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LAW/KR

P.L.2013, CHAPTER 259, *approved January 17, 2014*
Assembly, No 3321 (*First Reprint*)

1 AN ACT concerning the use of electronic technology in agency rule-
2 making, and amending P.L.1968, c.410.

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

6
7 1. Section 2 of P.L.1968, c.410 (C.52:14B-2) is amended to
8 read as follows:

9 2. As used in this act:

10 **[(a)]** "State agency" or "agency" shall include each of the
11 principal departments in the executive branch of the State
12 Government, and all boards, divisions, commissions, agencies,
13 departments, councils, authorities, offices or officers within any
14 such departments now existing or hereafter established and
15 authorized by statute to make, adopt or promulgate rules or
16 adjudicate contested cases, except the office of the Governor.

17 **[(b)]** "Administrative adjudication" or "adjudication" includes
18 any and every final determination, decision, or order made or
19 rendered in any contested case.

20 "Administrative rule" or "rule," when not otherwise modified,
21 means each agency statement of general applicability and
22 continuing effect that implements or interprets law or policy, or
23 describes the organization, procedure or practice requirements of
24 any agency. The term includes the amendment or repeal of any
25 rule, but does not include: (1) statements concerning the internal
26 management or discipline of any agency; (2) intra-agency and inter-
27 agency statements; and (3) agency decisions and findings in
28 contested cases.

29 "Contested case" means a proceeding, including any licensing
30 proceeding, in which the legal rights, duties, obligations, privileges,
31 benefits or other legal relations of specific parties are required by
32 constitutional right or by statute to be determined by an agency by
33 decisions, determinations, or orders, addressed to them or disposing
34 of their interests, after opportunity for an agency hearing, but shall
35 not include any proceeding in the Division of Taxation, Department
36 of the Treasury, which is reviewable de novo by the Tax Court.

37 **[(c)]** "Administrative adjudication" or "adjudication" includes
38 any and every final determination, decision or order made or
39 rendered in any contested case.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SSG committee amendments adopted January 28, 2013.

1 (d) "The head"] "Director" means the Director and Chief
2 Administrative Law Judge of the Office of Administrative Law,
3 unless otherwise indicated by context.

4 "Electronic [listserv] mailing list" means a computer program
5 that allows agency website visitors, at their discretion, to subscribe
6 to, or unsubscribe from, an e-mail discussion group or e-mail
7 mailing list controlled by the agency, and which program enables
8 the agency to automatically send e-mail messages to multiple e-mail
9 addresses on the user-generated subscriber list.

10 "Head of the agency" means and includes the individual or group
11 of individuals constituting the highest authority within any agency
12 authorized or required by law to render an adjudication in a
13 contested case.

14 [(e) "Administrative rule" or "rule," when not otherwise
15 modified, means each agency statement of general applicability and
16 continuing effect that implements or interprets law or policy, or
17 describes the organization, procedure or practice requirements of
18 any agency. The term includes the amendment or repeal of any
19 rule, but does not include: (1) statements concerning the internal
20 management or discipline of any agency; (2) intraagency and
21 interagency statements; and (3) agency decisions and findings in
22 contested cases.

23 (f) "License" includes the whole or part of any agency license,
24 permit, certificate, approval, chapter, registration or other form of
25 permission required by law.

26 [(g) "Secretary" means the Secretary of State.

27 [(h) "Director" means the Director and Chief Administrative
28 Law Judge of the Office of Administrative Law, unless otherwise
29 indicated by context.]

30 "State agency" or "agency" shall include each of the principal
31 departments in the executive branch of the State Government, and
32 all boards, divisions, commissions, agencies, departments, councils,
33 authorities, offices or officers within any such departments now
34 existing or hereafter established and authorized by statute to make,
35 adopt or promulgate rules or adjudicate contested cases, except the
36 office of the Governor.

37 "URL address" means a Uniform Resource Locator address,
38 which is used for the purposes of Internet navigation and is
39 commonly referred to as a website link, and which uses a protocol,
40 such as "http", and a domain name to identify, and provide website
41 visitors with direct access to, a particular Internet file or website
42 page.

43 (cf: P.L.1993, c.343, s.1)

44
45 2. (New section) a. Notwithstanding any law, rule, or
46 regulation to the contrary, each State agency shall post, in a visible
47 and publicly-accessible location on the agency's Internet website:

1 (1) the complete and current text of each State law under which
2 the agency is granted its authority, and the complete and current
3 text of each rule or regulation that has been adopted by the agency,
4 or that is proposed for, or is pending, agency adoption; or

5 (2) one or more URL addresses, which provide visitors to the
6 agency's website with a direct link to the complete and current text
7 of the documents listed in paragraph (1) of this subsection.

8 b. (1) An agency shall make regular and timely updates to the
9 full text documents and URL addresses posted on its Internet
10 website pursuant to subsection a. of this section, and shall take any
11 other reasonable action necessary to ensure that the posted
12 documents and URL addresses accurately reflect, or are directly
13 linked to, as the case may be, the most recent version of the
14 associated law, rule, or regulation, including any amendments or
15 supplements thereto, or repeals thereof. The agency shall indicate
16 on its Internet website, the frequency with which updates are made
17 pursuant to this paragraph.

18 (2) An agency that posts one or more URL addresses on its
19 Internet website pursuant to subsection a. of this section shall
20 additionally: (a) verify, on a regular basis, the functionality of each
21 URL address; and (b) provide a means by which website visitors
22 can notify the agency, through e-mail communication, and through
23 any other reasonable means, of any nonfunctional URL address.

24
25 3. Section 3 of P.L.1968, c.410 (C.52:14B-3) is amended to
26 read as follows:

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

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

33 (2) adopt rules of practice setting forth the nature and
34 requirements of all formal and informal procedures available,
35 including a description of all forms and instructions used by the
36 agency, and if not otherwise set forth in an agency's rules, a table of
37 all permits and their fees, violations and penalties, deadlines,
38 processing times and appeals procedures . A complete list of the
39 agency's permits, fees, violations, penalties, deadlines, processing
40 times, and appeals procedures shall also be made available for
41 public viewing through publication on the agency's
42 Internet website ;

43 (3) make available for public **[inspection]** viewing, through
44 publication on the agency's Internet website, and through any other
45 means, all final agency orders, decisions, and opinions, in
46 accordance with the provisions of chapter 73 of the laws of 1963 as
47 amended and supplemented (C.47:1A-1 et seq.);

1 (4) make available for public viewing, through publication on
2 the agency's Internet website, all of the agency's rule-making and
3 public hearing notices, publicity documents, press releases, final
4 and non-confidential agency reports, and rule-making petitions
5 received by the agency pursuant to subsection (f) of section 4 of
6 P.L.1968, c.410 (C.52:14B-4); and

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

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

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

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

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

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

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

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

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

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

39 (cf: P.L.2001, c.5, s.1)

40
41 4. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
42 read as follows:

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

45 (1) Give at least 30 days' notice of its intended action. The
46 notice shall include a statement of either the terms or substance of
47 the intended action or a description of the subjects and issues
48 involved, and the time when, the place where, and the manner in

1 which interested persons may present their views thereon. The
2 notice shall be mailed to all persons who have made timely requests
3 of the agency for advance notice of its rule-making proceedings
4 and , in addition to ¹any¹ other public notice required by law **【shall**
5 **be】** , ¹shall be¹ published in the New Jersey Register. Notice shall
6 also be distributed to the news media maintaining a press office to
7 cover the State House Complex, and made available **【electronically**
8 **through the largest nonproprietary cooperative public computer**
9 **network】** for public viewing through publication on the agency's
10 Internet website. Each agency shall additionally publicize the
11 intended action and shall adopt rules to prescribe the manner in
12 which it will do so **【, and】** . In order to inform those persons most
13 likely to be affected by or interested in the intended action , each
14 agency shall distribute notice of its intended action to interested
15 persons, and shall publicize the same, through the use of an
16 electronic ¹**【listserv】 mailing list**¹ or similar type of subscription-
17 based e-mail service . **【Methods】** Additional publicity methods that
18 may be employed include publication of the notice in newspapers of
19 general circulation or in trade, industry, governmental or
20 professional publications, distribution of press releases to the news
21 media and posting of notices in appropriate locations , including the
22 agency's Internet website . The rules shall prescribe the
23 circumstances under which each additional method shall be
24 employed;

25 (2) Prepare for public distribution at the time the notice appears
26 in the Register , and make available for public viewing through
27 publication on the agency's Internet website, a statement setting
28 forth a summary of the proposed rule, as well as a clear and concise
29 explanation of the purpose and effect of the rule, the specific legal
30 authority under which its adoption is authorized, a description of
31 the expected socio-economic impact of the rule, a regulatory
32 flexibility analysis, or the statement of finding that a regulatory
33 flexibility analysis is not required, as provided in section 4 of
34 P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
35 include an assessment of the number of jobs to be generated or lost
36 if the proposed rule takes effect, an agriculture industry impact
37 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),
38 and a housing affordability impact statement and a smart growth
39 development impact statement, as provided in section 31 of
40 P.L.2008, c.46 (C.52:14B-4.1b);

41 (3) Afford all interested persons a reasonable opportunity to
42 submit data, views, comments, or arguments, orally or in writing.
43 The agency shall consider fully all written and oral submissions
44 respecting the proposed rule , including any written submissions
45 that are received by the agency through its e-mail systems or
46 electronic ¹**【listservs】 mailing lists**¹. If within 30 days of the
47 publication of the proposed rule sufficient public interest is

1 demonstrated in an extension of the time for submissions, the
2 agency shall provide an additional 30 day period for the receipt of
3 submissions by interested parties. The agency shall not adopt the
4 proposed rule until after the end of that 30 day extension.

5 The agency shall conduct a public hearing on the proposed rule
6 at the request of a committee of the Legislature, or a governmental
7 agency or subdivision, or if sufficient public interest is shown,
8 provided such request is made to the agency within 30 days
9 following publication of the proposed rule in the Register. The
10 agency shall provide at least 15 days' notice of such hearing,
11 **[which]** shall publish such hearing notice on its Internet website,
12 and shall [be conducted] conduct the hearing in accordance with
13 the provisions of subsection (g) of this section.

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

19 (4) Prepare for public distribution , and make available for
20 public viewing through publication on the agency's Internet
21 website, a report listing all parties offering written or oral
22 submissions concerning the rule, summarizing the content of the
23 submissions and providing the agency's response to the data, views ,
24 comments, and arguments contained in the submissions.

25 (b) A rule prescribing the organization of an agency may be
26 adopted at any time without prior notice or hearing. Such rules
27 shall be effective upon filing in accordance with section 5 of
28 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by
29 the agency.

30 (c) If an agency finds that an imminent peril to the public
31 health, safety, or welfare requires adoption of a rule upon fewer
32 than 30 days' notice and states in writing its reasons for that finding,
33 and the Governor concurs in writing that an imminent peril exists,
34 **[it]** the agency may proceed to adopt the rule without prior notice
35 or hearing, or upon any abbreviated notice and hearing that it finds
36 practicable **[], to adopt the rule]** . **[The]** The agency shall publish,
37 on its Internet website, a summary of any rule adopted pursuant to
38 this subsection, and the statement of reasons for the agency's
39 finding that an imminent peril exists. Any rule adopted pursuant to
40 this subsection shall be effective for a period of not more than 60
41 days , unless each house of the Legislature passes a resolution
42 concurring in its extension for a period of not more than 60
43 additional days. The rule shall not be effective for more than 120
44 days unless repromulgated in accordance with normal rule-making
45 procedures.

46 (d) No rule hereafter adopted is valid unless adopted in
47 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).
48 A proceeding to contest any rule on the ground of noncompliance

1 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et
2 seq.) shall be commenced within one year from the effective date of
3 the rule.

4 (e) An agency may file a notice of intent with respect to a
5 proposed rule-making proceeding with the Office of Administrative
6 Law, for publication in the New Jersey Register at any time prior to
7 the formal notice of action required in subsection (a) of this section.
8 The notice shall be for the purpose of eliciting the views of
9 interested parties on an action prior to the filing of a formal rule
10 proposal. Such notice shall be distributed to interested persons
11 through the use of an electronic ¹[[listserv] mailing list¹ or similar
12 type of subscription-based e-mail service, and made available for
13 public viewing through publication on the agency's Internet
14 website. The agency shall afford all interested persons a reasonable
15 opportunity to submit data, views, comments, or arguments, orally
16 or in writing, on the proposed action, and shall fully consider all
17 written and oral submissions, including any written submissions
18 received by the agency through its e-mail systems or electronic
19 ¹[[listservs] mailing lists¹ . An agency may use informal
20 conferences and consultations as means of obtaining the viewpoints
21 and advice of interested persons with respect to contemplated rule-
22 making. An agency may also appoint committees of experts or
23 interested persons or representatives of the general public to advise
24 it with respect to any contemplated rule-making.

25 (f) An interested person may petition an agency to adopt a new
26 rule, or amend or repeal any existing rule. Such petition may be
27 submitted to the agency through mail, e-mail, electronic ¹[[listserv]
28 mailing list¹ , or through any other means. Each agency shall
29 prescribe by rule the form for the petition and the procedure for the
30 **[submission,]** consideration and disposition of the petition. The
31 petition shall state clearly and concisely:

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

34 (2) The reasons for the request and the petitioner's interest in the
35 request;

36 (3) References to the authority of the agency to take the
37 requested action.

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

40 Within 60 days following receipt by an agency of any such
41 petition, the agency shall either; (i) deny the petition, giving a
42 written statement of its reasons; (ii) grant the petition and initiate a
43 rule-making proceeding within 90 days of granting the petition; or
44 (iii) refer the matter for further deliberations which shall be
45 concluded within 90 days of referring the matter for further
46 deliberations. Upon conclusion of such further deliberations, the
47 agency shall either deny the petition and provide a written statement
48 of its reasons or grant the petition and initiate a rule-making

1 proceeding within 90 days. Upon the receipt of the petition, the
2 agency shall file a notice stating the name of the petitioner and the
3 nature of the request with the Office of Administrative Law for
4 publication in the New Jersey Register. Notice of formal agency
5 action on such petition shall also be filed with the Office of
6 Administrative Law for publication in the Register, and shall be
7 made available for public viewing through publication on the
8 agency's Internet website.

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

39 (g) All public hearings shall be conducted by a hearing officer,
40 who may be an official of the agency, a member of its staff, a
41 person on assignment from another agency, a person from the
42 Office of Administrative Law assigned pursuant to subsection o. of
43 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
44 contractor. The hearing officer shall have the responsibility to
45 make recommendations to the agency regarding the adoption,
46 amendment or repeal of a rule. These recommendations shall be
47 made public. At the beginning of each hearing, or series of
48 hearings, the agency, if it has made a proposal, shall present a

1 summary of the factual information on which its proposal is based,
2 and shall respond to questions posed by any interested party.
3 Hearings shall be conducted at such times and in locations which
4 shall afford interested parties the opportunity to attend. A verbatim
5 record of each hearing shall be maintained, and copies of the record
6 shall be available to the public at no more than the actual cost,
7 which shall be that of the agency where the petition for rule-making
8 originated.

9 (cf: P.L.2008, c.46, s.3)

10

11 5. This act shall take effect immediately, but shall be
12 inoperative until the first day of the sixth month following the date
13 of enactment.

14

15

16

17

18 Amends “Administrative Procedure Act” to require State
19 agencies to use various electronic technologies in rule-making
20 procedures.

ASSEMBLY, No. 3321

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2012

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman RUBEN J. RAMOS, JR.
District 33 (Hudson)
Assemblyman JOSEPH V. EGAN
District 17 (Middlesex and Somerset)
Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)
Assemblyman JOHN S. WISNIEWSKI
District 19 (Middlesex)
Assemblyman SCOTT T. RUMANA
District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

**Assemblymen Wimberly, Coughlin, Assemblywoman McHose and
Assemblyman Singleton**

SYNOPSIS

Amends "Administrative Procedure Act" to require State agencies to use various electronic technologies in rule-making procedures.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/18/2012)

A3321 BURZICHELLI, RAMOS

2

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29 (2) adopt rules of practice setting forth the nature and
30 requirements of all formal and informal procedures available,
31 including a description of all forms and instructions used by the
32 agency, and if not otherwise set forth in an agency's rules, a table of
33 all permits and their fees, violations and penalties, deadlines,
34 processing times and appeals procedures . A complete list of the
35 agency's permits, fees, violations, penalties, deadlines, processing
36 times, and appeals procedures shall also be made available for
37 public viewing through publication on the agency's
38 Internet website ;

39 (3) make available for public **[inspection]** viewing, through
40 publication on the agency's Internet website, and through any other
41 means, all final agency orders, decisions, and opinions, in
42 accordance with the provisions of chapter 73 of the laws of 1963 as
43 amended and supplemented (C.47:1A-1 et seq.);

44 (4) make available for public viewing, through publication on
45 the agency's Internet website, all of the agency's rule-making and
46 public hearing notices, publicity documents, press releases, final
47 and non-confidential agency reports, and rule-making petitions

1 received by the agency pursuant to subsection (f) of section 4 of
2 P.L.1968, c.410 (C.52:14B-4); and

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

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

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

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

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

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

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

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

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

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

35 (cf: P.L.2001, c.5, s.1)

36

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

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

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

1 published in the New Jersey Register. Notice shall also be
2 distributed to the news media maintaining a press office to cover
3 the State House Complex, and made available **[electronically**
4 **through the largest nonproprietary cooperative public computer**
5 **network]** for public viewing through publication on the agency's
6 Internet website. Each agency shall additionally publicize the
7 intended action and shall adopt rules to prescribe the manner in
8 which it will do so **[, and]** . In order to inform those persons most
9 likely to be affected by or interested in the intended action , each
10 agency shall distribute notice of its intended action to interested
11 persons, and shall publicize the same, through the use of an
12 electronic listserv or similar type of subscription-based e-mail
13 service . **[Methods]** Additional publicity methods that may be
14 employed include publication of the notice in newspapers of general
15 circulation or in trade, industry, governmental or professional
16 publications, distribution of press releases to the news media and
17 posting of notices in appropriate locations , including the agency's
18 Internet website . The rules shall prescribe the circumstances under
19 which each additional method shall be employed;

20 (2) Prepare for public distribution at the time the notice appears
21 in the Register , and make available for public viewing through
22 publication on the agency's Internet website, a statement setting
23 forth a summary of the proposed rule, as well as a clear and concise
24 explanation of the purpose and effect of the rule, the specific legal
25 authority under which its adoption is authorized, a description of
26 the expected socio-economic impact of the rule, a regulatory
27 flexibility analysis, or the statement of finding that a regulatory
28 flexibility analysis is not required, as provided in section 4 of
29 P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
30 include an assessment of the number of jobs to be generated or lost
31 if the proposed rule takes effect, an agriculture industry impact
32 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),
33 and a housing affordability impact statement and a smart growth
34 development impact statement, as provided in section 31 of
35 P.L.2008, c.46 (C.52:14B-4.1b);

36 (3) Afford all interested persons a reasonable opportunity to
37 submit data, views, comments, or arguments, orally or in writing.
38 The agency shall consider fully all written and oral submissions
39 respecting the proposed rule , including any written submissions
40 that are received by the agency through its e-mail systems or
41 electronic listservs. If within 30 days of the publication of the
42 proposed rule sufficient public interest is demonstrated in an
43 extension of the time for submissions, the agency shall provide an
44 additional 30 day period for the receipt of submissions by interested
45 parties. The agency shall not adopt the proposed rule until after the
46 end of that 30 day extension.

47 The agency shall conduct a public hearing on the proposed rule
48 at the request of a committee of the Legislature, or a governmental

1 agency or subdivision, or if sufficient public interest is shown,
2 provided such request is made to the agency within 30 days
3 following publication of the proposed rule in the Register. The
4 agency shall provide at least 15 days' notice of such hearing,
5 **[which]** shall publish such hearing notice on its Internet website,
6 and shall [be conducted] conduct the hearing in accordance with
7 the provisions of subsection (g) of this section.

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

13 (4) Prepare for public distribution , and make available for
14 public viewing through publication on the agency's Internet
15 website, a report listing all parties offering written or oral
16 submissions concerning the rule, summarizing the content of the
17 submissions and providing the agency's response to the data, views ,
18 comments, and arguments contained in the submissions.

19 (b) A rule prescribing the organization of an agency may be
20 adopted at any time without prior notice or hearing. Such rules
21 shall be effective upon filing in accordance with section 5 of
22 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by
23 the agency.

24 (c) If an agency finds that an imminent peril to the public
25 health, safety, or welfare requires adoption of a rule upon fewer
26 than 30 days' notice and states in writing its reasons for that finding,
27 and the Governor concurs in writing that an imminent peril exists,
28 **[it]** the agency may proceed to adopt the rule without prior notice
29 or hearing, or upon any abbreviated notice and hearing that it finds
30 practicable **[, to adopt the rule]** . **[The]** The agency shall publish,
31 on its Internet website, a summary of any rule adopted pursuant to
32 this subsection, and the statement of reasons for the agency's
33 finding that an imminent peril exists. Any rule adopted pursuant to
34 this subsection shall be effective for a period of not more than 60
35 days , unless each house of the Legislature passes a resolution
36 concurring in its extension for a period of not more than 60
37 additional days. The rule shall not be effective for more than 120
38 days unless repromulgated in accordance with normal rule-making
39 procedures.

40 (d) No rule hereafter adopted is valid unless adopted in
41 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).
42 A proceeding to contest any rule on the ground of noncompliance
43 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et
44 seq.) shall be commenced within one year from the effective date of
45 the rule.

46 (e) An agency may file a notice of intent with respect to a
47 proposed rule-making proceeding with the Office of Administrative
48 Law, for publication in the New Jersey Register at any time prior to

1 the formal notice of action required in subsection (a) of this section.
2 The notice shall be for the purpose of eliciting the views of
3 interested parties on an action prior to the filing of a formal rule
4 proposal. Such notice shall be distributed to interested persons
5 through the use of an electronic listserv or similar type of
6 subscription-based e-mail service, and made available for public
7 viewing through publication on the agency's Internet website. The
8 agency shall afford all interested persons a reasonable opportunity
9 to submit data, views, comments, or arguments, orally or in writing,
10 on the proposed action, and shall fully consider all written and oral
11 submissions, including any written submissions received by the
12 agency through its e-mail systems or electronic listservs. An
13 agency may use informal conferences and consultations as means of
14 obtaining the viewpoints and advice of interested persons with
15 respect to contemplated rule-making. An agency may also appoint
16 committees of experts or interested persons or representatives of the
17 general public to advise it with respect to any contemplated rule-
18 making.

19 (f) An interested person may petition an agency to adopt a new
20 rule, or amend or repeal any existing rule. Such petition may be
21 submitted to the agency through mail, e-mail, electronic listserv, or
22 through any other means. Each agency shall prescribe by rule the
23 form for the petition and the procedure for the [submission,]
24 consideration and disposition of the petition. The petition shall
25 state clearly and concisely:

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

28 (2) The reasons for the request and the petitioner's interest in the
29 request;

30 (3) References to the authority of the agency to take the
31 requested action.

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

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

1 made available for public viewing through publication on the
2 agency's Internet website.

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

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

1 which shall be that of the agency where the petition for rule-making
2 originated.

3 (cf: P.L.2008, c.46, s.3)

4

5 5. This act shall take effect immediately, but shall be
6 inoperative until the first day of the sixth month following the date
7 of enactment.

8

9

10 STATEMENT

11

12 This bill would require the State's administrative agencies to
13 employ various technologies, including the Internet, listserv
14 technology, and e-mail services, in order to streamline the agencies'
15 rule-making notice and comment procedures and facilitate
16 regulatory compliance.

17 In addition to the other requirements of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the bill
19 would require an agency to:

20 (1) make available for public inspection, through publication on
21 the agency's Internet website, all of the agency's rule-
22 making and public hearing notices, publicity documents,
23 press releases, final and non-confidential agency reports,
24 and rule-making petitions received thereby, as well as a
25 complete list of the agency's permits, fees, violations,
26 penalties, deadlines, processing times, and appeals
27 procedures;

28 (2) distribute notice of the agency's intended action to
29 interested persons, and publicize the same, through the use
30 of an electronic listserv or other similar type of subscription-
31 based e-mail service;

32 (3) for any proposed rule, make available for public viewing,
33 through posting on the agency's Internet website and
34 through any other reasonable means, a statement
35 summarizing the proposed rule, the potential impacts
36 thereof, and the agency's authority therefor; and

37 (4) accept and fully consider data, views, comments, or
38 arguments on a proposed rule, which are submitted to the
39 agency, in written form, through the agency's e-mail
40 systems or electronic listservs.

41 In order to enhance public awareness about the applicable laws
42 governing various regulated activities, the bill would also require
43 each State agency to post, in a visible and publicly-accessible place
44 on the agency's Internet website:

45 (1) the complete and current text of each State law under which
46 the agency is granted its authority, and the complete and current
47 text of each rule or regulation that has been adopted by the agency,
48 or that is proposed for, or is pending, agency adoption; or

1 (2) one or more URL addresses, which provide visitors to the
2 agency's website with a direct link to the complete and current text
3 of the those laws, rules, and regulations.

4 The bill would require each agency to make regular and timely
5 updates to the full text documents and URL addresses that are
6 posted on the agency's Internet website, and to take any other
7 reasonable action necessary to ensure that the posted documents and
8 URL addresses accurately reflect, or are directly linked to, as the
9 case may be, the most recent version of the associated law, rule, or
10 regulation, including any amendments or supplements thereto, or
11 repeals thereof. The agency would also be required to indicate on
12 its Internet website, the frequency with which updates are made
13 thereby.

14 An agency that posts one or more URL addresses on its Internet
15 website would additionally be required to: (1) verify, on a regular
16 basis, the functionality of each URL address; and (2) provide a
17 means by which website visitors can notify the agency, through
18 electronic communication, and through any other reasonable means,
19 of any nonfunctional URL addresses.

20 The bill would amend the definitions section of the
21 "Administrative Procedure Act" to include new definitions for the
22 terms "URL address" and "electronic listserv", and it would also
23 make technical changes to this section in order to alphabetize the
24 terms that are defined therein.

25 This bill would implement several policy recommendations that
26 were identified by the State's Red Tape Review Commission in the
27 commission report issued in February 2012.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3321

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2012

The Assembly Budget Committee reports favorably Assembly Bill No. 3321.

This bill requires the State's administrative agencies to employ various technologies, including the Internet, listserv technology, and e-mail services, to streamline the agencies' rule-making notice and comment procedures and facilitate regulatory compliance.

In addition to the other requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the bill requires an agency to:

- (1) make available for public inspection, through publication on the agency's Internet website, all of the agency's rule-making and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rule-making petitions received thereby, as well as a complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures;
- (2) distribute notice of the agency's intended action to interested persons, and publicize the same, through the use of an electronic listserv or other similar type of subscription-based e-mail service;
- (3) for any proposed rule, make available for public viewing, through posting on the agency's Internet website and through any other reasonable means, a statement summarizing the proposed rule, the potential impacts thereof, and the agency's authority therefor; and
- (4) accept and fully consider data, views, comments, or arguments on a proposed rule, which are submitted to the agency, in written form, through the agency's e-mail systems or electronic listservs.

In order to enhance public awareness about the applicable laws governing various regulated activities, the bill also requires each State agency to post, in a visible and publicly-accessible place on the agency's Internet website:

- (1) the complete and current text of each State law under which the agency is granted its authority, and the complete and current text of each rule or regulation that has been adopted by the agency, or that is proposed for, or is pending, agency adoption; or

(2) one or more URL addresses, which provide visitors to the agency's website with a direct link to the complete and current text of the those laws, rules, and regulations.

The bill would require each agency to make regular and timely updates to the full text documents and URL addresses that are posted on the agency's Internet website, and to take any other reasonable action necessary to ensure that the posted documents and URL addresses accurately reflect, or are directly linked to, as the case may be, the most recent version of the associated law, rule, or regulation, including any amendments or supplements thereto, or repeals thereof. The agency would also be required to indicate on its Internet website, the frequency with which updates are made thereby.

An agency that posts one or more URL addresses on its Internet website would additionally be required to: (1) verify, on a regular basis, the functionality of each URL address; and (2) provide a means by which website visitors can notify the agency, through electronic communication, and through any other reasonable means, of any nonfunctional URL addresses.

The bill amends the definitions section of the "Administrative Procedure Act" to include new definitions for the terms "URL address" and "electronic listserv." The bill also makes technical changes to the definitions' section in order to alphabetize the terms that are defined therein.

This bill implements several policy recommendations that were identified by the State's Red Tape Review Commission in the commission report issued in February 2012.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3321

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2013

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably and with committee amendments Assembly Bill No. 3321.

This bill would require the State's administrative agencies to employ various technologies, including the Internet, electronic mailing list technology, and electronic mail services, in order to streamline the agencies' rule-making notice and comment procedures and facilitate regulatory compliance.

In addition to the other requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the bill would require an agency to:

- (1) make available for public inspection, through publication on the agency's Internet website, all of the agency's rule-making and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rule-making petitions received thereby, as well as a complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures;
- (2) distribute notice of the agency's intended action to interested persons, and publicize the same, through the use of an electronic mailing list or other similar type of subscription-based e-mail service;
- (3) for any proposed rule, make available for public viewing, through posting on the agency's Internet website and through any other reasonable means, a statement summarizing the proposed rule, the potential impacts thereof, and the agency's authority therefor; and
- (4) accept and fully consider data, views, comments, or arguments on a proposed rule, which are submitted to the agency, in written form, through the agency's electronic mail systems or electronic mailing lists.

In order to enhance public awareness about the applicable laws governing various regulated activities, the bill would also require each

State agency to post, in a visible and publicly-accessible place on the agency's Internet website:

(1) the complete and current text of each State law under which the agency is granted its authority, and the complete and current text of each rule or regulation that has been adopted by the agency, or that is proposed for, or is pending, agency adoption; or

(2) one or more URL addresses, which provide visitors to the agency's website with a direct link to the complete and current text of those laws, rules, and regulations.

The bill would require each agency to make regular and timely updates to the full text documents and URL addresses that are posted on the agency's Internet website, and to take any other reasonable action necessary to ensure that the posted documents and URL addresses accurately reflect, or are directly linked to, as the case may be, the most recent version of the associated law, rule, or regulation, including any amendments or supplements thereto, or repeals thereof. The agency would also be required to indicate on its Internet website, the frequency with which updates are made thereby.

An agency that posts one or more URL addresses on its Internet website would additionally be required to: (1) verify, on a regular basis, the functionality of each URL address; and (2) provide a means by which website visitors can notify the agency, through electronic communication, and through any other reasonable means, of any nonfunctional URL addresses.

The bill would amend the definitions section of the "Administrative Procedure Act" to include new definitions for the terms "URL address" and "electronic mailing list", and it would also make technical changes to this section in order to alphabetize the terms that are defined therein.

This bill would implement several policy recommendations that were identified by the State's Red Tape Review Commission in the commission report issued in February 2012.

This bill is identical to Senate Bill No. 2507.

COMMITTEE AMENDMENTS

The committee amended the bill to: 1) correct a typographical error by adding the words "shall be" and thus specify that notice of an intended action by a State agency shall be published in the New Jersey Register in addition to being mailed to all persons who have made timely requests for such information from the effected agency; and 2) remove from the term "electronic listserv" the word "listserv," which is the name of a commercial electronic mailing list software program that allows website visitors to subscribe to an e-mail discussion group or e-mail mailing list, and use instead the term "mailing list."

SENATE, No. 2507

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 14, 2013

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

Senator DAWN MARIE ADDIEGO

District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Amends “Administrative Procedure Act” to require State agencies to use various electronic technologies in rule-making procedures.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/29/2013)

1 AN ACT concerning the use of electronic technology in agency rule-
2 making, and amending P.L.1968, c.410.

3

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

6

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

9 2. As used in this act:

10 **[(a)]** "State agency" or "agency" shall include each of the
11 principal departments in the executive branch of the State
12 Government, and all boards, divisions, commissions, agencies,
13 departments, councils, authorities, offices or officers within any
14 such departments now existing or hereafter established and
15 authorized by statute to make, adopt or promulgate rules or
16 adjudicate contested cases, except the office of the Governor.

17 **[(b)]** "Administrative adjudication" or "adjudication" includes
18 any and every final determination, decision, or order made or
19 rendered in any contested case.

20 "Administrative rule" or "rule," when not otherwise modified,
21 means each agency statement of general applicability and
22 continuing effect that implements or interprets law or policy, or
23 describes the organization, procedure or practice requirements of
24 any agency. The term includes the amendment or repeal of any
25 rule, but does not include: (1) statements concerning the internal
26 management or discipline of any agency; (2) intra-agency and inter-
27 agency statements; and (3) agency decisions and findings in
28 contested cases.

29 "Contested case" means a proceeding, including any licensing
30 proceeding, in which the legal rights, duties, obligations, privileges,
31 benefits or other legal relations of specific parties are required by
32 constitutional right or by statute to be determined by an agency by
33 decisions, determinations, or orders, addressed to them or disposing
34 of their interests, after opportunity for an agency hearing, but shall
35 not include any proceeding in the Division of Taxation, Department
36 of the Treasury, which is reviewable de novo by the Tax Court.

37 **[(c)]** "Administrative adjudication" or "adjudication" includes
38 any and every final determination, decision or order made or
39 rendered in any contested case.

40 **[(d)]** "The head" "Director" means the Director and Chief
41 Administrative Law Judge of the Office of Administrative Law,
42 unless otherwise indicated by context.

43 "Electronic listserv" means a computer program that allows
44 agency website visitors, at their discretion, to subscribe to, or
45 unsubscribe from, an e-mail discussion group or e-mail mailing list

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 controlled by the agency, and which program enables the agency to
2 automatically send e-mail messages to multiple e-mail addresses on
3 the user-generated subscriber list.

4 “Head of the agency" means and includes the individual or group
5 of individuals constituting the highest authority within any agency
6 authorized or required by law to render an adjudication in a
7 contested case.

8 **[(e)** "Administrative rule" or "rule," when not otherwise
9 modified, means each agency statement of general applicability and
10 continuing effect that implements or interprets law or policy, or
11 describes the organization, procedure or practice requirements of
12 any agency. The term includes the amendment or repeal of any
13 rule, but does not include: (1) statements concerning the internal
14 management or discipline of any agency; (2) intraagency and
15 interagency statements; and (3) agency decisions and findings in
16 contested cases.

17 **[(f)]** "License" includes the whole or part of any agency license,
18 permit, certificate, approval, chapter, registration or other form of
19 permission required by law.

20 **[(g)]** "Secretary" means the Secretary of State.

21 **[(h)** "Director" means the Director and Chief Administrative
22 Law Judge of the Office of Administrative Law, unless otherwise
23 indicated by context.]

24 "State agency" or "agency" shall include each of the principal
25 departments in the executive branch of the State Government, and
26 all boards, divisions, commissions, agencies, departments, councils,
27 authorities, offices or officers within any such departments now
28 existing or hereafter established and authorized by statute to make,
29 adopt or promulgate rules or adjudicate contested cases, except the
30 office of the Governor.

31 "URL address" means a Uniform Resource Locator address,
32 which is used for the purposes of Internet navigation and is
33 commonly referred to as a website link, and which uses a protocol,
34 such as "http", and a domain name to identify, and provide website
35 visitors with direct access to, a particular Internet file or website
36 page.

37 (cf: P.L.1993, c.343, s.1)

38

39 2. (New section) a. Notwithstanding any law, rule, or
40 regulation to the contrary, each State agency shall post, in a visible
41 and publicly-accessible location on the agency's Internet website:

42 (1) the complete and current text of each State law under which
43 the agency is granted its authority, and the complete and current
44 text of each rule or regulation that has been adopted by the agency,
45 or that is proposed for, or is pending, agency adoption; or

46 (2) one or more URL addresses, which provide visitors to the
47 agency's website with a direct link to the complete and current text
48 of the documents listed in paragraph (1) of this subsection.

1 b. (1) An agency shall make regular and timely updates to the
2 full text documents and URL addresses posted on its Internet
3 website pursuant to subsection a. of this section, and shall take any
4 other reasonable action necessary to ensure that the posted
5 documents and URL addresses accurately reflect, or are directly
6 linked to, as the case may be, the most recent version of the
7 associated law, rule, or regulation, including any amendments or
8 supplements thereto, or repeals thereof. The agency shall indicate
9 on its Internet website, the frequency with which updates are made
10 pursuant to this paragraph.

11 (2) An agency that posts one or more URL addresses on its
12 Internet website pursuant to subsection a. of this section shall
13 additionally: (a) verify, on a regular basis, the functionality of each
14 URL address; and (b) provide a means by which website visitors
15 can notify the agency, through e-mail communication, and through
16 any other reasonable means, of any nonfunctional URL address.

17
18 3. Section 3 of P.L.1968, c.410 (C.52:14B-3) is amended to
19 read as follows:

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

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

26 (2) adopt rules of practice setting forth the nature and
27 requirements of all formal and informal procedures available,
28 including a description of all forms and instructions used by the
29 agency, and if not otherwise set forth in an agency's rules, a table of
30 all permits and their fees, violations and penalties, deadlines,
31 processing times and appeals procedures . A complete list of the
32 agency's permits, fees, violations, penalties, deadlines, processing
33 times, and appeals procedures shall also be made available for
34 public viewing through publication on the agency's
35 Internet website ;

36 (3) make available for public **[inspection]** viewing, through
37 publication on the agency's Internet website, and through any other
38 means, all final agency orders, decisions, and opinions, in
39 accordance with the provisions of chapter 73 of the laws of 1963 as
40 amended and supplemented (C.47:1A-1 et seq.);

41 (4) make available for public viewing, through publication on
42 the agency's Internet website, all of the agency's rule-making and
43 public hearing notices, publicity documents, press releases, final
44 and non-confidential agency reports, and rule-making petitions
45 received by the agency pursuant to subsection (f) of section 4 of
46 P.L.1968, c.410 (C.52:14B-4); and

47 (5) publish in the New Jersey Register a quarterly calendar
48 setting forth a schedule of the agency's anticipated rule-making

1 activities for the next six months. The calendar shall include the
2 name of the agency and agency head, a citation to the legal
3 authority authorizing the rule-making action and a synopsis of the
4 subject matter and the objective or purpose of the agency's proposed
5 rules.

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

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

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

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

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

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

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

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

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

31 (cf: P.L.2001, c.5, s.1)

32

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

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

37 (1) Give at least 30 days' notice of its intended action. The
38 notice shall include a statement of either the terms or substance of
39 the intended action or a description of the subjects and issues
40 involved, and the time when, the place where, and the manner in
41 which interested persons may present their views thereon. The
42 notice shall be mailed to all persons who have made timely requests
43 of the agency for advance notice of its rule-making proceedings and
44 in addition to other public notice required by law **【shall be】** ,
45 published in the New Jersey Register. Notice shall also be
46 distributed to the news media maintaining a press office to cover
47 the State House Complex, and made available **【electronically】**
48 through the largest nonproprietary cooperative public computer

1 network】 for public viewing through publication on the agency’s
2 Internet website. Each agency shall additionally publicize the
3 intended action and shall adopt rules to prescribe the manner in
4 which it will do so **【, and】** . In order to inform those persons most
5 likely to be affected by or interested in the intended action , each
6 agency shall distribute notice of its intended action to interested
7 persons, and shall publicize the same, through the use of an
8 electronic listserv or similar type of subscription-based e-mail
9 service . 【Methods】 Additional publicity methods that may be
10 employed include publication of the notice in newspapers of general
11 circulation or in trade, industry, governmental or professional
12 publications, distribution of press releases to the news media and
13 posting of notices in appropriate locations , including the agency’s
14 Internet website . The rules shall prescribe the circumstances under
15 which each additional method shall be employed;

16 (2) Prepare for public distribution at the time the notice appears
17 in the Register , and make available for public viewing through
18 publication on the agency’s Internet website, a statement setting
19 forth a summary of the proposed rule, as well as a clear and concise
20 explanation of the purpose and effect of the rule, the specific legal
21 authority under which its adoption is authorized, a description of
22 the expected socio-economic impact of the rule, a regulatory
23 flexibility analysis, or the statement of finding that a regulatory
24 flexibility analysis is not required, as provided in section 4 of
25 P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
26 include an assessment of the number of jobs to be generated or lost
27 if the proposed rule takes effect, an agriculture industry impact
28 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),
29 and a housing affordability impact statement and a smart growth
30 development impact statement, as provided in section 31 of
31 P.L.2008, c.46 (C.52:14B-4.1b);

32 (3) Afford all interested persons a reasonable opportunity to
33 submit data, views, comments, or arguments, orally or in writing.
34 The agency shall consider fully all written and oral submissions
35 respecting the proposed rule , including any written submissions
36 that are received by the agency through its e-mail systems or
37 electronic listservs. If within 30 days of the publication of the
38 proposed rule sufficient public interest is demonstrated in an
39 extension of the time for submissions, the agency shall provide an
40 additional 30 day period for the receipt of submissions by interested
41 parties. The agency shall not adopt the proposed rule until after the
42 end of that 30 day extension.

43 The agency shall conduct a public hearing on the proposed rule
44 at the request of a committee of the Legislature, or a governmental
45 agency or subdivision, or if sufficient public interest is shown,
46 provided such request is made to the agency within 30 days
47 following publication of the proposed rule in the Register. The
48 agency shall provide at least 15 days' notice of such hearing,

1 **【which】** shall publish such hearing notice on its Internet website,
2 and shall **【be conducted】** conduct the hearing in accordance with
3 the provisions of subsection (g) of this section.

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

9 (4) Prepare for public distribution , and make available for
10 public viewing through publication on the agency's Internet
11 website, a report listing all parties offering written or oral
12 submissions concerning the rule, summarizing the content of the
13 submissions and providing the agency's response to the data, views ,
14 comments, and arguments contained in the submissions.

15 (b) A rule prescribing the organization of an agency may be
16 adopted at any time without prior notice or hearing. Such rules
17 shall be effective upon filing in accordance with section 5 of
18 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by
19 the agency.

20 (c) If an agency finds that an imminent peril to the public
21 health, safety, or welfare requires adoption of a rule upon fewer
22 than 30 days' notice and states in writing its reasons for that finding,
23 and the Governor concurs in writing that an imminent peril exists,
24 **【it】** the agency may proceed to adopt the rule without prior notice
25 or hearing, or upon any abbreviated notice and hearing that it finds
26 practicable **【, to adopt the rule】** . **【The】** The agency shall publish,
27 on its Internet website, a summary of any rule adopted pursuant to
28 this subsection, and the statement of reasons for the agency's
29 finding that an imminent peril exists. Any rule adopted pursuant to
30 this subsection shall be effective for a period of not more than 60
31 days , unless each house of the Legislature passes a resolution
32 concurring in its extension for a period of not more than 60
33 additional days. The rule shall not be effective for more than 120
34 days unless repromulgated in accordance with normal rule-making
35 procedures.

36 (d) No rule hereafter adopted is valid unless adopted in
37 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).
38 A proceeding to contest any rule on the ground of noncompliance
39 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et
40 seq.) shall be commenced within one year from the effective date of
41 the rule.

42 (e) An agency may file a notice of intent with respect to a
43 proposed rule-making proceeding with the Office of Administrative
44 Law, for publication in the New Jersey Register at any time prior to
45 the formal notice of action required in subsection (a) of this section.
46 The notice shall be for the purpose of eliciting the views of
47 interested parties on an action prior to the filing of a formal rule
48 proposal. Such notice shall be distributed to interested persons

1 through the use of an electronic listserv or similar type of
2 subscription-based e-mail service, and made available for public
3 viewing through publication on the agency's Internet website. The
4 agency shall afford all interested persons a reasonable opportunity
5 to submit data, views, comments, or arguments, orally or in writing,
6 on the proposed action, and shall fully consider all written and oral
7 submissions, including any written submissions received by the
8 agency through its e-mail systems or electronic listservs. An
9 agency may use informal conferences and consultations as means of
10 obtaining the viewpoints and advice of interested persons with
11 respect to contemplated rule-making. An agency may also appoint
12 committees of experts or interested persons or representatives of the
13 general public to advise it with respect to any contemplated rule-
14 making.

15 (f) An interested person may petition an agency to adopt a new
16 rule, or amend or repeal any existing rule. Such petition may be
17 submitted to the agency through mail, e-mail, electronic listserv, or
18 through any other means. Each agency shall prescribe by rule the
19 form for the petition and the procedure for the **[submission,]**
20 consideration and disposition of the petition. The petition shall
21 state clearly and concisely:

22 (1) The substance or nature of the rule-making which is
23 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
27 requested action.

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

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

47 If an agency fails to act in accordance with the time frame set
48 forth in the preceding paragraph, upon written request by the

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

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

47 (cf: P.L.2008, c.46, s.3)

48

1 posted on the agency's Internet website, and to take any other
2 reasonable action necessary to ensure that the posted documents and
3 URL addresses accurately reflect, or are directly linked to, as the
4 case may be, the most recent version of the associated law, rule, or
5 regulation, including any amendments or supplements thereto, or
6 repeals thereof. The agency would also be required to indicate on its
7 Internet website, the frequency with which updates are made
8 thereby.

9 An agency that posts one or more URL addresses on its Internet
10 website would additionally be required to: (1) verify, on a regular
11 basis, the functionality of each URL address; and (2) provide a
12 means by which website visitors can notify the agency, through
13 electronic communication, and through any other reasonable means,
14 of any nonfunctional URL addresses.

15 The bill amends the definitions section of the "Administrative
16 Procedure Act" to include new definitions for the terms "URL
17 address" and "electronic listserv." The bill also makes technical
18 changes to the definitions' section in order to alphabetize the terms
19 that are defined therein.

20 This bill implements several policy recommendations that were
21 identified by the State's Red Tape Review Commission in the
22 commission report issued in February 2012.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 2507

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2013

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably and with committee amendments Senate Bill No. 2507.

This bill requires the State's administrative agencies to employ various technologies, including the Internet, electronic mailing list technology, and electronic mail services, to streamline the agencies' rule-making notice and comment procedures and facilitate regulatory compliance.

In addition to the other requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the bill requires an agency to:

- (1) make available for public inspection, through publication on the agency's Internet website, all of the agency's rule-making and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rule-making petitions received thereby, as well as a complete list of the agency's permits, fees, violations, penalties, deadlines, processing times, and appeals procedures;
- (2) distribute notice of the agency's intended action to interested persons, and publicize the same, through the use of an electronic mailing list or other similar type of subscription-based e-mail service;
- (3) for any proposed rule, make available for public viewing, through posting on the agency's Internet website and through any other reasonable means, a statement summarizing the proposed rule, the potential impacts thereof, and the agency's authority therefor; and
- (4) accept and fully consider data, views, comments, or arguments on a proposed rule, which are submitted to the agency, in written form, through the agency's electronic mail systems or electronic listservs.

In order to enhance public awareness about the applicable laws governing various regulated activities, the bill also requires each State

agency to post, in a visible and publicly-accessible place on the agency's Internet website:

(1) the complete and current text of each State law under which the agency is granted its authority, and the complete and current text of each rule or regulation that has been adopted by the agency, or that is proposed for, or is pending, agency adoption; or

(2) one or more URL addresses, which provide visitors to the agency's website with a direct link to the complete and current text of those laws, rules, and regulations.

The bill would require each agency to make regular and timely updates to the full text documents and URL addresses that are posted on the agency's Internet website, and to take any other reasonable action necessary to ensure that the posted documents and URL addresses accurately reflect, or are directly linked to, as the case may be, the most recent version of the associated law, rule, or regulation, including any amendments or supplements thereto, or repeals thereof. The agency would also be required to indicate on its Internet website, the frequency with which updates are made thereby.

An agency that posts one or more URL addresses on its Internet website would additionally be required to: (1) verify, on a regular basis, the functionality of each URL address; and (2) provide a means by which website visitors can notify the agency, through electronic communication, and through any other reasonable means, of any nonfunctional URL addresses.

The bill amends the definitions section of the "Administrative Procedure Act" to include new definitions for the terms "URL address" and "electronic mailing list." The bill also makes technical changes to the definitions' section in order to alphabetize the terms that are defined therein.

This bill implements several policy recommendations that were identified by the State's Red Tape Review Commission in the commission report issued in February 2012.

This bill is identical to Assembly Bill No. 3321.

COMMITTEE AMENDMENTS

The committee amended the bill to: 1) correct a typographical error by adding the words "shall be," and thus clarifying that notice of an intended action by a State agency shall be published in the New Jersey Register in addition to being mailed to all persons who have made timely requests for such information from the effected agency; and 2) remove from the term "electronic listserv" the word "listserv," which is the name of a commercial electronic mailing list software program that allows website visitors to subscribe to an e-mail discussion group or e-mail mailing list, and use instead the term "mailing list."