ASSEMBLY, No. 3439

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman JAY WEBBER
District 26 (Essex, Morris and Passaic)

SYNOPSIS

Requires State agencies to periodically review administrative rules and regulations to ensure continued efficacy.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning review of administrative rules and regulations and amending P.L.2001, c.5 and P.L.1968, c.410.

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

1. Section 10 of P.L.2001, c.5 (C.52:14B-5.1) is amended to read as follows:

10. a. (Deleted by amendment, P.L.2011, c.45)

b. Every rule adopted on or after the effective date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire seven years following the effective date of the rule unless a sooner expiration date has been established for the rule. The expiration date shall be included in the adoption notice of the rule in the New Jersey Register and noted in the New Jersey Administrative Code.

c. (1) Notwithstanding any other provision of P.L.1968, c.410 (C.52:14B-1 et seq.), or rule adopted pursuant thereto, to the contrary, in the case of a proposed readoption without changes to the existing rule, or a proposed readoption with technical changes as approved by the Office of Administrative Law, an agency may continue in effect an expiring rule for a seven-year period by filing a public notice with the Office of Administrative Law for publication in the New Jersey Register at least 30 days prior to the expiration date of the rule. The notice pursuant to this paragraph shall include the citation for the rule, a general description of the rule, the specific legal authority under which the rule is authorized, and the new expiration date of the rule. The notice pursuant to this paragraph shall be effective upon filing with the Office of Administrative Law.

Upon the receipt of a public notice pursuant to this paragraph, the Office of Administrative Law shall publish the notice in the New Jersey Register. The new expiration date of the rule shall be noted in the New Jersey Administrative Code.

As used in this paragraph, "technical changes" means changes to: correct spelling, grammar and punctuation; correct codification; update contact information; or correct cross-references.

(2) In the case of a proposed readoption of an expiring rule with substantive changes, an agency may continue the expiring rule for a seven-year period by duly proposing the readoption with substantive changes and readopting the rule prior to its expiration. Upon the filing of a notice of proposed readoption with substantive changes, the expiration date of the rule shall be extended for 180 days, if such notice is filed prior to the expiration of the rule.

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

Matter underlined <u>thus</u> is new matter.

As used in this paragraph, "substantive changes" means any changes that are not technical changes as defined in paragraph (1) of this subsection.

d. (1) The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

(2) The Governor may, upon the request of an agency head within five days after the expiration of a rule, restore the effectiveness of an expired rule as of its expiration date, for a period to be specified by the Governor, in order to effect the readoption of the rule in accordance with subsection c. of this section.

e. This section shall not apply to any rule repealing a rule or any rule prescribed by federal law or whose expiration would violate any other federal or State law, in which case the federal or State law shall be cited in the publication of the rule.

f. In anticipation of the expiration of any rule under subsection b. of section 10 of P.L.2001, c.5 (C.52:14B-5.1) prior to the notice of proposed readoption without changes to an existing rule, the proposed readoption with technical changes as approved by the Office of Administrative Law to an existing rule, or the proposed readoption with substantive changes to an existing rule, pursuant to subsection c. of section 10 of P.L.2001, c.5 (C.52:14B-5.1), the agency shall complete a review of the existing rule, in order to assess whether the benefits of the rule continue to outweigh the costs and burdens of implementation of the rule and whether the rule remains effective, has become outdated or an alternative rule may better achieve the objective of the existing rule. The agency shall report the findings of the review to the Governor and Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1). The agency shall provide notice of the review's findings and availability of the review in the New Jersey Register at the time the notice of readoption is published in the New Jersey Register.

(cf: P.L.2011, c.45, s.1)

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

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

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and, in addition to any other public notice required by law, shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a press office to cover

the State House Complex, and made available for public viewing through publication on the agency's Internet website. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so. In order to inform those persons most likely to be affected by or interested in the intended action, each agency shall distribute notice of its intended action to interested persons, and shall publicize the same, through the use of an electronic mailing list or similar type of subscription-based e-mail service. Additional publicity methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations, including the agency's Internet website. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register, and make available for public viewing through publication on the agency's Internet website, a statement setting forth a summary of the proposed rule, as well as a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3), a housing affordability impact statement, a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b), and a racial and ethnic community criminal justice and public safety impact statement as required in section 3 of P.L.2017, c.286 (C.2C:48B-2);

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

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days

following publication of the proposed rule in the Register. The agency shall provide at least 15 days' notice of such hearing, shall publish such hearing notice on its Internet website, and shall conduct the hearing in accordance with the provisions of subsection (g) of this section.

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

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

(5) Prepare a regulatory impact analysis of the rule, considering the need for the rule and the consequences of the rule, whether the benefits of the rule outweigh the costs and burdens of the rule, and where appropriate and permitted by law, an assessment of values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. This analysis shall be in addition to any other analysis, statement or impact description required by law. The agency shall report the findings of the analysis to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and notice of the review's findings and availability of the review in the New Jersey Register, with notice of its intended action pursuant to paragraph (1) of subsection a. of section 4 of P.L.1968, c.410 (C.52:14B-4).

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

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, the agency may proceed to adopt the rule without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable. The agency shall publish, on its Internet website, a summary of any rule adopted pursuant to this subsection, and the statement of reasons for the agency's finding that an imminent peril exists. Any rule adopted pursuant to this subsection shall be effective for a period of not more than 60 days, unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be

effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

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

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. Such notice shall be distributed to interested persons through the use of an electronic mailing list or similar type of subscription-based e-mail service, and made available for public viewing through publication on the agency's Internet website. The agency shall afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, on the proposed action, and shall fully consider all written and oral submissions, including any written submissions received by the agency through its e-mail systems or electronic mailing lists. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Such petition may be submitted to the agency through mail, e-mail, electronic mailing list, or through any other means. Each agency shall prescribe by rule the form for the petition and the procedure for the consideration and disposition of the petition. The petition shall state clearly and concisely:

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

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

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

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

Within 60 days following receipt by an agency of any such petition, the agency shall either: (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or

(iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register, and shall be made available for public viewing through publication on the agency's Internet website.

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

(g) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent

contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost, which shall be that of the agency where the petition for rule-making originated.
(cf: P.L.2017, c.286, s.4)

3. This act shall take effect immediately.

STATEMENT

This bill would establish a mandatory review process for State agencies of any administrative rule or regulation set to expire at the end of each seven-year period. The review would require State agencies to determine whether the benefits of the rule continue to outweigh the costs and burdens of the rule, and whether the rule remains effective or has become outdated. The State agency would be required to report its findings to the Governor and the Legislature, and to the public in the New Jersey Register.

Additionally, this bill would require State agencies to conduct a regulatory impact analysis of all proposed administrative rules. This analysis would be comparable to the review analysis for existing rules, and the State agency proposing the rule would be required to report its analysis to the Governor and the Legislature, and to the public.

Although present law mandates that all administrative rules and regulations expire after a period of seven years, there is no mandatory review process in place to determine the continued efficacy of existing rules. With respect to proposed administrative rules, present law requires certain reviews to be conducted by State agencies prior to adoption of rules, and this bill would expand the requirements placed upon a State agency prior to adoption of any administrative rule.