

APPROVAL # 14

CHAPTER 167

1236

1975-1976 Regular Sessions

IN SENATE

January 20, 1975

Introduced by Sen. GORDON—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT

Notes

in relation to rule making and adjudication by state administrative agencies, constituting chapter eighty-two of the consolidated laws and amending the executive law, in relation to the state bulletin

75

Compared by _____

Approved _____

148 P.S.

1975

SENATE

SENATE JOURNAL
 MAR 12 1975
 PAGE 21

The Senate Bill
 by Mr. GORDON
 Entitled: "

Senate No. 1236
 Assem. Rept. No. _____

1236

MR. GORDON
 AN ACT IN RELATION TO RULE MAKING AND
 ADJUDICATION BY STATE ADMINISTRATIVE
 AGENCIES, CONSTITUTING CHAPTER EIGHTY-
 TWO OF THE CONSOLIDATED LAWS AND AMENDING
 THE EXECUTIVE LAW, IN RELATION TO THE
 STATE BULLETIN

" was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	47	Mr. Anderson			22	Mr. Lewis	
	49	Mr. Auer			50	Mr. Lombardi	
	45	Mr. Barclay			24	Mr. Marchi	
	23	Mr. Beatty			5	Mr. Marino	
	25	Ms. Bellamy			48	Mr. Mason	
	33	Mr. Bernstein			28	Mr. McCall	
	19	Mr. Bloom			59	Mr. McFarland	
	12	Mr. Bronston			15	Mr. Meyerson	
	9	Ms. Burstein			14	Mr. Moore	
	7	Mr. Caemmerer			47	Mr. Nolan	
	34	Mr. Calandra			27	Mr. Ohrenstein	
	21	Mr. Conklin			17	Mr. Owens	
	46	Mr. Donovan			11	Mr. Padavan	
	6	Mr. Dunne			60	Mr. Paterson	
	54	Mr. Eckert			53	Mr. Perry	
	35	Mr. Flynn			39	Mr. Pisani	
	32	Mr. Galiber			57	Mr. Present	
	30	Mr. Garcia			38	Mr. Rolison	
	1	Mr. Giuffreda			21	Mr. Ruiz	
	13	Mr. Gold			10	Mr. Santucci	
	26	Mr. Goodman			40	Mr. Schermerhorn	
	37	Mr. Gordon			2	Mr. Smith, B. C.	
	56	Mr. Griffin			51	Mr. Smith, W. T.	
	20	Mr. Halperin			43	Mr. Stafford	
	41	Mr. Hudson			18	Mr. Straub	
	44	Mr. Isabella			55	Mr. Tauriello	
	4	Mr. Johnson			3	Mr. Trunzo	
	15	Mr. Knorr			58	Mr. Volker	
	29	Mr. Leichter			32	Mr. Wader	
	8	Mr. Levy			25	Ms. Winikow	

AYES 60
 NAYS _____

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

Gordon
S 1236, Rec. No. 114
 No. 1-150

5/19 1975

(Republicans in Italics)

Those Who Voted
In the Affirmative

Those Who Voted
In the Negative

Those Who Voted
In the Affirmative

Those Who Voted
In the Negative

Those Who Voted
In the Affirmative

Those Who Voted
In the Negative

Mr. Abramson
 Miss Amatucci
~~Mr. Barber~~
Mr. Betros
 Mr. Bianchi
 Mr. Blumenthal
 Mr. Brewer
 Mr. Brown
Mr. Burns
Mr. Bucrows
Mr. Calogero
Mr. Caputo
 Mr. Cincotta
Mr. Cochran
 Mrs. Connelly
 Mr. Connor
Mr. Cook (G. D.)
Mr. Cook (D. W.)
 Mr. Cooperman
 Mr. Culhane
Mr. Daly
Mr. D'Amato
Mr. D'Indea
 Mr. Dearie
Mr. DeLillo
 Mr. Del Toro
 Mr. DeSalvio
Mr. DiCarlo
 Mr. DiFalco
 Mrs. Diggs
Mr. Dokuchits
Mr. Duryea
Mr. Dwyer
Mr. Emery
Mr. Esposito
 Mr. Eve
 Mr. Farrell
 Mr. Ferris
Mr. Fieta
 Mr. Fink
Mr. Flack
Mr. Flanagan
 Mr. Fortune
 Mr. Fremming
 Mr. Frey
 Mr. Gazzara
Mrs. Goodhue
 Mr. Gorski
 Mr. Gottfried
 Mr. Graber

Mr. Grannis
 Mr. Greco
 Mr. Griffin
 Mr. Griffith
Miss Gunning
 Mr. Haley
 Mr. Hamilton
Mr. Hanna
 Mr. Harenberg
Mr. Harris
Mr. Hawley
Mr. Healey
 Mr. Hecht
Mr. Henderson
Mr. Herbst
 Mr. Hevesi
 Mr. Hinchey
 Mr. Hochberg
 Mr. Hochbrueckner
 Mr. Hoyt
Mr. Hurley
 Mr. Izard
Mr. Jonas
Mr. Kelleher
 Mr. Kidder
 Mr. Koppell
 Mr. Kremer
 Mr. Landes
Mr. Lane
 Mr. Lasher
Mr. Lee
 Mr. Lehner
 Mr. Lentol
Mr. Levy
 Mr. Lewis
 Mr. Lill
 Mr. Lisa
Mr. Lopresto
Mr. Mannix
 Mr. Marchiselli
Mr. Margiotta
Mr. Marshall
 Mr. McCabe
Mr. Mega
 Mr. Miller (G. W.)
 Mr. Miller (H. J.)
Mr. Miller (H. M.)
 Mr. Miller (M. H.)
 Mr. Mirto
Mr. Molinari

Mr. Montano
Mr. Murphy (G. A.)
Mr. Murphy (M. J.)
Mr. Murphy (T. J.)
 Mr. Nicolosi
 Mr. Nine
Mr. O'Neil
 Mr. Orazio
 Mr. Passannante
 Mr. Pesce
 Mr. Posner (H. A.)
 Mr. Posner (S.)
Mr. Rappleyea
Mr. Reilly
Mr. Riford
 Mr. Robach
Mr. Roosa
Mr. Ross
 Mrs. Runyon
Mr. Ryan
 Mr. Schmidt
 Mr. Schumer
Mr. Sears
 Mr. Serrano
 Mr. Sharoff
 Mr. Siegel
 Mr. Silverman
Mr. Solomon
~~Mr. Stovely~~
 Mr. Stein
Mr. Stephens
 Mr. Stott
 Mr. Strelzin
Mr. Suchin
Mr. Sullivan
 Mr. Tallon
Mr. Taylor
 Mr. Thorp
Mr. Tills
 Mr. Vann
Mr. Velella
 Mr. Virgilio
 Mr. Walsh
Mr. Wempie
 Mr. Weprin
Mr. Wertz
 Mr. Yevoli
Mr. Zagame
 Mr. Zimmer
~~Mr. Zunker~~

AYES *147*

NOES *1*

SENATE

Introduced by:

ASSEMBLY

No. 1236

Senator Gordon

No.

Law: Special Act

Sections: New

Chapter 82 of the Consolidated
LawsAmended Section 160 of the Exec-
utive Law

Division of the Budget recommendation on the above bill:

Approved: _____ Veto: No Objection: _____ No Recommendation: _____

1. Subject and Purpose: The proposed State Administrative Procedure Act would establish uniform procedures for rule making, adjudication and licensing proceedings by State agencies. The Act would also provide for more frequent publication of the State Bulletin.

2. Summary of Provisions:

- a. Effective September 1, 1976 the bill would apply to every State agency, including public benefit corporations or public authorities with at least one member appointed by the Governor, but excluding the Governor, legislative agencies, judicial agencies, interstate compact agencies, international agencies, Division of Military and Naval Affairs, State Police, the Identification and Intelligence Unit of the Division of Criminal Justice Services, Department of Correctional Services, the State Insurance Fund, Unemployment Insurance Appeal Board and Workmen's Compensation Board;
- b. The bill's provisions regarding rules would not apply to:
1. rules concerning the internal management of the agency,
 2. rules relating to the use of public works including streets and highways, where signs or signals are used to explain rules,
 3. rules for judicial review of rules, explanatory forms and instructions, interpretive statements and statements of general policy having no legal effect,
 4. rules implementing agreements made under the Public Employees' Fair Employment Act (Article 14 of the Civil Service Law).
- c. The bill would create a uniform rulemaking procedure which would require a minimum 21 day public notification period, provide for immediate temporary adoption of rules in emergency situations, require rules to be filed with the Secretary of State to become effective, allow declaratory ruling by agencies and guarantee the right to judicial review under Article 78 of the Civil Practice Law and Rules.
- d. The bill would institute consistent procedures to be followed in adjudicatory processes which include right to reasonable notice of hearing, provision for written and oral testimony, keeping records

Dr: _____ Examiner: _____

Disposition:

Chapter No.

Veto No.

and making copies available, presiding officers and their powers, evidence requirements with the right of cross-examination, and requirements for reaching proper decisions, determinations and orders.

- e. The bill creates standard procedures for issuing licenses including determination of expiration date, notice to license holder and emergency suspension of a license.
 - f. Provision is made for public inspection of rules, orders, decisions, determination and opinions either through the appropriate agency or the Department of State.
 - g. The right to representation and advice by a counsel is guaranteed, although the counsel need not be a lawyer.
 - h. The bill would require the State Bulletin to be published at least every two weeks, copies be sent to every city, town and county clerk, and that public subscription and publishing rates be determined by the Secretary of State with the approval of the Director of the Budget.
3. Prior Legislative History: The bill is identical to last year's bill A.9670 which was vetoed by the preceding Governor (Veto #185). Similar bills have been introduced in the Legislature since 1969 but only two passed and were subsequently vetoed (1971 Veto #131; 1972, S.7730, Veto #98).
4. Arguments in Support:
- a. The bill would remedy the lack of consistency in State procedures for rule-making, adjudicatory processes and licensing procedures.
 - b. The bill's provision for public notice before adjudicatory proceedings and access to records of proceedings would provide consistent protection to the individual involved in an administrative proceeding and will assist public interest groups in safeguarding their concerns.
 - c. Requiring public authorities to comply with the provisions of the bill, especially those for public notice, could mitigate some of the criticism of authorities' lack of public awareness and responsiveness.
5. Possible Objections:
- a. The bill does not appear to provide a constructive remedy to a well-defined problem. §100, Legislative intent, states only that the State's rulemaking, adjudicatory and licensing functions are not uniform and create misunderstandings. There is no further description of the nature of this problem, or how this bill would correct such problems through "simple, uniform administrative procedures."

- b. Many of the critical words and terms used in the bill could be criticized as being vague and unclear since no specific definitions are provided. For example, although Section 102.2 (b) (iv) would exclude explanatory forms, instructions, and interpretive statements, no definition of such is provided. Furthermore, the lack of clear definitions for terms such as "general applicability" used to describe "rule" could lead to confusion, and unending unproductive litigation.
 - c. Although the bill attempts to offset the cost of implementing the proposed bill by charging several fees, none of the fees are expected to be sizeable. Many agencies could find that the cost of collecting the fees could easily exceed the actual fees.
 - d. It could be argued that the Attorney General and Comptroller as elected officials directly answerable to the public should be excluded from the provisions of the bill, as is the Governor.
 - e. It may be argued that the annual costs of this proposal (see Budgetary Implications) estimated at \$3-6 million annually may be excessive.
6. Other State Agencies Interested: Although all State agencies affected by the bill would be interested, those agencies conducting many adjudicatory proceedings such as the Departments of Environmental Conservation, Motor Vehicles and Agriculture and Markets would be most interested. The Departments of State and Law would also be interested.
7. Known Position of Others: The New York State Bar Association opposed the 1969 version of the bill because it appears to permit legal practice by lay persons. That provision of the bill (§601) is unchanged.

The Committee on Administrative Law of the Association of the Bar of the City of New York recommended approval of the law with certain reservations relating to:

- the broadness of the proposed "emergency clause"
- the issuing of subpoenas only by "presiding officers"
- the need for an agency to rule on each proposed finding of fact which could prove to be burdensome
- exemption of State agencies from the Act.

8. Budgetary Implications: The State is currently facing a fiscal crisis which is resulting in the curtailment and abolition of State programs. While the exact fiscal impact of the bill is difficult to determine, previous estimates have placed the cost of implementing the bill to be between \$2-5 million per year. Due to inflation, the cost of implementing the bill is probably higher and will continue to increase with inflation. Most of the cost is expected to result from:

- a. requirements for public notification of hearings and rule changes to be made by newspaper advertisements, notices in the State Bulletin and direct mailings to individuals who have requested notification.
- b. insuring public access to agency forms, instructions and procedures for implementing the bill, and every final order, decision, determination or opinion resulting from either a rulemaking or adjudicatory proceeding.
- c. requiring a record to be made of each adjudicatory proceeding along with copies of each transcript as requested.
- d. creating and publishing a State Bulletin on a bi-weekly basis and sending copies to subscribers and city, town and county clerks.

Many of these costs are expected to be offset by charges to the public. However, strong administrative control will be needed to insure that the cost of collecting possibly minimal fees will not exceed the expected revenues. Where costs have increased beyond a minimal level due to inflation, there could be pressure upon the State to subsidize those fees to prevent placing an undue burden upon public interest groups and individuals.

9. Recommendation: The bill is an attempt to solve problems allegedly caused by the lack of consistency in State rulemaking, adjudicatory and licensing procedures. However, the bill does not present an adequate definition of the alleged problems or how the bill would remedy them. The bill is flawed by the use of vague and unclear terms and words which could lead to confusion in implementing the bill.

Implementation of the bill could result in a possibly excessive annual cost of \$3-6 million in a period of State financial crisis. While the bill attempts to offset the cost by charging fees, many agencies could find that the cost of collecting fees exceeded the fee revenue. For these reasons, we recommend that the bill be vetoed.

DATE: May 27, 1975

EXAMINER: Marcia Roth *MP* *gms*

Vincent E. LaFleche, Assistant Chief Budget Examiner (Mgt.) *WZ*

Ram
Rorigan *SR*

11-11

JUN 2 1975

S. 1236



RICHARD A. WIEBE
CHAIRMAN

RICHARD L. DUNHAM
FREDERICK O. R. HAYES
JOSEPH H. MURPHY

STATE OF NEW YORK
EXECUTIVE DEPARTMENT — OFFICE FOR LOCAL GOVERNMENT
STATE BOARD OF EQUALIZATION AND ASSESSMENT

AGENCY BUILDING #4 — EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223

May 30, 1975

The Honorable Judah Gribetz
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate Bill No. 1236
By: Mr. Gordon

In 1962, the Law Revision Commission began a study of the administrative procedures of the various State agencies and concluded that existing procedures among the agencies were inconsistent and that a State Administrative Procedure Act was feasible, desirable and necessary.

Numerous bills to enact an administrative procedure act have been introduced in both houses of the Legislature periodically since the above-mentioned study was concluded. Bills were passed in 1971 (S.1558-A), 1972 (S.7730) and 1974 (A.9670). However, each of these bills was vetoed and it would appear, upon an examination and comparison of an administration-sponsored bill (e.g. S.6273-A which was introduced in the 1973 and 1974 sessions) with the vetoed bills, that the major reasons for such vetoes were as follows:

- [a] The inclusion of the terms "office", "council" and "public benefit corporation or public authority at least one of whose members is appointed by the Governor" within the definition of "agency" in proposed section 102;
- [b] The failure to exclude the Attorney General and the Comptroller from said definition of "agency";
- [c] The failure to exclude "rules relating to construction or supply contract administration" from the definition of "rule" as set forth in said proposed section 102; and

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[d] Inserting the language "either by itself or through the Department of State" in proposed section 501.

The preceding paragraph is set forth merely to indicate the apparent reasons for the vetoes of prior versions of this bill.

This bill is intended to provide uniform procedures for administrative rule-making, adjudication and licensing processes among State agencies. The purpose being to guarantee that actions of administrative agencies conform to the sound standards developed in the State and nation through constitutional, statutory and case law and to provide the public with simple, uniform administrative procedures.

As to "rule-making", it would appear that the provisions of this bill are in accordance with modern concepts of administrative fair play and we would have no objection to their applicability to the rule-making powers of the State Board.

An "adjudicatory proceeding" is defined as any proceeding in which a determination of the legal rights, duties or privileges of named parties thereto is required by statute to be made only on a record and after an opportunity for a hearing.

Reviews of county equalizations pursuant to Article 8 of the Real Property Tax Law would be governed by the provisions of this act relating to adjudicatory proceedings. The procedures presently used by the State Board in these proceedings do not differ materially from the procedures prescribed by this bill and we would therefore have no objection thereto.

However, the provisions of this act would not apply to hearings held by the State Board in connection with:

[1] State equalization rates determined pursuant to Article 12 of the Real Property Tax Law;

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- [2] Special franchise assessments made pursuant to Article 6 of the Real Property Tax Law;
- [3] Railroad ceilings established pursuant to Title 2-A of Article 4 of the Real Property Tax Law;
- [4] Hearings held pursuant to Article 25-AA of the Agriculture and Markets Law; and
- [5] Hearings pursuant to section 480-a of the Real Property Tax Law.

The above-mentioned are not adversary proceedings and affected parties are notified and are afforded an opportunity to be heard before a final determination is made. There is no statutory requirement that any proof be taken substantiating the determination of the State Board or that only evidence adduced or the record made at any hearing be considered by the State Board in making this determination. This is not to say that such determinations are not subject to review; for example, special franchise assessments and railroad ceilings are subject to judicial review pursuant to Article 7 of the Real Property Tax Law with a trial de novo and, although the rights of private parties are not involved in State equalization rate proceedings, section 760 of the Real Property Tax Law provides that a municipality may obtain judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules.

The State Board does not have licensing powers at the present time.

This bill would take effect on the 1st day of September in the year next succeeding the year in which it shall become a law.

The purpose of this memorandum is merely to set forth the manner in which the various administrative procedures of the State

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Re: Senate Bill No. 1236

Board would be affected by this act and, as we have previously indicated with respect to prior versions of this bill, we have no objection to the concepts expressed therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'T. F. McGrath', written in dark ink.

Thomas F. McGrath