

January 20, 1969

LEGISLATIVE HISTORY OF NJRS 52:14B-1 to 15
(Administrative Procedure Act)

New Constitution (1947) mandated publication of all administrative rules and regulations. (see N.J. Constitution Art 5, § 4 Par 6).

Bills to implement the constitutional mandate were introduced beginning in 1948:

1948-S21

Intro Mar 22 by Armstrong
Bill had statement (cop enc)
Public hearing held:
974.90 N.J. Senate and Assembly Committees on State
R424 department reorganization.
1948d
Public hearing on S.21. . .held April 22, 1948.

As a result of this hearing, a Committee Substitute for S21 was introduced Aug 16, 1948. It reached 2nd reading in Senate.

1949-S217 (Clapp)

Died in committee.
Statement on bill.

1950 - S263 (Wallace, Clapp, Summerhill)

Died in committee.
Statement on bill.

1952 - S48 (Clapp, Wallace, Summerhill)

Passed in Senate, amended.
Had 2nd reading, Assembly.
Statement on bill (copy enc.)

1955 - S277 (Lance) - Admin. Procedure Act

Died in Jud. Com.;
Statement on bill.

1956 - S42 (Ridolfi) - Admin. Procedure Act

Amended by Jud. Com.
Died after 2nd reading.
Statement on bill.

1957 - A515 (Franklin) - Admin. Procedure Act

Died in Revision and Amend. of Laws Com. No Statement
A516 (Franklin) - "Rules of Admin. Agencies Act"
Companion bill to A515.
Died in Com. No Statement.

Library

1958 - A338 (Franklin, Hauser) - Admin. Procedure Act
Amended in Com., and Passed Assembly amended.
Died in Senate. No Statement.

- A337 (Franklin, Hauser) Publication of Agency Rules & Regs.
Companion bill to A338. Passed Assembly, died in Senate.
Statement on bill.

- S34 (Jones) Admin. Procedure Act.
Died in Jud. Com.
No Statement.

- S54 (Jones) - "Rules of Admin. Agencies Act."
Died in Jud. Com.
No Statement

1959 - A240 (Franklin, etc.) - Admin. Procedure Act.
Passed Assembly; died in Senate Jud. Com.
No Statement.

- A239 (Franklin, etc.) - Implements Art. V. IV, Par 6, N.J.
Constitution. Companion to A240.
Passed Assembly; died in Senate Jud. Com.
Statement on bill.

1960 - A176 (Franklin, etc.) Admin. Procedure Act.
Died in Com.
No Statement

- A174 (Franklin, etc.) - Implements Art. V, § IV, Par 6,
N.J. Constitution. Companion to A176.
Died in Com.
Statement on bill.

1961 - A144 (Franklin, etc.) Admin. Procedure Act.

Amended in Com.; passed Assembly amended;
Died in Senate Com.
No Statement

-A148 (Franklin, etc.) - Implements Art V, § IV, Par 6, N.J.
Constitution. Companion to A144. Amended twice in Com.
Passed in Assembly; died in Senate Com.
Statement on bill.

1962 - A385 (Matthews, Mandelbaum, Lubetkin, Maraziti).
Died in Com.

Statement on bill. (" . . . recommended by the Special
Committee on Administrative Law of the New Jersey State
Bar Association.")

1962 - AJR22 (Matthews, etc.) - created 6-member Commission to study administrative procedures and draft an Act.
Died in Com.

1963 - AJR26 (Lubetkin) - recreated study commission.
Died in Com.
Statement on bill.

No bills found for years 1964, 1965, 1966 and 1967.

Bill which became law was:

1968 - Chap. 410 - S667
Introduced Apr 18 by Knowlton (and 5 others).

NO STATEMENT ON BILL.

June 20 - p. Sen.

June 24 - p. Assembly.

Dec 27 - cond. vetoed by Gov (cop enc)

Jan 14, 1969 - Re-passed both houses

Jan 14, 1969 - App - Chap 410 (OCR-CC ENCLOSED)

HP and RSL

Official Reports, etc.

974.90 N. J. Legislature Joint Committee on State Departmental Reorganization.
R424 Public Hearing on Senate Bill 21, 1948.
1948d

Periodical Articles, Bar Association Reports, etc.

NJ
KFN
2240
D38
1938

Jacobs, Nathan L. and Davis, Nathan, A Report on the State Administrative Agency in New Jersey. 1938.

**

Emmerglick, L.J. A legislative framework of State Administrative Procedure. 71 NJLJ 41, Feb 5, 1948.
(Xerox)

N.J. State Bar Ass'n. Report. Administrative Law. 73 NJLJ 166 May 25, 1950.
(Xerox)

N.J. State Bar Ass'n. Report. Administrative Law. 76 NJLJ 145 April 30, 1953.
(Xerox)

Schwartz, Bernard The Model State Administrative Procedure Act - Analysis and Critique. 7 Rutgers L R 434, Spring 1953.

*

Proposal for a State APA and its application to the Division of Alcoholic Beverage Control. (Edit) 77 NJLJ 44. Feb 11, 1954.
(Xerox)

Prospectus for an Acceptable APA (Edit.) 77 NJLJ 76 March 11, 1954.
(Xerox)

N.J. State Bar Ass'n. Report. Administrative Law. 77 NJLJ 133 April 22, 1954.
(Xerox)

Administrative Procedure Subject to Panel Discussion. (Edit) 77 NJLJ 145.
May 6, 1954.
(Xerox)

> *A REFORM - LONG OVERDUE (EDITORIAL)*
77 NJLJ 164
May 13, 1954

The Administrative Procedure Act Revised (Edit.) 77 NJLJ 270
August 5, 1954.
(Xerox)

N.J. State Bar Ass'n Report. Administrative Law. 77 NJLJ 413
Dec 9, 1954.
(Xerox)

N.J. State Bar Ass'n Report. Administrative Law. 78 NJLJ 145
May 5, 1955; 417, Dec 8, 1955
(No new material)

* LEWIS, ARTHUR W. ADMINISTRATIVE LAW. 9 RUTGERS L. REV. 45 (1953) (more)

** J353.9 VOGEL, CLARK CRANE. STUDY OF STATE ADMINISTRATIVE AGENCIES IN NEW JERSEY PREPARED... UNDER THE SUPERVISION OF NATHAN L. JACOBS... [NEWARK] 1941.
V87

- N.J. State Bar Ass'n Report. Administrative Law 79 NJLJ 154
May 3, 1956.
(no new material)
- N.J. State Bar Ass'n Report. Administrative Law 81 NJLJ 259
May 15, 1958.
(Xerox)
- Administrative & Judicial Process: A Contrast (Edit.) 82 NJLJ
March 19, 1959.
(Xerox)
- N.J. State Bar Ass'n Report. Administrative Law Committee
82 NJLJ 587, Nov 26, 1959.
(no new material)
- Publication of Administrative Rules and Regulations (Edit.) 84 NJLJ 16
Jan 12, 1961.
(Xerox)
- N.J. State Bar Ass'n Report. Administrative Law 84 NJLJ 588
Nov 9, 1961
(no new material)
- N.J. State Bar Ass'n Report. Administrative Law 85 NJLJ 257
May 10, 1962
(no new material)
- Administrative Agencies -- the fourth branch. (Editorial) 85 NJLJ 472
Sept 6, 1962.
(Xerox)
- Renewed efforts for administrative procedure reform. (Editorial)
86 NJLJ 128, Mar 3, 1963.
(Xerox)
- Keinger, A. H.
(Letter to the editor on New Jersey administrative procedure)
86 NJLJ 156, Mar 21, 1963.
(Xerox)
- N.J. State Bar Ass'n. Report. Administrative Law 86 NJLJ 264
May 9, 1963; 86NJLJ 639, Nov 14, 1963.
(no new material)
- N.J. State Bar Ass'n. Report. Administrative Law 88 NJLJ 298
May 6, 1965.
(no new material)
- Continuing need for clarification of administrative procedures. (Editorial)
88 NJLJ 488, July 29, 1965.
(Xerox)

On Administrative Rule Making (Edit.) 88 NJLJ
Sept 30, 1965.
(Xerox)

N.J. State Bar Ass'n. Report. Administrative Law 89 NJLJ 307
May 12, 1966.
(no new material)

Administrative Procedure Act again on State bar agenda. 89 NJLJ 714
Nov 3, 1966.
(Xerox)

New Jersey State Bar Ass'n. Section on Administrative Law.
Chairman's Report. (Vol.II, No.11, Aug, 1966).

Publication of Administrative Rules (Edit.) 90 NJLJ 620.
Sept. 21, 1967.

Senate 667 -- "The Administrative Procedure Act" (Editorial)
91 NJLJ 312, May 16, 1968.

CHAPTER 410 LAWS OF N. J. 1968

APPROVED 1/14/69

CORRECTED COPY

[OFFICIAL COPY REPRINT]

SENATE, No. 667

STATE OF NEW JERSEY

INTRODUCED APRIL 18, 1968

By Senators KNOWLTON, HAGEDORN, DICKINSON,
WOODCOCK and SCHIAFFO

Referred to Committee on Judiciary

AN ACT concerning practice and procedure of administrative agencies of the State.

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

1 1. This act shall be known and may be cited as the "Administra-
2 tive Procedure Act."

1 2. As used in this act:

2 (a) "State agency" or "agency" shall include each of the
2A principal departments in the executive branch of the State Govern-
3 ment, and all boards, divisions, commissions, agencies, depart-
4 ments, councils, authorities, offices or officers within any such de-
5 partments now existing or hereafter established and authorized
6 by statute to make, adopt or promulgate rules or adjudicate con-
7 tested cases, except **the office of the Governor.** the Division of
8 Workmen's Compensation in the Department of Labor and Indus-
9 try, **[and]** the Department of Defense, and any boards, divisions,
10 commissions, councils, agencies, departments, authorities, offices
11 or officers therein, and all **[boards or]** agencies **[concerned*
12 *with (to the extent that they or any of them are so concerned with)*
13 *the management, confinement, discipline or release of inmates of*
13A *any penal or correctional institution]** **the primary responsibility*
13B *of which is the management or operation of a State educational,*
13C *medical, mental, rehabilitative, custodial, penal or correctional in-*
13D *stitution or program, insofar as the acts of such agency relate to*
13E *the internal affairs of such institution or program.**

14 (b) "Contested case" means a proceeding, including any li-
15 censing proceeding, in which the legal rights, duties, obligations,
16 privileges, benefits or other legal relations of specific parties are

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

17 required by constitutional right or by statute to be determined by
 18 an agency by decisions, determinations, or orders, addressed to
 19 them or disposing of their interests, after opportunity for an agency
 20 hearing.

21 (c) "Administrative adjudication" or "adjudication" includes
 22 any and every **final** determination, decision or order made or
 23 rendered in any contested case.

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

28 *[(e) "Presiding officer" means an officer presiding at the taking
 29 of evidence in a contested case pursuant to this act.]*

30 **(e) "Administrative rule" or "rule," when not otherwise
 31 modified, means each agency statement of general applicability and
 32 continuing effect that implements or interprets law or policy, or
 33 describes the organization, procedure or practice requirements of
 34 any agency. The term includes the amendment or repeal of any rule,
 35 but does not include: (1) statements concerning the internal man-
 36 agement or discipline of any agency; (2) intra-agency and inter-
 37 agency statements; and (3) agency decisions and findings in con-
 38 tested cases.**

39 (f) "License" includes the whole or part of any agency license,
 40 permit, certificate, approval, chapter, registration or other form
 40A. of permission required by law.

41 **(g) "Secretary" means the Secretary of State.*

42 *(h) "Director" shall mean the Director of the Division of
 43 Administrative Procedure, unless otherwise indicated by context.**

1 3. *[(a)]* In addition to other rule-making requirements imposed
 2 by law, each agency shall:

3 (1) *[(Adopt)]* **adopt** as a rule a description of its organ-
 4 ization, stating the general course and method of its operations
 5 and the methods whereby the public may obtain information or
 6 make submissions or requests;

7 (2) *[(Adopt)]* **adopt** rules of practice setting forth the
 8 nature and requirements of all formal and informal procedures
 9 available, including a description of all forms and instructions
 10 used by the agency;

11 *[(3)]* Make available for public inspection all rules and all
 12 other written statements of policy or interpretations formu-
 13 lated, adopted, or used by the agency in the discharge of its
 14 functions;]*

15 *[(4)]* **(3) make** available for public inspection all
 16 final orders, decisions, and opinions *, *in accordance with the*

16A *provisions of chapter 73 of the laws of 1963 as amended and*
 16B *supplemented (c. 47:1A-1 et seq.).**

17 *[(b) No agency rule, order, or decision is valid or effective
 18 against any person or party, nor may it be invoked by the agency
 19 for any purpose, until it has been made available for public inspec-
 20 tion as herein required. This provision is not applicable in favor
 21 of any person or party who has actual knowledge thereof.]*

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

3 (1) Give at least 20 days' notice of its intended action. The
 4 notice shall include a statement of either the terms or substance
 5 of the intended action or a description of the subjects and issues
 6 involved, and the time when, the place where, and the manner
 7 in which interested persons may present their views thereon.
 8 The notice shall be mailed to all persons who have made timely
 9 request of the agency for advance notice of its rule-making
 10 proceedings and in addition to other public notice required by
 11 law shall be published in the New Jersey Register;

12 (2) Afford all interested persons reasonable opportunity to
 13 submit data, views, or arguments, orally or in writing. *[(In
 14 case of substantive rules, opportunity for oral hearing shall be
 15 granted if requested by 25 persons, by a county or municipality
 16 governmental subdivision or public agency, or by an associa-
 17 tion having not less than 25 members.]* The agency shall con-
 18 sider fully all written and oral submissions respecting the
 19 proposed rule. *[(Upon adoption of a rule, the agency, if re-
 20 quested to do so by an interested person either prior to
 21 adoption or within 30 days thereafter, shall issue a concise
 22 statement of the principal reasons for and against its adop-
 23 tion, incorporating therein its reasons for overruling the con-
 24 siderations urged against its adoption.]*

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

29 *[(b)]* **(c)** If an agency finds that an imminent peril to the
 30 public health, safety, or welfare requires adoption of a rule upon
 31 fewer than 20 days' notice and states in writing its reasons for
 32 that finding, it may proceed without prior notice or hearing or upon
 33 any abbreviated notice and hearing that it finds practicable, to
 34 adopt *[(an emergency)]* **the** rule. *[(The rule may be effective
 35 for a period of not longer than 120 days, but the adoption of an

36 identical rule under subsections (a) (1) and (a) (2) of this section
37 is not precluded during such period.]*

38 *[(c)]* *(d)* No rule hereafter adopted is valid unless adopted
39 in substantial compliance with this section. A proceeding to contest
40 any rule on the ground of noncompliance with the procedural re-
41 quirements of this section must be commenced within *[2 years]*
42 *1 year* from the effective date of the rule.

1 5. (a) Each agency shall file in the office of the Secretary of
2 State a certified copy of each rule adopted by it *[, including all
3 rules existing on the effective date of this act not theretofore so
4 filed. The Secretary of State shall keep a permanent register of
5 the rules open to public inspection].*

6 (b) Each rule hereafter adopted is effective *[20 days after]*
7 *upon* filing*[, except that:]* **with the Secretary of State.**

8 *(1) If a later date is required by statute or specified in the
9 rule, the later date is the effective date;]*

10 *(2) Subject to applicable constitutional or statutory provi-
11 sions, an emergency rule becomes effective immediately upon
12 filing with the Secretary of State, or at a stated date less
13 than 20 days thereafter, if the agency finds that this effective
14 date is necessary because of imminent peril to the public
15 health, safety, or welfare. The agency's finding and a brief
16 statement of the reasons therefor shall be filed with the rule.
17 The agency shall take appropriate measures to make emer-
18 agency rules known to the persons who may be affected by
19 them.]*

20 *(c) The Secretary of State shall: (1) accept for filing or publi-
21 cation any rule duly adopted and submitted by any agency pursuant
22 to this act; (2) endorse upon the certified copy of each rule accepted
23 for filing pursuant to this act the date and time upon which such
24 rule was filed; and (3) maintain the certified copy of each rule so
25 filed in a permanent register open to public inspection.

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

34 (e) The publication of a rule in the New Jersey Administrative
35 Code or the New Jersey Register shall be deemed to establish the
36 rebuttable presumption that the rule was duly filed and that the

37 text of the rule as so published is the text of the rule adopted.
38 Judicial notice shall be taken of the text of each rule published in
39 the New Jersey Administrative Code or the New Jersey Register.*

1 *6. (a) There is hereby created in the Department of State a
2 Division of Administrative Procedure.

3 (b) The secretary shall employ and assign to the division such
4 personnel as shall enable the division to discharge its responsi-
5 bilities effectively and efficiently. The Department of State shall
6 furnish such funds, equipment, and personnel as is necessary to
7 implement the work of the division within the limits of appropri-
8 ations for the purpose.

9 (c) The division shall be under the immediate supervision of a
10 director who shall be a person qualified by training and experience
11 to direct the work of such division. The director shall be appointed
12 by the secretary without regard to the provisions of the Civil Serv-
13 ice Law, Title 11, New Jersey Statutes, and shall serve at the
14 pleasure of the secretary and until the director's successor is
15 appointed and has qualified. He shall receive such salary as is
16 provided by law. The director: (1) shall administer the work
17 of the division under the direction and supervision of the secretary;
18 (2) shall perform such functions, in addition to the work of the
19 division, as the secretary may prescribe; (3) shall organize and
20 reorganize the division; (4) shall assign and reassign personnel
21 to employment within the division; (5) shall perform or cause to
22 be performed the work of the division in such manner and pursuant
23 to such program as he may deem necessary and appropriate; (6)
24 shall employ as necessary the services of the several departments
25 and agencies of State Government and of the employees of such
26 departments and agencies, in such manner and to such extent as
27 may be agreed upon by the chief executive officer of such depart-
28 ment or agency and the secretary.

29 (d) The secretary shall oversee the implementation of this act
30 by each agency and is empowered to do all things necessary and
31 appropriate to that end. The secretary shall delegate to the director
32 his responsibility and authority pursuant to this act, or such of
33 that responsibility and authority as he may deem desirable, which
34 shall be exercised under his supervision and direction.

35 (e) The division: (1) shall advise agencies concerning their obli-
36 gations under this act, subject to the provisions of section 4(b)
37 and 4(e) of chapter 20, laws of 1944, as amended and supplemented
38 (C. 52:17A-4b and 4b and 4e); (2) shall advise agencies in connec-
39 tion with the preparation, consideration, publication and interpre-
40 tation of rules required or appropriate pursuant to this act; (3)

41 shall, to the extent and in such manner as the director may deem
 42 appropriate, assist agencies in the preparation of rules to the end
 43 that such rules be uniform and consistent to the extent practicable;
 44 (4) shall secure, compile, and maintain as reference material rules
 45 and supporting information appropriate to the exercise of its re-
 46 sponsibilities; (5) shall effect and maintain liaison with agencies
 47 to assure compliance with this act; (6) shall formulate inter-
 48 departmental rules for the prompt, proper and co-ordinated pro-
 49 mulgation of all rules required or appropriate pursuant to this
 50 act; (7) shall have access to information concerning each agency
 51 to assure the proper promulgation of all rules required by law;
 52 (8) shall advise each agency and, to such extent as the director may
 53 deem appropriate, shall establish standards regarding the conduct
 54 of hearings.*

1 ***[6.]*** *7.* (a) The ***[Secretary of State]*** *director* shall com-
 2 pile, index, and publish *a publication to be known as the "New
 3 Jersey Administrative Code," containing* all effective rules adopted
 4 by each agency. ***[Compilations]*** *The code* shall be periodically
 5 supplemented or revised.

6 (b) The ***[Secretary of State]*** *director* shall publish a monthly
 7 bulletin to be known as the "New Jersey Register" setting forth
 8 *: (1)* the text of all rules filed during the preceding month ***[ex-**
 9 cluding rules in effect upon the adoption of this act]* *, and (2) such
 10 notices as shall have been submitted pursuant to this act.*

11 (c) The ***[Secretary of State]*** *director* may omit from the
 12 New Jersey Register or compilation any rule the publication of
 13 which would be unduly cumbersome, expensive, or otherwise in-
 14 expedient, if the rule in printed or processed form is made avail-
 15 able *by the adopting agency* on application ***[to the adopting**
 16 agency]* *thereto*, and if the register or ***[compilation]*** *code*
 17 contains a notice stating the general subject matter of the omitted
 18 rule and stating ***[how]*** *the manner in which* a copy thereof
 19 may be obtained. *He may include within the New Jersey Register
 20 and the New Jersey Administrative Code any document, material
 21 or information which he in his discretion may deem appropriate
 22 and convenient.*

23 (d) Copies of the New Jersey Register and compilations shall
 24 be made available upon request to agencies and officials of this
 25 State *and such other public officials as the director may designate*
 26 free of charge and to other persons at prices fixed by the ***[Secre-**
 27 tary of State]* *director* to cover mailing and publication costs.

28 (e) To facilitate uniformity in the compilation and indexing of
 29 all agency rules, the ***[Secretary of State]*** *director*, in col-

30 laboration with the Director of the Division of the State Library,
 31 Archives and History, shall formulate and distribute to all agencies
 32 standards for the form, arrangement, numbering and indexing of
 33 agency rules and shall consult with each agency in the preparation
 34 of compilations of its rules.

35 **(f) The director may determine the order in which such rules*
 36 *or any parts thereof are to be presented in the New Jersey Register*
 37 *and the New Jersey Administrative Code; he may number or re-*
 38 *number the parts, paragraphs and sections into which such rules*
 39 *may be divided; he may further divide or combine existing parts,*
 40 *paragraphs and sections and he may provide for appropriate*
 41 *digests, indices and other related material. He shall not, however,*
 42 *change the language of any existing rule excepting a title or*
 43 *explanatory caption; but he shall recommend any such changes as*
 44 *he may deem advisable to the administrative agency authorized to*
 45 *adopt such rule.*

46 *(g) The director is hereby authorized and empowered to promul-*
 47 *gate and enforce inter-agency rules for the implementation and*
 48 *administration of this act.**

1 ***[7. Any interested person may petition an agency requesting**
 2 **the promulgation, amendment, or repeal of a rule.]***

1 ***[8. The validity or applicability of a rule may be judicially de-**
 2 **termined by petition for a declaratory judgment in the Appellate**
 3 **Division of the Superior Court in accordance with the Rules of**
 4 **Civil Practice, if it is alleged that the rule, or its threatened**
 5 **application, interferes with or impairs, or threatens to interfere**
 6 **with or impair, the legal rights or privileges of the plaintiff. The**
 7 **agency shall be made a party to the action.]***

1 ***[9.]* *8.* Declaratory rulings. *On request of any interested**
 2 **person, an agency may in its sound]** **Subject to the provisions*
 3 *of section 4(b) and 4(e) of chapter 20, laws of 1944, as amended*
 4 *and supplemented (C. 52:17A-4b and 4e), an agency upon the*
 5 *request of any interested person may in its* discretion make a*
 6 *declaratory ruling with respect to the applicability to any person,*
 7 *property or state of facts of any statute or rule enforced or admin-*
 8 *istered by that agency. A declaratory ruling shall bind the agency*
 9 *and all parties to the proceedings on the state of facts alleged. Full*
 10 *opportunity for hearing shall be afforded to the interested parties.*
 11 *Such ruling shall be deemed a final decision or action subject to*
 12 *review in the Appellate Division of the Superior Court. Nothing*
 13 *herein shall affect the right or practice of every agency in its sole*
 14 *discretion to render advisory opinions.*

1 ***[10.]*** *9.* (a) In a contested case, all parties shall be afforded
2 an opportunity for hearing after reasonable notice.

3 (b) The notice shall include *in addition to such other informa-*
3A *tion as may be deemed appropriate* *:

4 (1) A statement of the time, place, and nature of the hearing;

5 (2) A statement of the legal authority and jurisdiction under
6 which the hearing is to be held;

7 (3) A reference to the particular sections of the statutes and
8 rules involved;

9 (4) A short and plain statement of the matters asserted. If
10 the agency or other party is unable to state the matters in detail
11 at the time the notice is served, the initial notice may be limited
12 to a statement of the issues involved. Thereafter upon applica-
13 tion a more definite and detailed statement shall be furnished.

14 (c) Opportunity shall be afforded all parties to respond, appear
15 and present evidence and argument on all issues involved ***[pro**
16 **se or by an attorney-at-law]***.

17 (d) Unless precluded by law, informal disposition may be made
18 of any contested case by stipulation, agreed settlement, **or**
19 consent order **[, or default]***.

20 ***(e)** The record in a contested case shall include:

21 (1) All pleadings, motions, intermediate rulings;

22 (2) Evidence received or considered;

23 (3) A statement of matters officially noticed;

24 (4) Questions and offers of proof, objections, and rulings
25 thereon;

26 (5) Proposed findings and exceptions;

27 (6) Any decision, opinion, or report by the officer presiding
28 at the hearing;

29 (7) All staff memoranda or data submitted to the hearing
30 officer or members of the agency in connection with their con-
31 sideration of the case.]*

31A ***(f)*** *(e)** Oral proceedings or any part thereof shall be
32 transcribed on request of any party *at the expense of such party**.

33 ***(g)*** *(f)** Findings of fact shall be based exclusively on the
34 evidence and on matters officially noticed.

35 ***(h)*** *(g)** Unless otherwise provided by any law, agencies
36 may place on any party the responsibility of requesting a hearing if
37 the agency notifies him in writing of his right to a hearing and of his
38 responsibility to request the hearing.

1 ***[11.]*** *10.* In contested cases:

2 ***(a)** The parties shall not be bound by common law or statutory
3 rules of evidence. They shall admit all testimony having reasonable

4 probative value, but shall exclude immaterial, irrelevant or unduly
 5 cumulative testimony. They shall give effect to the rules of privi-
 6 lege recognized by law. Every party shall have the right to present
 7 his case or defense by oral and documentary evidence, to submit
 8 rebuttal evidence and to conduct such cross-examination as may be
 9 required for a full and true disclosure of the facts.]*

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

22 (b) Notice may be taken of judicially ***[cognizable]*** *noticeable**
 23 facts. In addition, notice may be taken of generally recognized
 24 technical or scientific facts within the agency's specialized knowl-
 25 edge. Parties shall be notified either before or during the hearing,
 26 or by reference in preliminary reports or otherwise, of the material
 27 notice, including any staff memoranda or data, and they shall be
 28 afforded an opportunity to contest the material so noticed. The
 29 agency's experience, technical competence, and specialized knowl-
 30 edge may be utilized in the evaluation of the evidence.

1 ***[12.** Every administrative adjudication in a contested case in
 2 which a hearing has been held or waived shall become the final
 3 decision of the agency :

4 (a) When the head of the agency consists of a single individual,
 5 who presides and renders decision, or where such head of the agency
 6 designates a special hearer without power to make decisions under
 7 section 9 (b) (8) of the act, or to recommend a report, decision,
 8 findings of fact or conclusions of law, which limitations are an-
 9 nounced at the hearing and an opportunity has been afforded each
 10 party of record to present argument to the head of the agency,
 11 either orally or in writing, and the head of the agency renders
 12 decisions ; or

13 (b) When a person designated by statute to hear and finally
 14 decide contested cases for an agency presides and renders decisions ;
 15 or

16 (c) When the head of the agency is a group of individuals, all
 17 or a majority of whom preside and a majority of the head of the
 18 agency concur in the decision; or

19 (d) When the head of the agency is a group of individuals, and
 20 less than a majority preside and render decision, and the time for
 21 filing a petition for reconsideration by the head of the agency has
 22 expired without petition being filed, and in cases where such a
 23 petition is filed, or where the decision is reviewed by the agency
 24 on its own motion, decision has been rendered by not less than a
 25 majority after opportunity for all parties to present argument in
 26 the manner prescribed by agency rules; or]*

27 *[(e)]* *(c)* When a *[hearer] *person not empowered to
 28 render an administrative adjudication* is designated by the head
 29 of the agency as the presiding officer, *[and (1)]* his recom-
 30 mended report and decision containing recommended findings of
 31 fact and conclusions of law [has been]* *shall be* filed with
 32 the agency and delivered or mailed to the parties of record*, [or
 33 their attorneys of record]*; and *[(2)]* an opportunity *[has
 34 been]* *shall be* afforded each party of record to file exceptions,
 35 objections and replies thereto, and to present argument to the head
 36 of the agency or a majority thereof, either orally or in writing,
 37 as the agency may order[; and (3) the]*. *The* head of the
 38 agency *[has adopted, rejected or modified]* *shall adopt, reject
 39 or modify* the recommended report and decision. The recom-
 40 mended report and decision shall be a part of the record in the
 41 case.

42 *[Every agency shall promulgate rules of procedure to provide
 43 for exceptions, objections, rehearing, reargument or reconsidera-
 44 tion in contested cases decided by presiding officers under this
 45 section.

46 Any provision of this section, or rules promulgated under this
 47 section, may be waived by the parties of record in writing or orally
 48 in open hearing on the record.]*

1 *[(13.)]* *(d)* A final decision or order adverse to a party in a
 2 contested case shall be in writing or stated in the record. A final
 3 decision shall include findings of fact and conclusions of law, sep-
 4 arately stated. Findings of fact, if set forth in statutory language,
 5 shall be accompanied by a concise and explicit statement of the
 6 underlying facts supporting the findings. If, in accordance with
 7 agency rules, a party submitted proposed findings of fact, the deci-
 8 sion shall include a ruling upon each proposed finding. Parties
 9 shall be notified either personally or by mail of any decision or
 10 order. Upon request a copy of the decision or order shall be deliv-

11 ered or mailed forthwith by registered or certified mail to each
12 party and to his attorney of record.

1 ***[14.]** *(e)* Except where otherwise provided by law, the ad-
2 ministrative adjudication of the agency shall be effective on the
3 date of delivery or on the date of mailing, of the final decision to
4 the parties of record, ***[or their attorneys of record]*** **whichever*
5 *shall occur first**, or shall be effective on any date after the date
6 of delivery or mailing, as the agency may provide by general rule
7 or by order in the case. The date of delivery or mailing shall be
8 stamped on the face of the decision.

1 ***[15.]*** **11.** No agency shall revoke or refuse to renew any
2 license unless it has first afforded the licensee an opportunity for
3 hearing in conformity with the provisions of this act applicable
4 to contested cases. If a licensee has, in accordance with law and
5 agency rules, made timely and sufficient application for a renewal,
6 his license shall not expire until his application has been finally
7 determined by the agency. Any agency that has authority to sus-
8 pend a license without first holding a hearing shall promptly upon
9 exercising such authority afford the licensee an opportunity for
10 hearing in conformity with the provisions of this act.

11 This section shall not apply (1) where a statute provides that an
12 agency is not required to grant a hearing in regard to revocation,
13 suspension or refusal to renew a license, as the case may be; or
14 (2) where the agency is required by any law to revoke, suspend
15 or refuse to renew a license, as the case may be, without exercising
16 any discretion in the matter, on the basis of a ***[court conviction**
17 **or]*** judgment **of a court of competent jurisdiction**; or (3) where
18 the suspension or refusal to ***[review]*** **renew** is based solely
19 upon failure of the licensee to maintain insurance coverage as re-
20 quired by any law or regulation.

1 ***[16.]*** **12.** Whenever under statute or agency rule there is a
2 mode of administrative review within an agency, such review shall
3 remain unimpaired and ***[the]*** **any** judicial review shall be from
4 the final action of the agency ***[by appeal to the Appellate Division**
5 **of the Superior Court]***. The administrative review within the
6 agency need not comply with the requirements for the conduct of
7 contested cases ***[except section 12 of this act]***.

1 ***[17.]** The filing of an appeal to the Appellate Division of the
2 Superior Court shall not stay enforcement of the agency decision
3 except where the agency otherwise provides by order or as is other-
4 wise provided by the rules of court.*

1 ***[18.]*** **13.** Nothing in this act shall be deemed to affect any
2 agency proceeding initiated prior to the effective date hereof.

1 ***[19.]*** *14.* If any provision of this act or the application
2 thereof to any person or circumstance is held invalid, such invalidity
3 shall not affect other provisions or applications of the act which
4 can be given effect without the invalid provision or application and
5 to this end the provisions of this act are declared to be severable.

1 ***[20.]*** *15.* All acts and parts of acts which are inconsistent
2 with the provisions of this act are, to the extent of such incon-
3 sistency, hereby repealed; but such repeal shall not affect pending
4 proceedings.

1 *16. *There is hereby appropriated out of the General Treasury*
2 *the sum of \$300,000.00 to the Department of State for use to the ex-*
3 *tent and in the manner that the secretary may deem necessary in*
4 *connection with the action authorized by section 17 of this act for*
5 *the fiscal year ending June 30, 1969.**

1 ***[21.]*** *17.* This act shall take effect ***[6** months after its
2 approval]* *September 1, 1969, provided, however, that any agency
3 upon which responsibility or duty is imposed by this act may im-
4 mediately take such action as may be necessary in preparation for
5 the discharge of such responsibility or duty*.

FISCAL NOTE TO
SENATE, No. 667

STATE OF NEW JERSEY

DATED: JUNE 20, 1968

Senate Bill No. 667 is an act concerning practice and procedure of administrative agencies of the State and is to be known as the "Administrative Procedure Act."

It is the estimate of the Office of the Secretary of State that an initial expenditure by the State of \$304,665.00 would be necessary to implement the provisions of this act. However, the Office of the Secretary of State further has stated that it is its intention to defray these costs of printing and preparation from the sale of the bound Rules and Regulations.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 27, 1968

SENATE BILL NO. 667

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 667, with my objections, for reconsideration.

S-667, known as the Administrative Procedure Act, will establish standards for the promulgation of rules and the disposition of contested matters throughout State Government. Its primary thrust is to permit greater public participation in and familiarity with administrative processes, by requiring advance notice of the intention to promulgate rules and by requiring notice of hearings containing information of assistance to participants in such hearings. Such a measure can be of inestimable value in promoting public understanding of and cooperation with the State Government.

Many states of the Union have, since 1936, adopted administrative procedure acts to accomplish the goals sought to be achieved by S-667. The most cursory examination of these statutes reveals strikingly the necessity for variations among them and for careful response to local traditions, practices and methods. Noticeable in connection with the efforts of our sister states is the availability to those who would draft an administrative procedure act of extensive and comprehensive studies of local conditions and the effect upon them of uniform standards. New Jersey lacks such comprehensive studies; there is no one who can speak authoritatively of the probable effect of S-667 upon the relationship between the citizen and his government.

In the brief time since the Legislature acted upon this measure, I have struggled to assure that its provisions reflect both the needs and the nature of New Jersey's government and its people. These efforts have resulted, I believe, in revisions of S-667 which will ease administrative difficulties, and yet, most assuredly, will preserve the protections and benefits to both the people and the government so clearly intended by the Legislature. These revisions in language are more than 30 in number and touch upon all aspects of S-667. While many are technical in nature and self-explanatory, some are broad and reflect a philosophy which must be expressed.

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In structure, S-667 requires of each State agency the adoption, as a formal rule, of a description of its organization and of its methods, operations and objectives, thereby enabling the public to assign responsibility for the administration of any law and to secure the assistance for which the administration was created. In addition, each agency is required to formulate as a rule, the procedures, both formal and informal, employed by the agency in the execution, review and enforcement of the law. The bill further requires that no new rule is to be effective unless its adoption is preceded by public notice sufficient to enable those affected to address themselves to the merits of the proposed rule. All rules, both substantive and procedural, are to be published in a form promoting ready access and currency.

Furthermore, hearings conducted by State agencies for the purpose of resolving disputes of fact or of application of law or rule are to be conducted in an open manner. A party to such a hearing is assured of the right to assert his interests freely and aggressively.

As mentioned, this law is made applicable to all State agencies of whatever composition or function. Exempted from its requirements are two agencies, the procedures of which are already detailed and controlled by positive law. My studies have indicated two additional exemptions are vital. I would first exempt the Office of the Governor, the administrative responsibilities of which are dictated directly by the Constitution.

Second, Senate Bill No. 667 as originally passed, appears to cover the internal operations of educational and medical institutions. The fact that the original bill exempted from its provisions the internal operation of correctional institutions indicates the Legislature's awareness that requirements for the publication of rules and provision for notice and hearing, while clearly appropriate in regard to matters affecting the general public, are neither necessary or proper to the internal operation of an institution. I am therefore recommending that the Legislature enlarge its exemption to

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cover educational and medical institutions as well as correctional institutions. Of course, the rule-making, adjudicatory, filing and publication requirements of this act will be applicable to the State agencies to which these institutions are ultimately responsible.

I would assure the status of rules adopted pursuant to the act and their utility as instruments of law by investing them with presumptions of regularity and accuracy, and thus ready admissibility as evidence before the courts of this State.

I would substitute for the rule of evidence in S-667, one more consistent with current judicial rules.

I would create, in the Department of State, an agency capable of overseeing the implementation of this law, and of maintaining constant review of administrative rules and procedures.

I would authorize this agency to issue and enforce inter-agency rules binding throughout our government.

And finally, I would provide a grace period of nine months within which State agencies will be permitted to review current practices and rules and to prepare for the enforcement of uniform standards.

It is noted S-667 makes no appropriation. Let it be clearly understood that without the necessary funds it will be impossible to comply with the manifold provisions of the act. I therefore recommend the appropriation of \$300,000 to begin the implementation of this important program. It should be realized, however, that full implementation could possibly entail substantially greater appropriations in which case the Legislature will be so advised in the normal budget process.

For these reasons, while urgently supporting the principles inherent in this bill, I herewith return Senate Bill No. 667 for reconsideration and recommend that it be amended as follows:

On Page 1, Section 2, Line 7, following "except", insert "the Office of the Governor".

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On Page 1, Section 2, Line 8, following "and Industry," delete "and".

On Page 1, Section 2, Line 10, following "and all", delete "boards or".

On Page 1, Section 2, Line 11, following "agencies", delete the clause beginning "concerned with (to" in Line 11 and ending "or correctional institution." in Line 13, and insert in lieu thereof "the primary responsibility of which is the management or operation of a State educational, medical, mental, rehabilitative, custodial, penal or correctional institution or program, insofar as the acts of such agency relate to the internal affairs of such institution or program."

On Page 1, Section 2, Line 22, following "and every", insert "final".

On Page 2, Section 2, Line 28, delete in its entirety subsection (e), and insert in lieu thereof the following subsection:

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

On Page 2, Section 2, following Line 32, insert the following subsections:

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

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

On Page 2, Section 3, Line 1, following "3." delete "(a)".

On Page 2, Section 3, Line 3, following "(1)", delete "Adopt", and insert in lieu thereof "adopt".

On Page 2, Section 3, Line 7, following "(2)", delete "Adopt", and insert in lieu thereof "adopt".

On Page 2, Section 3, Line 11, delete in its entirety sub-section (3).

On Page 2, Section 3, Line 15, preceding "available for", delete "(4) Make" and insert in lieu thereof "(3) make".

On Page 2, Section 3, Line 16, following "and opinions", insert ", in accordance with the provisions of chapter 73 of the Laws of 1963 as amended and supplemented (c. 47:1A-1 et seq.)."

On Page 2, Section 3, Lines 17 through 21, delete in its entirety the subsection beginning "(b) No agency" and ending "actual knowledge thereof."

On Page 2, Section 4, Line 1, following "any rule," insert "except as may be otherwise provided".

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On Page 2, Section 4, Line 13, following "in writing." delete in its entirety the sentence beginning "In case", in Line 13 and ending "25 members." in Line 17.

On Page 3, Section 4, Line 19, following "rule.", delete in its entirety the sentence beginning "Upon adoption" in Line 19 and ending "its adoption." in Line 24.

On Page 3, Section 4, following Line 24, insert the following subsection:

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

On Page 3, Section 4, Line 25, preceding "If an agency", delete "(b)" and insert in lieu thereof "(c)".

On Page 3, Section 4, Line 30, following "adopt", delete "an emergency" and insert in lieu thereof "the".

On Page 3, Section 4, Line 30, following "rule." delete in its entirety the sentence beginning "The rule" in Line 30 and ending "such period." in Line 33.

On Page 3, Section 4, Line 34, preceding "No rule", delete "(c)" and insert in lieu thereof "(d)".

On Page 3, Section 4, Line 37, following "commenced within", delete "2 years", and insert in lieu thereof "1 year".

On Page 3, Section 5, Line 2, following "adopted by it" delete ", including all rules existing on the effective date of this act not theretofore so filed. The Secretary of State shall keep a permanent register of the rules open to public inspection".

On Page 3, Section 5, Line 6, following "is effective", delete "20 days after" and insert in lieu thereof "upon".

On Page 3, Section 5, Line 6, following "filing", delete ", except that:", and insert in lieu thereof "with the Secretary of State."

On Page 3, Section 5, Line 8, delete in its entirety the sub-subsection beginning in Line 8 "(1) If a" and ending in Line 9 "effective date;"

On Page 3, Section 5, Line 10, delete in its entirety the sub-subsection beginning in Line 10 "(2) Subject to" and ending in Line 19 "them."

On Page 4, Section 5, following Line 19, insert three subsections as follows:

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

"(d) The filing of a certified copy of any rule shall be deemed to establish the rebuttable presumptions that: (1) it was duly

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adopted; (2) it was duly submitted for prepublication and made available for public inspection at the hour and date endorsed upon it; (3) all requirements of this act and of inter-agency rules of the Secretary of State relative to such rule have been complied with; (4) its text is the text of the rule as adopted. Judicial notice shall be taken of the text of each rule, duly filed.

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

On Page 4, Section 5, Line 19, following Section 5, insert the following section:

"6. (a) There is hereby created in the Department of State a Division of Administrative Procedure.

"(b) The Secretary shall employ and assign to the Division such personnel as shall enable the Division to discharge its responsibilities effectively and efficiently. The Department of State shall furnish such funds, equipment, and personnel as is necessary to implement the work of the Division within the limits of appropriations for the purpose.

"(c) The Division shall be under the immediate supervision of a Director who shall be a person qualified by training and experience to direct the work of such Division. The Director shall be appointed by the Secretary without regard to the provisions of the Civil Service Law, Title 11, New Jersey Statutes, and shall serve at the pleasure of the Secretary and until the Director's successor is appointed and has qualified. He shall receive such salary as is provided by law. The Director:

- (1) shall administer the work of the Division under the direction and supervision of the Secretary;
- (2) shall perform such functions, in addition to the work of the Division, as the Secretary may prescribe;
- (3) shall organize and reorganize the Division;
- (4) shall assign and reassign personnel to employment within the Division;
- (5) shall perform or cause to be performed the work of the Division in such manner and pursuant to such program as he may deem necessary and appropriate;
- (6) shall employ as necessary the services of the several departments and agencies of state government and of the employees of such departments and agencies, in such manner and to such extent as may be agreed upon by the chief executive officer of such department or agency and the Secretary.

"(d) The Secretary shall oversee the implementation of this act by each agency and is empowered to do all things necessary and appropriate to that end. The Secretary shall delegate to the Director his responsibility and authority pursuant to this act, or such of that responsibility and authority as he may deem desirable, which shall be exercised under his supervision and direction.

"(e) The Division: (1) shall advise agencies concerning their obligations under this act, subject to the provisions of Section 4(b) and 4(e) of Chapter 20, Laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e); (2) shall advise agencies in

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connection with the preparation, consideration, publication and interpretation of rules required or appropriate pursuant to this act; (3) shall, to the extent and in such manner as the Director may deem appropriate, assist agencies in the preparation of rules to the end that such rules be uniform and consistent to the extent practicable; (4) shall secure, compile, and maintain as reference material rules and supporting information appropriate to the exercise of its responsibilities; (5) shall effect and maintain liaison with agencies to assure compliance with this act; (6) shall formulate inter-departmental rules for the prompt, proper and coordinated promulgation of all rules required or appropriate pursuant to this act; (7) shall have access to information concerning each agency to assure the proper promulgation of all rules required by law; (8) shall advise each agency and, to such extent as the Director may deem appropriate, shall establish standards regarding the conduct of hearings."

On Page 4, Section 6, Line 1, delete "6.", and insert in lieu thereof "7."

On Page 4, Section 6, Line 1, following "(a) The", delete "Secretary of State" and insert in lieu thereof "Director".

On Page 4, Section 6, Line 2, preceding "all effective", insert "a publication to be known as the "New Jersey Administrative Code," containing".

On Page 4, Section 6, Line 2, following "each agency.", delete "Compilations", and insert in lieu thereof "The Code".

On Page 4, Section 6, Line 4, following "(b) The", delete "Secretary of State" and insert in lieu thereof "Director".

On Page 4, Section 6, Line 5, following "setting forth", insert ": (1)".

On Page 4, Section 6, Line 6, following "the preceding month", delete "excluding rules in effect upon the adoption of this act" and insert in lieu thereof ", and (2) such notices as shall have been submitted pursuant to this act."

On Page 4, Section 6, Line 8, following "(c) The", delete "Secretary of State" and insert in lieu thereof "Director".

On Page 4, Section 6, Line 11, following "made available", insert "by the adopting agency".

On Page 4, Section 6, Line 12, preceding ", and if", delete "to the adopting agency", and insert in lieu thereof "thereto".

On Page 4, Section 6, Line 12, following "if the", delete "register", and insert in lieu thereof "Register".

On Page 4, Section 6, Line 12, following "or", delete "compilation", and insert in lieu thereof "Code".

On Page 4, Section 6, Line 14, following "stating", delete "how", and insert in lieu thereof "the manner in which".

On Page 4, Section 6, Line 14, following "may be obtained.", insert "He may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which he in his discretion may deem appropriate and convenient."

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On Page 4, Section 6, Line 17, following "State", insert "and such other public officials as the Director may designate".

On Page 4, Section 6, Line 18, preceding "to cover", delete "Secretary of State", and insert in lieu thereof "Director".

On Page 4, Section 6, Line 20, following "rules, the", delete "Secretary of State" and insert in lieu thereof "Director".

On Page 4, Section 6, following Line 25, insert two subsections as follows:

"(f) The Director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; he may number or renumber the parts, paragraphs and sections into which such rules may be divided; he may further divide or combine existing parts, paragraphs and sections and he may provide for appropriate digests, indices and other related material. He shall not, however, change the language of any existing rule excepting a title or explanatory caption; but he shall recommend any such changes as he may deem advisable to the administrative agency authorized to adopt such rule.

"(g) The Director is hereby authorized and empowered to promulgate and enforce inter-agency rules for the implementation and administration of this act."

On Page 4, Section 7, Line 1, delete in its entirety Section 7.

On Page 4, Section 8, Line 1, delete in its entirety Section 8.

On Page 4, Section 9, Line 1, delete "9.", and insert in lieu thereof "8."

On Page 4, Section 9, Line 1, following "Declaratory rulings.", delete "On request of any interested person, an agency may in its sound", and insert in lieu thereof "Subject to the provisions of Sections 4(b) and 4(e) of Chapter 20, Laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e, an agency upon the request of any interested person may in its".

On Page 5, Section 10, Line 1, delete "10.", and insert in lieu thereof "9."

On Page 5, Section 10, Line 3, following "shall include", insert "in addition to such other information as may be deemed appropriate".

On Page 5, Section 10, Line 15, following "issues involved", delete "pro se or by an attorney-at-law".

On Page 5, Section 10, Line 18, following "agreed settlement," insert "or".

On Page 5, Section 10, Line 19, following "order", delete ", or default".

On Page 5, Section 10, Line 20, delete in its entirety the subsection beginning in Line 20 "(e) The record" and ending in Line 31 "the case."

On Page 5, Section 10, Line 31A, preceding "Oral proceedings",

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On Page 5, Section 10, Line 32, following "any party", insert "at the expense of such party".

On Page 5, Section 10, Line 33, preceding "Findings of", delete "(g)" and insert in lieu thereof "(f)".

On Page 5, Section 10, Line 35, preceding "Unless otherwise", delete "(h)", and insert in lieu thereof "(g)".

On Page 6, Section 11, Line 1, preceding "In contested", delete "11." and insert in lieu thereof "10."

On Page 6, Section 11, Line 2, delete in its entirety the subsection beginning in Line 2 "(a) The parties" and ending in Line 9 "of the facts." and insert in lieu thereof the following subsection:

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

On Page 6, Section 11, Line 10, following "of judicially", delete "cognizable", and insert in lieu thereof "noticeable".

On Page 6, Section 12, Line 1, delete in their entirety Line 1 through and including Line 26.

On Page 7, Section 12, Line 27, preceding "When a", delete "(e)" and insert in lieu thereof "(c)".

On Page 7, Section 12, Line 27, following "When a", delete "hearer" and insert in lieu thereof "person not empowered to render an administrative adjudication".

On Page 7, Section 12, Line 28, following "presiding officer," delete "and (1)".

On Page 7, Section 12, Line 29, following "conclusions of law", delete "has been" and insert in lieu thereof "shall be".

On Page 7, Section 12, Line 31, following "of record", delete ", or their attorneys of record".

On Page 7, Section 12, Line 31, following "and", delete "(2)".

On Page 7, Section 12, Line 31, following "an opportunity", delete "has been" and insert in lieu thereof "shall be".

On Page 7, Section 12, Line 35, following "may order", delete "; and (3) the" and insert in lieu thereof ". The".

On Page 7, Section 12, Line 35, following "the agency", delete "has adopted, rejected or modified", and insert in lieu thereof "shall adopt, reject or modify".

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On Page 7, Section 12, Line 39, delete in their entirety Line 39 through and including Line 44.

On Page 7, Section 13, Line 1, preceding "A final", delete "13." and insert in lieu thereof "(d)".

On Page 7, Section 14, Line 1, preceding "Except where", delete "14." and insert in lieu thereof "(e)".

On Page 7, Section 14, Line 4, following "record,", delete "or their attorneys of record", and insert in lieu thereof "whichever shall occur first".

On Page 7, Section 15, Line 1, preceding "No agency", delete "15." and insert in lieu thereof "11."

On Page 8, Section 15, Line 16, following "basis of a", delete "court conviction or".

On Page 8, Section 15, Line 17, following "judgment", insert "of a court of competent jurisdiction".

On Page 8, Section 15, Line 17, following "refusal to", delete "review" and insert in lieu thereof "renew".

On Page 8, Section 16, Line 1, preceding "Whenever under", delete "16." and insert in lieu thereof "12."

On Page 8, Section 16, Line 3, following "unimpaired and", delete "the" and insert in lieu thereof "any".

On Page 8, Section 16, Line 4, following "of the agency", delete "by appeal to the Appellate Division of the Superior Court".

On Page 8, Section 16, Line 7, delete "except section 12 of this act".

On Page 8, Section 17, Line 1, delete in its entirety Section 17.

On Page 8, Section 18, Line 1, preceding "Nothing in", delete "18.", and insert in lieu thereof "13."

On Page 8, Section 19, Line 1, preceding "If any provision" delete "19." and insert in lieu thereof "14."

On Page 8, Section 20, Line 1, preceding "All acts", delete "20." and insert in lieu thereof "15."

On Page 8, Section 20, Line 3, following Line 3, insert the following section:

"16. There is hereby appropriated out of the General Treasury the sum of \$300,000 to the Department of State for use to the extent and in the manner that the Secretary may deem necessary in connection with the action authorized by Section 17 of this act for the fiscal year ending June 30, 1969."

On Page 8, Section 21, Line 1, preceding "This act", delete "21." and insert in lieu thereof "17."

On Page 8, Section 21, Line 1, following "take effect", delete "6 months after its approval" and insert in lieu thereof "September 1 1969, provided, however, that any agency upon which responsibility

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or duty is imposed by this act may immediately take such action as may be necessary in preparation for the discharge of such responsibility or duty."

Respectfully,

/S/ RICHARD J. HUGHES

GOVERNOR

[Seal]

Attest:

/S/ ALAN J. KARCHER

Acting Secretary to the Governor

STATEMENT

This proposed State Administrative Procedure Act may be considered one of the most significant and far-reaching bills implementing the new Constitution and regulating procedure of administrative agencies.

Pursuant to the Constitution it requires that all administrative rules and regulations be filed with the Secretary of State, and be compiled and published in a weekly Register and ultimately in an annual volume to be known as the New Jersey Administrative Code. It also requires that all determinations rendered by administrative agencies be in form of written opinions embodying reasons and that significant decisions be published in the Register. These decisions together with all administrative rules and regulations will thus be made fully available for public information.

As stated by the Governor in his Annual Message to this Legislature on January 13, "The next step is to make the procedure of our administrative agencies conform to accepted standards of fair and uniform administration according to the rule of law." Accordingly, the bill: (1) establishes methods for rule-making and provides that interested parties shall have an opportunity to be heard with respect to proposed rules before they take effect; (2) authorizes interested persons to petition administrative agencies requesting the promulgation, amendment or repeal of any rule; (3) provides for fair hearings before independent hearing commissioners to be selected by the president of the Civil Service Commission; and (4) contains comprehensive provisions for a single judicial review before the Appellate Division of the Superior Court and defines the scope of such review.

This proposed bill does not take away any of the substantive powers of administrative agencies nor does it in anywise interfere with the policies being enforced by them pursuant to legislative direction. It does, however, guard against abuse of the administrative process by affording adequate notice of regulation, opportunity for hearing before an impartial examiner and adequate opportunity for review without delay or undue expense.

1 40. Repeal. All acts and parts of acts which are inconsistent with the
2 provisions of this act are, to the extent of such inconsistency, hereby re-
3 pealed; but such repeal shall not affect pending proceedings.

1 41. Effective date. This act shall take effect six months after its ap-
2 proval.

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A bill to accomplish these purposes was originally introduced during the first half of the 1948 regular session of the Legislature (Senate Bill No. 21). Several constructive suggestions for modification of that proposal were made at the public hearing on that bill and thereafter. As a result, Committee Substitute for Senate Bill No. 21 was introduced during the second half of the 1948 regular legislative session.

Other bills on the subject were introduced at the regular legislative sessions in 1949 and 1950. Senate Bill No. 217 of 1949 was substantially identical with Committee Substitute for Senate Bill No. 21 of 1948. Senate Bill No. 263 of 1950 contained, as does this bill, a provision excepting from the definition of "contested case" those proceedings in the Division of Taxation which are reviewable de novo by the Division of Tax Appeals or by any court.

This measure contains a substantial change from the proposal submitted in 1950, i.e., a hearing commissioner's findings of fact will, in addition to his conclusions of law in a contested case, be subject to review and modification by the administrative agency.

The active interest in this proposal displayed by many bar associations and other groups and individuals, who gave careful and detailed study to its provisions and submitted valuable recommendations, has contributed substantially to the process of making every possible improvement in the bill. This spontaneous co-operation is indicative of a widely felt public need which the bill meets.