

2160

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sen. 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 providing for public comment during the initial development, preparation and promulgation of rules

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

1 Section 1. Paragraph (b) of subdivision 4-a of section 202 of the
2 state administrative procedure act, as added by chapter 335 of the laws
3 of 1992, is amended to read as follows:
4 (b) Each agency shall publish and make available to the public an
5 assessment of public comment for a rule revised pursuant to this subdivi-
6 sion. Such assessment shall be based upon any written comments submit-
7 ted to the agency DURING THE INITIAL DEVELOPMENT, PREPARATION AND
8 PROMULGATION OF SUCH PROPOSED RULE and any comments presented at any
9 public hearing held on the proposed rule by the agency. The assessment
10 shall contain: (i) a summary and an analysis of the issues raised and
11 significant alternatives suggested by any such comments; (ii) a state-
12 ment of the reasons why any significant alternatives were not incorpo-
13 rated into the rule; and (iii) a description of any changes made in the
14 rule as a result of such comments. If no comments have been received,
15 the notice of revised rule making shall state that no comments were
16 received by the agency. Any subsequent assessment published pursuant to
17 this paragraph or paragraph (b) of subdivision five of this section need
18 only include comments not addressed in any previously published assess-
19 ment of public comment for the rule; provided, however, that the notice
20 of revised rule making or adoption shall contain the date any previous
21 notice of revised rule making containing an assessment of public comment
22 was published in the state register.

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

LBD04827-01-3

1 S 2. Paragraph (b) of subdivision 5 of section 202 of the state admin-
2 istrative procedure act, as amended by chapter 171 of the laws of 1994,
3 is amended to read as follows:

4 (b) Except with respect to any rule defined in subparagraph (ii) of
5 paragraph (a) of subdivision two of section one hundred two of this
6 chapter, each agency shall publish and make available to the public an
7 assessment of public comment for a rule adopted pursuant to this subdi-
8 vision or paragraph (e) of subdivision six of this section. Such assess-
9 ment shall be based upon any written comments submitted to the agency
10 DURING THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION OF SUCH
11 PROPOSED RULE and any comments presented at any public hearing held on
12 the proposed rule by the agency. The assessment shall contain: (i) a
13 summary and an analysis of the issues raised and significant alterna-
14 tives suggested by any such comments, (ii) a statement of the reasons
15 why any significant alternatives were not incorporated into the rule and
16 (iii) a description of any changes made in the rule as a result of such
17 comments. If any comments included estimates of projected costs of the
18 proposed rule to the state, local governments or regulated persons,
19 which differed significantly from those presented by the agency in its
20 regulatory impact statement, regulatory flexibility analysis, or rural
21 area flexibility analysis, the assessment shall also summarize the agen-
22 cy's assessment of such estimates. If no comments have been received,
23 the notice of adoption shall state that no comments were received by the
24 agency. Comments submitted or presented to the agency by a legislative
25 committee or commission or by a member or members of the senate or
26 assembly shall be considered public comment and shall be summarized and
27 analyzed in the assessment.

28 S 3. Subdivision 1 of section 202-a of the state administrative proce-
29 dure act, as amended by chapter 171 of the laws of 1994, is amended to
30 read as follows:

31 1. In [developing] THE INITIAL DEVELOPMENT, PREPARATION AND PROMULGA-
32 TION OF a rule, an agency shall, to the extent consistent with the
33 objectives of applicable statutes, consider utilizing approaches which
34 are designed to avoid undue deleterious economic effects or overly
35 burdensome impacts of the rule upon persons, including persons residing
36 in New York state's rural areas, directly or indirectly affected by it
37 or upon the economy or administration of state or local governmental
38 agencies. Such approaches shall include, but not be limited to, the
39 specification of performance standards rather than design standards.
40 PRIOR TO PROMULGATING SUCH RULE, THE AGENCY SHALL, BY SUCH PROMULGATION,
41 HAVE AN AFFIRMATIVE DUTY TO REACH OUT TO ALL REGULATED PERSONS WHO MAY
42 BE ADVERSELY AFFECTED AND OBTAIN FROM SUCH PERSONS THEIR COMMENTS AND
43 COST ESTIMATES THAT MAY BE IMPOSED UPON SUCH PERSONS.

44 S 4. Paragraphs (c), (d) and (g) of subdivision 3 of section 202-a of
45 the state administrative procedure act, as amended by chapter 520 of the
46 laws of 1992, are amended to read as follows:

47 (c) Costs. A statement detailing the projected costs of the rule,
48 which shall indicate:

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

51 [(ii)] (B) the costs for the implementation of, and continued adminis-
52 tration of, the rule to the agency and to the state and its local
53 governments; and

54 [(iii)] (C) the information, including the source or sources of such
55 information, and methodology upon which the cost analysis is based; or

1 [(iv)] (II) where an agency finds that, AFTER A REASONABLE GOOD FAITH
2 EFFORT HAS BEEN MADE, it cannot fully provide a statement of such costs,
3 a statement setting forth its best GOOD FAITH estimate, which shall
4 indicate the information and methodology upon which such best estimate
5 is based and the reason or reasons why a complete cost statement cannot
6 be provided; AND

7 (III) (A) A SUMMARY OF AGENCY OUTREACH EFFORTS MADE TO REGULATED
8 PERSONS WHO MAY BE ADVERSELY AFFECTED BY ANY RULE BEFORE THE NOTICE OF
9 PROPOSED RULE MAKING IS FILED WITH THE SECRETARY OF STATE. SUCH OUTREACH
10 EFFORTS SHALL ASK FOR COST ESTIMATES, ADMINISTRATIVE BURDENS AND ADVERSE
11 EFFECTS THAT MAY BE CAUSED BY ADOPTING SUCH RULE; AND

12 (B) A SUMMARY OF COMMENTS RECEIVED BY THE AGENCY FROM REGULATED
13 PERSONS, WHO MAY BE ADVERSELY AFFECTED BY SUCH PROPOSED RULE MAKING,
14 PURSUANT TO CLAUSE (A) OF THIS SUBPARAGRAPH.

15 (d) Paperwork. A statement describing the need for any reporting
16 requirements, including forms and other paperwork OR OTHER ADMINISTRA-
17 TIVE BURDENS, which would be required as a result of the rule;

18 (g) Alternative approaches. A statement indicating whether any signif-
19 icant alternatives to the PROPOSED rule OR PROVISIONS OF THE PROPOSED
20 RULE were considered by the agency, including a discussion of such
21 alternatives and the reasons why they were not incorporated into the
22 rule. IN ADDITION, SUCH STATEMENT SHALL DISCLOSE SIGNIFICANT ALTERNATIVE
23 APPROACHES SUGGESTED BY REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED
24 BY SUCH PROPOSED RULE MAKING PRIOR TO FILING A PROPOSED RULE MAKING WITH
25 THE SECRETARY OF STATE OBTAINED FROM OUTREACH EFFORTS CONDUCTED PURSUANT
26 TO SUBPARAGRAPH (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

27 S 5. Paragraph (i) of subdivision 6 of section 202-a of the state
28 administrative procedure act, as amended by chapter 850 of the laws of
29 1990, is amended to read as follows:

30 (i) the information, COSTS, PAPERWORK OR ALTERNATIVE APPROACHES
31 presented in the statement is inadequate, MISLEADING or incomplete, AS
32 DETERMINED BY SUCH AGENCY OR BROUGHT TO THE ATTENTION OF SUCH AGENCY BY
33 REGULATED PERSONS BEFORE, DURING AND AFTER SUCH PROPOSED RULE WAS FILED
34 WITH THE SECRETARY OF STATE, provided, however, such revised statement
35 shall be submitted as soon as practicable to the secretary of state for
36 publication in the state register, provided, further, if such statement
37 exceeds two thousand words, the notice shall include only a summary of
38 such statement in less than two thousand words;

39 S 6. Subdivision 1 of section 202-b of the state administrative proce-
40 dure act, as amended by chapter 611 of the laws of 1996, is amended to
41 read as follows:

42 1. In [developing] INITIAL DEVELOPMENT, PREPARATION AND PROMULGATION
43 OF a rule, the agency shall consider utilizing approaches that will
44 accomplish the objectives of applicable statutes while minimizing any
45 adverse economic impact of the rule on small businesses and local
46 governments. THE AGENCY SHALL HAVE AN AFFIRMATIVE DUTY TO REACH OUT TO
47 ALL REGULATED PERSONS WHO MAY BE ADVERSELY AFFECTED BY THE PROMULGATION
48 OF A PROPOSED RULE MAKING AND OBTAIN FROM SUCH PERSONS THEIR COMMENTS
49 AND COST ESTIMATES OF ALL COSTS THAT MAY BE IMPOSED UPON SUCH PERSONS.
50 Consistent with the objectives of applicable statutes, the agency shall
51 consider such approaches as:

52 (a) the establishment of differing compliance or reporting require-
53 ments or timetables that take into account the resources available to
54 small businesses and local governments;

55 (b) the use of performance rather than design standards; [and]

1 (c) an exemption from coverage by the rule, or by any part thereof,
2 for small businesses and local governments so long as the public health,
3 safety or general welfare is not endangered[.]; AND

4 (D) WERE OBTAINED FROM COMMENTS AND ALTERNATIVE APPROACHES THAT COME
5 FROM REGULATED PERSONS PRIOR TO FILING A PROPOSED RULE MAKING DERIVED
6 FROM AGENCY OUTREACH EFFORTS CONDUCTED PURSUANT TO SUBPARAGRAPH (III) OF
7 PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWO-A OF THIS
8 ARTICLE.

9 S 7. Paragraph (e) of subdivision 2 of section 202-b of the state
10 administrative procedure act, as amended by chapter 611 of the laws of
11 1996, is amended and two new paragraphs (e-1) and (e-2) are added to
12 read as follows:

13 (e) an indication of how the rule is designed to minimize any adverse
14 economic impact of such rule on small businesses and local governments,
15 including information regarding whether the approaches suggested in
16 subdivision one of this section or other similar approaches were consid-
17 ered; [and]

18 (E-1) A SUMMARY OF AGENCY OUTREACH EFFORTS MADE TO REGULATED PERSONS
19 WHO MAY BE ADVERSELY AFFECTED BY ANY RULE BEFORE THE NOTICE OF PROPOSED
20 RULE MAKING IS FILED WITH THE SECRETARY OF STATE. SUCH OUTREACH EFFORTS
21 SHALL ASK FOR COST ESTIMATES, ADMINISTRATIVE BURDENS AND ADVERSE EFFECTS
22 THAT MAY BE CAUSED BY ADOPTING SUCH RULE;

23 (E-2) A SUMMARY OF COMMENTS RECEIVED BY THE AGENCY, PURSUANT TO PARA-
24 GRAPH (E-ONE) OF THIS SUBDIVISION, FROM REGULATED PERSONS WHO MAY BE
25 ADVERSELY AFFECTED BY SUCH PROPOSED RULEMAKING; AND

26 S 8. Subdivision 6 of section 202-b of the state administrative proce-
27 dure act, as amended by chapter 611 of the laws of 1996, is amended to
28 read as follows:

29 6. When any rule is proposed for which a regulatory flexibility analy-
30 sis is required, the agency shall assure that small businesses and local
31 governments have been given an ADVANCED opportunity to participate in
32 [the] DEVELOPMENT, PREPARATION AND DRAFTING OF A PROPOSED rule making
33 through such activities as:

34 (a) the publication of a general notice for the proposed rule making
35 PRIOR TO BEING FILED WITH THE SECRETARY OF STATE in publications likely
36 to be obtained by small businesses and local governments of the types
37 affected by the proposed rule;

38 (b) the PRIOR direct notification of interested small businesses and
39 local governments THAT MAY BE affected by the proposed rule;

40 (c) the conduct of special open conferences concerning the proposed
41 rule PRIOR TO FILING WITH THE SECRETARY OF STATE for small businesses
42 and local governments THAT MAY BE ADVERSELY affected by the rule; and

43 (d) the adoption or modification of agency procedural rules to reduce
44 the cost or complexity of participation in the rule making PROCESS by
45 small businesses and local governments.

46 S 9. Paragraph (i) of subdivision 7 of section 202-b of the state
47 administrative procedure act, as amended by chapter 850 of the laws of
48 1990, is amended to read as follows:

49 (i) the information, COSTS, PAPERWORK OR ALTERNATIVE APPROACHES
50 presented in the analysis submitted pursuant to this section is inade-
51 quate, MISLEADING or incomplete, AS DETERMINED BY SUCH AGENCY OR BROUGHT
52 TO THE ATTENTION OF SUCH AGENCY BY REGULATED PERSONS BEFORE, DURING AND
53 AFTER SUCH PROPOSED RULE WAS FILED WITH THE SECRETARY OF STATE,
54 provided, however, such revised analysis shall be submitted as soon as
55 practicable to the secretary of state for publication in the state
56 register, provided, further, if such statement exceeds two thousand

1 words, the notice shall include only a summary of such statement in less
2 than two thousand words;
3 S 10. This act shall take effect on the first of January next succeed-
4 ing the date on which it shall have become a law.