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

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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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 202-a of the state administrative procedure act, as amended by chapter 520 of the laws of 1992, paragraph (b) as amended by chapter 229 of the laws of 2000, paragraph (f) as amended by chapter 628 of the laws of 1995, is amended to read as follows:

3. Each regulatory impact statement shall contain:

(a) Statutory authority. A statement analyzing the statutory authority for the rule, including but not limited to the agency's interpretation of the legislative objectives of such authority;

(b) Needs and benefits. A [statement setting forth the purpose of, necessity for, and benefits derived from the rule,] DESCRIPTION OF THE POTENTIAL BENEFITS OF THE RULE, INCLUDING ANY BENEFICIAL EFFECTS THAT CANNOT BE QUANTIFIED IN MONETARY TERMS, THE NECESSITY OF THE RULE, THE IDENTIFICATION OF THOSE LIKELY TO RECEIVE THE BENEFITS THEREOF, a citation for and summary, not to exceed five hundred words, of each scientific or statistical study, report or analysis that served as the basis for the rule, an explanation of how it was used to determine the necessity for and benefits derived from the rule, and the name of the person that produced each study, report or analysis;

(c) Costs. A [statement detailing the projected costs of the rule, which shall indicate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) THE NAME, PUBLIC OFFICE ADDRESS AND TELEPHONE NUMBER OF THE AGENCY REPRESENTATIVE FROM WHOM THE EXPRESS TERMS OF THE ACTION AND ANY REGULATORY IMPACT STATEMENT MAY BE OBTAINED;

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

(G) A STATEMENT OUTLINING THE DETERMINATION MADE BY THE AGENCY PROPOSING THE RULE THAT THE PROPOSED RULE IS CLEARLY WITHIN THE AUTHORITY DELEGATED BY LAW AND CONSISTENT WITH THE LEGISLATIVE INTENT; AND

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

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

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

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

(C) ESTABLISH A COMPLAINT PROCEDURE FOR DETERMINING ENFORCEMENT ACTIVITIES THAT MAY CAUSE ECONOMIC, FINANCIAL OR OTHER HARM TO ENTITIES AFFECTED BY EXISTING OR PROPOSED RULES. IN ADDITION, THE COUNCIL MAY PROVIDE RECOMMENDATIONS TO AGENCIES FOR CHANGING SUCH ENFORCEMENT PROCEDURES;

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

(E) IDENTIFY DUPLICATIVE, OVERLAPPING AND CONFLICTING RULES, EXISTING OR PROPOSED, AND EXISTING OR PROPOSED RULES THAT ARE INCONSISTENT WITH THE POLICIES UNDERLYING STATUTES GOVERNING AGENCIES OTHER THAN THE ISSUING AGENCY AND, IN SUCH CASES, REQUIRE APPROPRIATE INTERAGENCY CONSULTATION TO MINIMIZE OR ELIMINATE SUCH DUPLICATION, OVERLAP OR CONFLICT;

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

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

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

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