

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-92—sSB 27

Government Administration and Elections Committee

Judiciary Committee

**AN ACT TRANSITIONING THE REGULATIONS OF CONNECTICUT
STATE AGENCIES TO AN ONLINE FORMAT**

SUMMARY: This act requires that state agency regulations be posted online, rather than published in the *Connecticut Law Journal*, making them available to the public on the Office of the Secretary of the State's and regulating agency's Internet websites. It establishes the same requirement for notices of proposed regulations and their accompanying documents.

The act requires the Office of Policy and Management (OPM) secretary to seek the necessary licensing agreements to permit the online posting of regulations containing codes or standards for which a third party holds the intellectual property rights. It requires agencies to post online (1) their policy manuals and guidance documents and (2) policies that have been implemented while in the process of being adopted in regulation form.

Lastly, the act creates an 11-member Regulation Modernization Task Force to develop an implementation plan for publishing regulations online and makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2013, except that the (1) task force provision and the requirement to seek licensing agreements are effective upon passage and (2) requirements concerning notices of intent are applicable to regulations noticed on and after July 1, 2013.

§§ 1 & 2—NOTICE REQUIREMENTS

Notice of Intent

By law, agencies may be authorized or required to adopt regulations. They must provide at least 30 days' notice of their intent to adopt proposed regulations. When a public act requires an agency to adopt regulations, the agency must provide the notice within five months after the passage of the act requiring adoption or by the time specified in the act. The act maintains these deadlines but establishes online posting requirements.

For regulations noticed on and after July 1, 2013, the act requires that the secretary of the state post the notice, rather than the *Connecticut Law Journal* publish it. The secretary must post the notice and its accompanying documents on her office's website within five days after receiving them from the agency. She must also provide electronic notification to any person who has requested notification of regulation-making proceedings.

The act requires agencies to post the notice and accompanying documents on

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their websites. They must also give electronic notice to the legislature's committees of cognizance for the regulation's subject matter at least 30 days in advance (prior law did not specify a deadline). Additionally, the act changes the deadline by which an agency must prepare a fiscal note regarding the regulations. The new deadline is 30 days before adopting the proposed regulation, rather than the date of publication in the *Connecticut Law Journal*.

Under the act, any agency that fails to post notice of intent to adopt required regulations by the applicable deadline must explain its reasons in an electronic, rather than written, statement to the governor, legislative committee of cognizance of the regulation's subject matter, and Legislative Regulation Review Committee.

The act requires agencies, after deciding to proceed with a proposed regulation or alter its text, to post to their own websites and submit to the secretary for posting on her office's website (1) the proposed regulation's final wording, (2) supporting reasons, and (3) opposing arguments and why they were rejected. Agencies must do this at least 20 days before submitting the proposed regulation to the Legislative Regulation Review Committee. If an agency fails to submit the text of the proposed regulations to the Regulation Review Committee within 180 days of posting the notice of intent, it must submit to the committee an electronic, rather than written, statement of its reasons for failing to do so.

By law, agencies must provide electronic or paper copies of proposed regulations and notices upon request. The act prohibits agencies from charging a fee for electronic copies. It requires agencies to provide the notices and copies of the proposed regulation 30 days in advance to people who have requested it. Prior law did not specify a deadline.

Other Notices

By law, an agency may propose, without prior notice, (1) technical amendments to regulations when necessary to conform to certain changes or (2) a repeal of a regulation if the authorizing statute is repealed. The act requires the agency to post to its website any such proposed technical amendments or repeals.

§§ 4, 6 & 7—APPROVED REGULATIONS

Submission to the Secretary

By law, regulations must be approved by the attorney general and the Legislative Regulation Review Committee. Prior law required agencies to submit two certified paper copies of the approved regulations to the Office of the Secretary of the State. The act instead requires agencies to submit one certified and one electronic copy to the secretary along with a statement from the department head certifying that the electronic version is a true and accurate copy of the approved regulation. The act authorizes the secretary to adopt regulations specifying the format agencies must use to submit electronic regulations and documents.

Regulation Effective Date

Under prior law, with some exceptions, regulations became effective when an

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agency filed them with the secretary. Under the act, regulations become effective when the secretary publishes them online, which she must do within five calendar days after the agency's filing. The act specifies that emergency regulations are effective upon electronic submission to the secretary. It eliminates the requirement that, before becoming enforceable, agency regulations must be published in the *Connecticut Law Journal*.

The act designates the online regulations posted by the secretary as the "official version" of the regulations of state agencies for "all purposes, including all legal and administrative proceedings." It requires agencies to provide or make available for inspection, if requested, paper copies of regulations and other written policy statements and agency forms and instructions.

§§ 6-8— PUBLISHED REGULATIONS

The act removes the:

1. duties of the Commission on Official Legal Publications (COLP) to publish (a) the semiannual compilation of all adopted state agency regulations and (b) a monthly update of approved regulations in the *Connecticut Law Journal*;
2. requirement to make published regulations available to state agencies and officials for free and to others for sale;
3. requirement that published regulations be included in each state law library's reference collection; and
4. ability to omit from the compilation emergency regulations and those that are too expensive or unduly cumbersome to publish.

The act requires the secretary to post the compilation of regulations, including emergency regulations, online in a manner easily accessible to, and searchable by, the public. She must update the compilation at least quarterly, and it must include website links to any regulation incorporated by reference. She must also include in the compilation a website link, if available, to information about any omitted regulations. By law, she may omit from the compilation regulations incorporated by reference that are (1) available from a federal agency or a government agency in another state and (2) to which a third party holds the intellectual property rights. (The act specifies that she may do this only until the OPM secretary obtains the necessary licensing agreements, as described below.)

Proprietary Regulations

In practice, non-state entities hold the intellectual property rights to several codes and standards that are incorporated by reference into state agency regulations (e.g., the State Building Code and the State Fire Safety Code). The act requires the OPM secretary to seek the necessary licensing agreements from the publishers of these codes and standards to permit them to be posted online by the secretary of the state.

§§ 9-12— AGENCY POLICIES

Policy Manuals and Guidance Documents

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The act requires any state agency that has written a manual or guidance document to post it on its website. It exempts from this requirement anything that is (1) protected from disclosure under state or federal law or (2) exempt from disclosure under the Freedom of Information Act. Additionally, it specifically requires the Department of Social Services (DSS) to post to its website its medical services, public assistance, and community services manuals.

Policies Awaiting Adoption in Regulation Form

By law, DSS must adopt as regulations policies necessary to conform to certain federal or joint federal and state program requirements. The law allows DSS to operate under such policies while in the process of adopting them in regulation form. Before implementing the policies, the act requires DSS, like other agencies, to post them to its website and electronically submit them to the secretary of the state for online posting. Unlike other agencies, the act retains the requirement that these DSS notices of intent appear in the *Connecticut Law Journal*.

The act also extends the online posting requirement to all agencies that adopt interim policies or procedures while the policies or procedures are in the process of being adopted in regulation form. Under the act, these policies and procedures are not effective unless the agency (1) posts them on its website, (2) electronically submits them to the secretary for posting online, and (3) complies with the authorizing statute's other requirements, if applicable. Any of these policies or procedures in effect on July 1, 2013 must be posted on the agency's website and submitted to the secretary by October 1, 2013. There is no deadline for the secretary to post them. When the superseding regulations take effect, the agency must notify the secretary, who must then remove the policy or procedure from the secretary's website.

§ 15—REGULATION MODERNIZATION TASK FORCE

The act establishes an 11-member gubernatorially appointed task force to develop a plan that ensures, by July 1, 2013, that Connecticut state agency regulations are available to the public in an accessible online format. The governor must (1) make the appointments within 30 days of the act's passage, (2) select the chairperson, and (3) fill any vacancy. The act requires the Department of Administrative Services (DAS) to provide administrative staff support. The task force must consult with the secretary of the state and either the state librarian or public records administrator.

By January 1, 2013, the task force must submit a plan to the governor and Regulation Review Committee that ensures state agency regulations are easily accessible to the public in an online format by July 1, 2013. The task force terminates on January 1, 2013 or when it submits its plan, whichever is later.

At a minimum, the plan must:

1. identify the hardware and software needed to transfer regulations to an online format;
2. recommend the appropriate state agency to supervise maintenance of the

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- online system;
3. describe the necessary staff training for using and maintaining the system;
 4. describe the anticipated amount of additional work and responsibilities required to create and maintain the system;
 5. describe the reduction in workload and costs that are anticipated with the system;
 6. estimate the cost to implement and maintain the system, with recommendations on how the state can recover it; and
 7. recommend additional legislation that may be necessary to facilitate the transition to publishing regulations in an online format.

The act authorizes the task force to request bond funds through DAS to pay a consultant for advice on the technical aspects of implementing and maintaining an online system for regulations. The Legislative Commissioners' Office, COLP, and all executive branch agencies must cooperate and provide information the task force needs.

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