

6447--A

Cal. No. 771

I N S E N A T E

February 9, 2012

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Subdivision 1 of section 202-d of the state administrative
2 procedure act, as amended by chapter 193 of the laws of 2008, paragraph
3 (d) as amended by section 6 of part O of chapter 60 of the laws of 2011,
4 is amended to read as follows:
5 1. (a) The departments of health, education, [insurance] FINANCIAL
6 SERVICES, environmental conservation, labor, [banking,] agriculture and
7 markets, motor vehicles and state, the offices of children and family
8 services and temporary and disability assistance, [and] the division of
9 housing and community renewal, and the workers' compensation board and
10 any other department specified by the governor or his OR HER designee
11 shall, and any other agency may, in its discretion, submit to the secre-
12 tary of state, for publication in the first regular issue of the state
13 register published during the month of January and the last regular
14 issue of the state register published in June, a regulatory agenda to
15 [afford the agency an opportunity to] solicit comments FROM REGULATED
16 PERSONS AND THE GENERAL PUBLIC concerning any rule which the agency is
17 considering [proposing] TO PROPOSE, but for which no notice of proposed
18 rule making has been submitted pursuant to subdivision one of section
19 two hundred two of this article.

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

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1 (b) A regulatory agenda shall be comprised of: (I) a [list and] brief
2 description of THE subject matter THAT IS being considered for A rule
3 making; (II) THE TIME FRAMES OR APPROXIMATE DATES FOR PUBLIC HEARINGS,
4 MEETINGS OR OTHER OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE DEVELOP-
5 MENT OF SUCH RULE; (III) A PROBABLE DATE OR TIME FRAME IN WHICH SUCH
6 RULE MAY BE FILED AS A PROPOSED RULE; and (IV) the name, public office,
7 address [and], telephone number AND E-MAIL ADDRESS of the agency repre-
8 sentative, knowledgeable on such regulatory agenda, from whom any infor-
9 mation may be obtained and to whom written comments may be submitted
10 concerning such regulatory agenda. [An e-mail address for requests for
11 information and submission of comments may also be included.]

12 (c) Agencies shall publish the regulatory agendas AND INFORMATION
13 RELATED TO SUCH AGENDAS on their respective websites [whenever feasi-
14 ble]. An agency that publishes its regulatory agenda on its website
15 [shall have the option of maintaining a] MAY continuously MAINTAIN AN
16 updated regulatory agenda ON SUCH WEBSITE, wherein a description of a
17 rule is added when the agency begins to consider proposing [it] SUCH A
18 RULE and is removed when the agency is no longer considering [proposing
19 it] TO PROPOSE SUCH A RULE. Such description shall identify the date on
20 which the description is first listed in the regulatory agenda and shall
21 conspicuously indicate that the description has been newly listed for a
22 period of not less than thirty days after such date. In any year that an
23 agency maintains a continuously updated regulatory agenda, it shall not
24 be required to publish a regulatory agenda in the last regular issue of
25 the state register in June. The agency shall inform the public that it
26 maintains an updated regulatory agenda on its website and shall list the
27 address of its website in a notice published with the regulatory agenda
28 such agency submits for publication in January. The secretary of state
29 shall republish this notice in the last regular issue in June.

30 (d) An agency [shall identify each rule described] in PREPARING its
31 regulatory agenda [for which a regulatory flexibility analysis or a
32 rural area flexibility analysis may be required, and] shall provide
33 outreach INFORMATION as IS appropriate to INFORM potentially affected
34 small businesses, local governments [and], public and private interests
35 AND ALL OTHER REGULATED PERSONS, INCLUDING THOSE LOCATED in rural areas.
36 Such outreach EFFORTS may include solicitation of input from potentially
37 affected parties through electronic means or through any of the activ-
38 ities listed in subdivision six of section two hundred two-b and subdi-
39 vision seven of section two hundred two-bb of this article.

40 S. 2. Subdivision 1 of section 207 of the state administrative proce-
41 dure act, as added by chapter 262 of the laws of 1996, is amended to
42 read as follows:

43 1. Unless the contrary is specifically provided by another law[,]: (A)
44 any rule which is adopted on or after the effective date of this section
45 shall be reviewed [after five years] NO LATER THAN IN THE FIFTH CALENDAR
46 YEAR SPECIFIED IN THE NOTICE OF ADOPTION FOR THE RULE, and, thereafter,
47 EVERY RULE SHALL BE RE-REVIEWED at five-year intervals.

48 (B) PROVIDED, HOWEVER, (I) FOR ANY RULE FOR WHICH A RURAL AREA FLEXI-
49 BILITY ANALYSIS OR JOB IMPACT STATEMENT IS PREPARED, THE INITIAL REVIEW
50 SHALL OCCUR NO LATER THAN THE THIRD CALENDAR YEAR SPECIFIED IN THE
51 NOTICE OF ADOPTION FOR SUCH RULE OR BEFORE THE FIFTH CALENDAR YEAR; (II)
52 NOT WITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, AN AGENCY MAY
53 PROPOSE A DIFFERENT REVIEW PERIOD OF NOT MORE THAN FIVE YEARS IN SUCH
54 ANALYSIS OR STATEMENT, ALONG WITH ITS JUSTIFICATION FOR DOING SO, AND
55 SHALL INVITE PUBLIC COMMENT THEREON.

1 (C) THE REVIEW PERIOD SPECIFIED FOR THE RULE SHALL ACCOMPANY THE
2 NOTICE OF ADOPTION.

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

6 2. An agency shall submit for publication in the regulatory agenda
7 published in January pursuant to section two hundred two-d of this arti-
8 cle a list of the rules which must be reviewed pursuant to subdivision
9 one of this section in the ensuing calendar year. In addition to the
10 information required by such section two hundred two-d, for each rule so
11 listed the agency shall provide an analysis of the need for and legal
12 basis of such rule, shall invite public comment on the continuation or
13 modification of the rule and shall indicate the last date for submission
14 of comments which shall be not less than forty-five days from the date
15 of publication. AN AGENCY THAT PUBLISHES ITS REGULATORY AGENDA ON ITS
16 WEBSITE PURSUANT TO PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION TWO
17 HUNDRED TWO-D OF THIS ARTICLE SHALL ALSO PUBLISH THE LIST OF RULES THAT
18 MUST BE REVIEWED PURSUANT TO THIS SECTION ON ITS WEBSITE.

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

21 6. THE SECRETARY OF STATE SHALL PUBLISH IN THE STATE REGISTER ON A
22 WEEKLY BASIS A LIST OF DELINQUENT AGENCIES THAT HAVE NOT SUBMITTED A
23 LIST OF RULES WHICH MUST BE REVIEWED AS REQUIRED BY THIS SECTION. AN
24 AGENCY SHALL CONTINUE TO BE PUBLISHED ON THE DELINQUENT LIST UNTIL IT
25 HAS PUBLISHED THE NOTICE REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

26 S 5. Section 2 of chapter 402 of the laws of 1994, amending the state
27 administrative procedure act relating to requiring certain agencies to
28 submit regulatory agendas for publication in the state register, as
29 amended by chapter 193 of the laws of 2008, is amended to read as
30 follows:

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

38 S 6. This act shall take effect on the first of January next succeed-
39 ing the date on which it shall have become a law; provided, however,
40 that section four of this act shall take effect on the first of Septem-
41 ber next succeeding the date on which it shall have become a law;
42 provided, further, that the amendments to subdivision 1 of section 202-d
43 of the state administrative procedure act made by section one of this
44 act shall not affect the expiration of such subdivision and shall be
45 deemed to expire therewith.