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I N   S E N A T E

February 9, 2012

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Introduced by Sens. CARLUCCI, KLEIN, SAVINO, VALESKY -- 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, in relation to continuing improvements to agency regulatory agendas and providing more effective review of existing rules; and to amend chapter 402 of the laws of 1994, amending the state administrative procedure act relating to requiring certain agencies to submit regulatory agendas for publication in the state register, in relation to extending the expiration of certain provisions of such chapter

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

1     Section 1. Paragraph (a) of subdivision 1 of section 202-d of the  
2     state administrative procedure act, as amended by chapter 193 of the  
3     laws of 2008, is amended to read as follows:  
4     (a) The departments of health, education, [insurance,] environmental  
5     conservation, FINANCIAL SERVICES, labor, [banking,] agriculture and  
6     markets, motor vehicles and state, the offices of children and family  
7     services and temporary and disability assistance, and the division of  
8     housing and community renewal and the workers' compensation board and  
9     any other department specified by the governor or his designee shall,  
10    and any other agency may, in its discretion, submit to the secretary of  
11    state, for publication in the first regular issue of the state register  
12    published during the month of January and the last regular issue of the  
13    state register published in June, a regulatory agenda to afford the  
14    agency an opportunity to solicit comments concerning any rule which the  
15    agency is considering proposing, but for which no notice of proposed  
16    rule making has been submitted pursuant to subdivision one of section  
17    two hundred two of this article.  
18    S 2. Subdivision 1 of section 207 of the state administrative proce-  
19    dure act, as added by chapter 262 of the laws of 1996, is amended to  
20    read as follows:  
21    1. Unless the contrary is specifically provided by another law, any  
22    rule which is adopted on or after the effective date of this section

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

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1 shall be reviewed IN THE CALENDAR YEAR SPECIFIED IN THE NOTICE OF  
2 ADOPTION FOR THE RULE, PROVIDED THAT AT A MINIMUM EVERY RULE SHALL BE  
3 INITIALLY REVIEWED after five years, and, thereafter, EVERY RULE SHALL  
4 BE RE-REVIEWED at five-year intervals. FOR ANY RULE FOR WHICH A REGULA-  
5 TORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS OR JOB IMPACT  
6 STATEMENT IS PREPARED, THE INITIAL REVIEW SHALL OCCUR AFTER TWO YEARS;  
7 PROVIDED, HOWEVER, THAT THE AGENCY MAY PROPOSE A DIFFERENT REVIEW PERIOD  
8 IN SUCH ANALYSIS OR STATEMENT, ALONG WITH ITS JUSTIFICATION FOR DOING  
9 SO, AND SHALL INVITE PUBLIC COMMENT THEREON. THE REVIEW PERIOD SPECIFIED  
10 FOR THE RULE AND AN ASSESSMENT OF ANY COMMENTS ON THIS ISSUE SHALL  
11 ACCOMPANY THE NOTICE OF ADOPTION.

12 S 3. Subdivision 2 of section 207 of the state administrative proce-  
13 dure act, as amended by chapter 327 of the laws of 2003, is amended to  
14 read as follows:

15 2. An agency shall submit for publication in the regulatory agenda  
16 published in January pursuant to section two hundred two-d of this arti-  
17 cle a list of the rules which must be reviewed pursuant to subdivision  
18 one of this section in the ensuing calendar year. In addition to the  
19 information required by such section two hundred two-d, for each rule so  
20 listed the agency shall provide an analysis of the need for and legal  
21 basis of such rule, shall invite public comment on the continuation or  
22 modification of the rule and shall indicate the last date for submission  
23 of comments which shall be not less than forty-five days from the date  
24 of publication. AN AGENCY THAT PUBLISHES ITS REGULATORY AGENDA ON ITS  
25 WEBSITE SHALL ALSO PUBLISH THE LIST OF RULES THAT MUST BE REVIEWED  
26 PURSUANT TO THIS SECTION ON ITS WEBSITE. IF THE ORIGINAL NOTICE OF  
27 PROPOSED RULE MAKING FOR A LISTED RULE REQUIRED THE PREPARATION OF A  
28 REGULATORY FLEXIBILITY ANALYSIS AND/OR A RURAL AREA FLEXIBILITY ANALY-  
29 SIS, THE AGENCY SHALL SO INDICATE AND SHALL PROVIDE OUTREACH AS APPRO-  
30 PRIATE TO POTENTIALLY AFFECTED SMALL BUSINESSES, LOCAL GOVERNMENTS AND  
31 PUBLIC AND PRIVATE INTERESTS IN RURAL AREAS THAT THE RULE IS BEING  
32 REVIEWED. SUCH OUTREACH MAY INCLUDE SOLICITATION OF INPUT THROUGH ELEC-  
33 TRONIC MEANS OR THROUGH ANY OF THE ACTIVITIES LISTED IN SUBDIVISION SIX  
34 OF SECTION TWO HUNDRED TWO-B AND SUBDIVISION SEVEN OF SECTION TWO  
35 HUNDRED TWO-BB OF THIS ARTICLE.

36 S 4. Section 207 of the state administrative procedure act is amended  
37 by adding a new subdivision 6 to read as follows:

38 6. BEGINNING WITH THE FIRST ISSUE IN SEPTEMBER OF EACH YEAR, THE  
39 SECRETARY OF STATE SHALL PUBLISH IN THE STATE REGISTER ON A WEEKLY BASIS  
40 A DELINQUENT LIST COMPRISED OF AGENCIES THAT HAVE NOT COMMENCED A REVIEW  
41 AS REQUIRED BY THIS SECTION. AN AGENCY SHALL CONTINUE TO BE LISTED ON  
42 THE DELINQUENT LIST UNTIL IT HAS PUBLISHED THE NOTICE REQUIRED BY SUBDI-  
43 VISION TWO OF THIS SECTION.

44 S 5. Section 2 of chapter 402 of the laws of 1994, amending the state  
45 administrative procedure act relating to requiring certain agencies to  
46 submit regulatory agendas for publication in the state register, as  
47 amended by chapter 193 of the laws of 2008, is amended to read as  
48 follows:

49 S 2. This act shall take effect on the first day of November next  
50 succeeding the date on which it shall have become a law and shall expire  
51 and be deemed repealed on December 31, [2012] 2016, and upon such date  
52 the provisions of subdivisions 1 and 2 of section 202-d of the state  
53 administrative procedure act as amended by section one of this act shall  
54 revert to and be read as set out in law on the date immediately preced-  
55 ing such effective date.

1     S 6. This act shall take effect on the first day of January next  
2 succeeding the date on which it shall have become law, provided, howev-  
3 er, that the amendments to subdivision 1 of section 202-d of the state  
4 administrative procedure act made by section one of this act shall not  
5 affect the expiration of such subdivision and shall be deemed to expire  
6 therewith.