S T A T E O F N E W Y O R K

4177

2013-2014 Regular Sessions

I N S E N A T E

March 13, 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 the dissemination of rule making information through electronic media

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

Section 1. The legislature finds and declares that the accessibility to the public of information concerning the regulatory activities of state agencies, and the ability of the public to communicate its views to state agencies in order to ensure that such policies are reflective of the people's interests, concerns and knowledge are essential elements of open and democratic government. Technological changes, such as the expansion of on-line services, computer bulletin boards and other aspects of the "information superhighway", offer the state new opportunities to provide additional means of ensuring the accessibility and accountability of agencies to the public. Therefore, it is the intent of the legislature that agencies maximize their use of such technologies as appropriate to provide for greater participation in the rule making process.

S 2. The opening paragraph of section 201 of the state administrative procedure act is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. AGENCIES SUBJECT TO THE PROVISIONS OF THIS CHAPTER SHALL MAXIMIZE THEIR USE OF INFORMATION TECHNOLOGIES, INCLUDING BUT NOT LIMITED TO THE INTERNET AND OTHER ON-LINE SERVICES, COMPUTER BULLETIN BOARDS, ELECTRONIC MAIL AND ADVANCED TELECOMMUNICATIONS TECHNOLOGIES, AS APPROPRIATE, TO PROVIDE FOR GREATER PARTICIPATION IN THE RULE MAKING PROCESS. EACH AGENCY SHALL INCLUDE A SUMMARY OF ITS EFFORTS IN THIS REGARD IN ITS ANNUAL REPORT.

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

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S 3. Paragraph (b) of subdivision 6-a of section 202 of the state administrative procedure act, as amended by chapter 171 of the laws of 1994, is amended to read as follows:

(b) An agency shall make a copy of the complete text of any proposed, adopted or emergency rule, regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis, or revisions thereof available to the public at the time such documents are submitted to the secretary of state for publication in the state register [and shall send to any person a copy of such text upon written request]. THE TEXT OF ANY PROPOSED, ADOPTED OR EMERGENCY RULE, REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS, OR REVISIONS THEREOF SHALL BE MADE AVAILABLE BY AN AGENCY THROUGH ALL MEANS AVAILABLE TO THE AGENCY, INCLUDING THE USE OF FACSIMILE TRANSMISSIONS OR OTHER ELECTRONIC METHODS, TO ANY MEMBER OF THE PUBLIC WHO REQUESTS SUCH TEXT. THERE SHALL BE NO CHARGE FOR PROVIDING A COPY OF SUCH TEXT TO ANY MEMBER OF THE PUBLIC, EXCEPT THAT, AT THE DISCRETION OF THE AGENCY, THERE MAY BE A CHARGE FOR FACSIMILE TRANSMISSION.

S 4. Paragraph (c) of subdivision 6-a of section 202 of the state administrative procedure act, as added by chapter 850 of the laws of 1990, is amended to read as follows:

(c) An agency shall notify every person who has submitted a written request to be notified of all proposed, revised, emergency and/or adopted rules which may affect such person. [Such] AN AGENCY MAY PROVIDE THE TEXT OF ALL PROPOSED, REVISED, EMERGENCY AND/OR ADOPTED RULES TO PERSONS WHO REQUEST SUCH TEXT ORALLY. WRITTEN requests shall expire annually on the thirty-first day of December with renewals for the succeeding year to be accepted on or after December first UNLESS THE AGENCY AUTOMATICALLY RENEWS SUCH REQUESTS. [Notices] THE TEXT OF ANY PROPOSED, ADOPTED OR EMERGENCY RULE, REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS, OR REVISIONS THEREOF issued pursuant to [such] WRITTEN OR ORAL requests shall be sent [in writing] BY MAIL BY THE AGENCY to the last address specified by the person, WHENEVER SUCH PERSON HAS REQUESTED THAT SUCH TEXT BE MAILED. An agency may charge any person requesting such [notice] TEXT a fee consisting of the cost of preparation, handling and postage. THE TEXT MAY ALSO BE PROVIDED BY ANY OTHER MEANS AVAILABLE TO THE AGENCY, INCLUDING THE USE OF FACSIMILE TRANSMISSIONS OR OTHER ELECTRONIC METHODS, AND A REASONABLE FEE MAY BE CHARGED THEREFOR AT THE DISCRETION OF THE AGENCY.

S 5. Subdivision 6 of section 202-b of the state administrative procedure act, as amended by chapter 611 of the laws of 1996, is amended to read as follows:

6. When any rule is proposed for which a regulatory flexibility analysis is required, the agency shall assure that small businesses and local governments have been given an opportunity to participate in the rule making through such activities as:

(a) the publication of a general notice for the proposed rule making in publications likely to be obtained by small businesses and local governments of the types affected by the proposed rule;

(b) the direct notification of interested small businesses and local governments affected by the proposed rule INCLUDING, WHERE THE AGENCY HAS THE TECHNOLOGICAL CAPABILITY TO DO SO, NOTIFICATION BY ELECTRONIC MAIL;

(c) THE DISSEMINATION OF SUCH INFORMATION TO ON-LINE BULLETIN BOARDS OVER THE INTERNET OR SIMILAR DATA COMMUNICATIONS NETWORKS;

(D) the conduct of special open conferences concerning the proposed rule for small businesses and local governments affected by the rule; and

[(d)] (E) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rule making by small businesses and local governments.

S 6. Subdivision 7 of section 202-bb of the state administrative procedure act, as added by chapter 171 of the laws of 1994, is amended to read as follows:

7. When any rule is proposed for which a rural area flexibility analysis is required, the agency shall assure that public and private interests in rural areas have been given an opportunity to participate in the rule making through such activities as:

(i) the publication of a general notice of the proposed rule making;

(ii) notification of public and private interests in rural areas directly affected by the proposed rule INCLUDING, WHERE THE AGENCY HAS THE TECHNOLOGICAL CAPABILITY TO DO SO, NOTIFICATION BY ELECTRONIC MAIL;

(iii) THE DISSEMINATION OF SUCH INFORMATION TO ON-LINE BULLETIN BOARDS OVER THE INTERNET OR SIMILAR DATA COMMUNICATIONS NETWORKS, INCLUDING BUT NOT LIMITED TO THE RURAL ASSISTANCE INFORMATION NETWORK OR ANY SUCCESSOR NETWORK;

(IV) the conduct of special public hearings or meetings concerning the proposed rule for those public and private interests affected by the rule; and

[(iv)] (V) the adoption or modification of agency procedural rules that will minimize the cost or complexity of participation in the rule making.

S 7. This act shall take effect immediately.