

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Administrative Procedure Act is
5 amended by changing Section 5-40 as follows:

6 (5 ILCS 100/5-40) (from Ch. 127, par. 1005-40)

7 Sec. 5-40. General rulemaking.

8 (a) In all rulemaking to which Sections 5-45 and 5-50 do
9 not apply, each agency shall comply with this Section.

10 (b) Each agency shall give at least 45 days' notice of its
11 intended action to the general public. This first notice
12 period shall commence on the first day the notice appears in
13 the Illinois Register. The first notice shall include all the
14 following:

15 (1) The text of the proposed rule, the old and new
16 materials of a proposed amendment, or the text of the
17 provision to be repealed.

18 (2) The specific statutory citation upon which the
19 proposed rule, the proposed amendment to a rule, or the
20 proposed repeal of a rule is based and by which it is
21 authorized.

22 (3) A complete description of the subjects and issues
23 involved.

1 (3.5) A descriptive title or other description of any
2 published study or research report used in developing the
3 rule, the identity of the person who performed such study,
4 and a description of where the public may obtain a copy of
5 any such study or research report. If the study was
6 performed by an agency or by a person or entity that
7 contracted with the agency for the performance of the
8 study, the agency shall also make copies of the underlying
9 data available to members of the public upon request if
10 the data are not protected from disclosure under the
11 Freedom of Information Act.

12 (4) For all proposed rules and proposed amendments to
13 rules, an initial regulatory flexibility analysis
14 containing a description of the types of small businesses
15 subject to the rule; a brief description of the proposed
16 reporting, bookkeeping, and other procedures required for
17 compliance with the rule; and a description of the types
18 of professional skills necessary for compliance.

19 (5) The time, place, and manner in which interested
20 persons may present their views and comments concerning
21 the proposed rulemaking.

22 During the first notice period, the agency shall accept
23 data, views, arguments, or comments from any interested
24 persons. The agency shall accept submissions in writing,
25 including submissions by email or by other publicly accessible
26 electronic means through its website. In the discretion of the

1 agency, submissions may be submitted orally. The notice
2 published in the Illinois Register shall indicate the manner
3 selected by the agency for the submissions, including the
4 email address or website address where submissions will be
5 accepted. The agency shall consider all submissions received.

6 The agency shall hold a public hearing on the proposed
7 rulemaking during the first notice period if (i) during the
8 first notice period, the agency finds that a public hearing
9 would facilitate the submission of views and comments that
10 might not otherwise be submitted or (ii) the agency receives a
11 request for a public hearing, within the first 14 days after
12 publication of the notice of proposed rulemaking in the
13 Illinois Register, from 25 interested persons, an association
14 representing at least 100 interested persons, the Governor,
15 the Joint Committee on Administrative Rules, or a unit of
16 local government that may be affected. At the public hearing,
17 the agency shall allow interested persons to present views and
18 comments on the proposed rulemaking. A public hearing in
19 response to a request for a hearing may not be held less than
20 20 days after the publication of the notice of proposed
21 rulemaking in the Illinois Register unless notice of the
22 public hearing is included in the notice of proposed
23 rulemaking. A public hearing on proposed rulemaking may not be
24 held less than 5 days before submission of the notice required
25 under subsection (c) of this Section to the Joint Committee on
26 Administrative Rules. Each agency may prescribe reasonable

1 rules for the conduct of public hearings on proposed
2 rulemaking to prevent undue repetition at the hearings. The
3 hearings must be open to the public and recorded by
4 stenographic or mechanical means. At least one agency
5 representative shall be present during the hearing who is
6 qualified to respond to general questions from the public
7 regarding the agency's proposal and the rulemaking process.

8 (c) Each agency shall provide additional notice of the
9 proposed rulemaking to the Joint Committee on Administrative
10 Rules. The period commencing on the day written notice is
11 received by the Joint Committee shall be known as the second
12 notice period and shall expire 45 days thereafter unless (i)
13 before that time the agency and the Joint Committee have
14 agreed to extend the second notice period beyond 45 days for a
15 period not to exceed an additional 45 days; (ii) or unless the
16 agency has received a statement of objection from the Joint
17 Committee or notification from the Joint Committee that no
18 objection will be issued; or (iii) the agency has received a
19 statement of unresponsiveness from the Joint Committee, in
20 which case the second notice period shall be extended for a
21 period not to exceed an additional 45 days. A statement of
22 unresponsiveness may be issued when the agency fails to
23 provide a substantive response to a suggestion of the Joint
24 Committee made during the second notice period. A substantive
25 response addresses the propriety, legal adequacy, statutory
26 authority, economic effects, budgetary effects, or public

1 policy of the rulemaking. Failure to provide a substantive
2 response within 7 days after the statement of unresponsiveness
3 is issued shall constitute a withdrawal of the rulemaking. The
4 written notice to the Joint Committee shall include (i) the
5 text and location of any changes made to the proposed
6 rulemaking during the first notice period in a form prescribed
7 by the Joint Committee; (ii) for all proposed rules and
8 proposed amendments to rules, a final regulatory flexibility
9 analysis containing a summary of issues raised by small
10 businesses during the first notice period and a description of
11 actions taken on any alternatives to the proposed rule
12 suggested by small businesses during the first notice period,
13 including reasons for rejecting any alternatives not utilized;
14 ~~and~~ (iii) if a written request has been made by the Joint
15 Committee within 30 days after initial notice appears in the
16 Illinois Register under subsection (b) of this Section, an
17 analysis of the economic and budgetary effects of the proposed
18 rulemaking; and (iv) a statement certifying that no procedure,
19 policy, schedule, or other feature of the agency will prevent
20 the agency from substantively engaging with the Joint
21 Committee regarding suggestions made during the second notice
22 period. After commencement of the second notice period, no
23 substantive change may be made to a proposed rulemaking unless
24 it is made in response to an objection or suggestion of the
25 Joint Committee. The agency shall also send a copy of the final
26 regulatory flexibility analysis to each small business that

1 has presented views or comments on the proposed rulemaking
2 during the first notice period and to any other interested
3 person who requests a copy. The agency may charge a reasonable
4 fee for providing the copies to cover postage and handling
5 costs.

6 (d) After the expiration of the second notice period,
7 after notification from the Joint Committee that no objection
8 will be issued, or after a response by the agency to a
9 statement of objections issued by the Joint Committee,
10 whichever is applicable, the agency shall file, under Section
11 5-65, a certified copy of each rule, modification, or repeal
12 of any rule adopted by it. The copy shall be published in the
13 Illinois Register. Each rule hereafter adopted under this
14 Section is effective upon filing unless a later effective date
15 is required by statute or is specified in the rulemaking.

16 (e) No rule or modification or repeal of any rule may be
17 adopted, or filed with the Secretary of State, more than one
18 year after the date the first notice period for the rulemaking
19 under subsection (b) commenced. Any period during which the
20 rulemaking is prohibited from being filed under Section 5-115
21 shall not be considered in calculating this one-year time
22 period.

23 (Source: P.A. 103-390, eff. 7-28-23.)