

2856

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. TEDISCO, BARRA, ALFANO, BACALLES, FINCH, REILICH
-- Multi-Sponsored by -- M. of A. BARCLAY, BUTLER, ERRIGO, GIGLIO,
HAWLEY, KOLB, P. LOPEZ, MOLINARO, RAIA, TOWNSEND -- read once and
referred to the Committee on Governmental Operations

AN ACT to amend the state administrative procedure act, in relation to
creating the New York state regulatory review council and expanding
regulatory impact statements

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

1 Section 1. Subdivision 3 of section 202-a of the state administrative
2 procedure act, as amended by chapter 520 of the laws of 1992, paragraph
3 (b) as amended by chapter 229 of the laws of 2000, paragraph (f) as
4 amended by chapter 628 of the laws of 1995, is amended to read as
5 follows:
6 3. Each regulatory impact statement shall contain:
7 (a) Statutory authority. A statement analyzing the statutory authority
8 for the rule, including but not limited to the agency's interpretation
9 of the legislative objectives of such authority;
10 (b) Needs and benefits. A [statement setting forth the purpose of,
11 necessity for, and benefits derived from the rule,] DESCRIPTION OF THE
12 POTENTIAL BENEFITS OF THE RULE, INCLUDING ANY BENEFICIAL EFFECTS THAT
13 CANNOT BE QUANTIFIED IN MONETARY TERMS, THE NECESSITY OF THE RULE, THE
14 IDENTIFICATION OF THOSE LIKELY TO RECEIVE THE BENEFITS THEREOF, a cita-
15 tion for and summary, not to exceed five hundred words, of each scien-
16 tific or statistical study, report or analysis that served as the basis
17 for the rule, an explanation of how it was used to determine the neces-
18 sity for and benefits derived from the rule, and the name of the person
19 that produced each study, report or analysis;
20 (c) Costs. A [statement detailing the projected costs of the rule,
21 which shall indicate:

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

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1 (i) the costs for the implementation of, and continuing compliance
2 with, the rule to regulated persons;

3 (ii) the costs for the implementation of, and continued administration
4 of, the rule to the agency and to the state and its local governments;
5 and

6 (iii) the information, including the source or sources of such infor-
7 mation, and methodology upon which the cost analysis is based; or

8 (iv) where an agency finds that it cannot fully provide a statement of
9 such costs, a statement setting forth its best estimate, which shall
10 indicate the information and methodology upon which such best estimate
11 is based and the reason or reasons why a complete cost statement cannot
12 be provided] DESCRIPTION OF THE POTENTIAL COSTS OF THE RULE, INCLUDING
13 ANY ADVERSE EFFECTS THAT CANNOT BE QUANTIFIED IN MONETARY TERMS, AND THE
14 IDENTIFICATION OF ALL THOSE ENTITIES LIKELY TO BEAR THE COSTS;

15 (d) Paperwork. A statement describing the need for any reporting
16 requirements, including forms and other paperwork, which would be
17 required as a result of the rule AND ANY FEES THE AGENCY WOULD REQUIRE
18 TO BE PAID WITH THE FILING AND PROCESSING OF THIS PAPERWORK;

19 (e) Local government mandates. A statement describing any program,
20 service, duty or responsibility imposed by the rule upon any county,
21 city, town, village, school district, fire district or other special
22 district;

23 (f) Duplication. A DETAILED statement identifying relevant rules and
24 other legal requirements of the state and federal governments, including
25 those which may duplicate, overlap or conflict with the rule. If the
26 statement indicates that the rule would duplicate, overlap or conflict
27 with any other relevant rule or legal requirement, the statement should
28 also identify all efforts which the agency has or will undertake to
29 resolve, or minimize the impact of, such duplication, overlap or
30 conflict on regulated persons, including, but not limited to, seeking
31 waivers of or exemptions from such other rules or legal requirements,
32 seeking amendment of such other rules or legal requirements, or entering
33 into a memorandum of understanding or other agreement concerning such
34 other rules or legal requirements;

35 (g) Alternative approaches. A DETAILED statement indicating [whether]
36 any [significant] alternatives to the rule [were considered by the agen-
37 cy], including a DETAILED discussion of such alternatives and the
38 reasons why they were not incorporated into the rule. IN ADDITION, A
39 DESCRIPTION OF ALTERNATIVE APPROACHES THAT COULD ACHIEVE THE SAME REGU-
40 LATORY GOAL AT LOWER COST, TOGETHER WITH AN ANALYSIS OF SUCH POTENTIAL
41 BENEFIT AND COSTS, AND A BRIEF DESCRIPTION OF THE LEGAL REASONS WHY SUCH
42 ALTERNATIVES, IF PROPOSED, COULD NOT BE ADOPTED;

43 (h) Federal standards. A statement identifying whether the rule
44 exceeds any minimum standards of the federal government for the same or
45 similar subject areas and, if so, an explanation of why the rule exceeds
46 such standards; and

47 (i) Compliance schedule. A statement indicating the estimated period
48 of time necessary to enable regulated persons to achieve compliance with
49 the rule.

50 S 2. The state administrative procedure act is amended by adding a new
51 section 208 to read as follows:

52 S 208. NEW YORK STATE REGULATORY REVIEW COUNCIL. 1. THERE IS HEREBY
53 CREATED THE "NEW YORK STATE REGULATORY REVIEW COUNCIL". ON AND AFTER
54 JANUARY FIRST, TWO THOUSAND TEN, NO NEW RULE, UNLESS CRITICAL TO THE
55 HEALTH, SAFETY AND GENERAL WELFARE OF THE PEOPLE OF THE STATE, SHALL
56 BECOME EFFECTIVE UNLESS SUCH RULE HAS BEEN APPROVED BY MAJORITY VOTE OF

1 THE COUNCIL. ANY ACTION TAKEN BY THE COUNCIL SHALL BE FINAL AND SHALL
2 ONLY OCCUR AFTER THE AGENCY REQUESTING THE RULE HAS HELD A PUBLIC HEAR-
3 ING AS REQUIRED PURSUANT TO SECTION TWO HUNDRED TWO OF THIS ARTICLE.
4 UNDER NO CIRCUMSTANCES, SHALL ANY RULE BE PLACED BEFORE THE COUNCIL FOR
5 FINAL DETERMINATION OF APPROVAL UNLESS, (I) THE POTENTIAL BENEFITS OF
6 THE RULE TO SOCIETY CLEARLY OUTWEIGH THE POTENTIAL COSTS TO SOCIETY, AND
7 THAT SITUATION HAS BEEN CLEARLY IDENTIFIED BY THE COUNCIL, AND (II) THE
8 RULE MAXIMIZES THE NET BENEFITS TO SOCIETY AND IS THE LEAST COSTLY
9 ALTERNATIVE, AND THE MAXIMUM BENEFITS AND MINIMUM COSTS HAVE BEEN CLEAR-
10 LY IDENTIFIED BY THE COUNCIL.

11 2. THE COUNCIL SHALL CONSIST OF THE FOLLOWING SIX VOTING MEMBERS: THE
12 GOVERNOR, THE COMPTROLLER, THE SPEAKER OF THE ASSEMBLY, THE MINORITY
13 LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE AND THE
14 MINORITY LEADER OF THE SENATE, OR THEIR DESIGNATED REPRESENTATIVE. THE
15 MEMBERS OF THE COUNCIL OR THEIR DESIGNATED REPRESENTATIVE SHALL RECEIVE
16 NO COMPENSATION FOR THEIR SERVICES. FOUR MEMBERS OF THE COUNCIL SHALL
17 CONSTITUTE A QUORUM AND THE AFFIRMATIVE VOTE OF THE MAJORITY OF THE
18 WHOLE COUNCIL SHALL BE NECESSARY FOR THE TRANSACTION OF ANY BUSINESS OR
19 THE EXERCISE OF ANY POWER OF THE COUNCIL. THE COUNCIL SHALL MEET AT
20 LEAST ONCE EVERY MONTH BUT SHALL MEET FIRST WITHIN SEVEN DAYS OF THE
21 BEGINNING OF EVERY MONTH TO CONDUCT ITS BUSINESS.

22 3. EACH STATE AGENCY PROPOSING A RULE SHALL SUBMIT THE FOLLOWING TO
23 THE COUNCIL IN ORDER FOR THE COUNCIL TO TAKE ACTION ON THE AGENCY'S
24 PROPOSAL:

25 (A) A STATEMENT CITING THE STATUTORY AUTHORITY, INCLUDING PARTICULAR
26 SECTIONS AND SUBDIVISIONS OF LAW, UNDER WHICH THE ACTION WILL BE TAKEN;

27 (B) THE EXPRESS TERMS OF SUCH PROPOSED ACTION IN TWO THOUSAND WORDS OR
28 LESS;

29 (C) A REGULATORY IMPACT STATEMENT AS REQUIRED UNDER SECTION TWO
30 HUNDRED TWO-A OF THIS ARTICLE;

31 (D) THE ANTICIPATED EFFECTIVE DATE OF THE NEW, AMENDED OR REPEALED
32 RULE;

33 (E) THE NAME, PUBLIC OFFICE ADDRESS AND TELEPHONE NUMBER OF THE AGENCY
34 REPRESENTATIVE FROM WHOM THE EXPRESS TERMS OF THE ACTION AND ANY REGULA-
35 TORY IMPACT STATEMENT MAY BE OBTAINED;

36 (F) A TRANSCRIPT OF THE PUBLIC HEARINGS HELD ON THE PROPOSED RULE
37 CHANGE REQUIRED UNDER SECTION TWO HUNDRED TWO OF THIS ARTICLE AS WELL AS
38 THE NAMES, ADDRESSES AND PHONE NUMBERS OF ALL INDIVIDUALS WHO TESTIFIED
39 AT SUCH HEARINGS;

40 (G) A STATEMENT OUTLINING THE DETERMINATION MADE BY THE AGENCY PROPOS-
41 ING THE RULE THAT THE PROPOSED RULE IS CLEARLY WITHIN THE AUTHORITY
42 DELEGATED BY LAW AND CONSISTENT WITH THE LEGISLATIVE INTENT; AND

43 (H) A STATEMENT OUTLINING THE DETERMINATION MADE BY THE AGENCY PROPOS-
44 ING THE RULE THAT THE FACTUAL CONCLUSIONS UPON WHICH THE RULE IS BASED
45 HAVE SUBSTANTIAL SUPPORT IN THE AGENCY RECORD, VIEWED AS A WHOLE, WITH
46 FULL ATTENTION TO PUBLIC COMMENTS IN GENERAL AND THE COMMENTS OF PERSONS
47 DIRECTLY AFFECTED BY THE RULE IN PARTICULAR.

48 4. IN ADDITION TO THE POWERS SET FORTH IN THE OTHER PROVISIONS OF THIS
49 SECTION, THE COUNCIL SHALL HAVE THE FOLLOWING POWERS TO:

50 (A) REQUIRE ANY STATE OFFICER, OR THE HEAD OF ANY DEPARTMENT, DIVISION
51 OR BUREAU THEREOF, TO FURNISH SUCH DATA, INFORMATION OR STATEMENTS AS
52 MAY BE NECESSARY FOR THE COUNCIL TO CONDUCT ITS BUSINESS;

53 (B) TAKE AND HEAR PROOFS AND TESTIMONY FROM INDIVIDUALS IN THE PUBLIC
54 AND PRIVATE SECTOR, SUBPOENA AND COMPEL THE ATTENDANCE OF WITNESSES AND
55 COMPEL THE PRODUCTION OF BOOKS, PAPERS, RECORDS AND DOCUMENTS;

1 (C) ESTABLISH A COMPLAINT PROCEDURE FOR DETERMINING ENFORCEMENT ACTIV-
2 ITIES THAT MAY CAUSE ECONOMIC, FINANCIAL OR OTHER HARM TO ENTITIES
3 AFFECTED BY EXISTING OR PROPOSED RULES. IN ADDITION, THE COUNCIL MAY
4 PROVIDE RECOMMENDATIONS TO AGENCIES FOR CHANGING SUCH ENFORCEMENT PROCE-
5 DURES;

6 (D) PREPARE AND PROMULGATE UNIFORM STANDARDS FOR THE DEVELOPMENT OF
7 REGULATORY IMPACT STATEMENTS REQUIRED PURSUANT TO THIS ARTICLE;

8 (E) IDENTIFY DUPLICATIVE, OVERLAPPING AND CONFLICTING RULES, EXISTING
9 OR PROPOSED, AND EXISTING OR PROPOSED RULES THAT ARE INCONSISTENT WITH
10 THE POLICIES UNDERLYING STATUTES GOVERNING AGENCIES OTHER THAN THE ISSU-
11 ING AGENCY AND, IN SUCH CASES, REQUIRE APPROPRIATE INTERAGENCY CONSULTA-
12 TION TO MINIMIZE OR ELIMINATE SUCH DUPLICATION, OVERLAP OR CONFLICT;

13 (F) DEVELOP PROCEDURES FOR ESTIMATING THE ANNUAL BENEFITS AND COSTS OF
14 AGENCY REGULATIONS, ON BOTH AN AGGREGATE AND ECONOMIC OR INDUSTRIAL
15 SECTOR BASIS, FOR PURPOSES OF COMPILING A REGULATORY BUDGET; AND

16 (G) MONITOR AGENCY COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

17 5. ANNUALLY, AFTER JANUARY FIFTEENTH AND BEFORE FEBRUARY FIFTEENTH,
18 COMMENCING TWO THOUSAND ELEVEN, THE COUNCIL SHALL PUBLISH AN ANNUAL
19 REPORT REGARDING THE ACTIONS TAKEN BY THE COUNCIL DURING THE PRIOR
20 CALENDAR YEAR. SUCH REPORT SHALL INCLUDE SPECIFIC DETAILS CONCERNING NEW
21 OR AMENDED RULES AND REGULATIONS PROPOSED TO THE COUNCIL AND WHAT
22 ACTIONS WERE TAKEN BY THE COUNCIL ON SUCH NEW OR AMENDED RULES OR REGU-
23 LATIONS.

24 S 3. This act shall take effect immediately, and shall apply to rules
25 and regulations proposed to be added, amended or repealed on or after
26 such effective date.