

CHAPTER 259

AN ACT concerning the use of electronic technology in agency rule-making, and amending P.L.1968, c.410.

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

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

C.52:14B-2 Definitions.

2. As used in this act:

"Administrative adjudication" or "adjudication" includes any and every final determination, decision, or order made or rendered in any contested case.

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

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

"Director" means the Director and Chief Administrative Law Judge of the Office of Administrative Law, unless otherwise indicated by context.

"Electronic mailing list" means a computer program that allows agency website visitors, at their discretion, to subscribe to, or unsubscribe from, an e-mail discussion group or e-mail mailing list controlled by the agency, and which program enables the agency to automatically send e-mail messages to multiple e-mail addresses on the user-generated subscriber list.

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

"License" includes the whole or part of any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law.

"Secretary" means the Secretary of State.

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

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

C.52:14B-31 Information required to be posted on State agency website.

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

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

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

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

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

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

C.52:14B-3 Additional requirements for rule-making.

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

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

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

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

(4) make available for public viewing, through publication on the agency's Internet website, all of the agency's rule-making and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rule-making petitions received by the agency pursuant to subsection (f) of section 4 of P.L.1968, c.410 (C.52:14B-4); and

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

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

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

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

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

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

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

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

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

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

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

C.52:14B-4 Adoption, amendment, repeal of rules.

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), and a housing affordability impact statement and a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b);

(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.

(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.

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

Approved January 17, 2014.