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

5091

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state administrative procedure act, in relation to enhancing agency compliance with regulatory impact and regulatory flexibility requirements for significant proposed rules

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

Section 1. Statement of purpose. The requirements of this act relating to regulatory impact and flexibility analyses have had salutary effects on the process used by agencies to develop regulations and public participation in that process. Among the benefits of these requirements is greater public involvement in the shaping of regulations and an increased awareness by agencies of the desirability of using regulatory approaches designed to minimize burdensome and costly effects on affected persons, businesses, including in particular small businesses, and the state and local economy.

Since the enactment of these requirements, it has become apparent that there are types of regulations where the extensive outreach and development requirements of regulatory impact and flexibility analyses do not produce a corresponding public benefit and may, in these times of fiscal stringency, result in an agency spending equivalent resources in the development of these as well as more significant regulations, just to meet a minimal compliance level.

Advance notice of the proposal of such minor rules, as defined in this act, in a regulatory agenda will give interested parties adequate opportunity to comment both on the substance of the rule and the agency's determination that the rule is a minor rule.

It is the purpose of this act to reduce the requirements of the regulatory impact statement and regulatory flexibility analysis statutes for such minor rules so that agencies may utilize their resources to concentrate on outreach and developmental activities for regulations which are

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

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more significant to the public, state and local governments, small businesses and other regulated parties in regard to compliance requirements, costs, alternatives, and where the agency authority for the regulation requires detailed explanation and justification.

It is intended thereby that agency compliance with the requirements of regulatory impact and flexibility analyses for important, substantive rules will be significantly improved as will the management and use of state resources.

S 2. Section 102 of the state administrative procedure act is amended by adding a new subdivision 12 to read as follows:

12. "MINOR RULE" MEANS A RULE (A) WHICH MERELY ADOPTS OR CONFORMS A RULE TO PROVISIONS OF FEDERAL OR STATE STATUTE, WHERE AGENCY ACTION IS NOT REQUIRED IN ORDER FOR SUCH PROVISIONS TO BECOME ENFORCEABLE AND THE RULE RELATES SOLELY TO MINISTERIAL MATTERS OF THE AGENCY; (B) WHICH SIMPLIFIES ADMINISTRATIVE PROCEDURES OR PRACTICES OF AN AGENCY AND WHICH DOES NOT LIMIT OR REDUCE THE RIGHTS OF OR PROCEDURES OR PRACTICES AVAILABLE TO THE PUBLIC; OR (C) FOR WHICH THE AGENCY REASONABLY EXPECTS THE TOTAL IMPLEMENTATION AND ANNUAL COST OF COMPLIANCE, INCLUDING PAPERWORK AND REPORTING REQUIREMENTS, TO THE STATE, LOCAL GOVERNMENTS, SMALL BUSINESSES AND OTHER REGULATED PARTIES, COMBINED, WILL NOT EXCEED ONE THOUSAND DOLLARS PER ANNUM AND WHICH THE AGENCY REASONABLY EXPECTS WILL NOT BE OPPOSED BY INTERESTED PARTIES.

S 3. Subdivision 5 of section 202-a of the state administrative procedure act is amended by adding a new paragraph (d) to read as follows:

(D) WHEN AN AGENCY SUBMITS A NOTICE OF PROPOSED RULE MAKING FOR A MINOR RULE NO LESS THAN SIXTY DAYS FOLLOWING PUBLICATION OF A SUMMARY OF SUCH RULE PURSUANT TO SECTION TWO HUNDRED TWO-D OF THIS ARTICLE, THE AGENCY MAY DISPENSE WITH THE REQUIREMENTS OF PARAGRAPHS (B), (C), (D), (E), (F), AND (G) OF SUBDIVISION THREE OF THIS SECTION. THE AGENCY SHALL INCLUDE IN THE NOTICE OF PROPOSED RULE MAKING AND ANY NOTICE OF REVISED RULE MAKING THE DATE THE REGULATORY AGENDA CONTAINING THE SUMMARY OF THE MINOR RULE WAS PUBLISHED IN THE STATE REGISTER.

S 4. Subdivision 3 of section 202-b of the state administrative procedure act is amended by adding a new paragraph (c) to read as follows:

(C) WHEN AN AGENCY SUBMITS A NOTICE OF PROPOSED RULE MAKING FOR A MINOR RULE NO LESS THAN SIXTY DAYS FOLLOWING PUBLICATION OF A SUMMARY OF SUCH RULE PURSUANT TO SECTION TWO HUNDRED TWO-D OF THIS ARTICLE, THE AGENCY MAY DISPENSE WITH THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION. THE AGENCY SHALL INCLUDE IN THE NOTICE OF PROPOSED RULE MAKING AND ANY NOTICE OF REVISED RULE MAKING THE DATE THE REGULATORY AGENDA CONTAINING THE SUMMARY OF THE MINOR RULE WAS PUBLISHED IN THE STATE REGISTER.

S 5. Subdivision 1 of section 202-d of the state administrative procedure act is amended by adding a new paragraph (g) to read as follows:

(G) A STATEMENT OF WHETHER THE RULE IS A MINOR RULE, AND THE BASIS FOR THIS DETERMINATION;

S 6. This act shall take effect on the first of October next succeeding the date on which it shall have become a law and shall apply to all rules proposed for adoption on or after such date provided that the amendment made to subdivision 1 of section 202-d of the state administrative procedure act by section five of this act shall take effect on the same date as the expiration and reversion of such subdivision as provided in section 2 of chapter 402 of the laws of 1994, as amended.