

5796

2009-2010 Regular Sessions

I N S E N A T E

June 5, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state administrative procedure act, in relation to state mandates on local governments and detailing the benefits and costs of proposed rules and to repeal certain provisions of such act relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The legislature finds that the rules promulgated by state
2 agencies often have a substantial impact on the lives of the state's
3 residents and the operations of local governments and businesses, and
4 therefore should be adopted through a process that provides for the open
5 and fully realized consideration of the potential costs and benefits of
6 regulatory action. To this end, the statutes governing the rulemaking
7 process should ensure that agency assessments of the costs and the bene-
8 fits of proposed rules are accurate and comprehensive.
9 S 2. Section 102 of the state administrative procedure act is amended
10 by adding a new subdivision 15 to read as follows:
11 15. "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY, TOWN, VILLAGE, OR
12 SCHOOL DISTRICT.
13 S 3. Paragraph (b) of subdivision 4-a of section 202 of the state
14 administrative procedure act, as added by chapter 335 of the laws of
15 1992, is amended to read as follows:
16 (b) Each agency shall publish and make available to the public an
17 assessment of public comment for a rule revised pursuant to this subdi-
18 vision. Such assessment shall be based upon any written comments submit-
19 ted to the agency and any comments presented at any public hearing held
20 on the proposed rule by the agency. The assessment shall contain: (i) a
21 summary and an analysis of the issues raised and significant alterna-
22 tives suggested by any such comments; (ii) a statement of the reasons
23 why any significant alternatives were not incorporated into the rule;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 and (iii) a description of any changes made in the rule as a result of
2 such comments. IF ANY COMMENTS INCLUDE ESTIMATES OF PROJECTED COSTS OF
3 THE PROPOSED RULE TO THE STATE, LOCAL GOVERNMENTS OR REGULATED PERSONS
4 WHICH DIFFER SIGNIFICANTLY FROM THOSE PRESENTED BY THE AGENCY IN ITS
5 REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS OR RURAL
6 AREA FLEXIBILITY ANALYSIS, THE ASSESSMENT SHALL SET FORTH THE AGENCY'S
7 EVALUATION OF THE DIFFERING ESTIMATES. COPIES OF COMMENTS THAT INCLUDE
8 ESTIMATES OF PROJECTED COSTS WHICH DIFFER SIGNIFICANTLY FROM THE AGEN-
9 CY'S ESTIMATES SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIB-
10 UTED WITH THE RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVI-
11 SION SIX-A OF THIS SECTION. If no comments have been received, the
12 notice of revised rule making shall state that no comments were received
13 by the agency. Any subsequent assessment published pursuant to this
14 paragraph or paragraph (b) of subdivision five of this section need only
15 include comments not addressed in any previously published assessment of
16 public comment for the rule; provided, however, that the notice of
17 revised rule making or adoption shall contain the date any previous
18 notice of revised rule making containing an assessment of public comment
19 was published in the state register.

20 S 4. Paragraph (b) of subdivision 5 of section 202 of the state admin-
21 istrative procedure act, as amended by chapter 171 of the laws of 1994,
22 is amended to read as follows:

23 (b) Except with respect to any rule defined in subparagraph (ii) of
24 paragraph (a) of subdivision two of section one hundred two of this
25 chapter, each agency shall publish [and], make available to the public
26 ON ITS WEBSITE AND DELIVER TO THE ADMINISTRATIVE REGULATIONS REVIEW
27 COMMISSION an assessment of public comment for a rule adopted pursuant
28 to this subdivision or paragraph (e) of subdivision six of this section.
29 Such assessment shall be based upon any written comments submitted to
30 the agency and any comments presented at any public hearing held on the
31 proposed rule by the agency. The assessment shall contain: (i) a summary
32 and an analysis of the issues raised and significant alternatives
33 suggested by any such comments, (ii) a statement of the reasons why any
34 significant alternatives were not incorporated into the rule and (iii) a
35 description of any changes made in the rule as a result of such
36 comments. If any comments included estimates of projected costs of the
37 proposed rule to the state, local governments or regulated persons,
38 which differed significantly from those presented by the agency in its
39 regulatory impact statement, regulatory flexibility analysis, or rural
40 area flexibility analysis, the assessment shall also summarize the agen-
41 cy's assessment of such estimates. COPIES OF COMMENTS THAT INCLUDE
42 ESTIMATES OF PROJECTED COSTS WHICH DIFFER SIGNIFICANTLY FROM THE AGEN-
43 CY'S ESTIMATES SHALL ACCOMPANY THE ASSESSMENT OF PUBLIC COMMENT DISTRIB-
44 UTED WITH THE RULE MAKING NOTICE PURSUANT TO PARAGRAPH (A) OF SUBDIVI-
45 SION SIX-A OF THIS SECTION. If no comments have been received, the
46 notice of adoption shall state that no comments were received by the
47 agency. Comments submitted or presented to the agency by a legislative
48 committee or commission or by a member or members of the senate or
49 assembly shall be considered public comment and shall be summarized and
50 analyzed in the assessment.

51 S 5. Subdivision 2 of section 202-a of the state administrative proce-
52 dure act, as amended by chapter 850 of the laws of 1990, is amended to
53 read as follows:

54 2. Each agency shall, except as provided in subdivision five of this
55 section, issue AND DELIVER TO THE ADMINISTRATIVE REGULATIONS REVIEW

COMMISSION a regulatory impact statement for a rule proposed for adoption or a rule adopted on an emergency basis.

S 6. Paragraphs (b), (c) and (d) of subdivision 3 of section 202-a of the state administrative procedure act, paragraph (b) as amended by chapter 229 of the laws of 2000 and paragraphs (c) and (d) as amended by chapter 520 of the laws of 1992, are amended to read as follows:

(b) Needs and benefits. A statement setting forth the purpose of, necessity for, and benefits derived from the rule, a citation for and summary, not to exceed five hundred words, of each scientific or statistical study, report or analysis that served as the basis for the rule, an explanation of how it was used to determine the necessity for and benefits derived from the rule, and the name of the person that produced each study, report or analysis. THE STATEMENT SHALL IDENTIFY THE CLASSES OF PERSONS OR ENTITIES THAT WOULD BENEFIT FROM ADOPTION OF THE RULE, DESCRIBE THE NATURE OF THE BENEFITS THAT SUCH CLASSES OF PERSONS OR ENTITIES WOULD DERIVE FROM IT, AND SET FORTH THE INFORMATION AND METHODOLOGY UPON WHICH THE ANALYSIS OF THE BENEFITS IS BASED;

(c) Costs. A statement detailing the projected [costs] POSITIVE OR NEGATIVE COST IMPACTS, INCLUDING MONETARY COSTS AND OPPORTUNITY COSTS AND OTHER NON-MONETARY COSTS, of the rule, which shall [indicate] INCLUDE:

(i) the costs for the implementation of, and continuing compliance with, the rule to regulated persons;

(ii) the costs for the implementation of, and continued administration of, the rule to the agency and to the state and its local governments; and

(iii) THE COSTS FOR PERSONS WHO OR ENTITIES THAT ARE NOT REGULATED BY BUT ARE OTHERWISE AFFECTED BY THE RULE;

(IV) the information, including the source or sources of such information, and methodology upon which the cost analysis is based; or [(iv)], where an agency finds that it cannot fully provide a statement of such costs, a statement setting forth its best estimate, which shall indicate the information and methodology upon which such best estimate is based and the reason or reasons why a complete cost statement cannot be provided;

(d) Paperwork. A statement describing the need for any reporting requirements, including forms and other paperwork AND ANY REPORTING BY ELECTRONIC MEDIA, which would be required as a result of the rule;

S 7. Section 202-a of the state administrative procedure act is amended by adding a new subdivision 7 to read as follows:

7. EACH AGENCY SHALL DEVELOP AND MAINTAIN ON ITS WEBSITE A STATEMENT OF THE PROCEDURES IT HAS ADOPTED TO ENSURE THAT INTERESTED PARTIES ARE GIVEN AN OPPORTUNITY TO LEARN AT AN EARLY OPPORTUNITY OF THE PROPOSED DEVELOPMENT OF ITS RULES AND TO PARTICIPATE MEANINGFULLY IN THAT DEVELOPMENT.

S 8. Paragraph (c) of subdivision 2 of section 202-b of the state administrative procedure act, as amended by chapter 611 of the laws of 1996, is amended to read as follows:

(c) an estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in such costs for small businesses or local governments of different types and of differing sizes, AND, WHEN THE RULE WOULD IMPOSE INITIAL CAPITAL COSTS OR ANNUAL COMPLIANCE COSTS ON LOCAL GOVERNMENTS, THE AGENCY SHALL IDENTIFY THE SOURCES, IF ANY, AVAILABLE TO LOCAL GOVERNMENTS TO FUND IMPLEMENTATION OF THE RULE;

1 S 9. Paragraph (a) of subdivision 1 of section 204-a of the state
2 administrative procedure act is REPEALED and paragraphs (b) and (c) of
3 such subdivision are relettered paragraphs (a) and (b).

4 S 10. This act shall take effect on the first of September next
5 succeeding the date on which it shall have become a law, and shall apply
6 to any rule for which a notice of proposed or revised rulemaking or a
7 notice of adoption is first prepared on or after such date.