to render an adjudication
32 in a contested case.

33 (e) "Administrative rule" or "rule," when not otherwise modi-
34 fied, means each agency statement of general applicability and
35 continuing effect that implements or interprets law or policy, or
36 describes the organization, procedure or practice requirements of
37 any agency. The term includes the amendment or repeal of any
38 rule, but does not include: (1) statements concerning the internal
39 management or discipline of any agency; (2) intraagency and
40 interagency statements; and (3) agency decisions and findings in
41 contested cases.

42-55 (f) "License" includes the whole or part of any agency license,
56 permit, certificate, approval, chapter, registration or other form
57 of permission required by law.

58 (g) "Secretary" means the Secretary of State.

59 (h) "Director" shall mean the Director of the Division of
60 Administrative Procedure, unless otherwise indicated by context.

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

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

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

23 (2) Prepare for public distribution at the time the notice appears
24 in the Register a statement setting forth a summary of the pro-
25 posed rule, a clear and concise explanation of the purpose and
26 effect of the rule, the specific legal authority under which its
27 adoption is authorized, and a description of the expected socio-
28 economic impact of the rule;

29 ~~[(2)]~~ (3) Afford all interested persons reasonable opportunity
30 to submit data, views, or arguments, orally or in writing. The
31 agency shall consider fully all written and oral submissions respect-
32 ing the proposed rule.

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, provided such request is made to the agency*
36 *within 15 days following publication of the proposed rule in the*

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

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

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

49 (c) If an agency finds that an imminent peril to the public health,
50 safety, or welfare requires adoption of a rule upon fewer than **[20]**
51 *30 days' notice and states in writing its reasons for that finding,*
52 *and the Governor concurs in writing that an imminent peril exists,*
53 *it may proceed without prior notice or hearing or upon any*
54 *abbreviated notice and hearing that it finds practicable, to adopt*
55 *the rule. The rule shall be effective for a period of not more than*
56 *60 days unless each House of the Legislature passes a resolution*
57 *concurring in its extension for a period of not more than 60 addi-*
58 *tional days. The rule shall not be effective for more than 120 days*
59 *unless repromulgated in accordance with normal rule-making*
60 *procedures.*

61 (d) No rule hereafter adopted is valid unless adopted in sub-
62 stantial compliance with this **[section]** act. A proceeding to contest
63 any rule on the ground of noncompliance with the procedural
64 requirements of this **[section must]** act shall be commenced within
65 1 year from the effective date of the rule.

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

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

83 (1) *The substance or nature of the rule making which is re-*
84 *quested;*

85 (2) *The reasons for the request and the petitioner's interest in*
86 *the request;*

87 (3) *References to the authority of the agency to take the re-*
88 *quested action.*

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

98 (g) *All public hearings shall be conducted by a hearing officer*
99 *who may be an official of the agency, a member of its staff, a person*
100 *on assignment from another agency, a person from the Office of*
101 *Administrative Law assigned pursuant to subsection o. of section*
102 *5 of P. L. 1978, c. 67 (C. 52:14F-50) or an independent contractor.*
103 *The hearing officer shall have the responsibility to make recom-*
104 *mendations to the agency regarding the adoption, amendment or*
105 *repeal of a rule. These recommendations shall be made public. At*
106 *the beginning of each hearing, or series of hearings, the agency, if*
107 *it has made a proposal, shall present a summary of the factual in-*
108 *formation on which its proposal is based, and shall respond to*
109 *questions posed by any interested party. Hearings shall be con-*
110 *ducted at such times and in locations which shall afford interested*
111 *parties the opportunity to attend. A verbatim transcript of each*
112 *hearing shall be maintained, and copies of the transcript shall be*
113 *available to the public at no more than the actual cost.*

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

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

5 (b) **[Each]** No rule hereafter adopted **[is]** shall be effective
6 **[upon filing with the director]** unless it has been deemed to be
7 approved by the Legislature pursuant to section 3 of this amenda-
8 tory and supplementary act.

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

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

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

1 13. This act shall take effect 30 days after enactment.

SENATE, No. 1560

STATE OF NEW JERSEY

INTRODUCED OCTOBER 9, 1980

By Senators ZANE, CAFIERO, DUMONT, DODD, HIRKALA, ORECHIO, HERBERT, SKEVIN, RODGERS, SHEIL, DWYER, DiFRANCESCO, EWING, WALLWORK, VREELAND, PARKER, FORAN, J. RUSSO, LIPMAN, CAUFIELD, A. RUSSO, GREGORIO, MERLINO, MARESSA, HAMILTON, WEISS, BEDELL, PERSKIE, MUSTO, GAGLIANO, LASKIN, DORSEY and GRAVES

(Without Reference)

AN ACT to amend and supplement the "Administrative Procedure Act," approved January 14, 1969 (P. L. 1968, c. 410).

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

1 1. (New section) Every rule hereafter proposed by a State
2 agency shall be submitted by the agency to the Senate and General
3 Assembly prior to its adoption, amendment or repeal on a day
4 during a regular or special session of the Legislature, and the
5 President of the Senate and the Speaker of the General Assembly
6 shall immediately refer the proposed rule to the appropriate stand-
7 ing reference committee in each House.

1 2. (New section) The standing reference committee may report
2 its approval or disapproval of the proposed rule to the full mem-
3 bership of the House or suspend the taking effect of a rule for 30
4 days, within 45 days of the date on which it is referred to the
5 committee.

1 3. (New section) A rule shall be deemed approved unless within
2 60 days of the submission thereof, the Senate and General Assembly
3 adopt a concurrent resolution disapproving the rule, in whole or
4 in part, or providing that the rule not take effect for 60 days,
5 during which time they may nevertheless adopt a concurrent reso-
6 lution disapproving the rule. No action may be taken by the Leg-
7 islature under this section until after 1 calendar day from the date
8 of the standing reference committee's report or suspension of the
9 rule.

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

1 4. (New section) Prior legislative approval in accordance with
2 this act shall not be required in the case of the adoption of a rule
3 required by the Federal Government or because of an emergency
4 affecting the public health, safety or welfare. When an emergency
5 affecting the public health, safety or welfare requires the adoption
6 of a rule, the head of the State agency adopting the rule shall
7 notify the President of the Senate and the Speaker of the General
8 Assembly by letter stating the nature of the emergent matter, the
9 reason for the adoption of the rule, and attaching a copy of the
10 rule. The President and the Speaker shall forward these docu-
11 ments to the appropriate standing reference committee in each
12 House.

1 5. (New section) The Senate and General Assembly shall estab-
2 lish by joint rule a joint committee of the Legislature to be known
3 as the Joint Legislative Oversight Committee. The committee shall
4 have such membership, be constituted in such manner and be gov-
5 erned by such procedures, as may be provided by joint rules.

1 6. (New section) It shall be the duty of the committee to:

2 a. Promote adequate and proper rules, statements of general
3 policy and interpretations of statutes by State agencies through
4 consultation with agencies, legislative standing reference commit-
5 tees and the general public;

6 b. Maintain a continuous review of the statutory authority for
7 the promulgation of rules and revisions to that authority through
8 legislative enactments or judicial findings;

9 c. Review existing rules in the manner provided in this act;

10 d. Engage in a continuous study of oversight procedures in order
11 to assess their effectiveness and to remain informed of new tech-
12 niques;

13 e. Develop criteria for the evaluation of rules;

14 f. When directed by either House or by the President of the
15 Senate or the Speaker of the General Assembly,

16 (1) Conduct examinations of agency programs, policies and
17 procedures to determine whether agency activities are efficient,
18 effective and serving their intended purpose;

19 (2) Evaluate and monitor the implementation of recommenda-
20 tions regarding agency programs, policies and procedures which
21 are offered in oversight examinations conducted by the committee,
22 special legislative committees or commissions, standing reference
23 committees, or any agency of the Legislature;

24 (3) Investigate complaints concerning agency programs, poli-
25 cies and procedures;

26 (4) Conduct such other studies related to oversight functions
 27 or procedures not otherwise delegated or assigned by statute to
 28 other joint legislative committees and issue such reports and make
 29 such recommendations as the committee deems necessary in regard
 30 thereto.

31 Written notice of any directive under this subsection shall be
 32 delivered to the members of the Legislature at least 48 hours be-
 33 fore the issuance of the directive.

1 7. (New section) a. The committee may review any rule proposed
 2 and adopted after the effective date of this act to determine
 3 whether the rule is adequate, proper, timely, appropriate, neces-
 4 sary, reasonable, equitable, understandable, consistent with legis-
 5 lative intent, in accord with judicial findings, and within the scope
 6 of the promulgating agency's authority.

7 In conducting its review, the committee may:

- 8 (1) Direct the State agency to provide such information as the
 9 committee deems necessary for the conduct of the review;
- 10 (2) Conduct a public hearing regarding the rule;
- 11 (3) Direct the State agency to conduct a public hearing regard-
 12 ing the rule and to report the results to the committee;
- 13 (4) Negotiate with and offer recommendations to the agency
 14 concerning revisions in the rule;

15 b. The committee, by majority vote of its authorized membership
 16 may report its disapproval or recommendation of suspension for
 17 60 days, of a rule to the President of the Senate and Speaker of
 18 the General Assembly, who may refer the report of the committee
 19 to a standing reference committee or the full membership of the
 20 House for appropriate action.

21 The Senate and General Assembly may adopt a concurrent reso-
 22 lution disapproving the rule or suspending it for 60 days, after
 23 1 calendar day from the date of the committee's report.

1 8. (New section) A vote by the Senate or General Assembly on a
 2 concurrent resolution on any action authorized by this act shall
 3 be a recorded vote.

1 9. (New section) Any rule proposed by a State agency which
 2 revises, rescinds or replaces either (1) any proposed or existing
 3 rule or (2) any rule which has been suspended shall be considered
 4 as a new rule and shall be subject to the provisions of this act and
 5 the act to which it is a supplement.

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

3 2. As used in this act:

4 (a) "State agency" or "agency" shall include each of the
5 principal departments in the executive branch of the State Govern-
6 ment, and all boards, divisions, commissions, agencies, depart-
7 ments, councils, authorities, offices or officers within any such de-
8 partments now existing or hereafter established and authorized
9 by statute to make, adopt or promulgate rules or adjudicate con-
10 tested cases, except the office of the Governor, the Division of
11 Workmen's Compensation in the Department of Labor and Indus-
12 try, the Department of Defense, and any boards, divisions, com-
13 missions, councils, agencies, departments, authorities, offices or
14 officers therein, and all agencies the primary responsibility of
15 which is the management or operation of a State educational,
16 medical, mental, rehabilitative, custodial, penal or correctional in-
17 stitution or program, insofar as the acts of such agency relate to
18 the internal affairs of such institution or program].

19 (b) "Contested case" means a proceeding, including any licens-
20 ing proceeding, in which the legal rights, duties, obligations,
21 privileges, benefits or other legal relations of specific parties are
22 required by constitutional right or by statute to be determined by
23 an agency by decisions, determinations, or orders, addressed to
24 them or disposing of their interests, after opportunity for an
25 agency hearing.

26 (c) "Administrative adjudication" or "adjudication" includes
27 any and every final determination, decision or order made or
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57 of permission required by law.

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60 Administrative Procedure, unless otherwise indicated by context.

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11 request of the agency for advance notice of its rule-making pro-
12 ceedings and in addition to other public notice required by law
13 shall be published in the New Jersey Register *and shall be filed*
14 *with the President of the Senate and the Speaker of the General*
15 *Assembly. The notice shall be additionally publicized in such*
16 *manner as the agency deems most appropriate in order to inform*
17 *those persons most likely to be affected by or interested in the*
18 *intended action. Methods that may be employed include publication*
19 *of the notice in newspapers of general circulation or in trade, in-*
20 *dustry, governmental or professional publications, distribution of*
21 *press releases to the news media and posting of notices in appro-*
22 *priate locations;*

23 (2) Prepare for public distribution at the time the notice appears
24 in the Register a statement setting forth a summary of the pro-
25 posed rule, a clear and concise explanation of the purpose and
26 effect of the rule, the specific legal authority under which its
27 adoption is authorized, and a description of the expected socio-
28 economic impact of the rule;

29 ~~[(2)]~~ (3) Afford all interested persons reasonable opportunity
30 to submit data, views, or arguments, orally or in writing. The
31 agency shall consider fully all written and oral submissions respect-
32 ing the proposed rule.

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, provided such request is made to the agency*
36 *within 15 days following publication of the proposed rule in the*
37 *Register. The agency shall provide at least 15 days' notice of*
38 *such hearing, which shall be conducted in accordance with the pro-*
39 *visions of subsection (g) of this section;*

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

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

49 (c) If an agency finds that an imminent peril to the public health,
50 safety, or welfare requires adoption of a rule upon fewer than [20]
51 30 days' notice and states in writing its reasons for that finding,
52 and the Governor concurs in writing that an imminent peril exists,
53 it may proceed without prior notice or hearing or upon any
54 abbreviated notice and hearing that it finds practicable, to adopt
55 the rule. The rule shall be effective for a period of not more than
56 60 days unless each House of the Legislature passes a resolution
57 concurring in its extension for a period of not more than 60 addi-
58 tional days. The rule shall not be effective for more than 120 days
59 unless repromulgated in accordance with normal rule-making
60 procedures.

61 (d) No rule hereafter adopted is valid unless adopted in sub-
62 stantial compliance with this [section] act. A proceeding to contest
63 any rule on the ground of noncompliance with the procedural
64 requirements of this [section must] act shall be commenced within
65 1 year from the effective date of the rule.

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

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

83 (1) *The substance or nature of the rule making which is re-*
84 *quested;*

85 (2) *The reasons for the request and the petitioner's interest in*
86 *the request;*

87 (3) *References to the authority of the agency to take the re-*
88 *quested action.*

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

98 (g) *All public hearings shall be conducted by a hearing officer*
99 *who may be an official of the agency, a member of its staff, a person*
100 *on assignment from another agency, a person from the Office of*
101 *Administrative Law assigned pursuant to subsection o. of section*
102 *5 of P. L. 1978, c. 67 (C. 52:14F-50) or an independent contractor.*
103 *The hearing officer shall have the responsibility to make recom-*
104 *mendations to the agency regarding the adoption, amendment or*
105 *repeal of a rule. These recommendations shall be made public. At*
106 *the beginning of each hearing, or series of hearings, the agency, if*
107 *it has made a proposal, shall present a summary of the factual in-*
108 *formation on which its proposal is based, and shall respond to*
109 *questions posed by any interested party. Hearings shall be con-*
110 *ducted at such times and in locations which shall afford interested*
111 *parties the opportunity to attend. A verbatim transcript of each*
112 *hearing shall be maintained, and copies of the transcript shall be*
113 *available to the public at no more than the actual cost.*

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

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

5 (b) **[Each]** No rule hereafter adopted **[is]** shall be effective
6 **[upon filing with the director]** unless it has been deemed to be
7 approved by the Legislature pursuant to section 3 of this amenda-
8 tory and supplementary act.

9 (c) The director shall: (1) accept for filing or publication any
10 rule duly adopted and submitted by any agency pursuant to this
11 act; (2) endorse upon the certified copy of each rule accepted for

12 filing pursuant to this act the date and time upon which such rule
13 was filed; and (3) maintain the certified copy of each rule so filed
14 in a permanent register open to public inspection.

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

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

1 13. This act shall take effect 30 days after enactment.

STATEMENT

This bill provides a procedure for the review and approval of administrative agency rules by the Legislature.

The bill requires State agencies to submit proposed rules to the Legislature which would then examine the rules through its standing reference committees. The committees would, in turn, make recommendations as to their approval or disapproval by the Legislature.

The bill also creates a legislative joint oversight committee to conduct an ongoing study of administrative rules which have been proposed and adopted after the effective date.

SENATE AMENDMENTS TO
SENATE, No. 1560

STATE OF NEW JERSEY

ADOPTED NOVEMBER 10, 1980

Amend page 1, section 2, line 3, omit "suspend", insert "its recommendation that"; omit "taking effect of a"; after "rule", insert "not take effect"; omit "30", insert "60".

Amend page 1, section 3, line 4, omit "for", insert "during the"; after "days", insert "following the date of the adoption of the resolution".

Amend page 1, section 3, lines 8-9, omit "or suspension of the rule".

Amend page 3, section 7, line 16, omit "disapproval or".

Amend page 3, section 7, line 21, before "The Senate", insert "c."

Amend page 3, section 7, line 22, omit "disapproving the rule or"; after "suspending", omit "it", insert "the rule".

Amend page 3, section 7, after line 23, insert a subsection d. as follows:

"d. Upon adoption by the Senate and General Assembly of the concurrent resolution, the rule shall be suspended for 60 days."

STATEMENT

These amendments make clear that the standing reference committee to which a proposed rule is referred has the power to recommend to the House that it adopt a concurrent resolution providing that no further action with respect to the implementation of the rule be taken during the 60 days following the adoption of the concurrent resolution.

The remaining amendments conform this bill to Assembly Bill No. 2209 presently pending in the General Assembly.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 13, 1981

SENATE BILL NO. 1560 (OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(a) of the Constitution, I herewith return Senate Bill No. 1560 (OCR) without my approval.

This bill is substantially the same as Senate Bill No. 1203 which I vetoed on September 22, 1980. Every regulation proposed by a State agency would have to be submitted, during a regular or special session of the Legislature, to the Speaker and Senate President who in turn would refer it to appropriate standing reference committee. Within 45 days of referral the committees could recommend to the full house the extension of the proposed regulation's effective date by 60 days. The Senate and Assembly could then, within 60 days of the initial submission, adopt a concurrent resolution either disapproving the regulation or suspending it for 60 days. If no concurrent resolution were adopted within 60 days of submission, the regulation would take effect.

Prior legislative approval would not be required for regulations adopted to meet emergency situations or federal requirements. Emergency rules would have to be signed by the Governor, however, and would be effective for only 60 days unless the Legislature, by concurrent resolution, extended the period for an additional 60 days. No emergency rule could last for more than 120 days.

The bill would also establish a Joint Legislative Oversight Committee to be organized by joint rule which would have the authority to review existing administrative regulations and recommend to the Speaker and Senate President, by majority vote, their suspension for 60 days. The legislative leaders could then refer the recommendation to committee or the full membership of their respective houses. If both houses ultimately adopted a concurrent resolution, the regulation would be suspended for 60 days.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-2-

This bill differs from S-1203 in two respects: (1) the Governor under S-1203 would have similar powers of suspension, and (2) the composition of the Joint Legislative Oversight Committee was specified.

This bill, like Senate Bill No. 1203, is an unconstitutional encroachment by the Legislative Branch upon the Executive. I note that the Ninth Circuit of the U.S. Court of Appeals in a sweeping opinion recently struck down similar Congressional veto provisions and that the President has instructed executive departments to ignore such vetoes.

Chief Justice Weintraub, addressing this question in Brown v. Heymann 62 NJ 1 (1972), wrote that there is no indication that our State Constitution was intended to depart from the basic concept of distribution of powers of government embodied in the Federal Constitution and that the separation of powers doctrine was designed to provide security against "aggregated power."

This bill represents such an attempt to aggregate power. To put it simply, it is my opinion that all legislative actions other than internal organization of the Legislature, expressions of sentiment, constitutional proposals (N.J. Const. Art. IX), or legislative response to executive reorganization plans (N.J.S.A. 52:14C-1 et seq.) are subject to gubernatorial veto. I am confident the courts will so find.

Accordingly, I am returning Senate Bill No. 1560 (OCR) without my signature.

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

Chief of Staff, Secretary