

7324

I N S E N A T E

May 2, 2012

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the state administrative procedure act and the economic development law, in relation to streamlined adjudicatory proceedings for small businesses

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

- 1 Section 1. The state administrative procedure act is amended by adding
2 a new section 308 to read as follows:
3 S 308. STREAMLINED OPTIONAL ADJUDICATORY PROCEEDINGS FOR SMALL BUSI-
4 NESSES. UNLESS OTHERWISE PROHIBITED BY LAW, AN AGENCY MAY ADOPT REGU-
5 LATIONS PROVIDING FOR USE AT THE OPTION OF A SMALL BUSINESS OF STREAM-
6 LINED ADJUDICATORY PROCEEDINGS CONDUCTED BY MAIL, ELECTRONIC MAIL,
7 TELEPHONE CONFERENCE OR VIDEOCONFERENCE. IN ADOPTING SUCH REGULATIONS,
8 THE AGENCY SHALL:
9 1. CONSIDER THE TYPES OF PROGRAMS AND ISSUES FOR WHICH SUCH STREAM-
10 LINED PROCEEDINGS MAY REASONABLY BE CONDUCTED, TAKING INTO ACCOUNT (A)
11 THE COMPLEXITY OF THE MATTERS TO BE RESOLVED IN THE PROCEEDING, (B) THE
12 SEVERITY OF POTENTIAL SANCTIONS, (C) ANY NECESSITY FOR PERSONAL APPEAR-
13 ANCES, INCLUDING BUT NOT LIMITED TO REQUIREMENTS FOR SWORN TESTIMONY OR
14 CROSS-EXAMINATION, AND (D) ANY POTENTIAL REDUCTION IN THE COSTS AND
15 BURDENS OF PARTICIPATING IN THE PROCEEDING FOR THE AGENCY AND FOR OTHER
16 PARTIES, AND SHALL APPROPRIATELY LIMIT THE AVAILABILITY OF STREAMLINED
17 PROCEEDINGS TO PROGRAMS AND ISSUES IN WHICH THE PUBLIC INTEREST IN FAIR
18 OUTCOMES CAN CONTINUE TO BE ASSURED;
19 2. ENSURE THAT A STREAMLINED PROCEEDING MAY ONLY BE USED AT THE OPTION
20 OF THE RESPONDENT SMALL BUSINESS WITH THE CONSENT OF THE AGENCY AND ANY
21 OTHER NECESSARY PARTY TO THE PROCEEDING, AND THAT THE RIGHTS OF RESPOND-
22 ENTS AND OTHER PARTIES WILL NOT BE DIMINISHED IN ANY RESPECT BY VIRTUE
23 OF PARTICIPATION IN A STREAMLINED PROCEEDING;
24 3. SPECIFY THE FORMAT OR FORMATS FOR REMOTE CONDUCT OF STREAMLINED
25 PROCEEDINGS;

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

LBD14128-01-2

1 4. ESTABLISH PROCEDURES FOR REQUESTING AND SCHEDULING SUCH
2 PROCEEDINGS, FOR THE CONDUCT OF SUCH PROCEEDINGS, AND FOR THE DEVELOP-
3 MENT OF A COMPLETE RECORD AS PROVIDED IN SECTION THREE HUNDRED TWO OF
4 THIS ARTICLE; AND

5 5. PROVIDE THAT, IN THE EVENT THAT IT BECOMES IMPRACTICAL OR INAPPRO-
6 PRIATE TO CONTINUE A PROCEEDING COMMENCED PURSUANT TO THIS SECTION AS A
7 STREAMLINED PROCEEDING, SUCH PROCEEDING MAY BE RESCHEDULED AS AN ADJUDI-
8 CATORY PROCEEDING PURSUANT TO SECTION THREE HUNDRED ONE OF THIS ARTICLE
9 WITHOUT PREJUDICE TO ANY PARTY.

10 S 2. Paragraphs (g) and (h) of subdivision 6 of section 133 of the
11 economic development law, paragraph (g) as amended and paragraph (h) as
12 added by section 5 of part BB of chapter 59 of the laws of 2006, are
13 amended and a new paragraph (i) is added to read as follows:

14 (g) establish procedures for making annual awards to be known as "New
15 York State Small Business Awards". These non-monetary awards shall be
16 given in recognition of unusual performance by persons, firms and organ-
17 izations which are engaged in the operation of New York state small
18 businesses or which are engaged in activities to assist small businesses
19 in the state. The board may nominate up to five award winners annually
20 and forward such names to the governor for his consideration. The gover-
21 nor may designate award winners from these nominees at his discretion.
22 Current members of the advisory board are not eligible as nominees;
23 [and]

24 (h) advise the commissioner on recommendations for the selection of a
25 minority and women-owned business enterprise statewide advocate as set
26 forth by section three hundred eleven-a of the executive law[.]; AND

27 (I) REPORT TO THE COMMISSIONER, THE GOVERNOR AND THE LEGISLATURE ON
28 AGENCY USE OF STREAMLINED OPTIONAL ADJUDICATORY PROCEEDINGS FOR SMALL
29 BUSINESSES.

30 S 3. Within one hundred eighty days of the effective date of this act,
31 the departments of environmental conservation, health and labor shall
32 institute pilot projects to offer optional streamlined adjudicatory
33 proceedings for small businesses for at least one regulatory program of
34 the agency under which small businesses currently appear as respondents
35 in adjudicatory proceedings; provided, however, that the governor may
36 direct that another agency shall institute a pilot project instead of a
37 listed agency. Such pilot projects shall be designed by the agency in
38 conjunction with the division for small business and in consideration of
39 input solicited from small businesses and other stakeholders. Notwith-
40 standing the provisions of section one of this act, the agency shall not
41 be required to adopt regulations governing such proceedings, but shall
42 ensure that such proceedings are governed by guidelines consistent with
43 the provisions of such section one and voluntarily accepted by all
44 participants. One year after initiating a pilot project, the agency
45 shall prepare a comparative review of the cost, timeliness and outcome
46 of streamlined proceedings and ordinary adjudicatory proceedings and
47 shall provide such review to the small business advisory board, along
48 with any other information which the board shall request.

49 S 4. Nothing in this act shall be construed to limit any existing
50 authority of any agency to provide for the conduct of adjudicatory
51 proceedings by mail, telephone or electronic means.

52 S 5. This act shall take effect immediately.