

[First Reprint]

ASSEMBLY, No. 3321

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2012

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman RUBEN J. RAMOS, JR.
District 33 (Hudson)
Assemblyman JOSEPH V. EGAN
District 17 (Middlesex and Somerset)
Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)
Assemblyman JOHN S. WISNIEWSKI
District 19 (Middlesex)
Assemblyman SCOTT T. RUMANA
District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblymen Wimberly, Coughlin, Assemblywoman McHose,
Assemblyman Singleton, Senators Whelan, Addiego, Oroho, Cardinale and
Assemblyman Diegnan

SYNOPSIS

Amends "Administrative Procedure Act" to require State agencies to use various electronic technologies in rule-making procedures.

CURRENT VERSION OF TEXT

As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on January 28, 2013, with amendments.

(Sponsorship Updated As Of: 1/7/2014)

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

9 2. As used in this act:

10 **[(a)]** "State agency" or "agency" shall include each of the
11 principal departments in the executive branch of the State
12 Government, and all boards, divisions, commissions, agencies,
13 departments, councils, authorities, offices or officers within any
14 such departments now existing or hereafter established and
15 authorized by statute to make, adopt or promulgate rules or
16 adjudicate contested cases, except the office of the Governor.

17 **[(b)]** "Administrative adjudication" or "adjudication" includes
18 any and every final determination, decision, or order made or
19 rendered in any contested case.

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

29 "Contested case" means a proceeding, including any licensing
30 proceeding, in which the legal rights, duties, obligations, privileges,
31 benefits or other legal relations of specific parties are required by
32 constitutional right or by statute to be determined by an agency by
33 decisions, determinations, or orders, addressed to them or disposing
34 of their interests, after opportunity for an agency hearing, but shall
35 not include any proceeding in the Division of Taxation, Department
36 of the Treasury, which is reviewable de novo by the Tax Court.

37 **[(c)]** "Administrative adjudication" or "adjudication" includes
38 any and every final determination, decision or order made or
39 rendered in any contested case.

40 **[(d)]** "The head" "Director" means the Director and Chief
41 Administrative Law Judge of the Office of Administrative Law,
42 unless otherwise indicated by context.

43 "Electronic ¹listserv mailing list¹" means a computer program
44 that allows agency website visitors, at their discretion, to subscribe

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SSG committee amendments adopted January 28, 2013.

1 to, or unsubscribe from, an e-mail discussion group or e-mail
2 mailing list controlled by the agency, and which program enables
3 the agency to automatically send e-mail messages to multiple e-mail
4 addresses on the user-generated subscriber list.

5 "Head of the agency" means and includes the individual or group
6 of individuals constituting the highest authority within any agency
7 authorized or required by law to render an adjudication in a
8 contested case.

9 **[(e)** "Administrative rule" or "rule," when not otherwise
10 modified, means each agency statement of general applicability and
11 continuing effect that implements or interprets law or policy, or
12 describes the organization, procedure or practice requirements of
13 any agency. The term includes the amendment or repeal of any
14 rule, but does not include: (1) statements concerning the internal
15 management or discipline of any agency; (2) intraagency and
16 interagency statements; and (3) agency decisions and findings in
17 contested cases.

18 **[(f)]** "License" includes the whole or part of any agency license,
19 permit, certificate, approval, chapter, registration or other form of
20 permission required by law.

21 **[(g)]** "Secretary" means the Secretary of State.

22 **[(h)** "Director" means the Director and Chief Administrative
23 Law Judge of the Office of Administrative Law, unless otherwise
24 indicated by context.]

25 "State agency" or "agency" shall include each of the principal
26 departments in the executive branch of the State Government, and
27 all boards, divisions, commissions, agencies, departments, councils,
28 authorities, offices or officers within any such departments now
29 existing or hereafter established and authorized by statute to make,
30 adopt or promulgate rules or adjudicate contested cases, except the
31 office of the Governor.

32 "URL address" means a Uniform Resource Locator address,
33 which is used for the purposes of Internet navigation and is
34 commonly referred to as a website link, and which uses a protocol,
35 such as "http", and a domain name to identify, and provide website
36 visitors with direct access to, a particular Internet file or website
37 page.

38 (cf: P.L.1993, c.343, s.1)

39

40 2. (New section) a. Notwithstanding any law, rule, or
41 regulation to the contrary, each State agency shall post, in a visible
42 and publicly-accessible location on the agency's Internet website:

43 (1) the complete and current text of each State law under which
44 the agency is granted its authority, and the complete and current
45 text of each rule or regulation that has been adopted by the agency,
46 or that is proposed for, or is pending, agency adoption; or

1 (2) one or more URL addresses, which provide visitors to the
2 agency's website with a direct link to the complete and current text
3 of the documents listed in paragraph (1) of this subsection.

4 b. (1) An agency shall make regular and timely updates to the
5 full text documents and URL addresses posted on its Internet
6 website pursuant to subsection a. of this section, and shall take any
7 other reasonable action necessary to ensure that the posted
8 documents and URL addresses accurately reflect, or are directly
9 linked to, as the case may be, the most recent version of the
10 associated law, rule, or regulation, including any amendments or
11 supplements thereto, or repeals thereof. The agency shall indicate
12 on its Internet website, the frequency with which updates are made
13 pursuant to this paragraph.

14 (2) An agency that posts one or more URL addresses on its
15 Internet website pursuant to subsection a. of this section shall
16 additionally: (a) verify, on a regular basis, the functionality of each
17 URL address; and (b) provide a means by which website visitors
18 can notify the agency, through e-mail communication, and through
19 any other reasonable means, of any nonfunctional URL address.

20

21 3. Section 3 of P.L.1968, c.410 (C.52:14B-3) is amended to
22 read as follows:

23 3. In addition to other rule-making requirements imposed by
24 law, each agency shall:

25 (1) adopt as a rule a description of its organization, stating the
26 general course and method of its operations and the methods
27 whereby the public may obtain information or make submissions or
28 requests;

29 (2) adopt rules of practice setting forth the nature and
30 requirements of all formal and informal procedures available,
31 including a description of all forms and instructions used by the
32 agency, and if not otherwise set forth in an agency's rules, a table of
33 all permits and their fees, violations and penalties, deadlines,
34 processing times and appeals procedures . A complete list of the
35 agency's permits, fees, violations, penalties, deadlines, processing
36 times, and appeals procedures shall also be made available for
37 public viewing through publication on the agency's
38 Internet website ;

39 (3) make available for public **[inspection]** viewing, through
40 publication on the agency's Internet website, and through any other
41 means, all final agency orders, decisions, and opinions, in
42 accordance with the provisions of chapter 73 of the laws of 1963 as
43 amended and supplemented (C.47:1A-1 et seq.);

44 (4) make available for public viewing, through publication on
45 the agency's Internet website, all of the agency's rule-making and
46 public hearing notices, publicity documents, press releases, final
47 and non-confidential agency reports, and rule-making petitions

1 received by the agency pursuant to subsection (f) of section 4 of
2 P.L.1968, c.410 (C.52:14B-4); and

3 (5) publish in the New Jersey Register a quarterly calendar
4 setting forth a schedule of the agency's anticipated rule-making
5 activities for the next six months. The calendar shall include the
6 name of the agency and agency head, a citation to the legal
7 authority authorizing the rule-making action and a synopsis of the
8 subject matter and the objective or purpose of the agency's proposed
9 rules.

10 In a manner prescribed by the Director of the Office of
11 Administrative Law, each agency shall appropriately publicize that
12 copies of its calendar are available to interested persons for a
13 reasonable fee. The amount of the fee shall be set by the director.

14 An agency shall notify the Director of the Office of
15 Administrative Law when it wishes to amend its calendar of rule-
16 making activities. Any amendment which involves the addition of
17 any rule-making activity to an agency's calendar shall provide that
18 the agency shall take no action on that matter until at least 45 days
19 following the first publication of the amended calendar in which the
20 announcement of that proposed rule-making activity first appears.

21 The provisions of this paragraph shall not apply to rule-making:

22 (a) required or authorized by federal law when failure to adopt
23 rules in a timely manner will prejudice the State;

24 (b) subject to a specific statutory authorization requiring
25 promulgation in a lesser time period;

26 (c) involving an imminent peril subject to provisions of
27 subsection (c) of section 4 of P.L.1968, c.410 (C.52:14B-4);

28 (d) for which the agency has published a notice of pre-proposal
29 of a rule in accordance with rules adopted by the Director of the
30 Office of Administrative Law; or

31 (e) for which a comment period of at least 60 days is provided.

32 A proposed rule falling within any of the exceptions to the
33 provisions of this subsection shall so indicate in the notice of
34 proposal.

35 (cf: P.L.2001, c.5, s.1)

36

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

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

41 (1) Give at least 30 days' notice of its intended action. The
42 notice shall include a statement of either the terms or substance of
43 the intended action or a description of the subjects and issues
44 involved, and the time when, the place where, and the manner in
45 which interested persons may present their views thereon. The
46 notice shall be mailed to all persons who have made timely requests
47 of the agency for advance notice of its rule-making proceedings
48 and , in addition to ¹any¹ other public notice required by law [shall

1 be] , 'shall be' published in the New Jersey Register. Notice shall
2 also be distributed to the news media maintaining a press office to
3 cover the State House Complex, and made available [electronically
4 through the largest nonproprietary cooperative public computer
5 network] for public viewing through publication on the agency's
6 Internet website. Each agency shall additionally publicize the
7 intended action and shall adopt rules to prescribe the manner in
8 which it will do so [, and] . In order to inform those persons most
9 likely to be affected by or interested in the intended action , each
10 agency shall distribute notice of its intended action to interested
11 persons, and shall publicize the same, through the use of an
12 electronic 'listserv' mailing list' or similar type of subscription-
13 based e-mail service . [Methods] Additional publicity methods that
14 may be employed include publication of the notice in newspapers of
15 general circulation or in trade, industry, governmental or
16 professional publications, distribution of press releases to the news
17 media and posting of notices in appropriate locations , including the
18 agency's Internet website . The rules shall prescribe the
19 circumstances under which each additional method shall be
20 employed;

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

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

1 The agency shall conduct a public hearing on the proposed rule
2 at the request of a committee of the Legislature, or a governmental
3 agency or subdivision, or if sufficient public interest is shown,
4 provided such request is made to the agency within 30 days
5 following publication of the proposed rule in the Register. The
6 agency shall provide at least 15 days' notice of such hearing,
7 **【which】 shall publish such hearing notice on its Internet website,**
8 **and shall 【be conducted】 conduct the hearing** in accordance with
9 the provisions of subsection (g) of this section.

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

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

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

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

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

1 (e) An agency may file a notice of intent with respect to a
2 proposed rule-making proceeding with the Office of Administrative
3 Law, for publication in the New Jersey Register at any time prior to
4 the formal notice of action required in subsection (a) of this section.
5 The notice shall be for the purpose of eliciting the views of
6 interested parties on an action prior to the filing of a formal rule
7 proposal. Such notice shall be distributed to interested persons
8 through the use of an electronic ¹["listserv"] mailing list¹ or similar
9 type of subscription-based e-mail service, and made available for
10 public viewing through publication on the agency's Internet
11 website. The agency shall afford all interested persons a reasonable
12 opportunity to submit data, views, comments, or arguments, orally
13 or in writing, on the proposed action, and shall fully consider all
14 written and oral submissions, including any written submissions
15 received by the agency through its e-mail systems or electronic
16 ¹["listservs"] mailing lists¹ . An agency may use informal
17 conferences and consultations as means of obtaining the viewpoints
18 and advice of interested persons with respect to contemplated rule-
19 making. An agency may also appoint committees of experts or
20 interested persons or representatives of the general public to advise
21 it with respect to any contemplated rule-making.

22 (f) An interested person may petition an agency to adopt a new
23 rule, or amend or repeal any existing rule. Such petition may be
24 submitted to the agency through mail, e-mail, electronic ¹["listserv"]
25 mailing list¹ , or through any other means. Each agency shall
26 prescribe by rule the form for the petition and the procedure for the
27 **["submission,]** consideration and disposition of the petition. The
28 petition shall state clearly and concisely:

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

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

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

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

37 Within 60 days following receipt by an agency of any such
38 petition, the agency shall either; (i) deny the petition, giving a
39 written statement of its reasons; (ii) grant the petition and initiate a
40 rule-making proceeding within 90 days of granting the petition; or
41 (iii) refer the matter for further deliberations which shall be
42 concluded within 90 days of referring the matter for further
43 deliberations. Upon conclusion of such further deliberations, the
44 agency shall either deny the petition and provide a written statement
45 of its reasons or grant the petition and initiate a rule-making
46 proceeding within 90 days. Upon the receipt of the petition, the
47 agency shall file a notice stating the name of the petitioner and the
48 nature of the request with the Office of Administrative Law for

1 publication in the New Jersey Register. Notice of formal agency
2 action on such petition shall also be filed with the Office of
3 Administrative Law for publication in the Register , and shall be
4 made available for public viewing through publication on the
5 agency's Internet website.

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

36 (g) All public hearings shall be conducted by a hearing officer,
37 who may be an official of the agency, a member of its staff, a
38 person on assignment from another agency, a person from the
39 Office of Administrative Law assigned pursuant to subsection o. of
40 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
41 contractor. The hearing officer shall have the responsibility to
42 make recommendations to the agency regarding the adoption,
43 amendment or repeal of a rule. These recommendations shall be
44 made public. At the beginning of each hearing, or series of
45 hearings, the agency, if it has made a proposal, shall present a
46 summary of the factual information on which its proposal is based,
47 and shall respond to questions posed by any interested party.
48 Hearings shall be conducted at such times and in locations which

1 shall afford interested parties the opportunity to attend. A verbatim
2 record of each hearing shall be maintained, and copies of the record
3 shall be available to the public at no more than the actual cost,
4 which shall be that of the agency where the petition for rule-making
5 originated.

6 (cf: P.L.2008, c.46, s.3)

7

8 5. This act shall take effect immediately, but shall be
9 inoperative until the first day of the sixth month following the date
10 of enactment.