ASSEMBLY COMMERCE, ECONOMIC DEVELOPMENT AND AGRICULTURE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5461

STATE OF NEW JERSEY

DATED: MARCH 20, 2025

The Assembly Commerce, Economic Development and Agriculture Committee reports favorably Assembly Bill No. 5461.

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

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

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

The bill would provide that, if 50 or more commenters request a 30-day extension to the public comment period or a public hearing for a proposed rule, this would constitute "sufficient public interest" for the purposes of section 4 of P.L.1968, c.410 (C.52:14B-4) and the agency proposing the rule would be required to grant the extension or hold a public hearing, as applicable. In addition, the bill would require State agencies to hold a public hearing on a rule proposal if the proposal is estimated to involve a substantive increase in expenditures by the State, municipalities, businesses, or residents. The bill would direct each State agency to formulate standards for what constitutes a

"substantive increase in expenditures," but would establish a minimum threshold of $50 million in a calendar year.

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

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

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