

6447--B

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 -- again 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. Paragraphs (a), (b) and (c) of subdivision 1 of section
2 202-d of the state administrative procedure act, as amended by chapter
3 193 of the laws of 2008, are 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 OR HER designee
10 shall, and any other agency may, in its discretion, submit to the secre-
11 tary of state, for publication in the first regular issue of the state
12 register published during the month of January and the last regular
13 issue of the state register published in June, a regulatory agenda to
14 [afford the agency an opportunity to] solicit comments concerning any
15 rule which the agency is considering [proposing] TO PROPOSE, but for
16 which no notice of proposed rule making has been submitted pursuant to
17 subdivision one of section 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 a list and brief
2 description of subject matter being considered for rule making and the
3 name, public office, address, E-MAIL ADDRESS and telephone number of the
4 agency representative, knowledgeable on such regulatory agenda, from
5 whom any information may be obtained and to whom written comments may be
6 submitted concerning such regulatory agenda. [An e-mail address for
7 requests for information and submission of comments may also be
8 included.]

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

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

30 1. (A) Unless the contrary is specifically provided by PARAGRAPH (B)
31 OF THIS SUBDIVISION OR BY another law, any rule which is adopted on or
32 after the effective date of this section shall be reviewed IN THE CALEN-
33 DAR YEAR SPECIFIED IN THE NOTICE OF ADOPTION FOR THE RULE, PROVIDED THAT
34 AT A MINIMUM EVERY RULE SHALL BE INITIALLY REVIEWED NO LATER THAN IN THE
35 FIFTH CALENDAR YEAR after [five years] THE YEAR IN WHICH THE RULE IS
36 ADOPTED, and, thereafter, EVERY RULE SHALL BE RE-REVIEWED at five-year
37 intervals.

38 (B) FOR ANY RULE FOR WHICH A REGULATORY FLEXIBILITY ANALYSIS, RURAL
39 AREA FLEXIBILITY ANALYSIS OR JOB IMPACT STATEMENT IS REQUIRED, THE
40 INITIAL REVIEW SHALL OCCUR NO LATER THAN IN THE THIRD CALENDAR YEAR
41 AFTER THE YEAR IN WHICH THE RULE IS ADOPTED; PROVIDED, HOWEVER, THAT THE
42 AGENCY MAY PROPOSE A DIFFERENT REVIEW PERIOD IN SUCH ANALYSIS OR STATE-
43 MENT, ALONG WITH ITS JUSTIFICATION FOR DOING SO, AND SHALL INVITE PUBLIC
44 COMMENT THEREON. THE REVIEW PERIOD SPECIFIED FOR THE RULE AND AN ASSESS-
45 MENT OF ANY COMMENTS ON THIS ISSUE SHALL ACCOMPANY THE NOTICE OF
46 ADOPTION.

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

50 2. An agency shall submit for publication in the regulatory agenda
51 published in January pursuant to section two hundred two-d of this arti-
52 cle a list of the rules which must be reviewed pursuant to subdivision
53 one of this section in the ensuing calendar year. In addition to the
54 information required by such section two hundred two-d, for each rule so
55 listed the agency shall provide an analysis of the need for and legal
56 basis of such rule, shall invite public comment on the continuation or

1 modification of the rule and shall indicate the last date for submission
2 of comments which shall be not less than forty-five days from the date
3 of publication. AN AGENCY SHALL ALSO PUBLISH THE LIST OF RULES THAT MUST
4 BE REVIEWED PURSUANT TO THIS SECTION ON ITS WEBSITE. IF THE ORIGINAL
5 NOTICE OF PROPOSED RULE MAKING FOR A LISTED RULE REQUIRED THE PREPARA-
6 TION OF A REGULATORY FLEXIBILITY ANALYSIS, A RURAL AREA FLEXIBILITY
7 ANALYSIS, OR A JOB IMPACT STATEMENT, THE AGENCY SHALL SO INDICATE AND
8 SHALL PROVIDE OUTREACH AS APPROPRIATE TO POTENTIALLY AFFECTED SMALL
9 BUSINESSES, LOCAL GOVERNMENTS AND PUBLIC AND PRIVATE INTERESTS IN RURAL
10 AREAS THAT THE RULE IS BEING REVIEWED. SUCH OUTREACH MAY INCLUDE SOLIC-
11 ITATION OF INPUT THROUGH ELECTRONIC MEANS OR THROUGH ANY OF THE ACTIV-
12 ITIES LISTED IN SUBDIVISION SIX OF SECTION TWO HUNDRED TWO-B AND SUBDI-
13 VISION SEVEN OF SECTION TWO HUNDRED TWO-BB OF THIS ARTICLE.

14 S 4. Section 2 of chapter 402 of the laws of 1994, amending the state
15 administrative procedure act relating to requiring certain agencies to
16 submit regulatory agendas for publication in the state register, as
17 amended by chapter 193 of the laws of 2008, is amended to read as
18 follows:

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

26 S 5. This act shall take effect immediately, provided, however that
27 sections one, two and three of this act shall take effect on the first
28 of January next succeeding the date on which it shall have become a law;
29 provided, further, that section two of this act shall apply to any rule
30 adopted on or after such date; and provided, further that the amendments
31 to subdivision 1 of section 202-d of the state administrative procedure
32 act made by section one of this act shall not affect the expiration of
33 such subdivision and shall be deemed to expire therewith.