

SENATE, No. 1234

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Senator THOMAS H. KEAN, JR.
District 21 (Morris, Somerset and Union)
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/10/2020)

1 **AN ACT** concerning review of administrative rules and regulations
2 and amending P.L.2001, c.5 and 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 10 of P.L.2001, c.5 (C.52:14B-5.1) is amended to
8 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

31
32 2. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
33 read as follows:

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

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

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

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

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

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

1 conduct the hearing in accordance with the provisions of subsection
2 (g) of this section.

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

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

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

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

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

47 (d) No rule hereafter adopted is valid unless adopted in
48 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).

1 A proceeding to contest any rule on the ground of noncompliance
2 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et
3 seq.) shall be commenced within one year from the effective date of
4 the rule.

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

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

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

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

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

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

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

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

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

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

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

10 (cf: P.L.2017, c.286, s.4)

11
12 3. This act shall take effect immediately.

13
14
15 STATEMENT

16
17 This bill would establish a mandatory review process for State
18 agencies of any administrative rule or regulation set to expire at the
19 end of each seven year period. The review would require State
20 agencies to determine whether the benefits of the rule continue to
21 outweigh the costs and burdens of the rule, and whether the rule
22 remains effective or has become outdated. The State agency would
23 be required to report its findings to the Governor and the
24 Legislature, and to the public in the New Jersey Register.

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

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