

1419

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, GALEF -- Multi-Sponsored by -- M. of A. CHRISTENSEN, DINOWITZ, ESPAILLAT -- read once and referred to the Committee on Governmental Operations

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:

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

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

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

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

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

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

18 S 4. Paragraph (c) of subdivision 6-a of section 202 of the state
19 administrative procedure act, as added by chapter 850 of the laws of
20 1990, is amended to read as follows:

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

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

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

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

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

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

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

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

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

10 7. When any rule is proposed for which a rural area flexibility analy-
11 sis is required, the agency shall assure that public and private inter-
12 ests in rural areas have been given an opportunity to participate in the
13 rule making through such activities as:

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

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

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

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

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

28 S 7. This act shall take effect immediately.