

ASSEMBLY, No. 1505

STATE OF NEW JERSEY

222nd LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman LUANNE M. PETERPAUL

District 11 (Monmouth)

Assemblyman DAN HUTCHISON

District 4 (Atlantic, Camden and Gloucester)

Assemblywoman MITCHELLE DRULIS

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Makes various changes to provisions of "Administrative Procedure Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A1505 FREIMAN, PETERPAUL

2

1 AN ACT concerning State agency procedures and amending
2 P.L.1968, c.410, P.L.2001, c.5, P.L.2011, c.33, and P.L.2017,
3 c.262.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1968, c.410 (C.52:14B-3) is amended to
9 read as follows:

10 3. a. In addition to other rule-making requirements imposed by
11 law, each agency shall:

12 (1) adopt as a rule a description of its organization, stating the
13 general course and method of its operations and the methods
14 whereby the public may obtain information or make submissions or
15 requests;

16 (2) adopt rules of practice setting forth the nature and
17 requirements of all formal and informal procedures available,
18 including a description of all forms and instructions used by the
19 agency, and if not otherwise set forth in an agency's rules, a table of
20 all permits and their fees, violations and penalties, deadlines,
21 processing times and appeals procedures. A complete list of the
22 agency's permits, fees, violations, penalties, deadlines, processing
23 times, and appeals procedures shall also be made available for
24 public viewing through publication on the agency's Internet
25 website;

26 (3) make available for public viewing, through publication on
27 the agency's Internet website, and through any other means, all final
28 agency orders, decisions, and opinions, in accordance with the
29 provisions of chapter 73 of the laws of 1963 as amended and
30 supplemented (C.47:1A-1 et seq.);

31 (4) make available for public viewing, through publication on
32 the agency's Internet website, all of the agency's rule-making and
33 public hearing notices, publicity documents, press releases, final
34 and non-confidential agency reports, **and** rule-making petitions
35 received by the agency pursuant to subsection (f) of section 4 of
36 P.L.1968, c.410 (C.52:14B-4) , all public comments received for
37 each proposed rulemaking action, and all data sets and other
38 information or resources used in the formulation of a proposed rule,
39 provided that the agency shall not disclose any confidential
40 information or trade secrets, or any information which may pose a
41 security threat to a person or property; and

42 (5) publish in the New Jersey Register a quarterly calendar
43 setting forth a schedule of the agency's anticipated rule-making
44 activities for the next six months. The calendar shall include the
45 name of the agency and agency head, a citation to the legal

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 authority authorizing the rule-making action and a synopsis of the
 2 subject matter and the objective or purpose of the agency's proposed
 3 rules ; and

4 (6) provide to the Office of Administrative Law all information
 5 required for the creation and maintenance of the Statewide database
 6 published pursuant to section 1 of P.L.2017, c.262 (C.52:14B-7.1).

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

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

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

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

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

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

25 (d) **【for which the agency has published a notice of pre-proposal**
 26 **of a rule in accordance with rules adopted by the Director of the**
 27 **Office of Administrative Law】** (Deleted by amendment, P.L. ,
 28 c.) (pending before the Legislature as this bill); or

29 (e) for which a comment period of at least **【60】** 90 days,
 30 commencing on the date of the formal notice of action required
 31 pursuant to subsection a. of section 4 of P.L.1968, c.410 (C.52:14B-
 32 4), is provided.

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

36 b. A State agency shall not consolidate rule proposals for rules
 37 that have no essential relation to one another. Each rulemaking
 38 action shall be directed toward a single object.

39 (cf: P.L.2013, c.259, s.3)

40
 41 2. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
 42 read as follows:

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

45 (1) Give at least **【30】** 60 days' notice of its intended action. The
 46 notice shall include a statement of either the terms or substance of
 47 the intended action or a description of the subjects and issues
 48 involved, and the time when, the place where, and the manner in

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

22 (2) Prepare for public distribution at the time the notice appears
23 in the Register, and make available for public viewing through
24 publication on the agency's Internet website, a statement setting
25 forth a summary of the proposed rule, as well as a clear and concise
26 explanation of the purpose and effect of the rule, the specific legal
27 authority under which its adoption is authorized, a description of
28 the expected socio-economic impact of the rule, including
29 estimates, in dollars, of the proposed rule's effects on annual
30 expenditures by the State, municipalities, businesses, and residents,
31 a regulatory flexibility analysis **[,]** or the statement of finding that a
32 regulatory flexibility analysis is not required, as provided in section
33 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which
34 shall include an assessment of the number of jobs to be generated or
35 lost if the proposed rule takes effect, an agriculture industry impact
36 statement, as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),
37 a housing affordability impact statement, a smart growth
38 development impact statement, as provided in section 31 of
39 P.L.2008, c.46 (C.52:14B-4.1b), **[and]** a racial and ethnic
40 community criminal justice and public safety impact statement as
41 required in section 3 of P.L.2017, c.286 (C.2C:48B-2), and a
42 consideration of alternatives to the rule proposal, including a no-
43 action alternative, with a justification as to why the rule proposal
44 serves the public interest better than the alternatives;

45 (3) Afford all interested persons a reasonable opportunity to
46 submit data, views, comments, or arguments, orally or in writing.
47 The agency shall begin accepting public comment when the public
48 notice is published in the New Jersey Register pursuant to

1 paragraph (1) of this subsection. The agency shall consider fully all
2 written and oral submissions respecting the proposed rule, including
3 any written submissions that are received by the agency through its
4 e-mail systems or electronic mailing lists. If, within ~~30~~ 60 days
5 of the publication of the proposed rule sufficient public interest is
6 demonstrated in an extension of the time for submissions, the
7 agency shall provide an additional 30-day period for the receipt of
8 submissions by interested parties. The agency shall not adopt the
9 proposed rule until after the end of that 30-day extension.

10 The agency shall conduct a public hearing on the proposed rule
11 at the request of a committee of the Legislature, or a governmental
12 agency or subdivision, ~~or~~ if sufficient public interest is shown,
13 provided such request is made to the agency within ~~30~~ 60 days
14 following publication of the proposed rule in the Register, or if the
15 proposed rule is estimated to cause a substantive increase in
16 expenditures by the State, local governments, businesses, or
17 residents. The agency shall provide at least 15 days' notice of such
18 hearing, shall publish such hearing notice on its Internet website,
19 and shall conduct the hearing in accordance with the provisions of
20 subsection (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, provided that the express
26 request by at least 50 commenters for an extension or public
27 hearing, as applicable, shall be considered sufficient public interest.
28 The head of each agency shall also adopt as part of its rules of
29 practice adopted pursuant to section 3 of P.L.1968, c.410
30 (C.52:14B-3) definite standards of what constitutes a substantive
31 increase in expenditures for the purposes of conducting a public
32 hearing pursuant to this paragraph, provided that an increase in
33 expenditures by the State, local governments, businesses, or
34 residents, or any combination thereof, of at least \$50 million in a
35 calendar year shall be considered a substantive increase in
36 expenditures; and

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

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

1 (c) If an agency finds that an imminent peril to the public
2 health, safety, or welfare requires adoption of a rule upon fewer
3 than 30 days' notice and states in writing its reasons for that finding,
4 and the Governor concurs in writing that an imminent peril exists,
5 the agency may proceed to adopt the rule without prior notice or
6 hearing, or upon any abbreviated notice and hearing that it finds
7 practicable. The agency shall publish, on its Internet website, a
8 summary of any rule adopted pursuant to this subsection, and the
9 statement of reasons for the agency's finding that an imminent peril
10 exists. Any rule adopted pursuant to this subsection shall be
11 effective for a period of not more than 60 days, unless each house
12 of the Legislature passes a resolution concurring in its extension for
13 a period of not more than 60 additional days. The rule shall not be
14 effective for more than 120 days unless repromulgated in
15 accordance with normal rule-making procedures.

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

22 (e) An agency **【may】** shall file a notice of intent with respect to
23 a proposed rule-making proceeding with the Office of
24 Administrative Law, for publication in the New Jersey Register at
25 **【any time】** least 90 days prior to the formal notice of action
26 required in subsection (a) of this section. The notice shall be for the
27 purpose of eliciting the views of interested parties on an action prior
28 to the filing of a formal rule proposal. Such notice shall be
29 distributed to interested persons through the use of an electronic
30 mailing list or similar type of subscription-based e-mail service, and
31 made available for public viewing through publication on the
32 agency's Internet website. The agency shall afford all interested
33 persons a reasonable opportunity to submit data, views, comments,
34 or arguments, orally or in writing, on the proposed action, and shall
35 fully consider all written and oral submissions, including any
36 written submissions received by the agency through its e-mail
37 systems or electronic mailing lists. An agency may use informal
38 conferences and consultations as means of obtaining the viewpoints
39 and advice of interested persons with respect to contemplated rule-
40 making. An agency may also appoint committees of experts or
41 interested persons or representatives of the general public to advise
42 it with respect to any contemplated rule-making.

43 (f) An interested person may petition an agency to adopt a new
44 rule, or amend or repeal any existing rule. Such petition may be
45 submitted to the agency through mail, e-mail, electronic mailing
46 list, or through any other means. Each agency shall prescribe by
47 rule the form for the petition and the procedure for the

1 consideration and disposition of the petition. The petition shall
2 state clearly and concisely:

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

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

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

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

11 Within 60 days following receipt by an agency of any such
12 petition, the agency shall either: (i) deny the petition, giving a
13 written statement of its reasons; (ii) grant the petition and initiate a
14 rule-making proceeding within 90 days of granting the petition; or
15 (iii) refer the matter for further deliberations, which shall be
16 concluded within 90 days of referring the matter for further
17 deliberations. Upon conclusion of such further deliberations, the
18 agency shall either deny the petition and provide a written statement
19 of its reasons or grant the petition and initiate a rule-making
20 proceeding within 90 days. Upon the receipt of the petition, the
21 agency shall file a notice stating the name of the petitioner and the
22 nature of the request with the Office of Administrative Law for
23 publication in the New Jersey Register. Notice of formal agency
24 action on such petition shall also be filed with the Office of
25 Administrative Law for publication in the Register, and shall be
26 made available for public viewing through publication on the
27 agency's Internet website.

28 If an agency fails to act in accordance with the time frame set
29 forth in the preceding paragraph, upon written request by the
30 petitioner, the Director of the Office of Administrative Law shall
31 order a public hearing on the rule-making petition and shall provide
32 the agency with a notice of the director's intent to hold the public
33 hearing if the agency does not. If the agency does not provide
34 notice of a hearing within 15 days of the director's notice, the
35 director shall schedule, and provide the public with a notice of, that
36 hearing at least 15 days prior thereto. Hearing notice shall also be
37 made available for public viewing through publication on the
38 agency's Internet website. If the public hearing is held by the
39 Office of Administrative Law, it shall be conducted by an
40 administrative law judge, a person on assignment from another
41 agency, a person from the Office of Administrative Law assigned
42 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
43 5), or an independent contractor assigned by the director. The
44 petitioner and the agency shall participate in the public hearing and
45 shall present a summary of their positions on the petition, a
46 summary of the factual information on which their positions on the
47 petition are based and shall respond to questions posed by any
48 interested party. The hearing procedure shall otherwise be

1 consistent with the requirements for the conduct of a public hearing
2 as prescribed in subsection (g) of section 4 of P.L.1968, c.410
3 (C.52:14B-4), except that the person assigned to conduct the
4 hearing shall make a report summarizing the factual record
5 presented and the arguments for and against proceeding with a rule
6 proposal based upon the petition. This report shall be filed with the
7 agency and delivered or mailed to the petitioner. A copy of the
8 report shall be filed with the Legislature along with the petition for
9 rule-making.

10 (g) All public hearings shall be conducted by a hearing officer,
11 who may be an official of the agency, a member of its staff, a
12 person on assignment from another agency, a person from the
13 Office of Administrative Law assigned pursuant to subsection o. of
14 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
15 contractor. The hearing officer shall have the responsibility to
16 make recommendations to the agency regarding the adoption,
17 amendment or repeal of a rule. These recommendations shall be
18 made public. At the beginning of each hearing, or series of
19 hearings, the agency, if it has made a proposal, shall present a
20 summary of the factual information on which its proposal is based,
21 and shall respond to questions posed by any interested party.
22 Hearings shall be conducted at such times and in locations which
23 shall afford interested parties the opportunity to attend. A verbatim
24 record of each hearing shall be maintained, and copies of the record
25 shall be available to the public at no more than the actual cost,
26 which shall be that of the agency where the petition for rule-making
27 originated.

28 (h) An interested person may petition an agency to identify a
29 rule that is inconsistent or in conflict with another State or federal
30 rule, and urge the agency to amend the rule in order to resolve the
31 conflict. The petition may be submitted to the agency through mail,
32 e-mail, electronic mailing list, or through any other written means.
33 Each agency shall prescribe by rule the form for the petition and the
34 procedure for the consideration and disposition of the petition.
35 Within 60 days following receipt by an agency of a complete
36 petition, the agency shall either deny the petition, giving a written
37 statement of its reasons, or grant the petition and initiate a
38 rulemaking proceeding within 60 days to amend the rule to resolve
39 the conflict or inconsistency. In order to be considered complete, a
40 petition submitted pursuant to this subsection shall state clearly and
41 concisely:

42 (1) the rules that are conflicting or inconsistent with one another,
43 and a description of the nature of the conflict or inconsistency,
44 including a description of how the conflict or inconsistency may
45 result in a tangible detriment to a person or property;

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

1 (3) the petitioner's suggested course of action to resolve the
2 conflict; and

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

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

6
7 3. 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, provided that the agency first performs a
25 conformity analysis to verify that the rule is not inconsistent or in
26 conflict with any other State or federal rules. The notice pursuant
27 to this paragraph shall include the citation for the rule, a general
28 description of the rule, the specific legal authority under which the
29 rule is authorized, and the new expiration date of the rule. The
30 notice pursuant to this paragraph shall be effective upon filing with
31 the Office of Administrative Law.

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

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

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

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

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

14
15 4. Section 1 of P.L.2017, c.262 (C.52:14B-7.1) is amended to
16 read as follows:

17 1. a. The Office of Administrative Law shall establish and
18 maintain, at a publicly accessible location on its Internet website, a
19 searchable database that identifies the number, nature, and current
20 status of all pending or proposed rule-making actions in the State.
21 The database shall include written descriptions and listings of all
22 such pending or proposed State rule-making actions, and shall
23 additionally incorporate the use of charts, tables, graphs, and other
24 graphics or visual aids, as necessary or appropriate, to provide
25 members of the public with a full, complete, and easily
26 comprehensible overview of pending or proposed rule-making
27 actions in the State.

28 b. (1) The database established and maintained pursuant to
29 subsection a. of this section shall include, with respect to each
30 proposed rule-making action **【**, a summary description that
31 indicates**】** :

32 (a) the title or subject matter of the rule-making action;

33 (b) the State agency responsible for the rule-making action;

34 (c) the identification number, if any, that is associated with the
35 rule-making action;

36 (d) the types or groups of persons who are the subject of, or who
37 will, or are likely to be, affected by, the rule-making action;

38 (e) the legal authority for the rule-making action;

39 (f) the date on which the rule-making action was initiated by the
40 State agency;

41 (g) the legal deadline, if any, that is associated with the rule-
42 making action;

43 (h) a concise abstract or synopsis describing the basis for, and
44 pertinent factors necessitating, the rule-making action; **【and】**

45 (i) a timetable showing the history of the rule-making action;

46 (j) all public comments received related to the rule-making
47 action; and

1 (k) all data sets and other information or resources used in the
2 formulation of a proposed rule, provided that the Office of
3 Administrative Law shall not disclose any confidential information
4 or trade secrets, or any information which may pose a security
5 threat to a person or property.

6 (2) The **【summary description】** information required by this
7 subsection shall additionally include a brief statement that identifies
8 the potential impacts of the rule-making action on the State and its
9 residents, and the anticipated significance of those impacts. At a
10 minimum, this statement shall indicate:

11 (a) the type and potential significance of any expected socio-
12 economic impacts associated with the rule-making action, as
13 determined in accordance with the provisions of paragraph (2) of
14 subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4);

15 (b) the number of jobs that will, or are likely to, be generated or
16 lost as a result of the rule-making action, as determined in
17 accordance with the provisions of paragraph (2) of subsection (a) of
18 section 4 of P.L.1968, c.410 (C.52:14B-4);

19 (c) the type and significance of any expected agricultural
20 industry impacts associated with the rule-making action, as
21 determined in accordance with the provisions of section 7 of
22 P.L.1998, c.48 (C.4:1C-10.3) and paragraph (2) of subsection (a) of
23 section 4 of P.L.1968, c.410 (C.52:14B-4);

24 (d) whether the State agency has prepared, or will prepare, a
25 regulatory flexibility analysis in connection with the rule-making
26 action, in accordance with the provisions of P.L.1986, c.169
27 (C.52:14B-16 et seq.) and paragraph (2) of subsection (a) of section
28 4 of P.L.1968, c.410 (C.52:14B-4); and

29 (e) if a regulatory flexibility analysis has been prepared in
30 connection with the rule-making action, the estimated number of
31 small businesses that will, or are likely to, be affected by the rule-
32 making action.

33 c. Notwithstanding the provisions of the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
35 contrary, **【the Office of Administrative Law may require】** each
36 State agency shall provide to **【provide】** the Office of
37 Administrative Law the information to be included in the database
38 **【summary description】** under subsection b. of this section in
39 association with any notice of proposed rule-making that is
40 submitted by the agency prior to, on, or after, the effective date of
41 this act. The form and manner in which the information will be
42 provided shall be determined by the Office of Administrative Law.

43 d. The database established and maintained pursuant to
44 subsection a. of this section shall also include distinct listings or
45 graphics that identify the total number of pending rule-making
46 actions by: (1) State agency; (2) rule-making type and stage; and
47 (3) current length, in 30-day intervals, of the State agency review

1 associated therewith, as determined by looking to the date of each
2 rule-making action's initiation by the State agency.

3 e. The Office of Administrative Law shall make [regular and
4 timely] daily updates to the database established pursuant to
5 subsection a. of this section to ensure that it reflects the most
6 current information pertaining to rule-making actions undertaken by
7 each State agency. The Office of Administrative Law shall
8 indicate, on its Internet website, the date on which the most recent
9 database update was performed pursuant to this subsection.

10 (cf: P.L.2017, c.262, s.1)

11
12 5. Section 10 of P.L.1968, c.410 (C.52:14B-10) is amended to
13 read as follows:

14 10. In a contested case:

15 (a) (1) The parties shall not be bound by rules of evidence
16 whether statutory, common law, or adopted formally by the Rules
17 of Court. All relevant evidence is admissible, except as otherwise
18 provided herein. The administrative law judge may, in his
19 discretion, exclude any evidence if he finds that its probative value
20 is substantially outweighed by the risk that its admission will either
21 necessitate undue consumption of time or create substantial danger
22 of undue prejudice or confusion. The administrative law judge shall
23 give effect to the rules of privilege recognized by law. Any party in
24 a contested case may present his case or defense by oral and
25 documentary evidence, submit rebuttal evidence and conduct such
26 cross-examination as may be required, in the discretion of the
27 administrative law judge, for a full and true disclosure of the facts.

28 (2) Where the case involves a permitting or licensing decision of
29 the Department of Environmental Protection, the department shall
30 be required to produce and certify a permitting record within 30
31 days after the filing of the contested case. This deadline may be
32 extended by an administrative law judge upon the unanimous
33 agreement of the parties. The production and certification of the
34 department's permitting record, in accordance with this paragraph,
35 shall not limit the ability of the parties to further supplement the
36 record.

37 (b) Notice may be taken of judicially noticeable facts. In
38 addition, notice may be taken of generally recognized technical or
39 scientific facts within the specialized knowledge of the agency or
40 administrative law judge. Parties shall be notified either before or
41 during the hearing, or by reference in preliminary reports or
42 otherwise, of the material noticed, including any staff memoranda
43 or data, and they shall be afforded an opportunity to contest the
44 material so noticed. The experience, technical competence, and
45 specialized knowledge of the agency or administrative law judge
46 may be utilized in the evaluation of the evidence, provided this is
47 disclosed of record.

1 (c) (1) All hearings of a State agency required to be conducted
2 as a contested case under this act or any other law shall be
3 conducted by an administrative law judge assigned by the Director
4 and Chief Administrative Law Judge of the Office of
5 Administrative Law, except as provided by this amendatory and
6 supplementary act. A recommended report and decision which
7 contains recommended findings of fact and conclusions of law and
8 which shall be based upon sufficient, competent, and credible
9 evidence shall be filed, not later than 45 days after the hearing is
10 concluded, with the agency in such form that it may be adopted as
11 the decision in the case and delivered or mailed, to the parties of
12 record with an indication of the date of receipt by the agency head;
13 and an opportunity shall be afforded each party of record to file
14 exceptions, objections, and replies thereto, and to present argument
15 to the head of the agency or a majority thereof, either orally or in
16 writing, as the agency may direct.

17 (2) Unless the head of the agency or a party requests that the
18 recommended report and decision be filed in writing, the
19 recommended report and decision of the administrative law judge
20 may be filed orally in such appropriate cases as prescribed by the
21 director and if a transcript has been requested pursuant to
22 subsection (e) of section 9 of P.L.1968, c.410 (C.52:14B-9).

23 (3) An administrative law judge may file a recommended report
24 and decision in the form of a checklist in such appropriate cases and
25 formats as prescribed by the director after consultation with each
26 State agency.

27 (4) The head of the agency, upon a review of the record
28 submitted by the administrative law judge, shall adopt, reject or
29 modify the recommended report and decision no later than 45 days
30 after receipt of such recommendations. In reviewing the decision of
31 an administrative law judge, the agency head may reject or modify
32 findings of fact, conclusions of law or interpretations of agency
33 policy in the decision, but shall state clearly the reasons for doing
34 so. The agency head may not reject or modify any findings of fact
35 as to issues of credibility of lay witness testimony unless it is first
36 determined from a review of the record that the findings are
37 arbitrary, capricious or unreasonable or are not supported by
38 sufficient, competent, and credible evidence in the record. In
39 rejecting or modifying any findings of fact, the agency head shall
40 state with particularity the reasons for rejecting the findings and
41 shall make new or modified findings supported by sufficient,
42 competent, and credible evidence in the record. Unless the head of
43 the agency modifies or rejects the report within such period, the
44 decision of the administrative law judge shall be deemed adopted as
45 the final decision of the head of the agency. The recommended
46 report and decision shall be a part of the record in the case. For
47 good cause shown, upon certification by the director and the agency
48 head, the time limits established herein may be subject to a single

1 extension of not more than 45 days. Any additional extension of
2 time shall be subject to, and contingent upon, the unanimous
3 agreement of the parties.

4 (5) Whenever the head of the agency rejects or modifies the
5 recommended report and decision of an administrative law judge
6 pursuant to paragraph (4) of this subsection, and the modification or
7 rejection is subsequently overturned by judicial review, the agency
8 shall be liable for the plaintiff's attorneys' fees incurred in the court
9 challenge to the final agency decision.

10 (d) A final decision or order adverse to a party in a contested
11 case shall be in writing or stated in the record. A final decision
12 shall include findings of fact and conclusions of law, separately
13 stated and shall be based only upon the evidence of record at the
14 hearing, as such evidence may be established by rules of evidence
15 and procedure promulgated by the director.

16 Findings of fact, if set forth in statutory language, shall be
17 accompanied by a concise and explicit statement of the underlying
18 facts supporting the findings. The final decision may incorporate
19 by reference any or all of the recommendations of the
20 administrative law judge. Parties shall be notified either personally
21 or by mail of any decision or order. Upon request a copy of the
22 decision or order shall be delivered or mailed forthwith by
23 registered or certified mail to each party and to his attorney of
24 record.

25 (e) Except where otherwise provided by law, the administrative
26 adjudication of the agency shall be effective on the date of delivery
27 or on the date of mailing, of the final decision to the parties of
28 record whichever shall occur first, or shall be effective on any date
29 after the date of delivery or mailing, as the agency may provide by
30 general rule or by order in the case. The date of delivery or mailing
31 shall be stamped on the face of the decision.

32 (f) The head of an agency may order that, in certain appropriate
33 cases, the recommended report and decision of the administrative
34 law judge shall be deemed adopted, immediately on filing thereof
35 with the agency, as the final decision of the head of the agency.
36 The appropriate cases shall be described in a written order issued by
37 the head of the agency, filed with the director, and made available
38 to the public as a government record. The order shall not include
39 any contested case for which the head of the agency is specifically
40 required by State or federal law to review the recommended report
41 and decision and adopt the final decision. The head of the agency
42 may revise or revoke an order, issued pursuant to this subsection,
43 whenever it is deemed appropriate. The order shall apply to all
44 appropriate contested cases commenced with the agency after the
45 order's issuance and until the order is rescinded or modified. In
46 such appropriate contested cases, the head of the agency shall not
47 have the opportunity to reject or modify the administrative law
48 judge's recommended report and decision pursuant to subsection (c)

1 of this section and the final decision by the administrative law judge
2 shall comply with the requirements of and shall be given the same
3 effect as a final decision of the head of the agency pursuant to
4 subsection (d) of this section.

5 (g) Whenever the parties in a contested case stipulate to the
6 factual record, and agree that there are no genuine issues of material
7 fact to be adjudicated, the head of the agency may, in his discretion,
8 render a final agency decision on the matter without obtaining the
9 prior input of, or a recommended report and decision from, an
10 administrative law judge.

11 (cf: P.L.2013, c.236, s.2)

12

13 6. This act shall take effect one year after the date of enactment.

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STATEMENT

17

18 This bill would make various changes to the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and other
20 laws that supplement that act, in order to alter the procedures State
21 agencies are required to follow when they adopt rules and
22 regulations to implement State and federal laws. The bill would
23 also provide for the payment of attorney's fees in certain
24 circumstances when the head of an agency rejects or modifies the
25 recommended report and decision of an administrative law judge
26 and the decision is overturned by a court.

27 Specifically, the bill would require State agencies to make
28 available for public viewing on the agency's website (1) all public
29 comments received related to each rule proposal issued by the
30 agency, and (2) all data sets and other information that were used
31 by the agency to formulate the proposed rule. The bill would also
32 require that each rule proposal be directed toward a single object,
33 prohibiting agencies from bundling together unrelated rule
34 proposals.

35 The bill would extend the public comment period for rule
36 proposals from 30 days to 60 days. The bill would require that the
37 socio-economic impact statement for rule proposals include
38 estimates, in dollars, of the proposed rule's effect on annual
39 expenditures by the State, municipalities, businesses, and residents.
40 The bill would also require rule proposals to include a consideration
41 of alternatives to the rule proposal, with a justification for why the
42 proposed rule is superior to the alternatives.

43 The bill would provide that, if 50 or more commenters request a
44 30-day extension to the public comment period or a public hearing
45 for a proposed rule, this would constitute "sufficient public interest"
46 for the purposes of section 4 of P.L.1968, c.410 (C.52:14B-4) and
47 the agency proposing the rule would be required to grant the
48 extension or hold a public hearing, as applicable. In addition, the

1 bill would require State agencies to hold a public hearing on a rule
2 proposal if the proposal is estimated to involve a substantive
3 increase in expenditures by the State, municipalities, businesses, or
4 residents. The bill would direct each State agency to formulate
5 standards for what constitutes a "substantive increase in
6 expenditures," but would establish a minimum threshold of \$50
7 million in a calendar year.

8 In addition, the bill would require State agencies to file a notice
9 of intent for each contemplated rulemaking at least 90 days prior to
10 issuing a formal rule proposal notification. Under current law,
11 agencies are authorized, but not required, to file a notice of intent.
12 The notice of intent is required to include a statement of either the
13 terms or substance of the intended action or a description of the
14 subjects and issues involved. The agency would be required to
15 establish the time when, the place where, and the manner in which
16 interested persons may present their views on the contemplated
17 rule-making. The bill would also require agencies to review and
18 respond to petitions that claim that one of the agency's rules is in
19 conflict or inconsistent with another State or federal rule.
20 Similarly, the bill would require State agencies to analyze their
21 rules to verify that they do not conflict with other State and federal
22 rules, prior to readopting them.

23 The bill would require the Office of Administrative Law (OAL)
24 to include all public comments received, and all data and other
25 information used, for each rulemaking action in its online database
26 of rulemaking actions. The bill would also explicitly require State
27 agencies to provide all necessary information to the OAL for the
28 development of the online database. In addition, the bill would
29 require the OAL to update the database daily, rather than making
30 "regular and timely updates," as in current law.

31 Finally, the bill would provide that, whenever the head of the
32 agency rejects or modifies the recommended report and decision of
33 an administrative law judge pursuant to subsection (c) of section 10
34 of P.L.1968, c.410 (C.52:14B-10), and the modification or rejection
35 is subsequently overturned by judicial review, the agency would be
36 liable for the plaintiff's attorneys' fees incurred in the court
37 challenge to the final agency decision.