

By Mr. Blanchette of Lawrence, petition of Kevin P. Blanchette and Alfred E. Saggese, Jr., for legislation to make state regulatory agencies more accountable to the public. State Administration.

The Commonwealth of Massachusetts

in the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT TO MAKE STATE REGULATORY AGENCIES MORE ACCOUNTABLE TO THE PUBLIC.

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. Section 9J of chapter 23 of the General Laws,
2 as amended by section 1 of chapter 20 of the Acts of 1939 is hereby
3 further amended by striking the first two sentences and inserting
4 in place thereof the following: — The director may adopt, amend,
5 alter or repeal, in accordance with the requirements of section two
6 of chapter thirty A, and shall enforce, all such reasonable rules,
7 regulations and orders as may be necessary or suitable for the
8 administration and enforcement of chapter one hundred and fifty-
9 one A. Such rules and regulations, and any amendments,
10 alterations or repeals thereof, shall, so far as they affect the
11 property rights of any class of employers or employees, be subject
12 to the approval of said state advisory council within a reasonable
13 time period, not to exceed one hundred twenty days, and shall,
14 upon the filing with the state secretary of a certified copy thereof
15 and a certificate that they have been approved by the state
16 advisory council if subject to such approval, together with the
17 statement of explanation as required by section five of chapter
18 thirty A, have the force and the effect of law.

1 SECTION 2. Section 2 of chapter 30A of the General Laws,
2 as most recently amended by section 2 of chapter 459 of the Acts
3 of 1976, is hereby further amended in the third paragraph by
4 striking the clause reading "either state express terms or describe
5 the substance of the proposed regulation" and inserting in place

6 thereof the following clause: — give a preliminary statement of
7 reasons for the proposed regulation, amendment or repeal and
8 either state its express terms or describe its substance;

1 SECTION 3. Section 3 of said chapter 30A, as most recently
2 amended by section 37 of chapter 189 of the Acts of 1984, is
3 hereby further amended in the third paragraph by striking the
4 clause reading “either state the express terms or describe the
5 substance of the proposed action” and inserting in place thereof
6 the following clause: — give a preliminary statement of the
7 reasons for the proposed action and either state its express terms
8 or describe its substance;

1 SECTION 4. Section 4 of said chapter 30A, as inserted by
2 section 1 of chapter 681 of the Acts of 1954, is hereby further
3 amended by inserting after the first sentence the following
4 sentence: — Upon receipt of such a petition, the agency shall
5 within three months of such receipt, either commence the rule-
6 making process, and complete the rule-making process within a
7 reasonable time thereafter, or issue a public statement, sending
8 a copy by first-class mail to the petitioner, setting forth the
9 agency's reasons for declining to adopt, amend or repeal the
10 regulation, making specific reference to the petition and
11 responding to any data, views and arguments which were
12 contained in the petition.

1 SECTION 5. Section 5 of said chapter 30A, as most recently
2 amended by section 28 of chapter 329 of the Acts of 1980, is hereby
3 further amended by striking the last sentence of the first paragraph
4 and inserting in place thereof the following sentences: — The
5 agency shall simultaneously file two attested copies of a statement
6 with respect to the adoption, amendment or repeal of any
7 regulation, explaining its purpose, the factual basis for the
8 agency's determination that such adoption, amendment or repeal
9 is reasonably necessary to carry out that purpose and the
10 substantive facts or other information and the technical,
11 theoretical and empirical studies, if any, on which the agency
12 relies. Such statement shall also include the agency's responses
13 to any data, views or arguments the agency received in connection

14 with such adoption, amendment or repeal. Upon receipt of agency
15 regulations, or any amendment or repeal thereof, and the
16 accompanying statement of explanation, prepared in accordance
17 with this chapter, the state secretary shall accept them for filing
18 the endorse thereon the time and date of the filing.

1 SECTION 6. Section 6 of said chapter 30A, as most recently
2 amended by section 5 of chapter 459 of the Acts of 1976, is hereby
3 further amended by striking clause (2) of the second paragraph
4 and by inserting in place thereof the following clause: — (2) all
5 regulations, or any amendment or repeal thereof, and their
6 accompanying statements of explanation, filed in accordance with
7 section five;

1 SECTION 7. Section 7 of said chapter 30A, as most recently
2 amended by section 3 of chapter 361 of the Acts of 1974, is hereby
3 stricken, and the following section shall be inserted in place
4 thereof: —

5 Section 7. Unless an exclusive mode of review is provided by
6 law, judicial review of the action or inaction of an agency in
7 adopting or failing to adopt any regulation, as required by sections
8 two through five, including the sufficiency of the reasons for a
9 regulation's adoption as an emergency regulation, may be had
10 through an action for declaratory relief in the manner and to the
11 extent provided under chapter two hundred and thirty-one A.

12 The reviewing court shall:

13 (1) Compel agency action unlawfully withheld or unreasonably
14 delayed; and

15 (2) Hold unlawful and set aside any regulation found to be (a)
16 in violation of constitutional provisions, (b) in excess of statutory
17 jurisdiction, authority or limitations or short of statutory right,
18 (c) made upon unlawful procedure, (d) without reasonable basis
19 in the statement required to be filed by section five, or (e) arbitrary,
20 capricious, an abuse of discretion or otherwise not in accordance
21 with law.

22 Where appropriate, the court may remand to the agency for
23 compliance with proper procedure or for the making of further
24 findings or a more detailed statement consistent with the
25 requirements of section five, while retaining jurisdiction of the

26 matter. The court shall review those portions of the rule-making
27 record and other evidence of compliance or non-compliance with
28 the requirements of this chapter as may be provided by the parties.

1 SECTION 8. Section 14 of said chapter 30A, as most recently
2 amended by sections 1 and 2 of chapter 411 of the Acts of 1976,
3 is hereby further amended by striking the first sentence of
4 paragraph (4) and inserting in place thereof the following
5 sentence: — The agency shall file in court an answer, as provided
6 in the Massachusetts Rules of Civil Procedure, and also the
7 original or a certified copy of the record of the proceedings under
8 review.

1 SECTION 9. Said section 14 of said chapter 30A is hereby
2 further amended in its next to last paragraph by adding at the
3 end thereof the following sentence: — The court shall issue a
4 memorandum of decision stating its conclusions of fact and law.