

SENATE, No. 228

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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SYNOPSIS

Revises “Administrative Procedure Act” concerning socio-economic impact statements for proposed rule-making.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning rule-making and amending and supplementing
2 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 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
8 as follows:

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

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

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

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 affordability impact statement and a smart growth development
2 impact statement, as provided in section 31 of P.L.2008, c.46
3 (C.52:14B-4.1b); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 If an agency fails to act in accordance with the time frame set
2 forth in the preceding paragraph, upon written request by the
3 petitioner, the Director of the Office of Administrative Law shall
4 order a public hearing on the rule-making petition and shall provide
5 the agency with a notice of the director's intent to hold the public
6 hearing if the agency does not. If the agency does not provide
7 notice of a hearing within 15 days of the director's notice, the
8 director shall schedule and provide the public with a notice of that
9 hearing at least 15 days prior thereto. If the public hearing is held
10 by the 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)

1 2. (New section) a. In proposing a rule for adoption, the agency
2 involved shall issue a description of the expected socio-economic
3 impact of the rule prepared by a representative of the segment of the
4 public proposed to be regulated by the rule, which shall be included
5 in the notice of a proposed rule as required by subsection (a) of
6 section 4 of P.L.1968, c.410 (C.52:14B-4). This description shall
7 include the anticipated impact and estimated cost of the proposed
8 rule on the affected segment of the population to be regulated by the
9 rule and the effect of the rule on job creation and job retention by
10 the affected regulated community.

11 b. (1) Prior to the submittal of the proposed rule to the Office of
12 Administrative Law for publication in the New Jersey Register, an
13 agency shall contact one representative of the segment of the public
14 proposed to be regulated by the rule, provide that representative
15 with a written copy of the proposed rule, and provide the
16 opportunity for the representative to prepare the description for the
17 socio-economic impact of the proposed rule as provided in
18 subsection a. of this section. The agency shall select this
19 representative based upon a list of interested persons associated
20 with the segment of the public proposed to be regulated by the rule
21 who have provided substantial written submissions to the agency on
22 previous proposed rules on similar subject matter.

23 (2) Upon receipt of the description of the socio-economic impact
24 of the proposed rule, the agency shall include, in full, that
25 description in the proposed rule submitted to the Office of
26 Administrative Law for publication in the New Jersey Register.

27 The Office of Administrative Law may require payment by the
28 representative preparing the description of the socio-economic
29 impact of the proposed rule sufficient to cover the proportional
30 costs of printing and distributing the New Jersey Register
31 attributable to that description.

32 c. This subsection shall not apply to any proposed rule which the
33 agency finds would impose an insignificant impact, either because
34 the scope of the regulation is minimal, or there is an extreme
35 unlikelihood that the regulation would evoke a socio-economic
36 impact. The agency's finding and an indication of the basis for its
37 finding shall be included in the notice of a proposed rule as required
38 by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

39

40 3. This act shall take effect immediately.

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STATEMENT

44

45 This bill revises the "Administrative Procedure Act," P.L.1968,
46 c.410 (C.52:14B-1 et seq.) (APA) to add specific requirements for
47 the socio-economic impact statement required as part of the rule-

1 making process. The APA, enacted in 1968, establishes the
2 procedures that agencies in the Executive branch of State
3 government must follow when exercising their authority to adopt
4 rules and regulations. This bill expands the requirements for the
5 description of the expected socio-economic impact of a proposed
6 rule-making by requiring State agencies to obtain, for inclusion in
7 the publication of the rule proposal in the New Jersey Register, a
8 socio-economic impact description of the proposed rule from the
9 regulated community.

10 Under this bill, a State agency, prior to submitting a proposed
11 rule to the Office of Administrative Law (OAL) for publication in
12 the New Jersey Register, would be required to contact one
13 representative of the segment of the public proposed to be regulated
14 by the rule (i.e., the regulated community), provide that
15 representative with a written copy of the proposed rule, and provide
16 the opportunity for the representative to prepare a description of the
17 socio-economic impact of the proposed rule. The agency would
18 select the regulated community representative from among those
19 interested persons associated with the segment of the public
20 proposed to be regulated by the rule who have provided substantial
21 written submissions to the agency on previous rules proposals on
22 similar subject matter. Upon receipt of the socio-economic impact
23 description of the proposed rule, the agency would be required to
24 include, in full, that description in the proposed rule submitted to
25 the OAL for publication in the New Jersey Register. The bill
26 provides that the OAL may require payment by the regulated
27 community representative preparing the socio-economic impact
28 description in an amount sufficient to cover the proportional costs
29 of printing and distributing the New Jersey Register attributable to
30 the publication of that description.

31 An agency would not be required to include a socio-economic
32 impact description prepared by a representative of the regulated
33 community if the agency finds that the proposed rule would impose
34 an insignificant impact, either because the scope of the regulation is
35 minimal, or there is an extreme unlikelihood that the regulation
36 would evoke a socio-economic impact. In this case, the agency's
37 finding and an indication of the basis for its finding are required to
38 be included in the notice of a proposed rule published by OAL.