

**SB3438**



**104TH GENERAL ASSEMBLY**

**State of Illinois**

**2025 and 2026**

**SB3438**

Introduced 2/4/2026, by Sen. Bill Cunningham

**SYNOPSIS AS INTRODUCED:**

5 ILCS 100/5-40

from Ch. 127, par. 1005-40

Amends the Illinois Administrative Procedure Act. In provisions regarding the second notice period for rulemaking, provides that the second notice period shall be extended for a period not to exceed an additional 45 days if the agency has received a statement of unresponsiveness from the Joint Committee on Administrative Rules. Lists the requirements for a statement of unresponsiveness. Provides that failure to provide a substantive response within 7 days after a statement of unresponsiveness is issued shall constitute a withdrawal of the rulemaking. In provisions regarding the contents of the written notice to the Joint Committee, requires a statement certifying that no procedure, policy, schedule, or other feature of the agency will prevent the agency from substantively engaging with the Joint Committee regarding suggestions made during the second notice period. Effective immediately.

LRB104 20062 BDA 34037 b

**A BILL FOR**

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17 provision to be repealed.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.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.