

# SENATE, No. 235

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Senator JEFF VAN DREW**

**District 1 (Atlantic, Cape May and Cumberland)**

**SYNOPSIS**

Prohibits adoption of new rules exceeding federal standards unless specifically authorized by State law or necessary to protect public health, safety, or welfare.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the adoption of new rules that exceed federal  
2 standards and supplementing P.L.1968, c.410 (C.52:14B-1 et  
3 seq.).  
4

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

8 1. a. A State agency shall not file with the Office of  
9 Administrative Law a notice of proposal or notice of adoption for  
10 any new rule that would exceed standards or requirements set forth  
11 by the federal government unless specifically authorized by State  
12 law.

13 b. The Office of Administrative Law shall not accept for filing  
14 a notice of proposal or notice of adoption which adopts a new rule  
15 that contains any standards or requirements which exceed standards  
16 or requirements set forth by the federal government unless the  
17 notice contains:

18 (1) a copy of the specific State law allowing the adoption of  
19 rules or standards that exceed federal standards or requirements;

20 (2) written justification for the exceedance of the federal  
21 standards or requirements; and

22 (3) a copy of the supporting documentation or analysis used by  
23 the State agency to justify the stricter standards or requirements.

24 c. A State agency filing a notice of proposal or notice of  
25 adoption pursuant to this section shall also satisfy the requirements  
26 set forth in section 2 of P.L.1995, c.65 (C.52:14B-23).

27 d. The provisions of this section shall not apply to:

28 (1) any rule in effect, or to the readoption of any rule in effect,  
29 on the date of enactment of P.L. , c. (C. ) (pending before the  
30 Legislature as this bill); or

31 (2) any rule authorized pursuant to subsection (c) of section 4 of  
32 P.L.1968, c.410 (C.52:14B-4) .  
33

34 2. a. Within 45 days after the date of enactment of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill), each  
36 State agency shall provide notice in writing to the Legislature,  
37 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the chairs  
38 of the appropriate State legislative committees dealing with the  
39 subject matter of the State agency, and the chairs of the Assembly  
40 Regulatory Oversight and Gaming Committee and the Senate  
41 Legislative Oversight Committee, or their successors, of each  
42 existing rule that contains any standards or requirements which  
43 exceed standards or requirements set forth by the federal  
44 government and for which the State agency does not have explicit  
45 authorization in State law.

46 b. The notice required pursuant to this section shall contain:

47 (1) the New Jersey Administrative Code citation for the rule;

- 1 (2) the statutory authority under which the agency adopted the  
2 rule;
- 3 (3) an explanation of how the rule exceeds the standards or  
4 requirements set forth by the federal government;
- 5 (4) justification for the exceedance of the federal standards or  
6 requirements, which may include an explanation of a New Jersey  
7 specific public policy goal that is met by the agency's rule; and
- 8 (5) an explanation of the potential consequences if the agency is  
9 required to adopt the standards or requirements set forth by the  
10 federal government.

11

12 3. This act shall take effect immediately.

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#### STATEMENT

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17 This bill would prohibit a State agency from filing with the  
18 Office of Administrative Law a notice of proposal or notice of  
19 adoption for any new rule that would exceed federal standards or  
20 requirements unless specifically authorized by State law.

21 The bill further provides that the Office of Administrative Law  
22 shall not accept for filing a notice of proposal or notice of adoption  
23 which adopts a new rule that contains any standards or requirements  
24 exceeding standards or requirements set forth by the federal  
25 government unless the notice contains: a copy of the specific State  
26 law allowing the adoption of rules or standards that exceed federal  
27 standards or requirements; written justification for the exceedance;  
28 and a copy of the supporting documentation or analysis used by the  
29 State agency to justify the stricter standards or requirements.

30 The bill also requires a State agency that files a notice of  
31 proposal or notice of adoption containing any standards or  
32 requirements exceeding those set forth by the federal government to  
33 satisfy the requirements set forth in section 2 of P.L.1995, c.65  
34 (C.52:14B-23), which requires a federal standards statement.

35 The bill would not apply to: (1) any rule in effect on the date the  
36 bill is enacted into law; (2) the readoption of any rule in effect on  
37 the date the bill is enacted into law; or (3) any rule authorized  
38 pursuant to subsection (c) of section 4 of P.L.1968, c.410  
39 (C.52:14B-4). This section of the "Administrative Procedure Act"  
40 referred to immediately above sets forth a procedure for a State  
41 agency to adopt rules when it finds that an imminent peril to the  
42 public health, safety, or welfare exists and the Governor concurs in  
43 writing that an imminent peril exists; if enacted, this bill would not  
44 alter this existing emergency rule-making procedure.

45 The bill also requires, within 45 days after the bill is enacted into  
46 law, each State agency to provide notice to the Legislature of any  
47 existing rules that contains standards or requirements which exceed

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1 those set forth by the federal government and for which the State  
2 agency does not have explicit authorization in State law. This  
3 notice would contain: the rule's New Jersey Administrative Code  
4 citation; the statutory authority under which the agency adopted the  
5 rule; an explanation of how the rule exceeds the federal standards or  
6 requirements set forth by the federal government; a justification for  
7 the exceedance, which may include an explanation of a New Jersey  
8 specific public policy goal that is met by the agency's rule; and an  
9 explanation of the potential consequences if the agency is required  
10 to adopt the standards or requirements set forth by the federal  
11 government.