

# SENATE . . . . . No. 1137

By Mr. Boverini, petition (accompanied by bill, Senate, No. 1137) of Walter J. Boverini for legislation relative to the adoption or repeal of regulations by certain agencies. State Administration.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

### AN ACT RELATIVE TO THE ADOPTION OR REPEAL OF REGULATIONS BY CERTAIN AGENCIES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Paragraph (2) of Section 1 of Chapter 30A of the  
2 General Laws is hereby amended by inserting after the word  
3 "Agency," in Line 1, as appearing in Section 50 of Chapter 835  
4 of the Acts of 1974, the words: — except as provided in  
5 Section 6D shall include.

1 SECTION 2. Section 2 of said Chapter 30A, as most recently  
2 amended by Section 2 of Chapter 459 of the Acts of 1976, is hereby  
3 further amended by striking out the fifth paragraph and inserting  
4 in place thereof the following paragraph: —

5 If the agency finds that immediate adoption, amendment, or  
6 repeal of a regulation is necessary for the preservation of the public  
7 health, safety, welfare, and that observance of the requirements  
8 of notice and a public hearing would be contrary to the public  
9 interest, the agency may dispense with such requirements and  
10 adopt, amend, or repeal the regulation as an emergency  
11 regulation. The agency's finding and a brief statement of the  
12 reason for its finding shall be incorporated in the emergency  
13 regulation as filed with the State Secretary under Section 5. An  
14 emergency regulation shall not remain in effect for longer than

15 ninety days, unless at that time the agency gives notice and holds  
16 a public hearing as required in this section, files notice of  
17 compliance with the State Secretary and files the proposed  
18 regulation, amendment, or repeal with the Clerk of the Senate and  
19 the Clerk of the House of Representatives as provided in Sec-  
20 tion 206D.

1 SECTION 3. Section 5 of said Chapter 30A, as most recently  
2 amended by Section 4 of said Chapter 459, is hereby further  
3 amended by inserting after the first paragraph the following  
4 paragraph: —

5 The State Secretary shall not accept for filing any regulation  
6 or any amendment or repeal of any regulation unless such  
7 regulation, amendment, or repeal has in addition to compliance  
8 with all applicable provisions of this chapter, been submitted to  
9 the General Court for review and comment as provided in  
10 Section 6D.

1 SECTION 4. Section 6D. Any regulation, or any amendment,  
2 or repeal of any such regulation shall, after compliance with all  
3 applicable provisions of this chapter be submitted to the General  
4 Court for its review and comment. For the purpose of this section  
5 a regulation or amendment to a regulation shall be defined as  
6 including the whole or any part of every rule, guideline, policy,  
7 statement, regulation, standard, or other requirement of general  
8 application and future effect, including the amendment or repeal  
9 thereof, adopted by an agency to implement or interpret the law  
10 enforced or administered by it; but does not include (a) advisory  
11 rulings issued under Section 8; or (b) regulations concerning only  
12 the internal management or discipline of the adopting agency or  
13 any other agency, and not substantially affecting the rights of or  
14 the procedures available to the public or that portion of the public  
15 affected by the agency's activities; (c) regulations relating to the  
16 use of public works, including streets and highways, when the  
17 substance of such regulations is indicated to the public by means  
18 of signs or signals; or (d) decisions issued in adjudicatory  
19 proceedings. The agency shall file the proposed regulation,  
20 amendment, or repeal with the Clerk of the Senate and the Clerk

21 of the House of Representatives. Any regulation filed with the  
22 General Court under the provisions of this section shall be  
23 accompanied by a summary of the regulation in laymen's terms.  
24 The Clerk shall refer such regulation to the Joint Committee on  
25 State Administration within five days of the filing thereof.

26 The Committee shall consider the proposed regulation,  
27 amendment, or repeal, and shall report to the General Court  
28 within forty-five days relative to its findings and recommendations  
29 regarding (a) whether the agency has statutory authority to  
30 promulgate, amend, or repeal such regulations; (b) whether, in the  
31 opinion of the Committee, and in consultation with the  
32 appropriate standing Committee of the General Court, the  
33 regulation, amendment, or repeal is consistent with the intent of  
34 the Legislature; (c) the appropriateness as public policy of the  
35 proposed regulation, amendment, or repeal; (d) whether  
36 legislation is necessary to clarify, define, or repeal the agency's  
37 authority to promulgate, amend, or repeal such regulation  
38 together with any legislative proposals; and (e) all other relevant  
39 comments.

40 The Clerk of the Senate and the Clerk of the House shall  
41 promulgate rules and regulations governing the form and  
42 procedure which shall be followed in the submissions, reference,  
43 and report of a proposed regulation, amendment, or repeal. The  
44 State Secretary shall not accept for filing and publication in the  
45 central register until after ninety days has expired from the time  
46 of its filing with House and Senate Clerks regulations of any  
47 amendment or repeal of any regulation unless such regulation,  
48 amendment, or repeal has, in addition to compliance with all  
49 applicable provisions of this chapter, received review and  
50 comment from the General Court as provided in this section and  
51 includes a summary in laymen's terms together with the report  
52 of the Joint Committee on State Administration, which is filed  
53 and published therewith.

54 Emergency regulations may be adopted during the prorogation  
55 of the General Court, provided that such regulation shall be filed  
56 with the Clerk of the Senate and the Clerk of the House of  
57 Representatives for submission at the next session of the General  
58 Court for review and comment as hereinbefore provided.

59 As used in this section, agency shall include any Department,  
60 Board, Commission, Division, or Authority of the State  
61 Government or subdivision of any of the foregoing or official of  
62 the State Government, authorized by law to make regulations or  
63 to conduct adjudicatory proceedings, but shall not include the  
64 legislative and judicial departments; the Governor and Council;  
65 Military or Naval Boards, commissions or officials; the Rate  
66 Setting Commission; the Massachusetts Turnpike Authority; the  
67 Massachusetts Port Authority; and the Massachusetts Parking  
68 Authority. The provisions of Section 5, in effect prior to January  
69 fifteenth, nineteen hundred and eighty, shall continue to apply to  
70 any agency, as defined in Section 1, which is not subject to the  
71 provisions of this section.

1 SECTION 5. On or before January 1, 1991 each agency shall  
2 prepare and file with the State Secretary, the Clerk of the Senate,  
3 and the Clerk of the House of Representatives a list of all  
4 regulations in effect upon the effective date of this Act together  
5 with a schedule for re-promulgation of each regulation such that  
6 one-fifth of such regulations shall be re-promulgated on or before  
7 January 1, 1993. Each agency shall prepare and file with the State  
8 Secretary, the Clerk of the Senate, and the Clerk of the House  
9 of Representatives a list of all regulations in effect upon the  
10 effective date of this Act together with a schedule for re-  
11 promulgation of each regulation such that one-fifth of such  
12 regulations shall be re-promulgated on or before January 1, 1994,  
13 one-fifth on or before January 1, 1995, one-fifth on or before  
14 January 1, 1996, one-fifth on or before January 1, 1997, and one-  
15 fifth on or before January 1, 1998.