

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

9714--B

I N A S S E M B L Y

January 19, 2010

A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to electronic permit applications and electronic record-keeping; and to amend the state administrative procedure act, in relation to rule making

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

1 Section 1. The executive law is amended by adding a new section 97-b
2 to read as follows:
3 S 97-B. AFFIRMATION IN LIEU OF OATH ON PERMIT APPLICATIONS; SIGNATURE
4 REQUIREMENT FOR ELECTRONIC PERMIT APPLICATIONS. 1. DEFINITIONS:
5 (A) "STATE AGENCY" SHALL MEAN ANY DEPARTMENT, BOARD, BUREAU, COMMIS-
6 SION, DIVISION, OFFICE, COUNCIL, COMMITTEE OR OFFICER OF THE STATE, OR A
7 PUBLIC BENEFIT CORPORATION OR PUBLIC AUTHORITY, AT LEAST ONE OF WHOSE
8 MEMBERS IS APPOINTED BY THE GOVERNOR, AUTHORIZED BY LAW TO MAKE RULES OR
9 TO MAKE FINAL DECISIONS IN ADJUDICATORY PROCEEDINGS BUT SHALL NOT
10 INCLUDE THE GOVERNOR, AGENCIES IN THE LEGISLATIVE AND JUDICIAL BRANCHES,
11 AGENCIES CREATED BY INTERSTATE COMPACT OR INTERNATIONAL AGREEMENT, THE
12 DIVISION OF MILITARY AND NAVAL AFFAIRS TO THE EXTENT IT EXERCISES ITS
13 RESPONSIBILITY FOR MILITARY AND NAVAL AFFAIRS, THE DIVISION OF STATE
14 POLICE, THE IDENTIFICATION AND INTELLIGENCE UNIT OF THE DIVISION OF
15 CRIMINAL JUSTICE SERVICES, THE STATE INSURANCE FUND, THE UNEMPLOYMENT
16 INSURANCE APPEAL BOARD, THE STATE DIVISION OF PAROLE AND THE DEPARTMENT
17 OF CORRECTIONAL SERVICES;
18 (B) "APPLICANT" SHALL MEAN ANY PERSON WHO SUBMITS AN APPLICATION;
19 (C) "APPLICATION" SHALL MEAN A PAPER, FORM OR DOCUMENT PRODUCED BY OR
20 ON BEHALF OF A STATE AGENCY AND REQUIRED TO BE FILED BY A PERSON WITH A
21 STATE AGENCY, PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION FOR SUCH
22 STATE AGENCY, PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION TO DETER-
23 MINE WHETHER TO ISSUE, MODIFY OR RENEW A PERMIT, LICENSE, CERTIFICATE,

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

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1 APPROVAL, REGISTRATION, CHARTER, OR SIMILAR FORM OF PERMISSION OR
2 AUTHORITY REQUIRED BY LAW OR BY STATE AGENCY RULES HAVING THE FORCE AND
3 EFFECT OF LAW, WHICH IS REQUIRED FOR A BUSINESS UNDERTAKING, PROJECT OR
4 ACTIVITY FOR AN APPLICANT, BUT SHALL NOT INCLUDE BONDS OR OTHER FORMS OF
5 SECURITY REQUIRED TO BE SUBMITTED BY APPLICANTS, OR ANY INDIVIDUAL
6 LICENSES FOR PRACTICING A PROFESSION PRESCRIBED IN TITLE EIGHT OF THE
7 EDUCATION LAW, FILINGS UNDER THE UNIFORM COMMERCIAL CODE, ROUTINE
8 LICENSES AND PERMITS FOR INDIVIDUAL PRIVILEGES, INCLUDING LICENSES FOR
9 OPERATING A MOTOR VEHICLE AND AMATEUR SPORTING LICENSES, SUCH AS FOR
10 HUNTING AND FISHING, OR BUILDING PERMIT ISSUED BY A CITY, TOWN OR
11 VILLAGE.

12 2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY STATE
13 AGENCY MAY, BY PROMULGATION OF REGULATIONS IN ACCORDANCE WITH THE STATE
14 ADMINISTRATIVE PROCEDURE ACT, PERMIT ANY APPLICATION TO BE FILED WITH
15 SUCH AGENCY, SUBSCRIBED AND AFFIRMED BY THE APPLICANT AS TRUE UNDER
16 PENALTY OF PERJURY WHERE STATUTE OTHERWISE REQUIRES THAT SUCH SIGNATURE
17 BE ACKNOWLEDGED, VERIFIED OR SWORN UNDER OATH.

18 3. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY STATE
19 AGENCY MAY, BY PROMULGATION OF REGULATIONS IN ACCORDANCE WITH THE STATE
20 ADMINISTRATIVE PROCEDURE ACT, PERMIT ANY APPLICATION TO BE SUBMITTED:
21 (A) BY ELECTRONIC MEANS, PROVIDED THAT A SIGNATURE IS REQUIRED THEREON
22 THAT MEETS THE REQUIREMENTS OF SUBDIVISION THREE OF SECTION THREE
23 HUNDRED TWO OF THE STATE TECHNOLOGY LAW, AND THE USE OF ELECTRONIC
24 RECORDS SHALL MEET THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION THREE
25 HUNDRED FIVE OF THE STATE TECHNOLOGY LAW; AND (B) SUBSCRIBED AND
26 AFFIRMED BY THE APPLICANT AS TRUE UNDER PENALTY OF PERJURY WHERE STATUTE
27 OTHERWISE REQUIRES THAT SUCH SIGNATURE BE ACKNOWLEDGED, VERIFIED OR
28 SWORN UNDER OATH.

29 S 2. Paragraph (a) of subdivision 2 of section 201-a of the state
30 administrative procedure act, as added by chapter 189 of the laws of
31 1996, is amended to read as follows:

32 (a) When it is apparent from the nature and purpose of the rule that
33 it will not have a substantial adverse impact on jobs and employment
34 opportunities, the agency shall include in the [notice of proposed rule
35 making or the notice of emergency adoption a] REGULATORY IMPACT STATE-
36 MENT PREPARED PURSUANT TO SECTION TWO HUNDRED TWO-A OF THIS ARTICLE A
37 BRIEF statement that the agency has determined that the rule will not
38 have a substantial adverse impact on jobs and employment opportunities;
39 provided, however, that, where appropriate, such statement shall indi-
40 cate that the agency has determined the rule will have a positive impact
41 on jobs and employment opportunities, or will have no impact on jobs and
42 employment opportunities. Except where it is evident from the subject
43 matter of the rule that the rule could only have a positive impact or no
44 impact on jobs and employment opportunities, the agency shall include in
45 the statement prepared pursuant to this paragraph a summary of the
46 information and methodology underlying its determination.

47 S 3. Paragraph (a) of subdivision 5 of section 202-a of the state
48 administrative procedure act, as amended by chapter 698 of the laws of
49 1984, is amended to read as follows:

50 (a) An agency may claim an exemption from the requirements of this
51 section AND SECTIONS TWO HUNDRED ONE-A, TWO HUNDRED TWO-B AND TWO
52 HUNDRED TWO-BB OF THIS ARTICLE for a rule that involves only a technical
53 amendment, provided, however, the agency shall state in the notice,
54 prepared pursuant to section two hundred two of this chapter, the reason
55 or reasons for claiming such exemption.

1 S 4. Paragraph (a) of subdivision 3 of section 202-b of the state
2 administrative procedure act, as amended by chapter 611 of the laws of
3 1996, is amended to read as follows:

4 (a) This section shall not apply to any rule defined in subparagraph
5 (ii) of paragraph (a) of subdivision two of section one hundred two of
6 this chapter, nor shall it apply to any rule which does not impose an
7 adverse economic impact on small businesses or local governments and
8 which the agency finds would not impose reporting, recordkeeping or
9 other compliance requirements on small businesses or local governments.
10 The agency's finding and the reasons upon which the finding was made,
11 including what measures the agency took to ascertain that the rule would
12 not impose such compliance requirements, or adverse economic impact on
13 small businesses or local governments, shall be included in the [rule
14 making notice] REGULATORY IMPACT STATEMENT as required by section two
15 hundred [two] TWO-A of this chapter.

16 S 5. Paragraph (a) of subdivision 4 of section 202-bb of the state
17 administrative procedure act, as added by chapter 171 of the laws of
18 1994, is amended to read as follows:

19 (a) This section shall not apply to any rule defined in subparagraph
20 (ii) of paragraph (a) of subdivision two of section one hundred two of
21 this chapter, nor shall it apply to any rule which does not impose an
22 adverse impact on rural areas and which the agency finds would not
23 impose reporting, recordkeeping or other compliance requirements on
24 public or private entities in rural areas. The agency's finding and the
25 reasons upon which the finding was made, including what measures the
26 agency took to ascertain that the rule would not impose such compliance
27 requirements or adverse impact, shall be included in the [rule making
28 notice] REGULATORY IMPACT STATEMENT as required by section two hundred
29 [two] TWO-A of this chapter.

30 S 6. Subdivision 7 of section 837 of the executive law, as added by
31 chapter 399 of the laws of 1972 and such section as renumbered by chap-
32 ter 603 of the laws of 1973, is amended to read as follows:

33 7. Receive, process and file fingerprints, photographs and other
34 descriptive data for the purpose of establishing identity and previous
35 criminal record. WHENEVER ANY PROVISION OF LAW REQUIRES OR PERMITS THE
36 SUBMISSION, TRANSMISSION, FORWARDING, RETENTION, RETURN OR DESTRUCTION
37 THEREOF, THE TERMS "CRIMINAL RECORD", "CRIMINAL HISTORY RECORD", "FING-
38 ERPRINTS", "FINGERPRINT CARDS", "PHOTOGRAPHS", "PALMPRINTS", "PERSONAL
39 APPEARANCE DATA", "HANDWRITING SAMPLES", AND "DESCRIPTIVE DATA" SHALL
40 MEAN AND INCLUDE DIGITAL OR ELECTRONIC IMAGES, IMPRESSIONS, REPRESENTA-
41 TIONS OR REPRODUCTIONS OF SUCH CRIMINAL RECORD, CRIMINAL HISTORY RECORD,
42 FINGERPRINTS, FINGERPRINT CARDS, PHOTOGRAPHS, PALMPRINTS, PERSONAL
43 APPEARANCE DATA, HANDWRITING SAMPLES AND DESCRIPTIVE DATA;

44 S 7. This act shall take effect immediately, provided that sections
45 two, three, four and five of this act shall take effect on the sixtieth
46 day after it shall have become a law.